

# Rules and Regulations

Federal Register

Vol. 68, No. 100

Friday, May 23, 2003

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 Parts 300 and 318

[Docket No. 02–026–5]

#### Hot Water Dip Treatment for Mangoes

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by amending the hot water dip treatment schedule for rounded varieties of mangoes from Mexico, Central America, Puerto Rico, the U.S. Virgin Islands, and the West Indies to provide for the treatment of mangoes weighing between 701 and 900 grams. Because that hot water dip treatment schedule previously provided only for the treatment of mangoes weighing up to 700 grams, this action will provide for the importation or interstate movement of larger rounded-variety mangoes from Mexico, Central America, Puerto Rico, the U.S. Virgin Islands, and the West Indies. We are also making other changes to the treatment schedule, including the extension of the treatment time if the mangoes are to be hydrocooled within 30 minutes of the treatment.

**DATES:** This regulation is effective May 23, 2003. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of May 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

#### SUPPLEMENTARY INFORMATION:

##### Background

To prevent the introduction into, and the dissemination within, the United States of plant pests, the Animal and Plant Health Inspection Service (APHIS) restricts the importation and interstate movement of many articles, including fruits. As a condition of importation or interstate movement, some fruits are required to be treated for plant pests in accordance with our regulations in title 7, chapter III, of the Code of Federal Regulations (7 CFR parts 300 to 399). The Plant Protection and Quarantine (PPQ) Treatment Manual contains approved treatment schedules and is incorporated by reference into the regulations at 7 CFR 300.1.

On January 2, 2003, we published a proposed rule in the **Federal Register** (68 FR 69–71, Docket No. 02–026–3) to amend the PPQ Treatment Manual to provide for the treatment of rounded mangoes from Mexico or Central America weighing from 701 to 900 grams. We also proposed to make other changes to the treatment schedule, including extending the treatment time for mangoes that would be hydrocooled within 30 minutes of treatment.

We solicited comments concerning our proposal for 45 days ending February 18, 2003. We received 11 comments by that date. They were from growers, a student, and State Government representatives. Nine commenters supported our proposal, although two of the nine raised issues concerning the proposed rule; the remaining two commenters voiced objections to the proposal. The issues raised by the commenters are discussed below.

*Comment:* Large mangoes, like the mangoes discussed in the proposed rule, are also grown in Puerto Rico. Will growers in Puerto Rico be able to use the amended treatment schedule to qualify their large mangoes for movement?

*Response:* As noted in the proposed rule, the duration of the hot water dip treatment is determined based on the origin, shape, and weight of the mangoes. Three tables, sorted by region of origin, are provided under treatment T102-a: Table 5–2–1 for Puerto Rico, U.S. Virgin Islands, or West Indies (excluding Aruba, Bonaire, Curacao, Margarita, Tortuga or Trinidad and Tobago); table 5–2–2 for Mexico or Central America (north of and including

Costa Rica); and table 5–2–3 for Panama, South America, or West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, or Trinidad and Tobago.

Because the proposed rule was prompted by a request from producers in Mexico, we had proposed to include the treatment for rounded variety mangoes weighing between 701 and 900 grams in table 5–2–2 only (*i.e.*, for mangoes from Mexico or Central America). However, based on this comment, we have carefully evaluated the available research and have determined that the same treatment schedule for rounded variety mangoes weighing between 701 and 900 grams can also address the risks presented by such mangoes produced in Puerto Rico, the U.S. Virgin Islands, or the West Indies. Therefore, in this final rule, we have also amended table 5–2–1 under treatment schedule T102-a to provide for the treatment of rounded variety mangoes weighing between 701 and 900 grams from Puerto Rico, the U.S. Virgin Islands, or the West Indies.

The regulations in § 318.58–2(b) of “Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands” contain a 700-gram limit on the size of mangoes that are eligible for movement if they meet certain conditions, which include treatment in accordance with the PPQ Treatment Manual. Because that limitation was based on the size limitation in the PPQ Treatment Manual, we are also amending § 318.58–2(b) in this final rule to reflect the availability of the treatment of mangoes weighing up to 900 grams.

*Comment:* Since the Commonwealth of Puerto Rico is a mango producer and a territory of the United States, Puerto Rico’s mango production should have been reflected in the discussion of U.S. production contained in the proposed rule’s regulatory flexibility analysis. Mangoes grown in Puerto Rico are shipped to the mainland United States, exported, or sold locally in Puerto Rico.

*Response:* The commenter is correct that we should have included data on Puerto Rico’s mango production in our economic analysis. In addition, we should have considered Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. We have adjusted the information presented under “Executive Order 12866 and Regulatory Flexibility Act” in this final rule to include available data concerning mango

production in Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. According to the country notes for the data we used from the Food and Agriculture Organization (FAO) of the United Nations, the data for U.S. exports and imports includes Puerto Rico and the U.S. Virgin Islands. According to these data, however, there were no U.S. exports.

*Comment:* The hot water dip treatment should be approved only for use against the Mexican fruit fly (*Anastrepha ludens*) because the research performed by the U.S. Department of Agriculture's Agricultural Research Service (ARS) was limited to that species. Prior research has shown that the West Indian fruit fly (*A. obliqua*) is more heat tolerant than the Mexican fruit fly. No information was provided on the heat tolerances for other important *Anastrepha* species, including *A. fraterculus*, *A. striata*, and *A. serpentina*.

*Response:* While the research that ARS conducted was limited to the Mexican fruit fly, we disagree that the treatment of mangoes should be approved only for the Mexican fruit fly. The genus *Anastrepha* contains at least 150 species or strains, and it would be impractical for us to test them all, especially when other scientific research would preclude the need for such testing. The specific fruit flies of concern in Mexico and Central America are *A. ludens*, *A. obliqua*, *A. serpentina*, *A. striata*, and the Mexican and Central American populations of the *A. fraterculus* species complex. In Puerto Rico, the U.S. Virgin Islands, and the West Indies, the fruit flies of concern are *A. suspensa* and *A. obliqua*. We have carefully reviewed the available research on this topic and have determined that the hot water dip treatment can be used to mitigate the risk of fruit flies associated with rounded mangoes weighing from 701 and 900 grams from Mexico, Central America, Puerto Rico, the U.S. Virgin Islands, and the West Indies.

We agree with the commenter that an earlier study (Sharp *et al.* [1989a]. J. Econ. Entomol. 82(6) 1657–1662]) had shown the West Indian fruit fly to be more heat tolerant than the Mexican fruit fly. These results were likely influenced by the stage of larva used in the study. It is likely that early third-instar larvae were used instead of late third-instar larvae; late third-instar larvae appear to tolerate heat better than the younger larva. In a subsequent study using a number of isolates and late third-instar larvae, ARS research concluded the Mexican fruit fly to be

consistently more heat tolerant than the West Indian fruit fly, especially when heat treated for 75 minutes or longer. These results became the basis for their later research on large mangoes.

*Comment:* The recurring breakdown in treatment compliance at several hot water treatment facilities in Mexico reinforces the need for APHIS to upgrade its oversight and monitoring of hot water dip treatments and other similar treatments. APHIS should provide timely written reports on compliance to States and other interested parties.

*Response:* We believe that our oversight and notification procedures are adequate and responsive. APHIS routinely maintains oversight of treatment programs. For mangoes produced in Mexico for export to the United States, we monitor trapping and controls in orchards, cut and inspect fruit prior to treatment, directly supervise all treatments, and inspect the mangoes upon their arrival at ports of entry. Further, box marking requirements allow us to trace mangoes back to their production area. When pests are intercepted following treatment, APHIS investigates possible causes and responds appropriately. Our response includes increasing our oversight for as long as necessary and, depending on the specific situation, could extend to rejecting shipments or terminating the preclearance program at a treatment facility. Although we do not routinely notify States and other interested parties of all compliance issues, we notify appropriate representatives of significant compliance problems, including when live fruit flies are found.

*Comment:* During 2 consecutive years (2001 and 2002), State personnel in California intercepted live *Anastrepha* larvae in mangoes imported from Mexico that were certified as having been treated according to the protocol. California officials have not yet been informed of the reason for this program failure.

*Response:* Our investigations into the fruit fly interceptions in 2001 and 2002 in treated mangoes from Mexico revealed two possible explanations for the presence of larvae in the mangoes. First, we believe the fruit may have been hydrocooled immediately after the authorized hot water treatment, with no adjustment to the dip time. Recent research conducted by ARS indicates that extending the dip time by 10 minutes for mangoes that will be hydrocooled within 30 minutes of removal from the hot water immersion tank compensates for any reduction in efficacy when hydrocooling is used.

(Copies of the ARS report are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**) We believe that the 10-minute extension of the dip time for mangoes that will be hydrocooled within 30 minutes of their removal from the hot water immersion tank addresses past failures associated with hydrocooling.

The second possibility is that the mangoes were misrepresented as originating from a registered orchard. If the mangoes did originate from an unregistered orchard, then it is possible that they originated from an orchard with an uncontrolled population of fruit flies, which could lower the effectiveness of the hot water dip treatment. In response to this possibility, APHIS increased its monitoring, rejected shipments, and terminated the preclearance program at the particular treatment facility until APHIS determined that appropriate remedial actions had been taken to allow the treatment facility to resume its operation.

*Comment:* Is irradiation approved as an alternative treatment to the hot water dip treatment, or is additional research necessary to determine whether larger mangoes can undergo irradiation as an alternative to the hot water dip treatment?

*Response:* Irradiation treatment could be used as an alternative to the hot water dip treatment for mangoes if the applicable provisions of the regulations in 7 CFR 305.2 have been met. According to § 319.56–2(k) of “Subpart—Fruits and Vegetables,” treatment by irradiation in accordance with § 305.2 may be substituted for treatments in the PPQ Treatment Manual for the mango seed weevil *Sternonchetus mangiferae* (Fabricius) or for one or more of the following 11 species of fruit flies: *A. fraterculus*, *A. ludens*, *A. obliqua*, *A. serpentina*, *A. suspensa*, *Bactrocera cucurbitae*, *B. dorsalis*, *B. tryoni*, *B. jarvisi*, *B. latifrons*, and *Ceratitidis capitata*. Because the ARS conducted exhaustive research to determine appropriate commodity-generic irradiation dose rates for certain pests, additional research would not be needed in order for irradiation to be used as an approved treatment for rounded mangoes weighing from 701 to 900 grams.

#### Miscellaneous

In addition to the changes discussed previously, we are also amending § 318.58(a) to replace the obsolete scientific name “*A. mombinpraeoptans* Sein” with “*A. obliqua*.”

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 changes discussed in this document.

#### 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**.

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 mangoes from Mexico, Central America, Puerto Rico, the U.S. Virgin Islands, and the West Indies 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. For this action, the Office of Management and Budget has waived its review process under Executive Order 12866.

We are amending the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1, to provide for the treatment of rounded-variety mangoes from Mexico, Central America, Puerto Rico, the U.S. Virgin Islands, and the West Indies weighing between 701 and 900 grams. Prior to this rule, the approved hot water dip treatment for mangoes from Mexico, Central America, Puerto Rico, the U.S. Virgin Islands, and the West Indies was limited to mangoes weighing 700 grams or less.

According to FAO, U.S. production of mangoes is supplemented with mango imports in order to satisfy the domestic demand, and that demand appears to be increasing:

#### PRODUCTION, IMPORT, AND EXPORT DATA FOR MANGOES FROM THE UNITED STATES, MEXICO, CENTRAL AMERICA, AND WEST INDIES <sup>1</sup>

[In metric tons]

Country and activity	1997	1998	1999	2000
U.S. production (includes Puerto Rico and Guam) .....	20,145	20,145	20,145	20,145
U.S. exports (includes Puerto Rico and U.S. Virgin Islands) .....	0	0	0	0
U.S. imports (includes Puerto Rico and U.S. Virgin Islands) .....	186,520	197,393	219,144	235,080
Mexico production .....	1,500,317	1,473,852	1,508,468	1,559,351
Mexico exports .....	187,127	209,426	204,002	206,782
Central America production .....	1,712,251	1,686,828	1,728,457	1,787,151
Central America exports .....	204,177	225,406	220,595	228,653
West Indies production .....	434,151	449,444	445,397	470,747
West Indies exports .....	12,451	8,523	10,828	12,029

<sup>1</sup> Includes Antigua and Barbuda, Cayman Islands, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Martinique, Montserrat, Saint Lucia, and Saint Vincent/Grenadines.

Although FAO production data for mangoes were not available for the U.S. Virgin Islands and the Northern Mariana Islands, data were reported in the 1998 Census of Agriculture. In 1998, the U.S. Virgin Islands harvested 61,621 pounds (approximately 28 metric tons), and the Northern Mariana Islands harvested 3,940 pounds (approximately 1.79 metric tons). FAO data were not available for imports and exports of mangoes into and from Guam or the Northern Mariana Islands.

U.S. mango imports are far greater than domestic production. U.S. production of mangoes has primarily been in Puerto Rico and southern Florida, with lesser quantities grown in California, Guam, Hawaii, the Northern Mariana Islands, and the U.S. Virgin Islands. According to the 1997 Census of Agriculture, there were 218 mango farms in Florida, 171 in Hawaii, and 2 in California. According to the 1998 Census of Agriculture, there were 255 mango farms in Puerto Rico, 163 in the U.S. Virgin Islands, 36 in Guam, and 14 in the Northern Mariana Islands.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small

entities. Whether affected entities may be considered small in this case depends on their annual gross receipts. Annual receipts of \$750,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in "other noncitrus fruit farming" (North American Industry Classification System code 111339). It is likely that most, if not all, mango producers in the United States are small entities. However, because the U.S. production of mangoes is supplemented with imports in order to satisfy the demand, we do not expect this rule will have a significant economic effect on domestic producers, large or small.

Mango producers in Puerto Rico and Florida contribute to the bulk of the mango production in the United States and are the entities more likely to be affected by this rule. Mangoes grown in Puerto Rico are shipped to the contiguous United States, exported, or sold locally. By providing for the treatment of larger mangoes produced in Puerto Rico, this rule may increase opportunities for producers there to ship additional fruit to mainland U.S. markets, but we are unable to predict

the number of producers affected, or the extent to which those producers will be affected, by this rule.

According to information provided by the University of Florida's Institute of Food and Agricultural Sciences (IFAS), about 10 to 15 growers manage the bulk of the producing mango acreage in Florida. According to IFAS, about 25 percent of Florida growers produce mangoes alone, while the remaining 75 percent are diversified operations growing other tropical fruits in addition to mangoes. Florida growers occupy niche markets in the State by providing green fruit for processing into chutney and other products and by providing fresh, untreated, tree-ripened fruit for consumption. The availability of larger mangoes from Mexico and Central America in the larger U.S. market is expected to have little to no impact on Florida producers who occupy those niche markets, as producers in Mexico and Central America are not expected to be shipping green fruit for processing and would be unable to provide untreated, tree-ripened fruit to U.S. markets.

The availability of a treatment for larger mangoes of the rounded varieties

is not expected to significantly affect U.S. mango producers, as the amount of those larger mangoes likely to be imported from Mexico, Central America, and the West Indies would represent a fraction of current import levels. These markets are unlikely to be affected by the availability of larger mangoes from Mexico, Central America, and the West Indies. Therefore, we do not expect that the economic effects of this rule on U.S. entities, large or small, will be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This final 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

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

■ Accordingly, 7 CFR parts 300 and 318 are amended as follows:

#### PART 300—INCORPORATION BY REFERENCE

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 300.1, paragraph (a) is amended as follows:

■ a. In paragraph (a)(4), by removing the word “and”.

■ b. In paragraph (a)(5), by removing the period and adding the word “; and” in its place.

■ c. By adding a new paragraph (a)(6) to read as follows:

#### § 300.1 Plant Protection and Quarantine Treatment Manual.

(a) \* \* \*

(6) Treatment T102–a, dated March 2003.

\* \* \* \* \*

#### PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

■ 3. The authority citation for part 318 continues to read as follows:

**Authority:** 7 U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

#### § 318.58 [Amended]

■ 4. In § 318.58, paragraph (a) is amended by removing the words “*mombinpraeoptans* Sein” and adding the word “*obliqua*” in their place.

#### § 318.58–2 [Amended]

■ 5. In § 318.58–2, paragraph (b)(1), the entry for mangoes is amended by removing the words “no larger than size 8 (no more than 700 g each)” and adding the words “no larger than 900 grams each” in their place.

Done in Washington, DC, this 16th day of May, 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–12986 Filed 5–22–03; 8:45 am]

BILLING CODE 3410–34–P

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Parts 318 and 319

[Docket No. 00–059–2]

#### Movement and Importation of Fruits and Vegetables

**AGENCY:** Animal and Plant Health Inspection Service.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations that govern the movement of fruits and vegetables from Puerto Rico and the U.S. Virgin Islands to require the treatment of pigeon peas (fresh shelled or in the pod) from Puerto Rico for movement into any other area of the United States. In addition, we amended the regulations that govern the importation of fruits and vegetables to require the treatment of pigeon peas (fresh shelled or in the pod) from the Dominican Republic imported into any area of the United States except Puerto

Rico, and to prohibit the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. These actions were necessary to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

**DATES:** The interim rule became effective January 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hesham A. Abuelnaga, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

#### SUPPLEMENTARY INFORMATION:

#### Background

The regulations in “Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands” (7 CFR 318.58 through 318.58–16) are designed to prevent the dissemination of plant pests, including diseases, from Puerto Rico and the U.S. Virgin Islands into other parts of the United States. The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–8) 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.

In an interim rule effective and published in the **Federal Register** on January 21, 2003 (68 FR 2681–2684, Docket No. 00–059–1), we amended the regulations in “Subpart—Fruits and Vegetables” to require the treatment of pigeon peas (fresh shelled or in the pod) from Puerto Rico for movement into any other area of the United States, including the U.S. Virgin Islands. (The **Federal Register** published a correction (68 FR 6544) to the interim rule on February 7, 2003.) In addition, we amended the regulations in “Subpart—Fruits and Vegetables” to require the treatment of pigeon peas (fresh shelled or in the pod) from the Dominican Republic for importation into any area of the United States, except Puerto Rico, and to prohibit the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. These actions were necessary to protect the United States from the introduction or spread of injurious plant pests.

Comments on the interim rule were required to be received on or before March 24, 2003. 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 action also affirms the information contained in the interim