

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

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

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

Permits

In § 319.56–3, we proposed to add provisions that oral permits may be issued in cases where no other importations are considered and the commodity is admissible with only inspection. One commenter questioned the ability to conduct tracebacks and keep records under the proposed oral permit provision. Specifically, the commenter asked how the oral request is documented, what form an oral request needs to be in, for what purposes does the oral request need to

be made, and if an oral request can be denied, what would be the reasons for denial. The commenter stated that APHIS is also easing the burden upon importers in obtaining these permits by allowing oral permits to be satisfactory in securing inspection.

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

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

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

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

Miscellaneous Changes

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

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

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