

SUPPLEMENTARY INFORMATION:**Background**

The fruits and vegetables regulations 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 or dissemination of quarantine pests, including fruit flies, that are new 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 temperatures and the duration of treatment vary according to the type of fruit and the pests involved. Detailed cold treatment procedures may be found in the Plant Protection and Quarantine 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 while 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.

On June 1, 2001, we published in the **Federal Register** (66 FR 29735–29739, Docket No. 00–068–1), a proposal to amend the regulations to allow, under certain conditions, the cold treatment of imported fruit upon arrival at the port of Corpus Christi, TX. The proposal was based on our determination that there are biological barriers at this port 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 the fruit undergoes cold treatment. In that proposed rule, we also proposed to correct several outdated references in the regulations to the “Bureau of Customs” and “Collector of Customs” and to correct the locations provided for Baltimore-Washington International and Dulles International Airports.

We solicited comments concerning our proposal for 60 days ending July 31, 2001. We received three comments by that date. They were from the director of the Port of Corpus Christi, TX, an importer, and a representative of State government. Two commenters were in favor of our proposal and agreed with

the rationale we presented in the proposed rule.

The third commenter suggested that the treatment of imported fruit should be forbidden anywhere in the southern United States because this region is especially vulnerable to fruit fly infestation. Also, this commenter noted that many U.S. trading partners require, as a condition of entry, that treatment of all commodity imports be completed in the country of origin or en route, and do not permit treatment at the port of entry.

We have carefully considered the potential risks associated with allowing the cold treatment of imported fruits and vegetables at the Port of Corpus Christi, TX, and have determined that the biological barriers present in the area of this port, along with the safeguards described in the proposed rule, would prevent the introduction of fruit flies and other insect pests in the unlikely event that they escape from a shipment of imported fruit before the fruit undergoes cold treatment. As noted in the proposed rule, this determination is based on a 1994 document prepared by APHIS assessing the pest risks associated with allowing cold treatment of tropical fruit fly host materials at certain U.S. ports, as well as on a specific analysis of conditions at the Port of Corpus Christi. The 1994 document established risk groups for many ports in the United States, including Corpus Christi, TX. Assignment of a port to a particular risk group was based on a number of criteria, including the individual port’s latitude, microclimate, immediate host availability, and past fruit fly introductions. The proposed risk mitigation measures for the Port of Corpus Christi were tailored to the level of risk assigned by that 1994 document. (Copies of this risk assessment document may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.) Although other countries may have different requirements regarding where and when treatments are to be conducted, APHIS’ regulations have provided for cold treatment after arrival for more than 30 years. We acknowledge that conducting cold treatment of imported fruit at a port in the southern United States such as Corpus Christi, TX, presents different risks than at ports in the northern United States, but we have found through experience that those risks can be successfully managed.

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 allows, under certain conditions, the cold treatment of imported fruit upon arrival at the Port of Corpus Christi, TX. Making this action effective immediately will facilitate the importation of imported fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other quarantine pests into the United States. 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. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This final rule amends the regulations governing the importation of fruits and vegetables to allow, under certain conditions, the cold treatment of imported fruit at the Port of Corpus Christi, TX, where a new cold treatment facility has been constructed. This action will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other quarantine pests into the United States.

In accordance with 5 U.S.C. 603, we have performed a final regulatory flexibility analysis, which is set out below, regarding the effects of this rule on small entities. The initial regulatory flexibility analysis in our proposed rule stated that we did not have all the data necessary for a comprehensive analysis of the potential effects of this rule on small entities. Therefore, we invited comments concerning potential economic effects, particularly the number and kind of small entities that might incur benefits or costs. We did not receive any comments providing the data we requested.

The port of Corpus Christi, located along the Texas coast on the Gulf of Mexico, is connected to both U.S. and Mexican markets through several State and interstate highways as well as by rail service from three rail carriers, which all have access to the docks. The facility at the port of Corpus Christi that would be used for cold treatment has 295,500 square feet of covered dockside storage and a state-of-the-art refrigerated