

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 95-068-1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow, under certain conditions, the cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. We have determined that there are biological barriers at these ports that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruit before undergoing cold treatment. We are also proposing to require that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours. These actions would facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

DATES: Consideration will be given only to comments received on or before June 28, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95-068-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-068-1. Comments received may be inspected 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 comments are requested to call

ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737-1236, (301) 734-8891.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56-8 (referred to below as "the regulations"), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and time requirements vary according to the type of fruit and the pests involved. Detailed cold treatment procedures may be found in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1.

Most imported fruit that requires cold treatment undergoes cold treatment in transit to the United States. However, APHIS also allows imported fruit to undergo cold treatment at an approved cold treatment facility in either the country of origin or after arrival in the United States at certain ports designated by APHIS in § 319.56-2d(b)(1) of the regulations.

Currently, cold treatment in the United States is limited to the following ports: the port of Wilmington, NC; Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC, at Baltimore-Washington International and Dulles International airports.

Imported fruit may undergo cold treatment at the listed ports other than Wilmington, NC, because biological barriers, including climatic conditions, exist to prevent the introduction and

establishment of fruit flies and other insect pests that could escape from shipments of imported fruit after arrival in the United States. Imported fruit may also undergo cold treatment at the port of Wilmington, NC, because APHIS has imposed special conditions regarding cold treatment to mitigate the risk of the introduction of fruit flies and other insect pests into the United States (see § 319.56-2d(b)(5)(iv)).

Recently, we received formal requests from the Taiwanese Government, the City of Atlanta Airport Authority, and the Mississippi State Port Authority to authorize the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, respectively, as approved locations for cold treatment of imported fruit.

Previously Published Notices and Regulations

On November 12, 1993, in response to earlier petitions from individuals at the ports of Wilmington, NC, and Gulfport, MS, we published in the Federal Register (58 FR 59953, Docket No. 93-121-1) an advance notice of proposed rulemaking requesting public comment on whether we should allow cold treatment at ports in the Southern United States and in California.

We solicited comments concerning this notice for a 45-day period ending December 27, 1993. During that period, we received four comments, three from State governments and one from a grower organization. Two commenters opposed allowing cold treatment at ports in the Southern United States and California, arguing that allowing such treatments would place California and Florida citrus crops at too great a risk of fruit fly infestation. Another commenter requested that we perform a detailed pest risk analysis before deciding whether to allow cold treatment at southern and California ports. Another commenter supported cold treatment at the port of Wilmington, NC.

We subsequently published a proposed rule in the Federal Register on May 13, 1994 (59 FR 24968-24971, Docket No. 93-121-2) in which we proposed to allow imported fruit to be cold treated at the port of Wilmington, NC, after arrival in the United States. At that time, we decided to give further consideration to allowing cold treatment at other ports in the Southern United States and California. In a final rule published in the Federal Register on August 10, 1994 (59 FR 40794-40797,

Docket No 93-121-3), we approved cold treatment, under certain conditions, at the port of Wilmington, NC.

Proposal of Additional Ports

After performing extensive risk analyses, we are proposing to add the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, to the list of ports in § 319.56-2d that are authorized as approved locations for cold treatment of imported fruit. This proposal to allow cold treatment of fruit under certain conditions at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, is based, in part, on a document prepared by APHIS assessing the pest risks associated with allowing cold treatment of tropical fruit fly host materials at certain United States ports. The risk mitigation measures discussed in the document are included in this proposal as requirements for the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. (Copies of this document may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**) We have determined that in the areas of these ports proposed for cold treatment, there are biological barriers that, along with certain safeguards, would prevent the introduction and establishment of fruit flies and other insect pests in the unlikely event that they escape from shipments of fruit before undergoing cold treatment.

Risk Groups

Plant Protection and Quarantine (PPQ), APHIS, has established risk groups for many ports in the United States. These risk groups characterize the relative risk, without consideration for mitigating factors, associated with the movement of tropical fruit fly host material for cold treatment at these ports in the United States. The ports have been assigned to one of five risk groups based on a number of criteria, including the individual port's latitude, microclimate, immediate host availability, and past fruit fly infestations. The risk groups are assigned numbers I through V; this number scale represents an ascending level of risk based on the criteria listed above. Group I ports consist of East Coast ports north of, and including, Baltimore, MD. Group II ports consist of the ports of Wilmington, NC, Seattle, WA, Portland, OR, Atlanta, GA, and Norfolk, VA. Group III ports consist of the ports of Charleston, SC, Savannah, GA, Port Arthur, TX, and Galveston/Houston, TX. Group IV ports consist of the ports of Gulfport, MS, Mobile, AL, New Orleans, LA, Corpus Christi, TX, and Pensacola, FL. Group V ports

consist of the ports of San Diego, CA, San Pedro/Long Beach, CA, San Francisco, CA, Oakland, CA, Tampa, FL, Miami, FL, West Palm/Ft. Lauderdale, FL, Cape Canaveral, FL, Jacksonville, FL, Ft. Meyers, FL, Ft. Pierce, FL, Brownsville, TX, and all Hawaiian ports.

The general requirements for cold treatment found in § 319.56-2d are designed to mitigate the risk of infestation due to fruit fly escape from shipments intended for cold treatment at Group I ports. These requirements include delivering, under the supervision of an inspector of PPQ, shipments of fruit that require cold treatment to an approved cold storage warehouse where the shipments will be cold treated; precooling and refrigerating the shipments of fruit intended for cold treatment promptly upon arrival at the cold treatment facility; allowing shipments of fruit that require cold treatment to leave U.S. Customs custody only under a redelivery bond for cold treatment; and allowing shipments of fruit that require cold treatment final release from the U.S. Collector of Customs only after official notification has been received by the Customs officer that the required cold treatment has been completed.

For shipments of fruit arriving for cold treatment at the port of Wilmington, NC, a Group II port, the regulations at § 319.56-2d(b)(5)(iv) also require that bulk shipments of fruit must arrive in fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies; bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force; and advance reservations for cold treatment must be made prior to the departure of a shipment from its port of origin.

Each of the ports proposed as an approved location for cold treatment in this document, the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, has been assigned to a risk group other than Group I; consequently, additional mitigating factors need to be put in place before cold treatment can occur at any of these ports.

Proposal of Special Conditions for the Ports of Seattle, WA, Atlanta, GA, and Gulfport, MS

We are proposing to impose additional special conditions regarding cold treatment at each of the ports proposed as an approved location for cold treatment that mitigate the risk of

the introduction and establishment of fruit flies and other insect pests. The special conditions that would be assigned to each port are listed below by port.

Special Conditions for the Maritime Port of Seattle, WA

The maritime port of Seattle has biological barriers to fruit fly introduction and establishment in that the port is not in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, the maritime port of Seattle, WA, belongs to the Group II list of ports because the area surrounding this port contains a small variety of fruit-fly host material and has a longer growing season than Group I ports. Therefore, in addition to the requirements in § 319.56-2d (b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the maritime port of Seattle, WA:

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

This condition would ensure that shipments that arrive at the maritime port of Seattle, WA, in cases or bins would not be exposed in such a manner as to allow fruit flies or other insect pests to escape from the shipment.

2. Bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

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

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

4. The cold treatment facility must remain locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

We believe that the biological barriers and these additional conditions established for cold treatment at the maritime port of Seattle, WA, would be adequate to prevent the introduction and establishment of fruit flies and other insect pests.

Special Conditions for the Airports of Atlanta, GA, and Seattle, WA

The airports of Atlanta, GA, and Seattle, WA, each have biological barriers to fruit fly introduction and establishment in that neither port is in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, both the airports of Atlanta, GA, and Seattle, WA, belong to the Group II list of ports because the areas surrounding these airports contain a small variety of fruit-fly host material and have longer growing seasons than Group I ports. Additionally, although fruit that travels to the United States by ship for cold treatment is regularly chilled during transit, fruit imported into the United States by aircraft for cold treatment is not. Therefore, the mitigation measures for the Group II airports of Atlanta, GA, and Seattle, WA, would be more extensive than the mitigation measures for Group II maritime ports. As such, in addition to the requirements in § 319.56-2d(b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the airports of Atlanta, GA, and Seattle, WA:

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

This condition would ensure that all shipments, including those that arrive at these airports in cases or bins, would not be exposed in such a manner as to allow fruit flies or other insect pests to escape from the shipment.

2. Bulk and containerized shipments of fruit must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

3. The cold treatment facility and PPQ must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the port and the cold treatment facility. The movement of shipments from aircraft to cold treatment facility would not be allowed until an acceptable route has been agreed upon.

In most instances, the route would be determined by establishing the shortest route between the aircraft and the cold treatment facility that does not include an area that contains host material for fruit flies during the time of year that the region experiences its most abundant amount of host material for fruit flies. Then, that route would be used throughout the year to convey shipments from aircraft to cold treatment facility. This predetermined route would reduce the amount of time that a shipment would have to wait before undergoing cold treatment and would reduce the risk that any fruit flies in the shipments would come into contact with host material en route to cold treatment.

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

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

5. The cold treatment facility must remain locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

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

This condition would act as a general safeguard. We propose this condition as an extra layer of defense that would trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages

to survive past the stage of pupation in the cold treatment facility.

7. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of PPQ, for handling fruit, including the ability to destroy or dispose of fruit safely.

This condition would ensure that, in the event that a shipment cannot be cold treated promptly or properly, the contents of the shipment could be safely treated by alternative means, destroyed, or disposed of so that fruit flies and other insect pests would not have the opportunity to escape. Examples of adequate contingency plans would include the ability to incinerate fruit, to bury fruit, or to re-export fruit.

We believe that the biological barriers and these additional conditions established for cold treatment at the airports of Atlanta, GA, and Seattle, WA, would be adequate to prevent the introduction and establishment of fruit flies and other plant pests.

Special Conditions for the Port of Gulfport, MS

The maritime port of Gulfport, MS, has biological barriers to fruit fly introduction and establishment in that it is not in a citrus-producing area. This reduces the likelihood that a fruit fly escaping from a shipment of fruit intended for cold treatment would find adequate host material for propagation. However, the port of Gulfport belongs to the Group IV list of ports because the area surrounding this port, among other things, contains a wider variety and greater quantity of fruit-fly host material than Group I, II, or III ports and has a lengthy growing season due to its southern location. Therefore, in addition to the requirements in § 319.56-2d(b)(5)(i) through (b)(5)(iii) of the regulations concerning cold treatment, the following additional requirements would apply to cold treatment conducted at the maritime port of Gulfport, MS:

1. All fruit entering the port for cold treatment must move in maritime containers. No bulk shipments (those shipments which are stowed and unloaded by the case or bin) would be allowed at the port of Gulfport, MS.

This condition would ensure that imported fruit arriving at the port of Gulfport, MS, for cold treatment would not be exposed to the outdoors. The shipping container would insulate the fruit, thereby helping to keep the fruit chilled during unloading, would prevent leakage of the shipment, and would serve as a barrier to fruit fly escape from shipments of untreated fruit.

2. Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

This condition would ensure that containerized shipments would be packaged in such a manner as to prevent fruit flies or other insect pests from escaping from the shipment when the container is opened. This condition would provide an extra barrier to fruit fly escape from a shipment of untreated fruit.

3. Containerized shipments of fruit arriving at the port must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

This condition would restrict the movement of untreated shipments of fruit intended for cold treatment, further minimizing the risk that any fruit flies in the shipments would come into contact with host material that may be in the area.

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

In most instances, the route would be determined by establishing the shortest route between the vessel and the cold treatment facility that does not include an area that contains host material for fruit flies during the time of year that the region experiences its most abundant amount of host material for fruit flies. Then, that route would be used throughout the year to convey shipments from vessel to cold treatment facility. This predetermined route would reduce the amount of time that a shipment would have to wait before undergoing cold treatment and would reduce the risk that any fruit flies in the shipments would come into contact with host material en route to cold treatment.

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

This condition would ensure that untreated shipments of fruit arriving at the port would not have to wait for an extended period of time for cold treatment. Ensuring the expeditious cold treatment of the fruit would minimize the risk of fruit flies maturing in deteriorating fruit.

6. Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements: (1) All containers must be unloaded within the cold treatment facility; and (2) untreated fruit may not be exposed to the outdoors under any circumstances.

Because of the southern location of the port of Gulfport, MS, we believe that this condition would be a necessary mitigating factor at this port. This condition would eliminate the possibility of untreated fruit being unloaded and waiting for cold treatment outside of the cold treatment facility itself.

If fruit intended for cold treatment was removed from its shipping container outside of the cold treatment facility, there would be an increased risk of fruit fly escape due to untreated fruit warming up to temperatures that would allow the insect pests that may be in the fruit to become more active and possibly to escape when the fly-proof packaging is removed from the shipment. Our proposal to require devanning inside of the cold treatment facility would ensure that all fruit that requires cold treatment remains in a cool environment.

7. The cold treatment facility must remain locked during non-working hours.

This condition would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

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

This condition would act as a general safeguard. We propose this condition as an extra layer of defense that would trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages to survive past the stage of pupation in the cold treatment facility.

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

This condition would ensure that, in the event that the primary cold treatment system fails, additional equipment is on hand at the cold treatment facility to perform cold treatments on shipments of fruit. Cold

holding rooms would be necessary to ensure that shipments of fruit remain cool during any waiting period that may ensue from a malfunction of the primary cold room. The identification of shipments to determine which lots have been treated and which lots need to be treated would eliminate the possibility of treated fruit being commingled with untreated fruit and thereby further reduce the possibility of fruit flies or other insect pests escaping from the cold treatment facility.

10. The cold treatment facility must have the ability to conduct methyl bromide fumigations on site. Therefore, the cold treatment facility must have fumigation equipment approved by the Deputy Administrator of PPQ and a site for conducting fumigation on the premises.

This condition would act as an additional contingency plan to treat fruit entering the port of Gulfport, MS. As the risk of fruit fly infestation is greater at Gulfport, MS, than at the other ports proposed for cold treatment, we have determined that an extra layer of protection should be provided by requiring methyl bromide fumigation capabilities as an alternative means of eliminating pests from shipments of fruit. The criteria for the approval of fumigation equipment can be found in the PPQ Treatment Manual.

With respect to methyl bromide fumigation, the Environmental Protection Agency published a notice of final rulemaking in the Federal Register on December 10, 1993 (58 FR 65018-65082) which freezes the production of methyl bromide at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

11. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of PPQ, for safely destroying or disposing of fruit.

This condition would ensure that, in the event a shipment cannot be cold treated promptly or properly, the contents of the shipment could be safely destroyed or disposed of so that fruit flies and other plant pests would not have the opportunity to escape. Examples of adequate contingency plans would include the ability to incinerate fruit, to bury fruit, or to re-export fruit.

We believe that the biological barriers and these additional conditions

established for cold treatment at the port of Gulfport, MS, would be adequate to prevent the introduction and establishment of fruit flies and other plant pests.

Proposal of Special Condition for the Port of Wilmington, NC

We are also proposing to require that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours as another special condition to cold treatment at the port of Wilmington, NC. We have determined that this safeguard, without interfering with daily operations at the port, would help ensure that unauthorized persons do not have access to untreated fruit and, therefore, cannot remove untreated fruit from the cold treatment facility.

Miscellaneous

We are also proposing to make minor editorial changes for clarity and consistency. We propose to amend the language in § 319.56-2d(b)(5)(iv)(B) to clarify that shipments coming in for cold treatment currently consist only of fruit. Section 319.56-2d(b)(5)(iv)(B) states that the shipments intended for cold treatment consist of fruits and vegetables, but, presently, only certain fruits from certain countries are approved for cold treatment.

We also propose to revise § 319.56-2x(b) to update the list of ports that are approved as locations for cold treatment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151-167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the cold treatment of imported fruits upon arrival at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. Modern cold treatment facilities have been or are in the process of being constructed at each of these ports.

Approximately 585.4 million kilograms of fresh fruits and vegetables were imported into the United States through the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA, during fiscal year 1994. The port of Gulfport, MS, handled about 98 percent of the total fresh fruit and vegetable imports for these ports. The ports of Atlanta, GA, and Seattle, WA, handled 0.25 and 1.75 percent, respectively, of the total fresh fruit and vegetable imports for these three ports. During fiscal year 1994, approximately 550,330 kilograms (less than one-tenth of one percent) of the total fresh fruit imports for these ports were cold treated in the country of origin or in transit to the United States and, if these ports had been approved for cold treatment, would have been eligible for cold treatment upon arrival in the United States. Should these ports be approved for cold treatment, we expect that an additional 20 million kilograms of new and rerouted fresh fruits would be imported through and cold treated at these ports each year.

According to the Small Business Administration, a "small" entity involved in the wholesale trade of fresh fruits is one that employs no more than 100 people. Currently, there are 4,388 "small" wholesale importers of fresh fruits in the United States. Use of on-site cold treatment facilities at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, may slightly reduce transportation costs for foreign fruit exporters, which, in turn, may slightly reduce transportation costs for domestic importers and, ultimately, may slightly reduce the cost of certain fruits for U.S. consumers. We expect, however, that these reductions in costs would be insignificant.

The alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative because it appears that, with the safeguards proposed, the cold treatment of fruit may be conducted at any of the ports proposed in this document without significant risk of introducing fruit flies or other injurious plant pests.

Executive Order 12778

This proposed rule would allow cold treatment of certain imported fruits to

be conducted at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits under this rule would be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and would 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. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 319.56-2d would be amended as follows:

a. In paragraph (b)(1), by revising the second sentence to read as set forth below.

b. By revising paragraph (b)(5)(iv) to read as set forth below.

c. By adding new paragraphs (b)(5)(v) and (b)(5)(vi) to read as set forth below.

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

* * * * *

(b) * * *

(1) * * * If not so refrigerated, the fruit must be both precooled and refrigerated after arrival only in cold storage warehouses approved by the Deputy Administrator and located at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the

North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

* * * * *

(5) * * *

(iv) *Special requirements for the maritime ports of Wilmington, NC, and Seattle, WA.* Shipments of fruit arriving at the maritime ports of Wilmington, NC, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

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

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

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

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

(v) *Special requirements for the airports of Atlanta, GA, and Seattle, WA.* Shipments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

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

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

(C) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility.

The movement of shipments from aircraft to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

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

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

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

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

(vi) *Special requirements for the port of Gulfport, MS.* Shipments of fruit arriving at the port of Gulfport, MS, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

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

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

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

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

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

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

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

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

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

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

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

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

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

* * * * *

3. In § 319.56-2x(b), the first sentence would be revised to read as follows:

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

* * * * *

(b) If treatment has not been completed before the fruits and vegetables arrive in the United States, fruits and vegetables listed above and requiring treatment for fruit flies may arrive in the United States only at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

Done in Washington, DC, this 23rd day of April 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

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