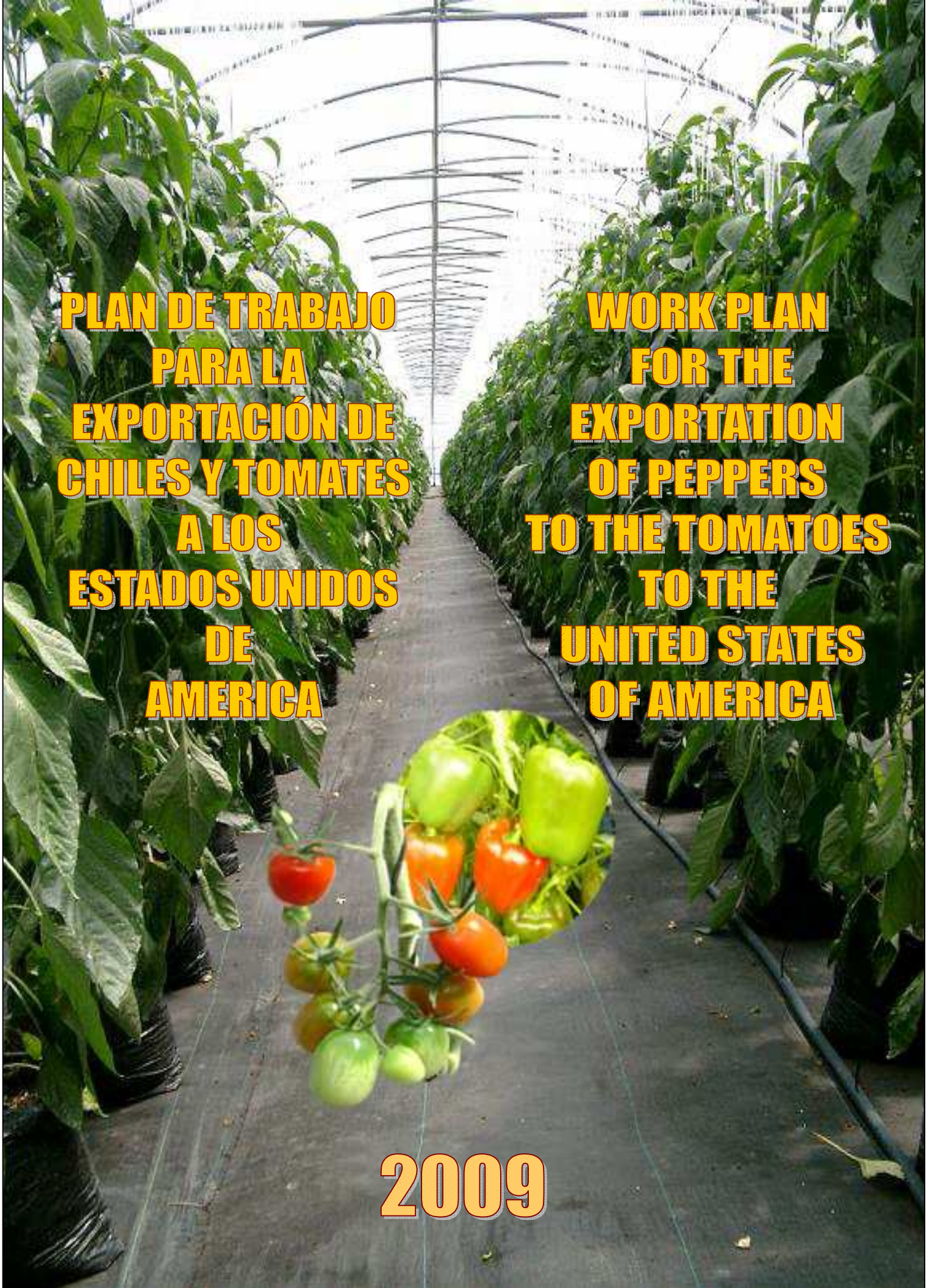

PLAN DE TRABAJO PARA LA EXPORTACIÓN DE CHILES Y TOMATES A LOS ESTADOS UNIDOS DE AMERICA

WORK PLAN FOR THE EXPORTATION OF PEPPERS TO THE TOMATOES TO THE UNITED STATES OF AMERICA

2009

Tabla de Contenidos

Table of Contents

Plan de Trabajo para el programa de Certificación de las Exportaciones de *Capsicum spp* y *Lycopersicon esculentum* a los Estados Unidos

El presente Plan de Trabajo fue elaborado conjuntamente por el Servicio Fitosanitario del Estado del Ministerio de Agricultura y Ganadería del Gobierno de Costa Rica y el Servicio de Inspección Agropecuario, Servicios Internacionales, del Departamento de Agricultura de los Estados Unidos. Será utilizado como una guía para la certificación y exportación de *Capsicum spp* y *Lycopersicon esculentum* a los Estados Unidos de América. No se autorizan cambios en estos lineamientos sin previa autorización por parte de APHIS. Cualquier cambio será documentado por escrito.

Los idiomas oficiales de este Plan de Trabajo serán el inglés y el español.

Por Costa Rica:

Ing. Gabriela Zúñiga Valerín
Directora
Servicio Fitosanitario del Estado

Ing. Javier Flores Galarza
Ministro de Agricultura
Testigo de Honor

Costa Rica, Enero 30 de 2009

Work Plan for the *Capsicum spp* and *Lycopersicon esculentum* Export Certification program to the United States

This Work Plan was developed jointly by Plant Protection Service of the Ministry of Agriculture and Husbandry of the Government of Costa Rica and the United States Department of Agriculture, Animal and Plant Health Inspection Service, International Services. It will be used as a guide for the certification and exportation of *Capsicum spp* and *Lycopersicon esculentum* to the United States of America. Deviation from these guidelines is not authorized unless previous approval is given by APHIS. All deviations will be documented in writing.

English and Spanish are the official languages of this Work Plan.

For the United States of America:

Eric Hoffman
APHIS Attaché
USDA/APHIS-IS

Peter Cianchette
Ambassador of the United States of America
Honorary Witness

Costa Rica, January 30, 2009

1. Productos incluidos en el programa

Tomates frescos (*Lycopersicon* esculentum) y chiles de las especies *Capsicum annuum, Capsicum frutescens, Capsicum baccatum, Capsicum chinense y Capsicum pubescens*

2. Certificado Fitosanitario de Exportación

2.1. El Certificado Fitosanitario para los chiles será otorgado con apego a la norma 7 CFR 319 [Docket No. 05–003–3] de APHIS y condicionado a la ausencia de plagas cuarentenarias (Anexo 1).

2.2. El Certificado Fitosanitario para tomates será otorgado con apego a la norma 7 CFR 319 Docket No. APHIS–2006–0009 de APHIS y condicionado a la ausencia de plagas cuarentenarias (Annex 2).

3. Organizaciones Participantes

3.1. El Servicio Fitosanitario del Estado del Ministerio de Agricultura y Ganadería del Gobierno de Costa Rica, en adelante SFE.

3.2. El Servicio de Inspección Agrícola, Servicios Internacionales del Departamento de Agricultura de los Estados Unidos, en adelante APHIS-IS.

4. Productores y Empacadores de tomates y/o chiles registrados como tales a través del SFE, en adelante Productores y Empacadores.

1. Products included in the program

Fresh tomatoes (*Lycopersicon* esculentum) and peppers of the species *Capsicum annuum, Capsicum frutescens, Capsicum baccatum, Capsicum chinense and Capsicum pubescens*

2. Phytosanitary Certificate of Exportation

2.1. The Phytosanitary Certificate for peppers will be issued based on the adherence to APHIS regulation 7 CFR 319 [Docket No. 05–003–3] and the absence of quarantine pests (Annex 1).

2.2. The Phytosanitary Certificate for tomatoes will be issued based on the adherence to APHIS regulation 7 CFR 319 Docket No. APHIS–2006–0009 and the absence of quarantine pests (Annex 2).

3. Participating Organizations

3.1. The Plant Protection Service of the Ministry of Agriculture and Husbandry of the Government of Costa Rica hereafter referred to as SFE.

3.2. The Animal and Plant Health Inspection Service, International Services of the United States Department of Agriculture, hereafter referred to as APHIS-IS.

3.3. Producers and Packers of tomatoes and/or peppers registered as such through the SFE hereafter referred to as Producers and Packers.

5. Acuerdos

El Acuerdo de Compromiso entre SFE y los productores/empacadores rige las responsabilidades técnicas y operacionales del programa de exportación de tomates y chiles en Costa Rica. (Anexo 3).

6. Responsabilidades de los participantes

6.1. Es responsabilidad de los productores y empacadores:

6.1.1. Cumplir con los requerimientos establecidos en este Plan de Trabajo y con cualquier otra regulación aplicable, de acuerdo con lo establecido en el Acuerdo de Compromiso entre SFE y los Productores y Empacadores (Anexo 3).

6.1.2. Informar inmediatamente a SFE sobre irregularidades en la ejecución de los requerimientos del programa y ejecutar oportunamente cualesquiera acciones correctivas.

6.1.3. Informar a SFE y APHIS al menos tres meses antes del inicio de la temporada de exportación.

6.1.4. Llevar a cabo las acciones necesarias para mantener los invernaderos libres de las siguientes plagas cuarentenarias de importancia para los Estados Unidos:

- En el caso de chiles: *Faustinus ovatipennis*, *Liriomyza huidobrensis* (Minador de hojas de la arveja), *Neoleucinodes elegantalis* (perforador del tomate), *Opogona sacchari* (palomilla del banano), *Phenacoccus parvus* (cochinilla harinosa de la lantana), *Planococcus minor* (cochinilla harinosa de la vid), *Thrips palmi* (Trips del melón), *Puccinia pampeana*, Virus Andino Moteado de la Papa, y el

4. Agreements

The Compliance Agreement between SFE and producers/packers governs the technical and operational responsibilities of the tomatoes and pepper export program in Costa Rica (Annex 3).

5. Participant responsibilities

5.1. It is the responsibility of the producers and packers:

5.1.1. To abide all the requirements established in this Work Plan and any other applicable regulations, as contained in the Compliance Agreement between SFE and the Packers (Annex 3).

5.1.2. To report immediately to SFE any irregularities in the execution of program requirements and to execute any necessary corrective actions on a timely basis.

5.1.3. To inform SFE and APHIS at least three months in advance the beginning of the export season.

5.1.4. To take the necessary actions to keep the greenhouses free of the following pest of quarantine importance to the United States:

- In the case of peppers: *Faustinus ovatipennis*, *Liriomyza huidobrensis* (Pea leafminer), *Neoleucinodes elegantalis* (tomato fruit borer), *Opogona sacchari* (banana moth), *Phenacoccus parvus* (Lantana mealybug), *Planococcus minor* (grape mealybug), *Thrips palmi* (Melon thrips), *Puccinia pampeana*, potato Andean potato mottle virus and the Tomato yellow mosaic virus.

Virus del Mosaico Amarillo del Tomate.	
• En el caso de Tomates: *Liriomyza huidobrensis* (Minador de hojas de la arveja), *Neoleucinodes elegantalis* (perforador del tomate), y el Viroide tubérculo fusiforme de la papa	• In the case of tomatoes: *Liriomyza huidobrensis* (Pea leafminer), *Neoleucinodes elegantalis* (tomato fruit borer) and potato spindle tuber viroid.
Estas medidas incluyen, sin limitarse a ellas: buenas prácticas agrícolas para el control de plagas en los viveros, eliminación de plantas infectadas, frutas sobre-maduras o no aceptables para la exportación.	These measures include but are not limited to: good agricultural practices for the pest control in the nurseries, culling of infested plants, over-ripen fruits or not acceptable for exportation.
6.1.5. Se requiere que los empacadores entreguen a SFE el programa semanal de empaque de manera que los inspectores puedan hacer los arreglos necesarios para las inspecciones.	5.1.5. Packers are required to provide SFE with the weekly schedule of packing so that SFE inspectors may arrange for inspections.
6.1.6. Se requiere que los productores/empacadores mantengan un mapa con la localización de los invernaderos y la localización de las trampas para las visitas oficiales.	5.1.6. Producers/Packers are required maintain a map with greenhouse and trap location for visual reference for officials visiting.
6.1.7. Suministrar los fondos necesarios mediante el Acuerdo de Compromiso para el personal de supervisión del SFE y la infraestructura de apoyo que incluye, pero no está limitada a: suministros, equipo, transporte y espacio de oficina si es necesario para la supervisión del programa.	5.1.7. To provide the necessary funds through the Compliance Agreement for the service of SFE supervisory personnel and support infrastructure included but not limited to: supplies, equipment, transportation and office space if necessary for supervising the program.
6.1.8. Mantener un programa de entrenamiento de personal en las políticas de exportación de APHIS que se lleve acabo como mínimo una vez durante la temporada de exportación	5.1.8. To keep a personnel training program on APHIS exportation policies that it's carried out at least once during the export season.
6.2. Es responsabilidad del SFE	**5.2. It is the responsibility of SFE**
6.2.1. En conjunto con APHIS, aprobar los sitios de producción que estarán enviando *Capsicum spp* y *Lycopersicon esculentum* a los Estados Unidos. (Anexo 4)	5.2.1. Jointly approve with APHIS the production sites that will be shipping *Capsicum spp* and *Lycopersicon esculentum* to the United States. (Annex 4)

6.2.2. Registrar los sitios de producción aprobados antes de que se inicie la exportación.	5.2.2. To register the approved production sites before the initiating exports
6.2.3. Visitar e inspeccionar los sitios de producción mensualmente, iniciando dos meses antes de la cosecha y continuando hasta el final de la temporada de envíos	5.2.3. Visit and Inspect the production sites monthly, starting two months before harvest and continuing through until de end of the shipping season
6.2.4. Certificar todos los envíos de Chiles y/o Tomates a los Estados Unidos durante la cosecha y hasta que finalice la temporada de envíos, aportando un oficial del SFE que supervise y ejecute las acciones requeridas en este Plan de Trabajo y cualquier otra regulación aplicable.	5.2.4. During harvest and upon completion of the shipping season certify all the shipments of peppers and/or tomatoes to the United States by providing a SFE officer to supervise and execute the required actions in this Work Plan and any other applicable regulations.
6.2.5. Mantener registros de la localización de trampas, revisiones de las mismas y de cualquier captura de Moscamed (*Ceratitis capitata*) y MoscaMex (*Anastrepha ludens*) en el caso de siembras de *C. pubescens*. (Anexo 5)	5.2.5. Maintain records of trap placement, checking of traps and any Medfly (*Ceratitis capitata*) and Mexfly captures (*Anastrepha ludens*) in case of *C. pubescens* plantations. (Annex 5)
6.2.6. Mantener un programa de control de calidad aprobado por APHIS para supervisar o auditar el programa de trampeo.	5.2.6. Maintain an APHIS approved quality control program to monitor or audit the trapping program.
6.2.7. Asegurar que las responsabilidades de todos los productores/empacadores sean realizadas adecuadamente de acuerdo con este Plan de Trabajo y tomar las acciones apropiadas según se requiera.	5.2.7. To ensure that responsibilities of all of the producers/packers are properly carried out according to this Work Plan and take the appropriate actions as required.
6.2.8. Brindar supervisión general y dirección al programa.	5.2.8. To provide general supervision and direction of the program
6.2.9. Suministrar los recursos humanos necesarios para realizar la inspección y certificación de los embarques en las plantas empacadoras, las medidas fitosanitarias en el campo y el control de la mosca de la fruta. Un inspector del SFE debe estar presente durante todo el proceso de cosecha, empaque y certificación de los cargamentos	5.2.9. To provide the necessary human resources to conduct shipment inspection and certification at the packing plant, field phytosanitary measures and fruit-fly control. An inspector from SFE should be present at all times during the process of recollection of the fruit, packing and shipment certification.

6.2.10. Servir como contacto oficial de APHIS.	5.2.10. To serve as the official contact with APHIS.
6.2.11. Mantener un Plan de Trabajo actualizado para el programa en cooperación con APHIS.	5.2.11. To maintain an up-to-date work plan for the program in joint cooperation with APHIS.
6.2.12. Suministrar reportes semanales de trampeo, inspección y exportaciones (Anexo 6A y 6B).	5.2.12. To provide weekly reports on trapping, inspection and company exports (Annex 6A y 6B).
6.3. Es responsabilidad de APHIS:	**5.3. It is the responsibility of APHIS:**
6.3.1. En conjunto con SFE, llevar acabo la inspección certificación inicial de los sitios de producción aceptados para la exportación de *Capsicum spp* y *Lycopersicon esculentum* a los Estados Unidos. (Anexo 4)	5.3.1. To jointly inspect and certify with SFE, initial approval of the production sites approved for exporting *Capsicum spp* and *Lycopersicon esculentum* to the United States. (Annex 4)
6.3.2. Supervisar los sitios de producción en cualquier momento durante la temporada de envíos.	5.3.2. To supervise the production sites at any time during the shipping season
6.3.3. Aprobar un programa de control de calidad para monitorear o auditar el programa de trampeo.	5.3.3. To approve a quality control program to monitor or audit the trapping program.
6.3.4. Revisar los datos del programa de trampeo en cualquier momento durante la temporada de envíos.	5.3.4. To review the trapping program data at any time during the shipping season.
6.3.5. Mantener un Plan de Trabajo actualizado para el programa en cooperación con SFE.	5.3.5. To maintain an up-to-date Work Plan for the program in joint cooperation with SFE.
6.3.6. Entrenar en conjunto con SFE al personal de la compañía previo al inicio de la temporada de exportación.	5.3.6. To jointly train with SFE company personnel prior to the beginning of the export season.
7. Políticas y regulaciones de APHIS	**6. Aphis policies and regulations**
7.1. La importación de *Capsicum spp* y *Lycopersicon esculentum* a los EU está regulada por Cuarentena de Frutas y Vegetales (Fruits and Vegetables	6.1. The importation of *Capsicum spp* and *Lycopersicon esculentum* to the U.S. is regulated under the Fruits and Vegetables Quarantine, 7 CFR 319 [Docket No. 05-

Quarantine), 7 CFR 319 [Docket No. 05-003-3]. (Anexo 1) y 7 CFR 319 Docket No. APHIS–2006–0009 (Annex 2) respectivamente.	003-1]. (Annex 1) and 7 CFR 319 Docket No. APHIS–2006–0009 (Annex 2) respectively.
7.2. La aprobación inicial de los sitios de producción sería llevada acabo en conjunto por, SFE y APHIS	6.2. Initial approval of the production sites would be completed jointly by the exporting country SFE and APHIS.
7.3. Representantes del país exportador, SFE, visitarían los sitios de producción al menos una vez al mes, iniciando dos meses antes de la cosecha y continuarían haciéndolo hasta el final de la temporada de envíos.	6.3. Representatives of the exporting country SFE would have to visit the production sites at least once a month, starting 2 months before harvest and continuing through until de end of the shipping season.
7.4. APHIS puede supervisar los sitios de producción en cualquier momento durante este periodo.	6.4. APHIS could monitor the production sites at any time during this period.
7.5. Los sitios de producción de tomates y/o chiles tendrán que ser invernaderos que no permitan el ingreso de plagas.	6.5. Tomato and/or Pepper production sites would have to consist of pest exclusionary green houses.
7.6. Los sitios registrados tendrán un programa de trampeo dentro del invernadero y dentro de un área de 500 metros de ancho alrededor del mismo con el fin de detectar la mosca de la fruta.	6.6. Registered sites would have a trapping program inside the greenhouse an within 500 meters wide around the registered production site for fruit fly detection.
7.7. El sitio de producción deberá ser inspeccionado antes de la cosecha para la detección de las siguientes plagas cuarentenarias:	6.7. The production site will have to be inspected before harvest for the following quarantine pests:
Para Chiles:	For Peppers:
Faustinus ovatipennis *Liriomyza huidobrensis* *Neoleucinodes elegantalis* *Opogona sacchari* *Phenacoccus parvus* *Planococcus minor* *Thrips palmi* *Puccinia pampeana*, Virus Andino del Moteado de la Papa Virus del Mosaico Amarillo del Tomate	*Faustinus ovatipennis* *Liriomyza huidobrensis* *Neoleucinodes elegantalis* *Opogona sacchari* *Phenacoccus parvus* *Planococcus minor* *Thrips palmi* *Puccinia pampeana*, Andean potato mottle virus Tomato yellow mosaic virus.

Para Tomates: *Liriomyza huidobrensis* *Neoleucinodes elegantalis* Viroide Tubérculo Fusiforme de la Papa	For tomatoes: *Liriomyza huidobrensis* *Neoleucinodes elegantalis* Potato spindle tuber viroid
7.8. SFE deberá mantener registros de la localización de trampas, mantenimiento de las mismas y de cualquier captura de moscas de la fruta.	6.8. SFE would have to maintain records of trap placement, checking of traps and any fruitfly captures.
7.9. SFE deberá mantener un programa de control de calidad aprobado por APHIS para supervisar o auditar el programa. Los registros de trampeo deben ser conservados para su análisis por parte de APHIS.	6.9. SFE will have to maintain an APHIS-approved quality control program to monitor or audit the program. Trapping records should be kept for APHIS review.
7.10. Los tomates y/o chiles deben ser empacados dentro de las 24 horas después de la cosecha en una planta de empaque libre de plagas.	6.10. The tomatoes and/or peppers must be packed within 24 hours of harvest in a pest exclusionary packinghouse.
7.11. Los tomates y/o chiles deben ser resguardados por una malla a prueba de insectos o por un plástico alquitranado mientras son transportados desde el sitio de producción hacia la empacadora y mientras esperan ser empacados.	6.11. The tomatoes and/or peppers must be safeguarded by and insect proof mesh screen or plastic tarpaulin while in transit from the production site to the packing house and while awaiting packing.
7.12. Los tomates y/o chiles deben ser empacados en cajas o contenedores a prueba de insectos o cubiertos por malla anti-insectos, o toldo de lona para su transporte a los Estados Unidos.	6.12. The tomatoes and/or peppers would have to be packed in insect-proof cartons or containers or covered with insect proof mesh for transiting into to the United States.
7.13. Durante el tiempo en que la empacadora se esté utilizando para la exportación de tomates y/o chiles a los Estados Unidos, la misma sólo debe aceptar tomates y/o chiles provenientes de sitios de producción aprobados y registrados.	6.13. During the time the packing house is in use for exporting tomatoes and/or peppers to the United States, the packinghouse could only accept tomatoes and/or peppers only from registered approved production sites.
7.14. La caja de envío tendrá una etiqueta con la identidad del sitio de producción.	6.14. The shipping box would have to be labeled with the identity of the production site.

8. Certificación Fitosanitaria para Exportación

El SFE será responsable de la certificación de la exportación, inspección y emisión de los certificados fitosanitarios. Cada envío de chiles y/o tomates deberá ser acompañado de un certificado fitosanitario emitido por SFE que llevará la siguiente declaración adicional:

En el caso de envíos de chiles:

Estos Chiles fueron producidos en un sitio de producción aprobado y el envío ha sido inspeccionado y encontrado libre de las plagas en la lista de requerimientos. (esta leyenda debe de escribirse en inglés)

En el caso de envíos de tomates:

Estos tomates fueron producidos en un sitio de producción aprobado y el envío ha sido inspeccionado y encontrado libre de las plagas en la lista de requerimientos. (esta leyenda debe de escribirse en inglés)

La cajas en el envío deben estar etiquetadas con la identificación del sitio de producción.

9. Sitios de producción en invernaderos

9.1. Los sitios de producción de chiles y/o tomates deberán consistir en invernaderos que no permitan el ingreso de plagas con puertas dobles con sistema de cierre automático.

9.2. Las puertas dobles deberán poderse cerrar con llave cuando el invernadero no esté operando.

9.3. Las aberturas adicionales deben ser cubiertos con una malla de 1.6 mm (o

7. Phytosanitary Export Certification

SFE would be responsible for the export certification, inspection and issuance of phytosanitary certificates. Each shipment of peppers and/or tomatoes would have to be accompanied by a phytosanitary certificate issued by SFE and bearing the following additional declaration in the certificate:

In the case of pepper shipments:

These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements.

In the case of tomato shipments:

These tomatoes were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements.

The shipping box must be labeled with the identity of the production site

8. Greenhouse production sites

8.1. Pepper and/or tomato production sites would have to consist of pest exclusionary green houses with self closing double doors.

8.2. Double doors must be lockable when the greenhouse is not in operation.

8.3. All additional openings would be required to be covered with 1.6 (or less)

menos).	millimeter screening.
10. Planta empacadora	**9. Packinghouse**
10.1. Los cargamentos de tomates y/o chiles deben ser empacados en una empacadora que no permita el ingreso de plagas.	9.1. The shipments of tomatoes and/or peppers must be packed in a pest exclusionary packinghouse.
10.2. Se deben instalar barreras físicas (tales como un sistema de puertas dobles, cortinas de aire y/o fajas plásticas transparentes que cuelguen verticalmente en las puertas) para evitar la posible entrada de moscas de la fruta u otros insectos polizontes al recinto a prueba de insectos.	9.2. Physical barriers must be installed (such as a double door system air curtains and/or vertically hanging clear plastic flaps at doors) to exclude the possible entry of fruit flies and hitchhiking insects into the insect-free enclosure.
10.3. Las puertas deben contar con cerraduras, incluyendo la puerta de área de cargado, para poder cerrarla cuando la empacadora no esté en uso.	9.3. Doors must have locks placed, including the door in the loading area, when the packinghouse is not in use.
10.4. El área de cargado deberá ser diseñada de manera que el contenedor se mantenga completamente sellado a las puertas de cargado mientras el contenedor/camión esté siendo cargado. No debe colocarse ninguna luz alrededor de esta área.	9.4. The loading area must be designed so that the container remains completely sealed to the loading doors as the container/truck is been loaded. No lightning should be placed around this area.
10.5. Las instalaciones de la empacadora deben contar con un área adecuada de manera que el personal del SFE pueda recoger muestras para la inspección/examen de las cajas de chiles y/o tomates empacados.	9.5. Packing house facilities must have an adequate area so that SFE personnel are able to draw samples for inspection/examination of the pepper and/or tomatoes packed boxes.
10.6. En la medida de lo posible se debe evitar el empacar o cargar los contenedores por la noche para prevenir la entrada de insectos polizontes en los contenedores/cajas.	9.6. Packing or loading at night should try to be avoided as to prevent hitchhiker from getting into the containers/boxes.
10.7. La planta empacadora debe cumplir con todos los requerimientos de seguridad y salud, tales como barandas en las escaleras y pasadizos, luz suficiente, extintores de incendios y botiquines de primeros auxilios, así como recipientes	9.7. The packing plant must comply with all safety and health requirements such as safety ladders and walkways, sufficient lighting, fire extinguishers and first aid kit, as well as adequate containers for waste.

adecuados para desperdicios.	
10.8. Se prohibirá la entrada de niños o personas no autorizadas a las áreas de tratamiento y empacado.	9.8. The admission of children or unauthorized persons into the treatment and packing areas shall be prohibited.
10.9. Si se encuentran insectos vivos durante la operación de la planta empacadora, se debe detener el proceso hasta que se implemente una medida fitosanitaria correctiva que garantice el control de la plaga.	9.9. If life insects are found during packing plant operation, the process should be halted until a phytosanitary measure is applied and that the pest control is guaranteed.
11. Procedimientos para la cosecha	**10. Harvesting procedures**
11.1. Se requiere que todos los productores sigan los siguientes procedimientos que están sujetos a la verificación por parte del SFE. Se debe mantener un registro de todos estos procedimientos.	10.1. All producers are required to meet the following procedures that are subject to verification by SFE. Records of all these procedures must be maintained.
11.2. Sanidad en el campo	10.2. Field sanitation
11.2.1. Al menos dos meses antes de la cosecha y a través de toda la cosecha los invernaderos de producción deberán estar bajo un programa de control para las siguientes plagas y enfermedades:	10.2.1. Beginning at least two months before harvest and continuing through the completion of harvest greenhouses production sites must be under pest control program following pests and diseases:
Para Chiles: *Faustinus ovatipennis* *Liriomyza huidobrensis* *Neoleucinodes elegantalis* *Opogona sacchari* *Phenacoccus parvus* *Planococcus minor* *Thrips palmi* *Puccinia pampeana*, Virus Andino del Moteado de la Papa Virus del Mosaico Amarillo del Tomate Para tomates: *Liriomyza huidobrensis* *Neoleucinodes elegantalis* Viroide Tubérculo Fusiforme de la Papa	For Peppers: *Faustinus ovatipennis* *Liriomyza huidobrensis* *Neoleucinodes elegantalis* *Opogona sacchari* *Phenacoccus parvus* *Planococcus minor* *Thrips palmi* *Puccinia pampeana*, Andean Potato Mottle Virus Tomato Yellow Mosaic Virus. For tomatoes: *Liriomyza huidobrensis* *Neoleucinodes elegantalis* Potato spindle tuber viroid

11.2.2. La sanidad en el campo debe mantenerse estrictamente de manera que las plantas caídas, de descarte o enfermas sean enterradas, destruidas o removidas del campo al menos dos veces por semana.	10.2.2. Field sanitation is to be strictly maintained so that fallen, culled and diseased vegetables are buried, destroyed or removed from the field at least twice per week.
11.2.3. Todos los tomates y/o chiles rechazados deben ser alejados y eliminados de manera apropiada fuera de los invernaderos de producción. Las plantas descartadas deben ser cubiertas con tierra a una profundidad no menor a 10 pulgadas o convertidas en compost para reducir la actividad de los insectos y para acelerar la degradación de los chiles y/o tomates.	10.2.3. All removed tomatoes and/or peppers must be taken away and properly disposed outside the greenhouse production sites. The discarded vegetables should be covered with soil at a minimum depth of 10 inches and/or composted to reduce insect activity and to speed degradation of the peppers and/or tomatoes.
11.2.4. El área de desechos debe ser revisada para detectar cualquier incremento en la actividad de la mosca de la fruta. Esta área debe ser tratada con un insecticida eficaz aprobado, de ser necesario.	10.2.4. The disposal area should be monitored to detect any increase in fruit fly activity. This area should be treated with an approved effective insecticide if necessary.
11.3. Cosecha	10.3. Harvest
11.3.1. En el momento de la cosecha, se deben seleccionar los tomates y/o chiles en el sitio de producción con el fin de reducir la cantidad de material vegetal descartado en la planta de empaque.	10.3.1. At time of harvest, tomatoes and/or peppers will be selected in the production site field to reduce amount of discarded vegetables at the packing plant.
11.3.2. El material vegetal de descarte será eliminado de inmediato después de la cosecha.	10.3.2. Culled vegetables will be disposed immediately after harvesting.
11.3.3. Los tomates y/o chiles deben ser resguardados por una malla a prueba de insectos o por un plástico alquitranado mientras son transportados desde el sitio de producción hacia la empacadora y mientras esperan ser empacados.	10.3.3. The tomatoes and/or peppers would have to be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing.
11.3.4. Todos los recipientes de campo deben codificarse para su adecuada identificación según invernadero y/o productor. Esto mantiene los tomates y/o chiles separados de acuerdo al	10.3.4. All field bins are coded for proper identification by greenhouse and/or grower. This keeps tomatoes and/or peppers separate according to greenhouse and/or grower from harvest through

invernadero y/o productor desde la cosecha hasta el empacado.	packing.
12. Programa de Trampeo	**11. Trapping Program**
12.1. Los sitios de producción registrados deberán contar con trampas con una proteína cebo aprobada para la detección de moscas de la fruta dentro de los invernaderos a una densidad de cuatro trampas por hectárea, con un mínimo de dos trampas por invernadero.	11.1. Registered production sites would have to contain traps with approved protein bait for the detection of fruit flies within the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse.
12.2. Las trampas deberán recibir mantenimiento semanal.	11.2. Traps would have to be serviced on a weekly basis.
12.3. Deberán colocarse trampas de moscamed con atrayente aprobado dentro de un área de amortiguamiento de 500 metros de ancho alrededor del sitio de producción, a una densidad de 1 trampa por cada 10 hectáreas, al menos una trampa deberá estar cerca del invernadero. Para chiles de la especie *C. pubescens* de áreas en donde se encuentra la Mosca Mexicana (*Anastrepha ludens*) deberán colocarse trampas tipo McPhail con proteína en igual densidad a las trampas Jackson. Estas trampas deberán ser revisadas al menos una vez cada 7 días.	11.3. Medfly traps with approved lure would have to be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares, at least one trap should be placed near the greenhouse. For peppers of the *C. pubescens* specie in areas were Mexfly (*Anastrepha ludens)* is known to occur, McPhail traps with protein should be placed in the same density of the Jackson traps. These traps would have to be checked at least once every 7 days.
12.4. Las trampas deberán ser dispuestas al menos dos meses antes de la exportación y el trampeo deberá continuar hasta el final de la cosecha.	11.4. Traps would have to be set for at least two months prior to export and trapping would continue to the end of harvest.
12.5. La captura de 0.7 o más moscamed por trampa por semana dentro de la zona de amortiguamiento o moscamex en el caso de chiles de la especie *C. pubescens* sería causa de suspensión o retraso de la cosecha.	11.5. Capture of 0.7 or more med flies per trap per week within the buffer zone or mexflies for peppers of the specie *C. pubescens* is known to occur would suspend or delay the harvest.
12.6. Si se detecta una sola moscamed (o moscamex en el caso de *C. pubescens*) dentro de un sitio de producción o en un envío las instalaciones perderían su facultad para exportar Chiles a los EUA hasta que SFE y APHIS	11.6. If a single Medfly (or mexfly in the case of *C. pubescens*) is detected in side a registered production site or in a consignment the facility would lose its ability to export peppers to the US until SFE and APHIS investigate the incident.

investiguen el incidente.	
12.7. El SFE tendrá que mantener registros del despliegue de las trampas, mantenimiento de las mismas y de cualquier captura de moscamed y moscamex (en el caso de *C. pubescens*). Además, SFE mantendrá un programa de control de calidad aprobado por APHIS con el fin de monitorear o auditar el programa de trampeo.	11.7. SFE will have to maintain records of trap placement, checking of traps and any medfly and mexfly captures (in the case of *C. pubescens*). In addition SFE will have to maintain an APHIS-approved quality control program to monitor or audit the trapping program.
13. Procedimientos de Inspección	**12. Inspection Procedures**
13.1. Antes de la inspección, los chiles y/o tomates se identificarán por invernadero y/o productor. Cualquier medida que se tome como resultado de hallazgos durante la inspección se aplicará automáticamente en la empacadora a todos los chiles y/o tomates de los respectivos invernaderos y/o productores.	12.1. Prior to inspection, the peppers and/or tomatoes will be identified by greenhouse and/or producers. Any action taken as a result of findings of the inspection will automatically apply to all the peppers and/or tomatoes in the packinghouse of the greenhouse and/or producers.
13.2. Los invernaderos serán inspeccionados en búsqueda de plagas cuarentenarias listadas en la sección de Políticas y Regulaciones de APHIS. (Anexo 7)	12.2. Greenhouses should be inspected for the quarantine pests listed in the APHIS policies and regulations sections as well as for holes in the mesh that can lead to the entrance of quarantine pests. (Annex 7)
13.3. Las inspecciones serán realizadas por SFE a lo largo de la temporada de envíos. El propósito de esta inspección es detectar cualquier productor que no se apegue a este Plan de Trabajo.	12.3. Inspections will be carried out by SFE throughout the shipping season. The purpose of this inspection is to detect any procedures not following this work plan.
13.4. SFE inspeccionará los invernaderos al menos una vez por semana durante la temporada de envíos con el fin de detectar plagas y enfermedades cuarentenarias.	12.4. SFE will inspect the greenhouses at least once a week during the shipping season for the detection of quarantine pests and diseases.
13.5. Las observaciones de la inspección deben registrarse en el formulario: “Formulario Diario de Inspección de la Planta Empacadora”. (Anexo 8)	12.5. Observations from inspection must be recorded on the form: “Daily Facility Inspection Form” (Annex 8)

12.6. El inspector debe seleccionar al azar un 2% de los chiles y/o tomates y examinarlos en busca de plagas cuarentenarias significativas. Cualquier organismo que se encuentre del cual se desconozca su importancia cuarentenaria, será considerado de significancia cuarentenaria. La inspección consistirá en un examen visual, haciendo uso de una lupa si es necesario. Se hará corte de material vegetal en caso de que haya indicaciones de organismos internos. Se deben llevar registros de todos los organismos encontrados y los especimenes deben conservarse.	12.6. The inspector should randomly select 2% of the peppers and/or tomatoes and examine for the presence of quarantine significant pests. Any organism found for which quarantine significance is not known will be considered to be quarantine significant. Inspection will consist of visual examination, with use of a hand lens, if necessary. Vegetable cutting will be carried out if there are any indications of internal organisms. Records must be kept of all organism encountered, and specimens must be retained.
12.7. Si se encuentran insectos durante la inspección, todas las cajas de ese lote deben ser re-inspeccionadas por el personal de la empacadora. SFE llevará acabo una segunda inspección después de que las cajas hayan sido chequeadas por el personal. El inspector del SFE también notificará al encargado de planta de lo que se encontró durante la inspección y este a su vez trasmitirá ese mensaje al personal para que chequeen mejor los chiles y/o tomates que están siendo empacados de ese lote.	12.7. If insects are found during the inspection all boxes from that batch, from that lot should be re-inspected by company personnel. SFE will conduct a second inspection after the boxes are checked by the personnel will also notify the Plant Manager of the findings who will then transmit that message to personnel as to better scrutinize peppers and/or tomatoes that are being packed from that lot.
12.8. Los insectos que se encuentren durante la inspección serán llevados para identificación en un laboratorio autorizado por SFE. Los resultados de esta identificación deben anotarse en el reporte semanal a APHIS	12.8. The insects that are found during the inspection will be taken for identification to a laboratory authorized by SFE. The results of this identification should be written in the weekly report to APHIS.
12.9 Todos los cargamentos de tomates y/o chiles hacia los Estados Unidos debe ser inspeccionados y certificados por oficiales del SFE.	12.9. All shipments of tomatoes and/or peppers to the United States must be inspected and certified by SFE officials.
14. Acciones Correctivas	**13. Corrective Actions**
14.1. En el caso de chiles el sitio de producción debe ser inspeccionado antes de la cosecha para la detección de: *Faustinus ovatipennis*, *Liriomyza huidobrensis* (Minador de hojas de la arveja), *Neoleucinodes elegantalis*	13.1. In the case of peppers the production site would have to be inspected prior to harvest for: *Faustinus ovatipennis*, *Liriomyza huidobrensis* (Pea leafminer), *Neoleucinodes elegantalis* (tomato fruit borer), *Opogona sacchari* (banana moth),

(perforador del tomate), *Opogona sacchari* (palomilla del banano), *Phenacoccus parvus* (cochinilla harinosa de la lantana), *Planococcus minor* (cochinilla harinosa de la vid), *Thrips palmi* (Trips del melón), *Puccinia pampeana*, Virus Andino Moteado de la Papa, y el Virus del Mosaico Amarillo del Tomate.	*Phenacoccus parvus* (Lantana mealybug), *Planococcus minor* (grape mealybug), *Thrips palmi* (Melon thrips), *Puccinia pampeana*, potato Andean Potato Mottle Virus and the Tomato Yellow Mosaic Virus.
14.2. En el caso de Tomates el sitio de producción debe ser inspeccionado antes de la cosecha para la detección de: *Liriomyza huidobrensis* (Minador de hojas de la arveja), *Neoleucinodes elegantalis* (perforador del tomate), y el Viroide tubérculo fusiforme de la papa	13.2. In the case of tomatoes the production site would have to be inspected prior to harvest for: *Liriomyza huidobrensis* (Pea leafminer), *Neoleucinodes elegantalis* (tomato fruit borer) and potato spindle tuber viroid
En caso de que se encuentre que alguna de esta plagas o cualquier otra plaga cuarentenaria que infecta de manera general el sitio de producción, el SFE no permitiría la exportación desde tal sitio hasta que se haya logrado la mitigación del riesgo y el productor reciba aprobación para re-iniciar operaciones por APHIS.	If any of these pests or any other quarantine pests are found to be generally infesting the production site, SFE would not allow export from that production site until risk mitigation has been achieved and the producer receives approval to resume operations by APHIS
14.3. Si el SFE detecta cualquier plaga cuarentenaria en el envío, el cargamento será considerado no elegible para exportación a los Estados Unidos.	13.3. If SFE detects any quarantine pests in the consignment, the shipment would be deemed ineligible for export to the United States.
14.4. La captura de 0.7 o más moscamed por trampa por semana dentro de la zona de amortiguamiento o moscamex en el caso de chiles de la especie *C. pubescens* sería causa de suspensión o retraso de la cosecha dependiendo de si ésta se había iniciado, para envíos de tomates y/o chiles desde ese sitio de producción, hasta que APHIS y SFE determinen que el riesgo de plaga ha sido mitigado.	13.4. Capture of 0.7 or more med flies per trap per week within the buffer zone or mexflies for peppers of the specie *C. pubescens* is known to occur would suspend or delay the harvest depending on whether the harvest had begun, for consignments of tomatoes and/or peppers from that production site until APHIS and SFE determine that the pest risk has been mitigated.
14.5. Si se detecta una sola moscamed (o moscamex en el caso de *C. pubescens*) dentro de un sitio de producción o en un envío las instalaciones perderían su facultad para exportar Chiles a los EUA hasta que SFE y APHIS mutuamente determinen que la mitigación	13.5. If a single Medfly (or mexfly in the case of *C. pubescens*) is detected in side a registered production site or in a consignment the facility would lose its ability to export peppers to the US until SFE and APHIS mutually determine that risk mitigation has been achieved.

del riesgo se ha logrado.	
14.6. Las acciones que no se apeguen a este Plan de Trabajo u otros requerimientos que apliquen serán manejados de forma consistente con la naturaleza de la acción, según determinen SFE y APHIS.	13.6. Actions not in compliance with this work plan or other applicable requirements will be dealt in a manner consistent with the nature of the action, as determined by SFE and APHIS.
14.7. Le será negada inmediatamente la certificación a aquel productor o empacador que no cumpla con las medidas fitosanitarias requeridas en el campo o en la planta empacadora. Dependiendo de la intención o seriedad del incidente, el Acuerdo de Compromiso será cancelado o suspendido.	13.7. Any producer or packer not in compliance with any required field or packing plant phytosanitary measures will immediately be denied certification. Depending on the intent or seriousness of the incident will have their Compliance Agreement canceled or suspended.
14.8. La detección de una plaga cuarentenaria significativa será causa de rechazo del invernadero en que fue encontrada. Si se detecta cualquier plaga interna, incluyendo moscas de la fruta, la planta empacadora será suspendida de inmediato a la espera de la revisión y aprobación por parte del SFE/APHIS.	13.8. The detection of a quarantine significant pest will be cause for rejection of the greenhouse in which it was found. If any internal pests are detected, including fruit flies, the packing plant will be immediately suspended pending evaluation by SFE/APHIS.
14.9. Cualquier emisión de un Certificado Fitosanitario para tomates y/o chiles, que no satisfaga totalmente los requerimientos fitosanitarios en el sitio de producción o en la planta empacadora, será causa de inmediata suspensión del Acuerdo de Compromiso, a la espera de la revisión y aprobación por parte del SFE y/o APHIS.	13.9. Any issuance of a Phytosanitary Certificate for tomatoes and/or peppers, which does not totally satisfy required fields and packing plant phytosanitary requirement, will be cause for immediate suspension of the Compliance Agreement, pending review and approval by SFE and/or APHIS.
14.10. SFE no permitirá los envíos de tomates y/o chiles que provienen de sitios de producción que no estén registrados dentro del programa.	13.10. SFE will not allow the shipments of tomatoes and/or peppers from production sites that are not registered within the program.
15. Revisión y Evaluación del Programa	**14. Program Review and Evaluation**
15.1. Las actividades de certificación del tomate y/o chile serán revisadas y evaluadas al menos una vez al año por	14.1. Tomato and/or pepper certification activities will be reviewed and evaluated at least once a year or sooner by

parte del SFE y APHIS, o antes, si la condiciones fitosanitarias cambian, para asegurar que todos los aspectos de la operación y las actividades relacionadas sean conducidas con eficiencia de acuerdo con los procedimientos y las normas que apliquen.	SFE and APHIS, if phytosanitary conditions change, to ensure that all aspects of the operation and related activities are conducted effectively in accordance with applicable procedures and standards.
15.2. En caso de que surjan eventos no previstos, SFE y APHIS coordinarán las acciones apropiadas y las propondrán como revisiones al Plan de Trabajo.	14.2. If any unforeseen event arises, SFE and APHIS will coordinate appropriate actions and propose them as revisions of the Work Plan.

16. Anexos	15. Annexes
1. Regulación Final para la Importación de Chiles a los Estados Unidos	1. Final Rule for the Importation of Peppers to the United States
2. Regulación Final para la importación de Tomates a los Estados Unidos	2. Final Rule for the Importation of Tomatoes to the United States
3. Acuerdo de Compromiso del SFE	3. SFE Compliance Agreement
4. Formulario de Certificación de Compañías Exportadoras de Chiles /Formulario de Inspección	4. Pepper Export Companies Certification Form / Inspection Report
5. A.Reporte de Monitoreo/ B.Formulario del Programa de Control de Calidad de Moscas de la Fruta: B1.Evaluación de las Actividades de monitoreo/ B2. Colocación de Especímenes y Objetos Extraños	5. Trapping Report/Fruit Fly Control Program Form
6. A. Reporte semanal de inspecciones. B. Reporte de capturas de moscas (Informe semanal del monitoreo)	6. Weekly Report
7. Formulario de inspección semanal de invernaderos	7. Greenhouse Weekly Inspection Form
8. Formulario diario de inspección de la Planta empacadora	8. Daily Facility Inspection Form

Annex1

FINAL RULE FOR THE IMPORTATION OF PEPPERS TO THE UNITED STATES

be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

4. In § 890.806 add new paragraph (j)(4)(iv) to read as follows:

§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?

* * * * *

(j) * * *

(4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the former spouse must change the enrollment within 60 days of the disaster, as announced by OPM. If the former spouse does not change the enrollment within the time frame announced by OPM, the former spouse will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

5. In § 890.1108 add new paragraph (h)(4)(iv) to read as follows:

§ 890.1108 Opportunities to change enrollment; effective dates.

* * * * *

(h) * * *

(4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

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[FR Doc. 06–2081 Filed 3–6–06; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–078–2]

Karnal Bunt; Addition and Removal of Regulated Areas in Arizona

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in Maricopa and Pinal Counties, AZ, to the list of regulated areas and by removing certain areas or fields in Maricopa County, AZ, from the list of regulated areas. Those actions were necessary to prevent the spread of Karnal bunt into noninfected areas of the United States and to relieve restrictions on certain areas that were no longer necessary. **DATES:** Effective on March 7, 2006, we are adopting as a final rule the interim rule that became effective on December 7, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Karnal Bunt Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–3769.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 7, 2005, and published in the **Federal Register** on December 13, 2005 (70 FR 73553–73556, Docket No. 05–078–1), we amended the regulations in ''Subpart—Karnal Bunt'' (7 CFR 301.89–1 through 301.89–16) by adding certain areas in Maricopa and Pinal Counties, AZ, to the list of regulated areas in § 301.89–3(g), either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3- mile-wide buffer zone around fields or areas affected with Karnal bunt. In the same interim rule, we also amended the regulations by removing certain areas or fields in Maricopa County, AZ, from the list of regulated areas based on our determination that those fields or areas had met our criteria for release from regulation.

We solicited comments concerning the interim rule for 60 days ending February 13, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 73553–73556 on December 13, 2005.

Done in Washington, DC, this 28th day of February 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2073 Filed 3–6–06; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 05–003–3]

Importation of Peppers From Certain Central American Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables in order to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported, under certain conditions, into the United States without treatment. The conditions to which the importation of peppers will be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action will allow for the importation of peppers from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: *Effective Date:* March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 though 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 dissemination of plant pests that are new to or not widely distributed within the United States.

On October 12, 2005, we published in the **Federal Register** (70 FR 59283–59290, Docket No. 05–003–1) a proposed rule to amend the regulations to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported into the United States without treatment under specified conditions.

On November 7, 2005, we published a document in the **Federal Register** (70 FR 67375, Docket No. 05–003–2) in which we corrected the Supplementary Information section of the proposed rule to state that Guatemala was the only Central American country covered by our proposal that currently contains areas free of the Mediterranean fruit fly (Medfly). In addition, we corrected the figure given in the proposed rule's "Paperwork Reduction Act" section for the estimated annual total burden on respondents.

We solicited comments on the proposed rule for 60 days ending on December 12, 2005. We received 32 comments by that date. They were from representatives of State and foreign governments, importers and exporters, industry organizations, producers, scientists, and private citizens. Of those commenters, 31 fully supported the proposed changes, although one of those commenters posed a question, which is addressed below. The remaining commenter was opposed to the proposed rule. The issues raised by that commenter are also addressed below.

One commenter asked if the recognition and approval of fruit fly free areas in the Central American countries covered by the rule will be performed by Animal and Plant Health Inspection Service (APHIS) personnel coming from the United States or by APHIS personnel already on duty in the region.

The recognition and approval of free areas will be conducted in accordance with the procedures described in paragraph (f) of § 319.56–2 of the regulations. The APHIS personnel involved in the approval and auditing activities called for by that paragraph may be already stationed in the region or may be drawn from APHIS offices in the United States.

The commenter who opposed the proposed rule stated that from 1999 to 2005, there were 794 interceptions in Florida of the pests of concern identified in the pest risk assessment and the proposed rule. The commenter stated that allowing the importation of hosts of these pests would add to the likelihood of pest introduction.

We are not making any changes to our proposal in response to this comment. We suspect the commenter's figure includes pest interceptions on other fruits and vegetables, not only peppers, and that the majority of these interceptions were in passenger baggage, not commercial cargo. An examination of our interception records from the port of Miami, FL, from 1999 to 2005 revealed that there were only two interceptions of any of the quarantine pests identified in the proposed rule; these interceptions were made in commercial shipments of processed peppers. It is unlikely that those processed peppers were subjected to any of the phytosanitary measures described in the proposed rule and required by this final rule. For the reasons detailed in the proposed rule, we are confident that the risks associated with commercial shipments of peppers imported into the United States from Central America will be effectively mitigated through the application of the phytosanitary measures required by this final rule.

The same commenter agreed that the proposed phytosanitary measures were conceptually well-grounded, but expressed doubt as to whether the national plant protection organizations (NPPOs) of the individual countries would be able to provide sufficient oversight of those measures to prevent the movement of pests into Florida.

The commenter provided no evidence to support his contention regarding the inability of the Central American NPPOs to oversee the prescribed phytosanitary measures. The continued ability of producers in those countries to export peppers to markets such as the United States is dependent on their ability to meet our phytosanitary standards. We are confident that the NPPOs in Central America are fully capable of overseeing the application of the measures required by this rule. Further, this rule provides that APHIS will maintain oversight by participating in the approval and monitoring of production sites and by reviewing the trapping records that must be maintained for each site. If, through trapping records, site visits, or port of entry inspections, we find that any of the required mitigation measures are not being properly administered, we will suspend shipments from the offending sites.

Miscellaneous Change

In our proposed provisions concerning the placement of Medfly traps in the buffer area surrounding each production site, we referred to Medfly traps with an approved protein bait. In this final rule, those provisions (§ 319.56–2oo(b)(3)(iii)) refer Medfly traps with an approved lure, as it will be parapheromone lures, rather than protein baits, that will be used outside of the greenhouses.

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 change discussed in the previous paragraph.

Note: In our October 2005 proposed rule, we proposed to add the conditions governing the importation of peppers from Central America as § 319.56–2nn. In this final rule, those conditions are added as § 319.56–200.

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 peppers from certain countries while continuing to protect against the introduction of plant 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. The shipping season for peppers from eligible Central American countries is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. 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.

We are amending the regulations governing the importation of fruits and vegetables in order to allow certain types of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported, under certain conditions, into the United States without treatment. The conditions to which the importation of peppers will be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action will allow for the importation of peppers from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. In accordance with section 604 of the RFA, we have prepared a final regulatory flexibility analysis describing the expected impact of the changes in this rule on small entities. During the comment period for our proposed rule, we did not receive any comments pertaining to the initial regulatory flexibility analysis presented in that document.

Central American Production and Exports

While agriculture is an important industry in the countries that will be affected by this rule, it does not account for the largest share of gross domestic product in any of the countries. Peppers do not appear to be a major crop in those Central American countries. However, production and exports of peppers are following upward trends.

Over the past four decades, pepper production in Central America has been on the rise. For the last 11 years, exports of peppers from this region have also increased. However, much of the increase in exports is a reflection of increased trade among the countries in this region. During this time period, an average of 62.23 percent of exports were intra-regional. Although this percentage has fluctuated substantially, the percentage of peppers exported from Central American countries to other Central American countries has been generally above 70 percent since 1997 with the exception of 2002. In 2003, approximately 96 percent of all Central American pepper exports were sent to other countries within the region.

It is estimated that about 31,040 metric tons of peppers may be imported into the United States each year from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua as a result of this rule.[1]

U.S. Production and Trade Levels

In 2004, U.S. pepper production totaled 843,696 metric tons (table 1). While domestic production has fluctuated from year to year and has declined or remained steady since 2000, there has been an upward trend in domestic pepper production over the last 9 years. Imports have also been on the rise, and these have been increasing at a rapid pace since 1996. Per capita consumption of bell peppers has remained fairly constant over the past 9 years, while consumption of chili peppers has been growing at a steady pace since 1996, as seen in table 1. Although the levels of production, imports, and per capita consumption are reported for all pepper varieties, information on exports and domestic consumption is not available for all varieties. This is only reported in the case of bell peppers, and is shown in table 2. That table shows that most production is consumed domestically, with approximately 10 percent devoted to exports. Additionally, as mentioned above, per capita consumption of bell peppers has been steady despite the overall increase in imports.

TABLE 1.—U.S. PRODUCTION, IMPORTS, AND PER CAPITA CONSUMPTION OF ALL PEPPERS, 1996–2004

Year	Production and imports (metric tons)		Per capita consumption (pounds)		
	Production	Imports	Bell peppers	Chili peppers	Total
1996	752,976	277,334	7.1	4.6	11.7
1997	680,400	290,557	6.4	4.5	10.9
1998	662,256	329,336	6.4	4.7	11.1
1999	707,616	342,128	6.7	4.7	11.4
2000	911,736	346,660	7.0	5.1	12.1
2001	857,304	366,514	6.9	5.1	12.0
2002	843,696	408,499	6.8	5.7	12.5
2003	843,696	426,197	6.9	5.5	12.4
2004	843,696	445,982	7.1	6.0	13.1

Source: USDA/ERS, "Vegetables and Melons Yearbook," *http://usda.mannlib.cornell.edu/data-sets/specialty/89011/.*

TABLE 2.—U.S. SUPPLY AND UTILIZATION OF FRESH BELL PEPPERS, 1996–2004

Year	Supply			Utilization		
	Production*	Imports*	Total*	Exports*	Domestic*	Per capita use (pounds)
1996	754,745	171,143	925,888	60,465	865,423	7.1
1997	678,540	179,217	857,758	60,692	797,066	6.4
1998	660,260	199,085	859,345	57,970	801,375	6.4
1999	705,892	206,524	912,416	66,309	846,107	6.7
2000	765,631	198,190	963,822	71,479	892,342	7.0
2001	748,168	215,596	963,764	73,347	890,417	6.9
2002	710,700	249,979	960,679	73,166	887,514	6.8

[1] These estimates were provided by the exporting countries and have been aggregated for the purpose of this analysis.

TABLE 2.—U.S. SUPPLY AND UTILIZATION OF FRESH BELL PEPPERS, 1996–2004—Continued

Year	Supply			Utilization		
	Production*	Imports*	Total*	Exports*	Domestic*	Per capita use (pounds)
2003	731,112	245,715	976,828	72,077	904,751	6.9
2004	762,184	258,053	1,020,237	73,438	946,799	7.1

Source: USDA/ERS, "Vegetables and Melons Yearbook," *http://usda.mannlib.cornell.edu/data-sets/specialty/89011/.*
*Amounts shown are in metric tons.

From 1995 to 2003, most of the peppers imported into the United States came from Mexico, Canada, and the Netherlands, with the majority supplied by Mexico. Given the close ties created by the North American Free Trade Agreement, these trading patterns are not surprising.

It is unlikely that this rule will lead to dramatic increases in U.S. import levels of peppers. The amount of peppers expected to be imported from the countries covered by this rule (31,040 metric tons) represents approximately 6.95 percent of the 2004 import level (445,982 metric tons). Thus, Central American imports are not expected to command a large portion of the U.S. imported pepper market. **Effects on Small Entities**

This rule will affect domestic producers of peppers as well as importers that deal with these commodities. It is likely that the entities affected will be small according to Small Business Administration (SBA) guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities will not be significant.

Two alternatives to this rule are as follows: (1) Maintaining the regulations as they are currently written regarding the importation of peppers from these Central American countries or (2) allowing importation of the peppers under phytosanitary requirements less stringent than those described in this rule.

The first alternative would maintain current safeguards against the entry of quarantine pests, *i.e.*, continue the current prohibition on the importation of fresh peppers from the countries covered by this rule. However, given our determination that the application of the phytosanitary measures described in this rule will effectively mitigate the risks associated with the importation of commercial shipments of peppers from the specified Central American countries, we do not believe a continued prohibition on those imports would be appropriate or justifiable. Further, this option would also mean that those specified Central American countries, as well as the United States, would forgo the economic benefits expected to be afforded by the trade of Central American peppers.

The second alternative—allowing importation of fresh peppers from certain Central American countries under phytosanitary requirements less restrictive than those in this rule—could potentially lead to the introduction of pests not currently found in the United States. This option could result in significant damage and costs to domestic production and is not desirable for those reasons.

Affected U.S. pepper producers are expected to be small based on 2002 Census of Agriculture data and SBA guidelines for entities in two farm categories: Other Vegetable (except Potato) and Melon Farming (North American Industry Classification System [NAICS] number 111219) and Other Food Crops Grown Under Cover (NAICS number 111419). The SBA classifies producers in these farm categories as small entities if their total annual sales are no more than $750,000. APHIS does not have information on the size distribution of domestic pepper producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States.[2] Of this number, approximately 97 percent had total annual sales of less than $500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms.[3] This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 4,748 pepper farms that could be affected by this rule would also qualify as small. In the case of fruit and vegetable wholesalers (NAICS number 422480),[4] those entities with fewer than 100 employees are considered small by SBA standards.[5] In 1997, there were a total of 4,811 fruit and vegetable wholesale trade firms in the United States.[6] Of these firms, 4,610 or 95.8 percent employed fewer than 100 employees and were considered small by SBA standards. Between 1997 and 2002 there is not likely to have been substantial changes in the industry. Therefore, domestic producers and importers that may be affected by this rule are predominantly small entities.

Economic analysis of the expected increase in imports of peppers from Central America shows that the importation of these commodities will lead to negligible changes in domestic prices. Based on historical consumption data, an increase in imports of this magnitude would lead to a decrease in price of approximately $0.01 to $0.02 per pound at the retail level, based on an average price of $1.15 per pound over the last 25 years.

Although domestic producers may face slightly lower prices as a result of the increase in the pepper supply, these price changes are expected to be negligible. Changes of the magnitude presented here should not have large repercussions for either domestic producers or importers of peppers.

This rule contains information collection or recordkeeping requirements (see "Paperwork Reduction Act" below).

Executive Order 12988

This final rule allows peppers to be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. State and local laws and regulations regarding peppers imported under this rule will be preempted while the fruit is in foreign commerce. Fresh peppers are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce

[2] This number represents the total number of farms in the United States, thus including barley, buckwheat, corn, millet, oats, rice, soybean, and sugarcane farms.

[3] Source: SBA and 2002 Census of Agriculture.

[4] Note that this NAICS code relates to the 1997 Economic Census. The 2002 NAICS code for this group is 424480.

[5] For NAICS 424480, SBA guidelines state that an entity with not more than 100 employees should be considered small unless that entity is a government contractor. In this case, the size standard increases to 500 employees. However, in this instance, it is fair to assume that fruit and vegetable importers will not be under government contract since it is against regulations for imports to be used in relevant government programs (*e.g.*, school lunch programs).

[6] Source: SBA and 1997 Economic Census.

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.

National Environmental Policy Act An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of peppers under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[7] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. **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 0579–0274.

Government Paperwork Elimination Act Compliance

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

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. A new § 319.56–2oo is added to read as follows:

§ 319.56–2oo Administrative instructions: Conditions governing the entry of peppers from certain Central American countries.

Fresh peppers (*Capsicum* spp.) may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua only under the following conditions:

(a) For peppers of the species *Capsicum annuum, Capsicum frutescens, Capsicum baccatum,* and *Capsicum chinense* from areas free of Mediterranean fruit fly (Medfly), terms of entry are as follows:

(1) The peppers must be grown and packed in an area that has been determined by APHIS to be free of Mediterranean fruit fly (Medfly) in accordance with the procedures described in § 319.56–2(f) of this subpart.

(2) A pre-harvest inspection of the growing site must be conducted by the national plant protection organization (NPPO) of the exporting country for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus, and if these pests are found to be generally infesting the growing site, the NPPO may not allow export from that production site until the NPPO has determined that risk mitigation has been achieved.

(3) The peppers must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(4) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pests listed in the requirements."

(b) For peppers of the species *Capsicum annuum, Capsicum frutescens, Capsicum baccatum, Capsicum chinense,* and *Capsicum pubescens* from areas in which Medfly is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO will visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest-exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(3) Registered sites must contain traps for the detection of Medfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export peppers to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

[7] Go to *http://www.regulations.gov,* click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS–2005–0095 then click on "Submit." The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

(iii) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Medfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS' review.

(5) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements." The shipping box must be labeled with the identity of the production site.

(c) For peppers of the species *Capsicum pubescens* from areas in which Mexican fruit fly (Mexfly) is considered to exist:

(1) The peppers must be grown in approved production sites registered with the NPPO of the exporting country. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly, starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(2) Pepper production sites must consist of pest-exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(3) Registered sites must contain traps for the detection of Mexfly both within and around the production site.

(i) Traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(ii) If a single Mexfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to ship under the systems approach until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(iii) Mexfly traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export, and trapping must continue to the end of the harvest.

(iv) Capture of 0.7 or more Mexflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(v) The greenhouse must be inspected prior to harvest for the weevil *Faustinus ovatipennis,* pea leafminer, tomato fruit borer, banana moth, lantana mealybug, passionvine mealybug, melon thrips, the rust fungus *Puccinia pampeana,* Andean potato mottle virus, and tomato yellow mosaic virus. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, export from that production site will be halted until the exporting country's NPPO determines that the pest risk has been mitigated.

(4) The exporting country's NPPO must maintain records of trap placement, checking of traps, and any Mexfly captures. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS's review.

(5) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(6) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may accept peppers only from registered approved production sites.

(7) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These peppers were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements." The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control number 0579–0274)

Done in Washington, DC, this 1st day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2127 Filed 3–6–06; 8:45 am]

BILLING CODE 3410–34–P

Annex 2

FINAL RULE FOR THE IMPORTATION OF TOMATOES TO THE UNITED STATES

Rules and Regulations

Federal Register
Vol. 71, No. 166
Monday, August 28, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2006–0009] Importation of Tomatoes From Certain Central American Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables in order to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. The conditions to which the importation of tomatoes will be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action will allow for the importation of pink and red tomatoes from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1228; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 though 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 dissemination of plant pests that are new to or not widely distributed within the United States.

Section 319.56–2dd of the regulations contains administrative instructions allowing the importation of tomatoes from various countries where the Mediterranean fruit fly (Medfly, *Ceratitis capitata*) is present. In this document, we are amending that section by adding a new paragraph (f) that sets forth administrative instructions concerning the importation of pink and red tomatoes from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

On February 6, 2006, we published in the **Federal Register** (71 FR 6011–6016, Docket No. APHIS–2006–0009) a proposal [1] to amend the regulations to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States under certain conditions.

We solicited comments concerning our proposal for 60 days ending April 7, 2006. We received 15 comments by that date. They were from representatives of State and foreign agricultural departments, industry organizations, importers and exporters, producers, farmers, and individuals. Eight of these commenters supported the proposed rule. The others expressed reservations, which are discussed below.

General Comments

In our proposal, we explained that the proposed conditions to which tomatoes from Central America would be subject were very similar to current requirements for importing tomatoes from France, Morocco and Western Sahara, and Spain. We also stated that since the start of the tomato systems approach in France and Spain, the number of pest interceptions has been very low, with an approximate shipment infestation rate of 0.005 percent in Spain and 0.06 percent in France. With respect to those numbers, one commenter asked if the pest interception rates were for Medfly or for some other pest.

The interceptions on tomatoes from France and Spain were leafminers, not Medfly.

One commenter questioned why the pea leafminer (*Liriomyza huidobrensis*) was included in the list of quarantine pests of concern in the risk management document. The commenter said it would be unlikely for the pea leafminer to be introduced on tomato fruit, as that pest is commonly associated with only foliage or leaf litter, and asked if those plant parts will be allowed entry.

The commenter is correct in that the pea leafminer feeds on foliage and not fruit. While foliage and leaf litter will not be permitted entry with tomato fruit, leafminer pupae may fall from tomato foliage onto the fruit during harvesting, packing, etc. These pupae are easy to detect and inspectors should readily detect any that may end up on fruit.

Two commenters expressed concern that allowing more imports of tomatoes from foreign markets would result in negative economic impacts on small family farms in the United States. Two additional commenters stated that the Florida tomato industry has already experienced disasters such as freezes and hurricanes and that the entry of Medfly into Florida could devastate an already struggling industry.

Our proposed rule was prepared in response to requests from several Central American countries that we allow the importation of pink and red tomatoes grown under a systems approach. Our scientific review of pests, similar programs, and other available documents led us to conclude that pest risk would be mitigated under the systems approach. The Plant Protection Act authorizes the Secretary to prohibit or restrict importations only when necessary to prevent the introduction of plant pests.

One commenter stated that any imports of pink and red tomatoes from the Central American countries as proposed will increase the risk of the Medfly entering the United States and noted that the proposed rule claims only that the risk of Medfly introduction will be mitigated, not eliminated.

This rule is designed to prevent the introduction and dissemination of quarantine pests into the United States. We recognize that there is no such thing as "zero risk" with respect to the

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov*, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS–2006–0009, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

importation of agricultural commodities, so we cannot claim that required phytosanitary measures will entirely eliminate all risk. With regard to pink and red tomatoes from Central America, we have determined that the requirements and mitigation measures set forth in this rule are effective and provide the appropriate level of protection to prevent the introduction and dissemination of the pests of concern in the United States. Further, pink and red tomatoes are not a preferred host of Medfly and Medfly has never been intercepted in commercial shipments of tomatoes grown under similar systems approaches in other countries.

One commenter stated that we did not clearly explain how the risks presented by tomatoes from Central America were similar to the risks presented by tomatoes from other countries. The commenter asked that we explain this conclusion. In addition, the commenter stated that we did not provide an explanation as to how the systems approach itself was very similar to the current requirements for importing tomatoes from France, Morocco and Western Sahara, and Spain, nor did we provide any documentation that the enforcement regimes in Europe are similar or equivalent to those in Central America.

With regard to risks presented by Central American tomatoes, we did not state that the risks associated with tomatoes from Central America and other countries were the same, merely that the systems approach we were proposing to add has been successful at mitigating the risk of Medfly introduction into the United States when applied to tomatoes produced in those other countries. With regard to the specific similarities of the systems approaches, tomatoes from Spain, France, and Morocco and Western Sahara are imported under conditions similar to those which will be applied to Central American tomatoes. The use of pest-exclusionary greenhouses, trapping/triggering programs, and inspection are similar in all of the programs. The requirements pertaining to the importation of pink and red tomatoes from Spain and France are contained in § 319.56–2dd, paragraphs (a) and (b), and requirements for Morocco and Western Sahara are contained in paragraph (c), and may be compared to the provisions of § 319.56–2dd, paragraph (f) in this rule.

With regard to growing conditions, the proposed rule did not make any claims as to the similarity of the growing conditions and practices in France, Morocco and Western Sahara, and Spain, thus we have not prepared any documentation on that subject. The enforcement regimes of those countries with respect to their tomato export programs would equate to compliance with the relevant regulations in § 319.56–2dd, thus any similarities in their respective enforcement regimes would be in line with the similarities among the respective paragraphs in those regulations.

One commenter stated that in a draft report titled, "Exotic Fruit Fly Strategic Plan, FY 2006–2010," APHIS acknowledged that the fruit fly populations in Central America and in Mexico are a significant threat to U.S. agriculture due to the large numbers of people migrating north from fruit fly infested areas. The commenter stated that APHIS did not acknowledge this risk in the proposed rule.

The proposed rule pertains to the importation of commercial shipments of tomatoes from the specified Central American countries. Therefore, the risk documentation prepared for the proposed rule, as well as the proposed rule itself, focus on the commercial fruit pathway and do not examine or seek to address the risks associated with individuals migrating from fruit fly infested areas in those countries to the United States.

Alternatives Considered

One commenter stated that APHIS should consider requiring the use of aerial spraying of spinosad in the areas where Medfly exists and/or a program releasing sterile fruit flies in the Medfly areas of these countries to reduce the risk of exporting Medfly on pink and red tomatoes to the United States.

The measures suggested by the commenter would be undertaken by a country seeking to eradicate a fruit fly or to establish areas of pest freedom or low prevalence. They are not phytosanitary measures APHIS can require with respect to a particular imported commodity.

One commenter requested that we limit distribution of pink and red tomatoes to States with crops that are not susceptible to Medfly or other quarantine pests from Central American countries. The commenter stated that at a minimum, Central American tomatoes should not be allowed to be distributed in the southern United States.

Based on our experience with similar programs in France, Spain, and Morocco and Western Sahara, we believe that limiting distribution of tomatoes in the United States would be beyond what is necessary to ensure pest mitigation is achieved. As stated previously, the Plant Protection Act authorizes the Secretary to prohibit or restrict importations only when necessary to prevent the introduction of plant pests.

One commenter stated that APHIS did not consider the use of ethylene gas on green tomatoes to ripen them. The commenter added that using ethylene gas will not increase the risk of Medfly introduction because it would involve importing green tomatoes only.

Ethylene gas is not a phytosanitary measure; therefore, we would not require the use of it in our regulations. Further, green tomatoes from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama are currently enterable into the United States and importers are free to use ethylene gas to color tomatoes if they desire.

One commenter stated that we did not consider irradiation as an alternative.

As stated previously, we evaluated the risks associated with pink and red tomatoes from Central America and determined that the risks could be mitigated through the application of the measures described in the proposed rule and in this document. If we had determined that the designated measures were insufficient to provide an appropriate level of quarantine security, it is possible that we would have considered requiring the application of phytosanitary treatments such as irradiation. That was not necessary, however.

Central American National Plant Protection Organizations

One commenter asked if APHIS will provide oversight to ensure compliance with the program.

APHIS will provide oversight of the programs by monitoring, conducting inspections, reviewing reports, and removing from the program any participating sites that are not in compliance with the mitigation measures.

A second commenter stated that he requested specific information regarding the participating national plant protection organizations (NPPOs) from APHIS and was provided with contact information for each NPPO instead of the specific information. The commenter questioned our ability to trust the individual Central American NPPOs to provide sufficient oversight if we do not have specific information on their workforces and capacities. One commenter raised similar concerns stating that a systems approach is complicated and assumes that the necessary technical, inspection, and other resources are available to the exporting countries and are effective.

The NPPO of each of the countries covered by the rule, like the NPPO of

any country, is necessarily concerned with, among other things, the detection and management of quarantine pests, including fruit flies, and thus administers programs to prevent the introduction and spread of quarantine pests and promote appropriate measures for their control. Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama are all parties to the International Plant Protection Convention (IPPC), which is an international treaty to secure action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control.

We do not routinely request that our trading partners provide us with specific information concerning the number and experience level of the individual employees of their NPPOs, nor do our trading partners normally ask that information of APHIS. We have full confidence in the Central American NPPOs to oversee the prescribed mitigation measures. Further, it is in the best interest of the participating Central American countries to succeed with this program and doing so will require they meet our phytosanitary standards.

One commenter asked that APHIS include provisions for conducting compliance audits during the active shipping and growing season to ensure full compliance with the systems approach. The commenter added that results of these compliance audits should be made available for review by all stakeholders in the United States.

As described in the proposed rule and in this document, APHIS would be directly involved in the approval of production sites and determinations as to whether risk mitigation has been achieved following pest detections. In addition, each exporting country's NPPO will have to maintain an APHIS-approved quality control program to monitor or audit its fruit fly trapping program, and the trapping records will have to be maintained for APHIS review. We believe that these measures will be adequate to provide the compliance assurance sought by the commenter.

Economic Analysis

One commenter took issue with the statement in the economic analysis that, "[b]etween 1997 and 2002 there is not likely to have been substantial changes in the [domestic] industry." The commenter said this statement is unsupportable and not relevant to the potential economic impacts on U.S. tomato growers in 2006.

Our statement that "Between 1997 and 2002, there is not likely to have been substantial changes in the industry" followed three sentences describing fruit and vegetable wholesale trade firms (*i.e.*, potential importers) and was intended to indicate that we believe the majority of those firms would still be small entities in 2002, as they were in 1997. The statement was not intended to apply to tomato growers.

One commenter took issue with a statement in the economic analysis that the proposed rule would provide importers with alternative sources of tomatoes at a more advanced stage of ripeness. The commenter said that while this is technically true, it is meaningless because importers have not requested an alternative source for pink and red tomatoes and there is no indication that there are insufficient supplies of green, pink, or red tomatoes available in the United States.

The availability of alternative sources of tomatoes at a more advanced stage of ripeness was cited as a potential result of the proposed action, not as an initiating factor behind it.

One commenter took issue with the statement that the effects on small businesses would not be significant. The commenter noted that APHIS indicates it does not have information on the size distribution of domestic tomato producers and makes assumptions, for example, that the subject imports will "compete with all fresh tomatoes produced domestically." The commenter claimed that this statement was inaccurate based solely on the cost of transportation from Central America to all parts of the United States. The commenter stated that APHIS also notes that the domestic price would fall by as much as $0.50 per cwt. The commenter stated that even if the price decline was "only" 1.4 percent, this does not render the decline insubstantial, and that the answer depends on the marketplace at the time the imports enter the United States because we are dealing with a perishable commodity, and with pink and red tomatoes we are dealing with a most perishable commodity. In such cases, the commenter stated, a small decline in price can and has had a profound negative effect on the price of tomatoes, and that if these tomatoes were to enter the United States during the winter months, then only the tomato producers in Florida would be harmed and the harm could be much greater than that suggested in the economic analysis.

The economic analysis did not quantitatively account for the possibility that imports from Central America may displace imports from other countries. In fact, the economic analysis cautions that the impacts are likely overstated because the displacement of other tomato imports was not taken into account. Florida and other tomato-producing States do not produce enough field-grown tomatoes to meet domestic demand. Thus, domestic field production is supplemented by domestic greenhouse production and by imports. Over the past 6 years, fresh tomato imports have comprised approximately 34 percent of U.S. supply (production plus imports minus exports). Over one-third of annual imports arrive in the United States during the winter months, with the bulk of these imports coming from Mexico.

We are unclear as to the commenter's intent in stating that transportation costs of imports of fresh tomatoes from Central America would prevent them from competing with all fresh tomatoes produced domestically and about pink and red tomatoes being a most perishable commodity. We presume the commenter believes that it will not be cost effective, nor feasible time-wise due to a more advanced stage of ripeness, for importers to transport tomatoes all over the United States. It would appear that the commenter is concerned that the bulk of Central American tomato imports will end up in the southern States because of their closer proximity to Central America. Most of the tomatoes produced in Florida are shipped to markets in the eastern United States, while Mexican imports serve mainly the western States. We believe that Central American imports will follow a similar pattern as Mexican imports. These marketing patterns would suggest that Florida producers may be less affected by fresh tomato imports from Central America than other domestic and foreign suppliers.

Miscellaneous Change

In our proposed provisions concerning the placement of Medfly traps in the buffer area surrounding each production site, we referred to Medfly traps with an approved protein bait. In this final rule, those provisions (§ 319.56–2dd(f)(2)(iii)(C)) refer to Medfly traps with an approved lure, as it will be parapheromone lures, rather than protein baits, that will be used outside of the greenhouses.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

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 tomatoes from Central America while continuing to protect against the introduction of plant 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 relief in 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.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

We are amending the regulations governing the importation of fruits and vegetables in order to allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. The conditions to which the importation of tomatoes will be subject, including trapping, pre-harvest inspection, and shipping procedures, are designed to prevent the introduction of quarantine pests into the United States. This action will allow for the importation of pink and red tomatoes from those countries in Central America while continuing to provide protection against the introduction of quarantine pests into the United States.

Central American Production and Exports

While agriculture is an important industry in the countries that will be affected by this rule, it does not account for the largest share of gross domestic product in any of the countries. Tomatoes do not appear to be major crops in those Central American countries. However, production and exports of tomatoes are following upward trends.

Tomato production in Central America has been steadily increasing since the early 1960s. Over this period, production has increased almost 300 percent. In conjunction with this increase in production, exports of tomatoes from the region have also increased. Exports in 2003 were 42 times the exports in 1962. Between 1980 and 2003, exports increased by 45 percent.

Nearly all of this trade has been intraregional. From 1962 to 2003, 96 percent of Central American tomato exports were to other countries within Central America. Thus, the vast majority of the tomatoes exported from any Central American country are destined for another country within the same region.

U.S. Import Levels

U.S. imports of Central American tomatoes have fluctuated greatly over the last 15 years.[2] In fact, 2003 was the end of a 10-year period during which the United States did not import tomatoes from any Central American country. U.S. imports of fresh tomatoes principally originate in Mexico, Canada, and the Netherlands, with Mexico being by far the largest supplier.

Although this rule will allow for more liberal importation of tomatoes from certain Central American countries, it is unlikely that the changes will lead to dramatic increases in U.S. import levels from that region.

Effects on Small Entities

This rule will affect domestic producers of tomatoes as well as importers that deal with these commodities. It is likely that the entities affected will be small according to Small Business Administration (SBA) guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities will not be significant.

Two alternatives to this course of action are as follows: Maintaining the status quo with respect to the importation of tomatoes from these Central American countries (*i.e.*, green tomatoes only) or allowing importation without establishing the risk mitigations in this rule.

The first alternative would maintain current safeguards against the entry of quarantine pests. However, this option would also mean that those specified Central American countries as well as the United States would forgo the economic benefits expected to be afforded by the trade of Central American tomatoes.

Allowing the importation of fresh tomatoes from certain Central American countries under less restrictive phytosanitary requirements could potentially lead to the introduction of pests not currently found in the United States. This option could result in significant damage and costs to domestic production and is not desirable for those reasons.

Affected U.S. tomato producers are expected to be small based on the 2002 Census of Agriculture data and SBA guidelines for entities in two farm categories: Other Vegetable (except Potato) and Melon Farming (North American Industry Classification System [NAICS] code 111219) and Other Food Crops Grown Under Cover (NAICS code 111419). The SBA classifies producers in these farm categories as small entities if their total annual sales are $750,000 or less. APHIS does not have information on the size distribution of domestic tomato producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States.[3] Of this number, approximately 97 percent had total annual sales of less than $500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms.[4] This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 19,539 tomato farms that could be affected by the rule would also qualify as small. In the case of fruit and vegetable wholesalers (NAICS code 422480),[5] those entities with fewer than 100 employees are considered small by SBA standards.[6] In 1997, there were a total of 4,811 fruit and vegetable wholesale trade firms in the United States.[7] Of these firms, 4,610

[2] It is important to note here that this discussion refers to imports of all varieties of tomatoes. Disaggregated data were not available for this analysis.

[3] This number represents the total number of farms in the United States, thus includes barley, buckwheat, corn, millet, oats, rice, soybean, and sugarcane farms.

[4] Source: SBA and 2002 Census of Agriculture.

[5] Note that this NAICS code relates to the 1997 Economic Census. The 2002 NAICS code for this group is 424480.

[6] For NAICS 424480, SBA guidelines state that an entity with not more than 100 employees should be considered small unless that entity is a Government contractor. In this case, the size standard increases to 500 employees. However, in this instance, it is fair to assume that fruit and vegetable importers will not be under Government contract since it is against regulations for imports to be used in relevant Government programs (*e.g.*, school lunch programs).

[7] Source: SBA and 1997 Economic Census.

or 95.8 percent employed fewer than 100 employees and were considered small by SBA standards. Between 1997 and 2002, there were not likely to have been substantial changes in the fruit and vegetable wholesale trade industry, thus we expect that a similar percentage of entities would have been small in 2002. Therefore, domestic producers and importers that may be affected by this rule are predominantly small entities.

Economic analysis of the expected increase in imports of tomatoes from Central America shows that the importation of this commodity will lead to negligible changes in domestic prices. APHIS estimates that an additional 13,092 metric tons of tomatoes may be imported from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama on a yearly basis. Using historical consumption data to estimate an elasticity of demand for tomatoes, an increase in imports of this size will result in a price decrease of $0.50 per hundredweight (cwt) overall.

TABLE 1.—U.S. SUPPLY, UTILIZATION, AND FARM WEIGHT PRICE OF FRESH TOMATOES, 2000–2005

Year	Supply			Utilization			Season-average price	
	Production	Imports	Total	Exports	Domestic	Per capita use	Current dollars	Constant 2000 dollars
	(Million pounds)					(Pounds)	($/cwt)	
2000	4,162.0	1,609.5	5,771.5	410.4	5,361.2	19.0	$30.70	$30.70
2001	4,061.1	1,815.6	5,876.7	398.2	5,478.5	19.2	30.00	29.30
2002	4,289.3	1,896.2	6,185.5	332.1	5,853.4	20.3	31.60	30.36
2003	3,909.8	2,070.7	5,980.5	314.1	5,666.4	19.5	36.70	34.62
2004	3,975.7	2,054.6	6,030.3	367.5	5,662.8	19.3	36.70	33.92
2005[f]	4,086.0	2,000.0	6,086.0	360.0	5,726.0	19.4	.....	.....

Notes: — = not available, f = ERS forecast.
Source: USDA/ERS, "Vegetables and Melons Yearbook," *http://usda.mannlib.cornell.edu/data-sets/specialty/89011/.*

For this analysis, it is assumed that imports of tomatoes from Central America will compete with all fresh tomatoes produced domestically. In 2004, U.S. fresh tomato production totaled 3,976 million pounds (table 1). APHIS estimates that an additional 13,092 metric tons (28.7 million pounds) of tomatoes will be imported from Central America. These import levels equate to only 0.7 percent of domestic production in 2004 and 1.4 percent of 2004 imports. Given the additional imports, it is possible that the domestic price will fall by as much as $0.50 per cwt. In 2004, the average producer price was $36.70 per cwt. Thus, the expected price decline will represent a 1.4 percent decline. However, this percentage is likely overstated because the new imports will be close substitutes for tomatoes from other countries. Imports from Central America will probably displace at least some of those imports from other countries. This likely substitution is not taken into account in the analysis.

In order to put this price change into perspective, we consider it in terms of average revenue for small-entity tomato producers. Due to the lack of data on tomato farming, it is difficult to determine an accurate potential change in revenues for all producers. Averaging the total drop in revenues across all firms will overstate the loss to small producers while understating that for the larger ones. Data from the 2002 Census of Agriculture were used to estimate tomato production by small and large firms. This, in turn, was used to estimate revenues for these two categories. An average revenue per firm was then calculated. We conclude that any producer with fewer than 80 acres of tomatoes may be considered small, based on industry yields and revenues and the small-entity definition of not more than $750,000 in annual revenue. For small-entity producers with fewer than 100 acres (the reported category closest to 80 acres), a price change of $0.50 per cwt will lead to an estimated per firm decline in annual revenue of $293, or 1.6 percent. Given this small change and recalling that these effects are likely overstated, domestic producers are not likely to be significantly impacted by the rule.

Although domestic producers may face slightly lower prices as a result of the potential increase in the tomato supply, these price changes are expected to be negligible. Domestic import firms, on the other hand, may actually benefit from more open trade with Central America resulting from increased opportunities that could be made available as a result of establishing new sources of tomatoes at a more advanced stage of ripeness. In both instances, changes of the magnitude presented here should not have large repercussions for either domestic producers or importers of tomatoes.

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 rule will allow pink and red tomatoes grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama to be imported into the United States. State and local laws and regulations regarding tomatoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and will 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of tomatoes under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were

prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[8] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. **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 0579–0286.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

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

[8] Go to *http://www.regulations.gov*, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS–2006–0009, click on *Submit*, then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. Section 319.56–2dd is amended by adding a new paragraph (f) and revising the OMB citation at the end of the section to read as follows:

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

* * * * *

(f) *Tomatoes (fruit) (Lycopersicon esculentum) from certain countries in Central America.* Pink or red tomatoes may be imported into the United States from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama only under the following conditions:

(1) From areas free of Mediterranean fruit fly:

(i) The tomatoes must be grown and packed in an area that has been determined by APHIS to be free of Mediterranean fruit fly (Medfly) in accordance with the procedures described in § 319.56–2(f) of this subpart.

(ii) A pre-harvest inspection of the production site must be conducted by the national plant protection organization (NPPO) of the exporting country for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests are found to be generally infesting the production site, the NPPO may not allow exports from that production site until the NPPO and APHIS have determined that risk mitigation has been achieved.

(iii) The tomatoes must be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin at the packinghouse for transit to the United States. These safeguards must remain intact until arrival in the United States.

(iv) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These tomatoes were grown in an area recognized to be free of Medfly and the shipment has been inspected and found free of the pests listed in the requirements."

(2) From areas where Medfly is considered to exist:

(i) The tomatoes must be grown in approved registered production sites. Initial approval of the production sites will be completed jointly by the exporting country's NPPO and APHIS. The exporting country's NPPO must visit and inspect the production sites monthly starting 2 months before harvest and continuing through until the end of the shipping season. APHIS may monitor the production sites at any time during this period.

(ii) Tomato production sites must consist of pest-exclusionary greenhouses, which must have self-closing double doors and have all other openings and vents covered with 1.6 (or less) mm screening.

(iii) Registered sites must contain traps for the detection of Medfly both within and around the production site as follows:

(A) Traps with an approved protein bait for Medfly must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of two traps per greenhouse. Traps must be serviced on a weekly basis.

(B) If a single Medfly is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export tomatoes to the United States until APHIS and the exporting country's NPPO mutually determine that risk mitigation is achieved.

(C) Medfly traps with an approved lure must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum of 10 traps. These traps must be checked at least every 7 days. At least one of these traps must be near the greenhouse. Traps must be set for at least 2 months before export and trapping must continue to the end of the harvest.

(D) Capture of 0.7 or more Medflies per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of tomatoes from that production site until APHIS and the exporting country's NPPO can agree that the pest risk has been mitigated.

(E) The greenhouse must be inspected prior to harvest for pea leafminer, tomato fruit borer, and potato spindle tuber viroid. If any of these pests, or other quarantine pests, are found to be generally infesting the greenhouse, exports from that production site will be halted until the exporting country's NPPO and APHIS determine that the pest risk has been mitigated.

(iv) The exporting country's NPPO must maintain records of trap

placement, checking of traps, and any Medfly captures in addition to production site and packinghouse inspection records. The exporting country's NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS's review.

(v) The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The tomatoes must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(vi) During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered approved production sites.

(vii) The exporting country's NPPO is responsible for export certification, inspection, and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by the NPPO and bearing the declaration, "These tomatoes were grown in an approved production site and the shipment has been inspected and found free of the pests listed in the requirements." The shipping box must be labeled with the identity of the production site.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0131, and 0579–0286)

Done in Washington, DC, this 22nd day of August 2006.

Nick Gutierrez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14219 Filed 8–25–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–109–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised the Code of West Virginia (W. Va. Code) as amended by Senate Bill 461 concerning water rights and replacement, and revised the Code of State Regulations (CSR) as amended by Committee Substitute for House Bill 4135 by adding a postmining land use of bio-oil cropland, and the criteria for approving bio-oil cropland as a postmining land use for mountaintop removal mining operations.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, E-mail address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 17, 2006 (Administrative Record Number WV–1462), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its permanent regulatory program in accordance with SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of State Committee Substitute for House Bill 4135, which amends CSR 38–2 by adding a postmining land use of bio-oil cropland and criteria for approving bio-oil cropland as an alternative postmining land use for mountaintop removal mining operations with variances from approximate original contour (AOC). The State also submitted State Senate Bill 461, which amends W. Va. Code section 22–3–24 relating to water rights and replacement. In its submittal of the amendment, the WVDEP stated that the codified time table for water replacement is identical to the one contained in the agency's policy dated August 1995 (Administrative Record Number WV–1425) regarding water rights and replacement that is referenced in the Thursday, March 2, 2006, **Federal Register** (71 FR 10764, 10784–85).

The West Virginia Governor also signed Senate Bill 774, on April 4, 2006, which amends language concerning definitions, offices, and officers within the WVDEP. The amendments to Senate Bill 774 are non-substantive changes to the West Virginia program that do not require OSM approval. Therefore, the amendments to Senate Bill 774 can take effect as provided therein on June 9, 2006.

We announced receipt of the proposed amendment in the June 2, 2006, **Federal Register** (71 FR 31996). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV–1464). We did not hold a hearing or a meeting, because no one requested one. The public comment period closed on July 3, 2006. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings that we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment in full. Any revisions that we do not specifically discuss below concern non-substantive wording or editorial changes and are approved herein without discussion.

Anexo 3

ACUERDO DE COMPROMISO DEL SFE-PRODUCTOR

Ministerio de Agricultura y Ganadería
Servicio Fitosanitario del Estado
Programa de Inspección y Certificación *In situ* de chile (*Capsicum* spp.) y/o tomate (*Lycopersicon esculentum*)

01.08-F45
ACUERDO DE COMPROMISO SFE-PRODUCTOR / EMPACADOR DE CHILE (*Capsicum* spp.) Y/O TOMATE (*Lycopersicon esculentum*)

Yo _____ en mi condición de _____
(productor, empacador o representante legal de la empresa)

cédula número _____, registro número _____,

acuerdo regirme por todas las especificaciones y regulaciones establecidas en el Plan de Trabajo. Acepto las consecuencias que puedan derivarse del incumplimiento de cualquiera de o todos los aspectos incluidos en el Plan de Trabajo y en el documento "01.08-G16, Guía técnica para la certificación de chile (C*apsicum* spp.) y/o tomate (*Lycopersicon esculentum*) producidos en ambientes protegidos (invernaderos), con destino a los Estados Unidos".

_____ _____
Firma productor, empacador o representante legal de la empresa Número de cédula

De acuerdo con lo establecido en el presente documento, se ratifica este Acuerdo de Compromiso.

_____ _____
Firma director (a) SFE Número de cédula

_____
Fecha de ratificación

Anexo 4

FORMULARIO DE CERTIFICACIÓN DE INSTALACIONES

Información del productor		
1. Nombre	2. Encargado	3. Fecha
4. Ubicación	5. Nº de invernaderos	
	6. Área de cada invernadero	
	7. Área total	
8. Los productos son actualmente exportados?	9. Si contestó que si, a cuál país?	10. Importador en Estados Unidos
Información del trampeo		
11. Nº de trampas por invernadero	12. Nº de trampas en los alrededores	
13. Registro de capturas ☐Si ☐No	14. Tipo de trampas utilizadas Invernaderos _____ Alrededores_____	
15. Programa de control de calidad en el lugar	☐Si ☐No	
Sanidad de los invernaderos		
16. Libre de desechos	☐ Si ☐No	
17. Libre de malezas	☐ Si ☐No	
18. Libre de plagas	☐ Si ☐No	
19. Pediluvio	☐ Si ☐No	
20. Lavatorio/pila	☐ Si ☐No	
21. Fuente de agua_____		
Sanidad de la empacadora		
22. Sistema de doble puerta	☐ Si ☐No	
23. Instalaciones y contenedores para empaque de fruta están limpios y ordenados	☐ Si ☐No	
24. Fruta de desecho es removida diariamente	☐ Si ☐No	
25. El área de post tratamiento se mantiene cerrada durante la noche	☐ Si ☐No	

26. La malla anti insectos del área de post tratamiento se encuentra intacta (es de menos de 1.6 mm)	☐ Si ☐No
27. Se encuentran insectos vivos dentro de esta área	☐ Si ☐No
28. Las cajas con producto empacado, las paletas y contenedores están apropiadamente marcadas	☐ Si ☐No
29. Área de inspección para el SFE es apropiada	☐ Si ☐No

Área de desecho

30. Área de desechos está de acuerdo al Plan de trabajo ☐ Si ☐No

31. Verificar la presencia de las siguientes plagas en el cultivo de chile:

• *Faustinus ovatipennis*	☐ Si ☐No
• *Liriomyza huidobrensis*	☐ Si ☐No
• *Neoleucinodes elegantalis*	☐ Si ☐No
• *Opogona sachari*	☐ Si ☐No
• *Phenacoccus pardus*	☐ Si ☐No
• *Planacoccus minor*	☐ Si ☐No
• *Trips palmi*	☐ Si ☐No
• *Puccinia pampeana*	☐ Si ☐No
• Andean Potato Mottle Virus	☐ Si ☐No
• Tomato Yellow Mosaic Virus	☐ Si ☐No

Anexo 4

FORMULARIO DE CERTIFICACIÓN DE INSTALACIONES

Verificar la presencia de las siguientes plagas en el cultivo de tomate: • *Liriomyza huidobrensis* ☐ Si ☐ No • *Neoleucinodes elegantalis* ☐ Si ☐ No • Potato Sprindle Tuber Viroid ☐ Si ☐ No		
32. Instalaciones son aprobadas ☐ Si ☐ No	Comentarios	
Inspector de APHIS	Inspector del SFE	Fecha

Anexo 5-A

REPORTE DE MONITOREO

Informe de Monitoreo en Ambientes Protegidos

								Ceratitis capitata		Anastrepha obliqua		Anastrepha striata		Anastrepha ludens		Anastrrepha serpentina		Anastrepha fraterculus		Anastrepha spp		Otras	
Fecha	**Inspector**	**ID trampa**	**Tipo de trampa**	**Latitud**	**Longitud**	**No. días de la última Inspección**	**Actividad**	M	H	M	H	M	H	M	H	M	H	M	H	M	H	M	H
								0	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

Anexo 5-B1

FORMULARIO CONTROL DE CALIDAD DE MOSCAS DE LA FRUTA

EVALUACIÓN DE LAS ACTIVIDADES DE TRAMPEO
(CONTROL DE CALIDAD)

SFE-APHIS
Programa Moscas de la Fruta
Tel. 2220-2555 / Tel.Fax (506) 2220-2732

Evaluación de las Actividades de Trampeo
(Control de Calidad)

Responsable de ruta:		
Provincia:	Cantón:	Distrito:
Rutas evaluadas:		
Fecha de Evaluación:		

Trampa	**Parámetros de Evaluación**														
Código	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Calif
Promedio Total de Puntos:															

Parámetros a Evaluar	
1- Ubicación de la trampa	8- Manejo General de materiales
2- Orientación de la trampa	9- Cumplimento de las revisiones
3- Estado del Atrayente (s)	10- Rotación de trampas
4- Información de la trampa	11- Precisión de la referencia
5- Armado de la trampa	12- Reporte de objetos de control de calidad
6- Estado de la trampa	13- Elaboración de reportes
7- Interferencias	14- Divulgación y relaciones públicas

Escala	**Calificación**
1	Deficiente: Menor o igual 29 puntos
2	Regular: 30 a 35 puntos
3	Eficiente: 36 o mas puntos

Observaciones:

Supervisor
Nombre
Firma

Responsable ruta
Nombre
Firma

Anexo 5-B2

FORMULARIO CONTROL DE CALIDAD DE MOSCAS DE LA FRUTA

COLOCACIÓN DE ESPECÍMENES Y OBJETOS EXTRAÑOS
(CONTROL DE CALIDAD)

SFE-APHIS
Programa Moscas de la Fruta
Tel. 2220-2555 / Tel.Fax (506) 2220-2732

Colocación de Especímenes y Objetos Extraños

Yo: _____ En calidad de: _____

Procedo a colocar: □ espécimen

_____
(género y especie)
□ objeto

_____
(descripción)

En la trampa(s) nº: _____ Ruta nº: _____

Fecha de colocación: _____ Responsable ruta: _____

Firma supervisor: _____
(Control de Calidad)

Anexo 6 A

FORMULARIO DE REPORTE SEMANAL DE INSPECCIONES

1. Semana Nº		2. Fecha de reporte	
3. Nº total de cajas empacadas			
4. Nº total de cajas inspeccionadas			
5. Identificación del contenedor	6. Nº de cajas	7. Puerto de entrada en los Estados Unidos	8. Día de embarque
9. ¿Se encontraron moscas en el programa de trampeo? (Adjuntar reporte de captura de moscas) ☐ SI ☐ NO			
10. ¿Los invernaderos se mantienen de acuerdo con el Plan de Trabajo? ☐ SI ☐ NO			
11. ¿La planta empacadora se mantiene de acuerdo con el Plan de Trabajo? ☐ SI ☐ NO			
12. Comentarios:			
13. Nombre del inspector		14. Firma	

*Please send this report by e-mail or fax to Marco González Vargas APHIS Ag. Specialist
E-mail: Marco.V.González@aphis.usda.go
Fax: (506) 2290-4548

Anexo 6B
REPORTE DE CAPTURAS DE MOSCAS

Informe semanal del Monitoreo de Moscas de la Fruta en Ambientes Protegidos: _____

Semana: Del ____ de _____ al ____ de _____ del 2009

Invernadero No.	Inspector	Propietario	Fecha	Dias de Exposición	No. de Trampas Jackson	Ceratitis Capitata		Total	MTS	Captura de Mosca en Trampa: McPhail con Torula
						M	H			

Fuente: Programa Moscas de la Fruta, MAG - SFE

Anexo 7

FORMULARIO DE
INSPECCIÓN SEMANAL
DE LOS INVERNADEROS

Invernadero Nº	Semana	Fecha
1. Examinar los alrededores del invernadero en búsqueda de malezas/basura/residuos de fruta		
2. Comprobar la condición del sistema de doble puerta		
3. Cotejar el sistema de cierre (candados) del invernadero		
4. Chequear la condición de la malla alrededor del invernadero		
5. Verificar la sanidad dentro de los invernaderos (fruta sobre madura, malezas, fruta de desecho, etc.)		
6. Buscar síntomas de plagas e insectos cuarentenarios		
7. Si hay síntomas de plagas cuarentenarias, enviar muestras para su análisis. Nº de muestras enviadas		
Comentarios:		
Inspector:	Firma:	

Anexo 8

FORMULARIO DIARIO DE INSPECCIÓN DE LA PLANTA EMPACADORA

Planta empacadora	**Fecha**	
1. Revisar que no haya malezas/basura/residuos de fruta alrededor de la planta empacadora		
2. Revisar que los sistemas de doble puerta/cortinas de aire sean funcionales		
3. Los seguros de las puertas (candados) no han sido removidos durante la noche		
4. El área cuarentenada se encuentra libre / no se encontraron insectos vivos en la inspección inicial		
5. El área de carga permite el acomodo hermético de los contenedores durante la carga		
6. El material de embalaje cumple con la regulación NIMF 15		
7. Las cajas están marcadas apropiadamente		
8. Área apropiada para llevar acabo las inspecciones		
Inspección		
9. Indicar en la casilla adjunta el número de cajas inspeccionadas		
10. Indicar en la casilla adjunta el número de cajas empacadas. Chequear que este número coincida la mañana siguiente		
11. Indicar el número de frutas que fueron disectadas en búsqueda de insectos internos		
12. Indicar la medida fitosanitaria (fumigación, re-acondicionamiento de cajas, rechazo de la carga) llevada acabo si se encuentran insectos durante la inspección (tanto de la planta empacadora como en la inspección de las cajas empacadas)		
13. Inspector	14. Firma	