

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50–3, paragraph (c), the entry for New Jersey is amended by adding, in alphabetical order, an entry for Cumberland County to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

New Jersey.

* * * * *

Cumberland County. The entire county.

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Done in Washington, DC, this 15th day of June 2007.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–12025 Filed 6–20–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Parts 305 and 319**

[Docket No. APHIS–2006–0040]

RIN 0579–AC10

Importation of Fruit From Thailand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand. As a condition of entry, these fruits must be grown in production areas that are registered with and monitored by the national plant protection organization of Thailand,

treated with irradiation in Thailand, and subject to inspection. The fruits must also be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been treated with irradiation in Thailand. In the case of litchi, the additional declaration must also state that the fruit had been inspected and found to be free of *Peronophythora litchii*, a fungal pest of litchi.

Additionally, under this final rule, litchi and longan imported from Thailand may not be imported into or distributed to the State of Florida, due to the presence of litchi rust mite in Thailand. This action allows the importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand into the United States while continuing to provide protection against the introduction of quarantine pests into the United States.

EFFECTIVE DATE: July 23, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:**Background**

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 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 July 26, 2006, we published in the **Federal Register** (71 FR 42319–42326, Docket No. APHIS–2006–0040) a proposal¹ to amend the regulations to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand. As a condition of entry, we proposed to require that these fruits be grown in production areas that are registered with and monitored by the national plant protection organization (NPPO) of Thailand and treated with irradiation in Thailand at a dose of 400 gray. The 400 gray dose is approved to treat all plant pests of the class Insecta except pupae and adults of the order Lepidoptera; we proposed to inspect for

the Lepidopteran pests for which the irradiation treatment is not approved. We also proposed to require that the fruits be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been treated with irradiation in Thailand. In the case of litchi, the additional declaration would also have had to state that the fruit had been inspected and found to be free of *Peronophythora litchii*, a fungal pest of litchi.

We solicited comments concerning our proposal for 60 days ending September 25, 2006. We received 43 comments by that date, from producers, exporters, researchers, members of Congress, and representatives of State governments. They are discussed below by topic.

Based on the comments we received, we are making one change to the regulations as they were proposed. In addition to the treatments and safeguards included in the proposed rule, this final rule prohibits the importation and distribution of litchi and longan from Thailand into the State of Florida. We are making this change based on comments regarding the risk associated with the litchi rust mite, *Aceria litchi*, which is present in Thailand and is a pest of litchi and longan. The comments on this topic are discussed in more detail below under the heading “Pests Named by Commenters That Were Not Addressed in the Risk Management Document.”

General Comments

Several commenters expressed general concern about the risk that importing litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand could introduce plant pests into the United States. One commenter was concerned that the importation of these fruits from Thailand could introduce harmful plant pests into Florida. Two other commenters were concerned that the same thing could happen in Hawaii, which already struggles to control invasive species. One commenter suggested that the entire State of Hawaii be designated as a natural resource preserve.

We believe that the mitigations included in this final rule are sufficient to mitigate the risk associated with the importation of these fruits, and thus will prevent the introduction of invasive species into the United States. In the case of litchi and longan, this final rule adds a safeguard to the proposed rule to ensure that litchi rust mite is not introduced to Florida.

¹To 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–2006–0040, then click “Submit.” Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

The Animal and Plant Health Inspection Service (APHIS) does not have the statutory authority to designate areas as natural resource preserves.

One commenter asked whether APHIS had considered preparing an environmental impact statement for the importation of the six tropical fruits from Thailand.

We prepared an environmental assessment to support our proposed action; it was available for public review and comment along with the proposed rule. We received no comments specifically addressing the environmental assessment. We have prepared an environmental assessment and finding of no significant impact for this final rule; it can be accessed through *Regulations.gov* (see footnote 1).

Our regulations in 9 CFR part 372 describe the procedures we use to fulfill our obligations under the National Environmental Policy Act. Section 372.5 describes the types of actions for which we would normally prepare an environmental impact statement and the types of actions for which we would normally prepare an environmental assessment. An action for which we would normally prepare an environmental assessment, as described in § 372.5(b), “may involve the agency as a whole or an entire program, but generally is related to a more discrete program component and is characterized by its limited scope (particular sites, species, or activities) and potential effect (impacting relatively few environmental values or systems). Individuals and systems that may be affected can be identified. Methodologies, strategies, and techniques employed to deal with the issues at hand are seldom new or untested. Alternative means of dealing with those issues are well established. Mitigation measures are generally available and have been successfully employed.” We believe these statements are all consistent with the proposed action and the action taken in this final rule, which allows the importation of a limited number of fruits from one country, subject to mitigation measures that have been successfully employed elsewhere.

One commenter addressed our characterization in the proposed rule of pupae and adults of the order Lepidoptera as “external feeders.” This commenter stated that pupae of Lepidoptera do not feed, and that it would be more accurate to state that pupae and adults of the order Lepidoptera do not occur in fruit.

We agree with this comment, and we will use this wording to discuss the

issue as it arises elsewhere in this document. The comment does not affect the rule text that we proposed, and we are making no changes based on this comment in this final rule.

Requiring Production Areas To Be Registered With and Monitored by the NPPO of Thailand

We proposed to require that all litchi, longan, mango, mangosteen, pineapple, and rambutan imported from Thailand into the United States be grown in a production area that is registered with and monitored by the NPPO of Thailand.

Six commenters stated that the proposed rule did not describe how this requirement would mitigate the risk associated with importing these fruits from Thailand into the United States. One commenter noted that the proposed rule stated that this requirement would result in fruit that had fewer pests and thus maximize the effectiveness of the irradiation treatment, but stated that we provided no supporting data on the relationship between the number of pests in a specific fruit and the ability of a specific dose of irradiation to neutralize those pests.

We appreciate the opportunity to clarify our statement in the proposed rule. When we referred to reducing the number of plant pests in the fruit, our meaning was not that the requirement would reduce the number of species of plant pests found in the fruit, but rather that it would reduce the pest population found in the fruit.

Based on published research, we expect the irradiation dose of 400 gray to neutralize all plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, that are exposed to the dose. (Pupae and adults of the order Lepidoptera are not approved for treatment by the 400 gray dose because not enough research has been done to judge whether the dose will be effective on those insects.² The 400 gray dose has been determined to provide at least a Probit 9 level security based on tests performed on hundreds of thousands of individual plant pests. A treatment that achieves Probit 9 security is 99.9968 percent effective against the treated plant pests—in other words, if 1 million plant pests are subjected to the

² A detailed discussion of the evidence supporting this determination can be found in the proposed rule (70 FR 33857–33873, Docket No. 03–077–1, published in the **Federal Register** on June 10, 2005) and final rule (71 FR 4451–4464, Docket No. 03–077–2, published in the **Federal Register** on January 27, 2006) that added the 400 gray dose to the regulations as a treatment option. These documents can be accessed on the Internet at <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetailed&d=APHIS–2005–0052>.

treatment, and 32 or fewer survive, the treatment is Probit 9 effective. However, if a shipment of fruit being treated is heavily infested with pests, the possibility of having some pests survive a treatment remains. Because fruit that is grown in production areas registered with and monitored by the NPPO of Thailand will be grown in accordance with best management practices, the density of pests in the production area will be reduced, which means that the pest population being treated will be smaller than it would otherwise be. Reducing the pest population in Thai fruit prior to the treatment provides an additional assurance that the 400 gray dose will neutralize the plant pests that are present in the fruit.

Three commenters requested that APHIS provide additional information regarding the best management practices that the Thai NPPO would require for registered production areas.

The best management practices that would be required by the Thai NPPO for production areas growing these six tropical fruits for export would vary according to the pest population in the production area, the fruit being grown in the production area, and other factors. Rather than prescribe certain management practices for Thai producers, APHIS instead will include in the framework equivalency workplan a requirement that producers utilize appropriate pest management control measures to ensure low pest population levels (especially of fruit flies) and to comply with all horticultural standards required by the NPPO.

The regulations for treatment of imported fruits and vegetables with irradiation in § 305.31(f)(1) require that the plant protection service of a country from which articles are to be imported into the United States enter into a framework equivalency workplan. Among other things, this workplan specifies the type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated articles into the United States. The regulations in § 305.31(f)(2) require that the foreign irradiation facility enter into a facility preclearance workplan. This workplan details the activities that APHIS and the foreign NPPO will carry out to verify the facility’s compliance with the requirements of § 301.34.³

³ We published a notice in the **Federal Register** providing background information on bilateral workplans in general on May 10, 2006 (71 FR 27221–27224, Docket No. APHIS–2005–0085). That notice may be viewed at <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS–2005–>

APHIS will ensure that these measures are being effectively employed through inspection of the fruit when it is treated in Thailand; if the number of pests found is above a certain tolerance, we will reject the fruit for treatment, meaning that it may not be exported to the United States.

We are making no changes to the proposed rule in response to these comments.

Monitoring and Inspection

In the proposed rule, we described the monitoring and inspection for the treatment of the six Thai fruits as follows:

“The regulations in § 305.31 contain extensive requirements for performing irradiation treatment at a facility in a foreign country. These requirements include:

- The operator of the irradiation facility must sign a compliance agreement with the Administrator of APHIS and the NPPO of the exporting country.
- The facility must be certified by APHIS as capable of administering the treatment and separating treated and untreated articles.
- Treatments must be monitored by an inspector.
- A preclearance workplan must be entered into by APHIS and the NPPO of the exporting country. In the case of fruits imported from Thailand, this workplan would include provisions for inspection of articles, which APHIS would perform before or after the treatment.
- The operator of the irradiation facility must enter into a trust fund agreement with APHIS to pay for the costs of monitoring and preclearance.”

Several commenters expressed confusion regarding whether an officer from APHIS' Plant Protection and Quarantine (PPQ) program would be on site in Thailand to monitor irradiation treatment and inspect the treated fruit. One of the commenters noted that PPQ personnel monitor the irradiation treatment of fruits and vegetables moved interstate from Hawaii and that the NPPO of Japan has inspectors on site to monitor the irradiation treatment of Hawaiian papayas that are intended for export to Japan. The commenter urged APHIS to include a requirement in the rule that PPQ monitor irradiation treatment of fruits in Thailand that are intended for export to the United States, rather than addressing it in the compliance agreement. One commenter

stated that irradiation treatment would be effective only if properly performed.

We agree with the commenters that it is necessary to have a PPQ officer on site to monitor irradiation treatment of fruits intended for export to the United States. Under § 305.31(f), irradiation treatment must be monitored by an inspector. *Inspector* is defined in § 305.1 as any individual authorized by the Administrator or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in 7 CFR 305. Because this work would involve oversight in a foreign country, it would be conducted exclusively by APHIS employees. We include the details of how this requirement will be fulfilled in the facility preclearance work plan under paragraph (f)(2) of § 305.31. We believe that the PPQ officer's supervision will be adequate to ensure that the irradiation treatment is properly performed, and thus effective.

Because the regulations already require that an inspector monitor the irradiation treatment, we do not believe it is necessary to make any changes based on these comments.

One commenter asked how APHIS would verify that the phytosanitary certification provided by the Thai NPPO is accurate. Another commenter expressed general concern that the production and treatment of these Thai fruits would not be effectively monitored by the Thai NPPO.

As a signatory to the International Plant Protection Convention (IPPC),⁴ the Thai NPPO is obligated to provide accurate and complete phytosanitary certification and to fulfill its responsibilities under bilateral agreements with other NPPOs. We have reviewed the Thai NPPO's procedures and are confident in its ability to provide such certification, and we are also confident that the Thai NPPO can fulfill its responsibilities under the regulations and under a framework equivalency workplan. If we became aware of inaccuracies in the phytosanitary certification, or we determine that the requirements of the regulations and the workplan are not being complied with, we will take appropriate corrective action.

Several commenters also expressed the opinion that APHIS should inspect all fruit being exported from Thailand. Two commenters stated that the proposed rule indicated that APHIS inspectors will not be directly involved

with supervising the required inspection program in Thailand.

As stated earlier, the proposed rule indicated that all fruit that is treated and exported under these regulations will be inspected prior to export, before or after irradiation treatment. A PPQ inspector will supervise the treatment and inspection process under the bilateral workplan between APHIS and the Thai NPPO.

The regulations in § 319.56–6 provide that all imported fruits and vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector. The pre-export inspection that will be conducted by APHIS personnel as part of preclearance activities in Thailand will serve to satisfy the inspection requirement. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated.

Two commenters stated that inspection levels in general should be increased.

For these six fruits from Thailand, inspections will be performed at levels specified in the workplan, according to a statistical plan designed to ensure phytosanitary security. Our successful use of such plans in the past indicates that they are effective.

One commenter stated that APHIS does not have enough personnel to check all shipments of fruit.

If we do not have personnel available to fulfill our inspection responsibilities, as they are detailed in the workplan, we will not allow fruit to be precleared and imported from Thailand.

Two commenters stated that inspection in general is not an effective mitigation.

We disagree with these commenters. Inspection can be an effective mitigation for pests that are found outside of the commodity, such as pupae and adults of the order Lepidoptera, or for pathogens that cause easily visible symptoms when they infect a commodity. For other pests, treatments or other mitigation strategies are typically required, such as the 400 gray irradiation dose that we are requiring for the six fruits approved for export from Thailand to the United States.

One commenter stated that because irradiation will not control pupae and adults of the order Lepidoptera, these plant pests could be introduced into the United States via shipments of treated and inspected fruit. The commenter cited as examples the introduction of adult Lepidoptera via the holding bay of

⁰⁰⁸⁵⁻⁰⁰⁰¹. Both the framework equivalency workplan and the facility preclearance workplan are bilateral workplans.

⁴ The text of the International Plant Protection Convention can be reviewed at <http://www.ippc.int/IPPEn/default.jsp>.

a transport ship once the hatch doors are opened at the port of entry and the introduction of pupae through deposit onto soil during transportation of the fruit to importer facilities.

As discussed earlier, fruit from Thailand exported to the United States under these regulations will be inspected prior to export in all cases for the presence of plant pests that are pupae or adults of the order Lepidoptera. In addition, under § 305.31(g)(2)(i), all fruits and vegetables irradiated prior to arrival in the United States must either be packed in insect-proof packaging or stored in rooms that completely preclude access by fruit flies. (A room that fruit flies cannot enter will also exclude Lepidopteran pests, since Lepidopteran pests are typically much larger than fruit flies.) These requirements are designed to prevent reinfestation after commodities are treated with irradiation and subjected to any necessary inspection.

The Risk Management Document and Its Discussion in the Proposed Rule

In the proposed rule, we stated the following about the risk management document that we prepared to support our proposed action:

“We have not prepared a comprehensive pest risk analysis for this proposed rule, as we normally do when determining whether to allow the importation of fruits or vegetables under the regulations. When we prepare a comprehensive pest risk analysis for a commodity, one part of the analysis examines in detail the likelihood that the plant pests for which the commodity could serve as a host would be introduced into the United States via the importation of that commodity, the likelihood that those pests would become established if they were introduced, and the damage that could result from their introduction or establishment. This helps us to determine which plant pests pose a risk that makes mitigation measures beyond port-of-entry inspection necessary. However, since irradiation at the 400 gray dose is approved to neutralize all plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, we did not consider it necessary to undertake a detailed analysis of the risks posed by any plant pests that fall into the category, since the risks for all these pests would be mitigated through the irradiation treatment. For the plant pests that we identified that are not approved for treatment with the 400 gray dose, we have analyzed what specific mitigations may be necessary given the risks they pose and the likelihood that these risks

would be effectively mitigated by inspection.”

One commenter stated that the Thai NPPO provided APHIS with full pest risk analyses for each of the six fruits we proposed to allow to be imported from Thailand into the United States. This commenter stated that these pest risk assessments were the basis for discussions between the Thai NPPO and APHIS on proper mitigations for the pests associated with each of these six fruits. The commenter was concerned that, because we did not make these pest risk assessments or the comprehensive lists of plant pests associated with each of the six fruits available for public review and comment, the public could be misled regarding how APHIS determined which pests associated with these fruits are quarantine pests and thus required mitigation.

Bearing out this commenter's concern, several commenters requested that APHIS complete a full pest risk assessment for each of the six fruits addressed in the proposed rule. Many of these commenters recommended that APHIS concentrate on pathogens, as the primary pest mitigation method we proposed to use for these fruits, irradiation treatment, is not approved to neutralize pathogens.

It is correct that the Thai NPPO provided APHIS with pest risk assessments and pest lists for each of the six fruits addressed in the proposed rule. However, APHIS plant scientists reviewed the documents that were submitted by the Thai NPPO and used additional sources to develop independent pest lists. The lists of pests that were judged to be quarantine pests, however, did not change during the review process prior to the publication of the proposed rule, which allowed for productive discussions between the Thai NPPO and APHIS on mitigation measures for quarantine pests associated with each of the six fruits.

By listing only the pests associated with these fruits that were judged to be quarantine pests in the risk management document, however, we appear to have caused confusion. Many commenters, for example, asked whether we had considered pests that we did not list in the risk management document; in fact, we had considered them and determined that they were not quarantine pests, meaning that we did not include them in the risk management document. (These comments are discussed later in this document under the heading “Pests Named by Commenters That Were Not Addressed in the Risk Management Document.”) Therefore, in support of

this final rule, we are making available on *Regulations.gov* (see footnote 1) not only the risk management document, with the updates discussed in this document, but also the pest lists we used when determining what quarantine pests are associated with each of the six fruits in question. We hope this will help to address these concerns.

Three commenters addressed the statement in the risk management document that pineapples moved interstate from Hawaii are approved for irradiation treatment at a 250 gray dose. The commenters stated that the pineapple in production in Hawaii is the smooth Cayenne variety, which is not a host of the fruit flies present in Hawaii; therefore, smooth Cayenne pineapples have never been subject to quarantine treatment, including irradiation.

The commenters are correct that the regulations allow smooth Cayenne pineapples to move interstate from Hawaii without treatment. However, for pineapples of varieties other than the smooth Cayenne that are moved interstate from Hawaii, the regulations in § 305.34(a) provide for the use of irradiation treatment at a dose of 150 gray.⁵ Thus, the risk management document correctly referred to the existence of irradiation requirements for pineapples moved interstate from Hawaii, but did not completely describe the situation. We have amended the risk management document to clarify our discussion of this matter.

One commenter stated that economic factors should be considered in risk assessments.

Our risk assessments evaluate the risk associated with a quarantine pest in part by considering the economic impact of its introduction. We have carefully considered the risks posed by all the quarantine pests associated with the six Thai fruits addressed in the proposal. As mentioned earlier, based on the risk posed by *A. litchi*, this final rule prohibits litchi and longan from Thailand from being imported into or distributed to Florida based on the possible economic consequences of the introduction of that pest into litchi production areas in that State.

Two commenters stated that, despite the apparent effectiveness of the mitigation measures described in the

⁵ At the time the risk management document was written, the required dose for pineapples other than smooth Cayenne moved interstate from Hawaii was 250 gray. Since then, we published a final rule in the *Federal Register* on January 27, 2006 (Docket No. 03-077-2, 71 FR 4451-4464) that lowered the required dose to 150 gray. We have updated the risk management document for this final rule to reflect this change.

risk management document, there was still some risk that quarantine pests could be introduced to the United States through the importation of Thai fruits due to failures in treatment or the execution of the treatment protocols. The commenters cited temporary faults in the irradiation equipment or procedures, human error, and intentional disregard of the treatment procedures with terroristic intent to introduce plant pests. The commenters stated that, when considering that large volumes of Thai fruit would be imported over an indefinite period of time, there was bound to be some failure in the system designed to prevent the introduction of plant pests. The commenters believed that such a risk was unacceptable and thus opposed finalizing the proposed rule.

APHIS has authorized the importation of fruits from foreign localities under phytosanitary measures similar to those described in the proposed rule for many years. These measures have been proven to be effective at preventing the introduction of quarantine pests. When considering what phytosanitary measures are necessary to prevent the introduction of quarantine pests into the United States through the importation of a commodity whose importation is presently prohibited, we balance the necessity of preventing the introduction of quarantine pests with our obligation under the World Trade Organization Agreement on Sanitary and Phytosanitary Measure to take the least restrictive measures necessary to ensure phytosanitary security. We believe the measures required by this final rule fulfill both of these objectives.

One commenter stated that pupae and adults of the order Lepidoptera are not likely to move in the pathway for fresh fruit exported from Thailand to the United States.

We agree with this commenter. However, we believe it is necessary to inspect Thai fruits to ensure their freedom from these pests because of the potential for harm if a quarantine pest of the order Lepidoptera were to be introduced into the United States.

One commenter objected to our statement that we are confident that inspection can detect pupae and adults of the order Lepidoptera, which we made in the preamble of the proposed rule. This commenter stated that APHIS did not provide support for the assertion and that, given the proposal's implications for the agricultural and environmental health of the United States, such support was necessary.

Our assertion that inspection can detect pupae and adults of the order Lepidoptera is based on decades of

experience inspecting imported fruit for plant pests. The commenter did not provide any specific reasons to doubt the ability of our inspectors to detect such pests.

Pests Named by Commenters That Were Not Addressed in the Risk Management Document

Several commenters expressed concern regarding pests that were not addressed in the risk management document. As discussed earlier, along with this final rule, we are providing the full pest lists we used when determining what quarantine pests are associated with each of the six fruits in question we proposed to import from Thailand, so that the public can see the full set of pests we considered. We will also address the specific pests about which commenters expressed concern.

Several pests named by commenters are already present in the United States and thus are not considered quarantine pests. These pests are:

- *Cylindrocladiella peruviana*, a fungus;
- Longan witches' broom;
- Pineapple bacterial wilt;
- Pineapple heart rot;
- Bacterial leaf spot, caused by *Erwinia mangifera*; and
- Blossom malformation, caused by the fungus *Fusarium subglutinans*.

Citing pineapple bacterial wilt and pineapple heart rot, two commenters asked us to develop a postentry pineapple risk management plan for pineapples imported into Hawaii from Thailand. Because both diseases are already present in Hawaii and are not under official control in that State, we do not believe it is necessary to develop a plan for action regarding the introduction of those diseases.

Two genera, *Deudorix* (fruit borers) and *Greeneria* (fungi), were named by commenters as pests we did not consider. We do not consider pests that are not identified to the species level when developing risk documents. We did consider *Deudorix epijarbas* (Lepidoptera: Lycaenidae) as a quarantine pest of litchi and longan in the risk management document and in the proposed rule. Our review of the available scientific information did not identify any other species of the genus *Deudorix* or any species of the genus *Greeneria* that qualified as a quarantine pest.

Commenters also mentioned ants as a class of pests that the risk management document did not address. Our review of the available scientific information did not identify any species of ants in Thailand that qualified as quarantine pests.

Other pests cited by the commenters are discussed below.

Aceria litchi, *A. longana*, *A. dimocarpis*. All three of these are mites, which the 400 gray irradiation dose is not approved to treat. *A. longana* and *A. dimocarpis* are not considered quarantine pests because they are not known to be associated with mature fruit. *A. longana* infests the leaves and inflorescences of the tree. *A. dimocarpis* is associated with young fruit, and typically causes premature fruit drop; since only mature fruit would be treated and exported from Thailand, it is unlikely that this pest would move to the United States.

However, a review of the available literature confirms that *A. litchi* is considered to be associated with the fruit of litchi and longan.⁶ Additionally, APHIS considers *A. litchi* to be a quarantine pest. For this reason, our regulations generally prohibit the movement of litchi and longan into Florida from areas where *A. litchi* is present. For example, litchi and longan moved interstate from Hawaii to the mainland United States that are treated with irradiation in accordance with § 305.34 may not be moved into or distributed in Florida under paragraph (b)(4)(iii) of that section. Litchi from China and India that are imported under § 319.56–2x are also not allowed to be imported into or distributed in Florida.

Because *A. litchi* is not present in Florida and because we have consistently prohibited host movement into Florida from areas where that pest is present, this final rule prohibits the importation and distribution of litchi and longan from Thailand into the State of Florida.

Citrus greening. The citrus greening disease is spread by specific insect vectors, all of which would be neutralized by irradiation at the 400 gray dose.

Cryptophlebia carpophaga. Synonymous with *C. ombrodelta*, which is considered a quarantine pest and was addressed in the risk management document and in the proposed rule.

Cylindrocarpon tonkinense. Synonymous with *C. lichenicola*, which is the accepted name. A postharvest fungus. The commenter cited it as a pest of litchi from Thailand, but CABI reports it as only present in India, and as a pest of yams.

Deanolis sublimbalis [Lepidoptera: Pyralidae], the mango seed borer. The name *Deanolis sublimbalis* is a synonym of *Deanolis albizonalis*. *D.*

⁶The pest lists for litchi and longan that accompany this rule provide a full list of citations supporting this determination.

albizonalis is listed in the pest list for mango from Thailand. We determined that this quarantine pest would not follow the pathway of imported fruit. As *D. albizonalis* larvae feed within the mango, the damaged area softens and collapses. Common signs of damage by *D. albizonalis* are bursting at the fruit apex and longitudinal cracking of the fruit as it nears maturity. Because of the destructive and obvious nature of fruit injury, it is very unlikely that any infested fruit would be packed for export. Therefore, we determined that no mitigation beyond inspection is necessary to address the risk posed by this pest.

Homodes bracteigutta (Walker) [Lepidoptera: Noctuidae]. This pest is on the pest list for longan from Thailand. We determined that this quarantine pest would not follow the pathway of imported fruit, because *H. bracteigutta* occurs externally to the fruit during all its life stages and thus is unlikely to remain on the fruit after processing. Therefore, we determined that no mitigation beyond inspection is necessary to address the risk posed by this pest.

Pestalotiopsis flagisetulai. A fungus that occurs on mangosteen. We do not consider this fungus to be a quarantine pest. The pest causes rot in infested fruit during postharvest storage, meaning that infested fruit would be likely to be culled prior to shipment to the United States. If the disease were introduced into the United States, we would not expect its consequences to be significant. According to an Australian pest risk assessment, *P. flagisetulai* is a weak pathogen that only affects fruits that were bruised during harvest, causing storage rots.

Phomopsis longanae. A pathogen causing stem-end rot on longan. This pest is reported in China, but not in Thailand.

Tessarotoma papillosa (Drury) [Hemiptera: Pentatomidae], known as the litchi stink bug. This pest is on the pest list for litchi from Thailand. We determined that this quarantine pest would not follow the pathway of imported fruit, because *T. papillosa* is a large, active insect that attacks the fruit and is unlikely to remain with litchi after processing. Therefore, we determined that no mitigation beyond inspection is necessary to address the risk posed by this pest.

Twig pathogens. One commenter recommended that twig and stem pathogens should be considered in the risk management document or addressed through an additional measure in the inspection process that

would prohibit stem material from being shipped.

The commenter did not cite any specific twig pathogens that we should have included in the risk management document. In general, our preclearance inspection is sufficient to detect disease symptoms on any twigs included with the fruit and to reject shipments in which diseased material is present.

Fungi

For litchi and mango from Thailand, we identified one fungus each as being a quarantine pest. For litchi, the fungus was *Peronophythora litchii*. We stated the following about *P. litchii* in the proposed rule:

“This pest can cause litchi fruit to drop prematurely from their trees; fungicidal field treatments are typically applied to reduce premature fruit drop in commercial litchi production areas where *P. litchii* is present. To address the risk posed by this pest, we are proposing to require that litchi from Thailand be inspected and found to be free of *P. litchii*. We would also require that the phytosanitary certificate accompanying litchi from Thailand include an additional declaration to that effect.

“We believe that most litchi fruit that are infected with *P. litchii* would be culled prior to importation into the United States; trained harvesters, packinghouse personnel, and plant quarantine inspectors can easily detect the distinctive symptoms of the disease on fruit. Litchi that are infected with *P. litchii* but are not symptomatic may not be culled, but the likelihood that *P. litchii* would then be introduced into the United States via the few fruit that may escape detection is very low, because the spores are transmitted by water. This means that for *P. litchii* to be introduced into the United States via an infected litchi fruit, the fruit would have to be incompletely consumed and discarded in a place where the pest could be transmitted to a litchi production area through moving water. Additionally, there is no record of interception of this disease on litchi imported into the United States from other countries in regions where this pathogen is present. Therefore, we believe that the requirement that litchi from Thailand be inspected for *P. litchii*, along with the additional declaration that would be required on the phytosanitary certificate accompanying the fruit, would adequately mitigate the risk posed by this pest.”

For mangos, the fungus we identified as a quarantine pest was *Phomopsis mangiferae*. We stated the following

about *P. mangiferae* in the proposed rule:

“We believe that *Phomopsis mangiferae* is unlikely to be introduced into the United States via the importation of mangoes for consumption. The pest is specific to mangoes and is spread only via the seed of the mango. For the pest to spread, fungal spores from the seed must be dispersed at a time when susceptible tissue is available; thus, dispersal only occurs when infected seed is used in mango production. If infected fruit is consumed and the seed is discarded as waste, the infected fruit does not serve as a pathway for introduction. Discarded fruit could create a possible source of inoculum that could provide the means for introduction, but the likelihood that infected mangoes will reach these habitats is low because (1) the host range is limited to mango; (2) the portion of the total number of mango shipments from Thailand that is expected to be transported to mango-producing areas in California, Florida, Hawaii, or Texas is small; and (3) the likelihood of fruit being discarded in mango orchards at an appropriate time is likewise very low. For these reasons, we are not proposing any measures beyond inspection to mitigate the risk associated with this plant pest. This decision is consistent with the recommendations contained in pest risk analyses examining the importation of mangoes from Australia, India, and Pakistan, countries where *Phomopsis mangiferae* is also present.”

One commenter stated that the proposed rule did not provide any quarantine mitigation for disease pathogens.

As discussed above, we identified two disease pathogens as quarantine pests, and proposed mitigations for both of them. For *P. litchii*, the mitigation proposed was inspection with an additional declaration on the phytosanitary certificate accompanying litchi imported from Thailand stating that the litchi had been inspected and found to be free of *P. litchii*. For *P. mangiferae*, the mitigation proposed was inspection.

We received several comments addressing *P. litchii* specifically.

As noted above, for *P. litchii* to be introduced into the United States via an infected litchi fruit, the fruit would have to be incompletely consumed and discarded in a place where the pest could be transmitted to a litchi production area through moving water. Several commenters stated that, while this would be unlikely in States where litchi is not produced, the likelihood that incompletely consumed litchi fruit

would be discarded in a yard or other area with a litchi tree in a litchi production area is not insignificant. Given the significant annual rainfalls in Hawaii, some commenters stated, the skin or seed of an infected fruit could affect a growing area through direct water transmission. Additionally, backyard litchi trees would also provide a vector for transmission of the fungus to commercial litchi orchards.

Another commenter stated that, as a means of determining freedom from *P. litchii*, inspection may be problematic. Visual inspection will identify advanced infections, but may not reveal recent infections, which can be asymptomatic. In addition, the commenter stated, the fungus will remain in a suspended state during transit in cool temperatures, allowing fungal growth to resume once litchi are imported. The commenter cited a risk analysis prepared by the Australian government regarding *P. litchii* that stated that the probability of distribution into Australia of *P. litchii* through fruit imported from Thailand was high: "The pathogen is likely to survive storage and transportation, even at cool dry temperatures, and is unlikely to progress to visual decay before distribution."

Several of the commenters specifically argued that the litchi imported from Thailand should be prohibited from importation or distribution into Hawaii and other litchi-producing States to prevent a possible introduction of *P. litchii*.

We understand the commenters' concerns and have carefully considered them in developing this final rule. We continue to believe that the requirement that the phytosanitary certificate accompanying litchi imported from Thailand into the United States contain an additional declaration stating that the litchi had been inspected and found to be free of *P. litchii* is an adequate mitigation for the risk posed by *P. litchii*.

Several considerations lead us to this conclusion. One is that our prediction in the risk management document that it is unlikely that *P. litchii* would be introduced into the United States has largely been borne out in practice in other circumstances. The regulations in § 319.56–2x presently allow the importation of litchi from two other countries in which *P. litchii* is present, China and India, when the litchi are treated in accordance with 7 CFR 305. (No treatment is available for *P. litchii*; the treatments are applied to neutralize other plant pests that are present in those countries.) There is no special inspection requirement to mitigate the

risk posed by *P. litchii* in the regulations for litchi from China and India, although all fruits entering the United States are inspected for quarantine pests.

During the period 2003 through 2006, we received no shipments of litchi from India, but 550 shipments of litchi from China. There were no interceptions of *P. litchii* on these fruit, and no introductions of *P. litchii* in the United States have been reported.

While the Australian risk analysis identified the probability of distribution of *P. litchii* as high, it identified the probability of entry of the fungus as moderate, which is consistent with requiring inspection and an additional declaration on the phytosanitary certificate that certifies freedom from the pest.

Along with the information in the proposed rule, we believe that this information indicates that the mitigation against *P. litchii* in the proposed rule was adequate. We are making no changes to the proposed rule in response to these comments.

Two commenters stated that the host range of *P. litchii* was not adequately represented in the risk management document. One stated that the CABI Abstracts indicate that in nature, the disease is confined to litchi, although in laboratory conditions, tomatoes, papayas, and loofah may also be infected. This commenter, however, also stated that *P. litchii* has also been reported on longan in China (Hoi, H.H., J.Y. Lu and L.Y. Gong. 1984. Observation on asexual reproduction by *Peronophythora litchii*. Mycologia 76:745–747) and on Christmas berry tree, a commonly occurring invasive species in Hawaii. The other commenter stated that *P. litchii* has also been found on tomato and papaya, without the other references.

We typically discount reports of host status based on a species' role as a laboratory or experimental host when completing risk assessments, as there is no clear evidence that the plants would ever be infected with the disease in nature; the CABI citation confirms this. The fact that longan is not listed as a host in the CABI citation, over 20 years after the publication of the Chinese report, argues against placing restrictions on the importation of longan from Thailand based on the Chinese report. Additionally, the commenter did not provide a reference to establish Christmas berry tree as a host of *P. litchii*, and we have been unable to find such a reference. We are making no changes to the proposed rule in response to these comments.

The proposed rule stated that fungicidal field treatments are typically applied to reduce premature fruit drop in commercial litchi production areas where *P. litchii* is present. One commenter stated that this disease control method may result in a higher possibility of disease introduction on fruits. The commenter stated that very few fungicides are therapeutic and kill the pathogen once infection is established. If the results of field fungicide treatments are designed to "reduce fruit drop," then there will be potentially higher infection rates among the fruits that remain on the tree and harbor latent, non-fatal infections.

Two other commenters also referred to this statement, noting that no mention is made of what pesticides would be used and whether they are legally registered for use in the United States. As the commenters noted, imported fruit that has been sprayed with pesticides not legally registered for use on those specific crops in the United States may not be imported into the United States.

Another commenter noted that the proposed rule stated that we believe that most litchi fruit that are infected with *P. litchii* would be culled prior to importation into the United States; trained harvesters, packinghouse personnel, and plant quarantine inspectors can easily detect the distinctive symptoms of the disease on fruit. The commenter stated that APHIS should have more than a belief that this will happen. The commenter also stated that all fruit, not most fruit, infected with this fungus should be culled before litchi are shipped from Thailand to the United States. The commenter also questioned whether the training these workers receive is adequate to perform the task of culling infected fruit.

We appreciate these commenters' concerns. We would like to take this opportunity to clarify that we are not requiring any fungicidal treatment to be applied to litchi imported from Thailand. The statement in the proposed rule and the risk management document simply described the typical response of litchi producers to *P. litchii* infection in a production area. Similarly, the culling described in the proposed rule is part of a characterization of the probability of introduction; exporters would routinely cull litchi intended for export in order to ensure that the fruit is marketable. We are not making culling a required phytosanitary measure. The mitigation we are requiring for *P. litchii* is inspection and phytosanitary certification of freedom from the disease. If a shipment of litchi was

found to be infested with *P. litchii*, the Thai NPPO would not issue a phytosanitary certificate for those litchi, and they would be ineligible for export to the United States. As discussed earlier, we believe that inspection and certification for freedom from the disease is adequate to address the risk posed by *P. litchii*.

The workplan agreed to by the Thai NPPO and APHIS will contain specific provisions requiring compliance with these and all other regulations that apply to the export of these fruits to the United States.

Finally, harvesters and packinghouse personnel can be trained to look for symptoms of pathogens such as *P. litchii*; this process would be included in our bilateral workplan with Thailand.

One commenter stated that the fungus should not be characterized as *Peronophythora litchii* but rather as *Phytophthora litchii*. In this context, the commenter stated that over the last several years, the plant protection community has become aware of several new species of *Phytophthora* that have most likely been introduced into the United States on plant material imported from Asia. Although these introductions were probably directly associated with the importations of plant propagative materials, the commenter was very concerned given the ability of some *Phytophthora* species to hybridize with other species.

Therefore, the commenter expressed concern about allowing the importation of a known host (litchi) from a known infested area with nothing more than a visual inspection. The commenter doubted that a thorough host range study has been completed for *P. litchii*. The commenter stated that the increasing number of new *Phytophthora* species moving from Asia to the Western Hemisphere needs to be curtailed and that APHIS should place a higher emphasis on phytosanitary security with regard to this genus.

While some sources have reclassified *Peronophythora litchii* as *Phytophthora litchii*, there has not been a consensus judgment in that regard. As mentioned earlier, CABI continues to refer to the pest as *Peronophythora litchii*, and several other references list the fungus under that name as well. We are making no changes to the proposed rule in response to this comment.

Were the fungus to be classified under *Phytophthora* rather than *Peronophythora*, we would still rely on the scientific evidence available to assess the risk it poses, and we believe the biology of *P. litchii* is sufficiently well characterized in the literature for us to do that.

Two commenters specifically addressed *P. mangiferae*. Referring to our statement that the portion of the total number of mango shipments from Thailand that is expected to be transported to mango-producing areas in California, Florida, Hawaii, or Texas is small, the commenter cited U.S. census data indicating that the Asian American population of the United States is 4 percent. In Hawaii, Asian Americans make up 42 percent of the population, in Florida 2 percent, in California 12 percent, in Texas 3 percent, and Puerto Rico 0.2 percent; all told, the Asian American population represents over 12.4 million Americans. The commenter stated that these statistics clearly demonstrate that there will be demand for mangoes from Thailand. The commenter additionally stated that such demand indicates that *P. mangiferae* would be dispersed by seed in the urban or agricultural areas of Florida, Hawaii, California, Texas, and Puerto Rico.

Another commenter objected to our use of conditional terms, such as our statement that mangos exhibiting symptoms of *P. mangiferae* "are likely to be detected at harvest and during packing and inspection" and our statement that, if infected mangos are imported into the United States, the number of mangoes that would be shipped to mango production areas in California, Florida, Hawaii, and Texas is expected to be small.

Our assessment of *P. mangiferae* as posing a risk for which inspection is a suitable mitigation was not based on the idea that there would be no demand in the United States for mangoes imported from Thailand. Rather, our assessment was based on the means by which *P. mangiferae* must be disseminated in order for it to spread. Discarded fruit imported for consumption could create a possible source of inoculum that could provide the means for introduction, but the likelihood that infected mangoes will reach these habitats is low because (1) the host range is limited to mango; (2) the portion of the total number of mango shipments from Thailand that is expected to be transported to mango-producing areas, specifically, in the four named States is small; and (3) the likelihood of fruit being discarded in mango orchards at an appropriate time is likewise very low. All these factors, combined, led us to determine that the probability of introduction of *P. mangiferae* is low. The commenter did not state any reasons for disputing our analysis of the probability of occurrence for each of the specific stages of the pathway for introduction.

Regarding the second commenter's comments, those statements in the

proposed rule were part of an analysis of the probability of introduction of *P. mangiferae*, not a set of mitigations that we are requiring. Our conclusion that the probability of introduction for *P. mangiferae* is low led us to propose no mitigations beyond inspection against its introduction.

Labeling

Three commenters stated that each fruit imported from Thailand should be required to have a label stating its country of origin and that irradiation was used as a treatment on the fruit. Two of these commenters also stated that the fruit should be required to be kept in its original containers. One of the commenters stated that, without a labeling requirement, consumers would be unable to distinguish Thai pineapples from Hawaiian pineapples, the latter of which the commenter believed to be of higher quality.

Our regulations in § 305.31(g)(2)(iii) require that the packaging for all fruits and vegetables irradiated prior to arrival in the United States be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. If pallets of fruits or vegetables are broken apart into smaller units prior to or during entry into the United States, each individual carton must have the required label information.

Labeling requirements indicating that the fruits have been treated with irradiation do not fall under APHIS' authority, as they do not help to mitigate the pest risk associated with fruit imported from Thailand. However, the Food and Drug Administration requires in 21 CFR 179.26 that, "for irradiated foods not in package form, the required logo and phrase 'Treated with radiation' or 'Treated by irradiation' be displayed to the purchaser with either (i) the labeling of the bulk container plainly in view or (ii) a counter sign, card, or other appropriate device bearing the information that the product has been treated with radiation. As an alternative, each item of food may be individually labeled. In either case, the information must be prominently and conspicuously displayed to purchasers. The labeling requirement applies only to a food that has been irradiated, not to a food that merely contains an irradiated ingredient but that has not itself been irradiated."

The bilateral workplan we agree to with the Thai NPPO will contain provisions ensuring compliance with these and other requirements of both APHIS and other Federal agencies that

relate to irradiation and importation of food in general.

Comparable Regulations on the Interstate Movement of Hawaiian Fruits

Several commenters expressed concern that we proposed to allow the importation of mangosteen from Thailand into the United States while that fruit is prohibited from moving interstate from Hawaii to the rest of the United States. The commenters stated that Hawaiian farmers have waited over 6 years for a pest risk analysis to be completed regarding the interstate movement of mangosteen from Hawaii. These commenters stated their belief that Hawaii should be given preference over foreign countries, given the infrastructure available to support interstate movement with treatment, Hawaii's status as a producer of fruit for niche markets, and Hawaii's status as a State.

We process requests for movement of fruits both from Hawaii and from foreign countries as expeditiously as possible. We are developing a proposed rule that would allow the interstate movement of mangosteen, as well as other fruits, from Hawaii to the mainland United States. We also plan to implement a notice-based process for approving commodities for interstate movement from Hawaii, similar to the process recently proposed for foreign commodities. However, it is critically important that we take whatever time is necessary to develop treatment protocols that will safeguard American plant resources from pest invasion and that are acceptable to producers and shippers of fruits and vegetables moved interstate.

With regard to the five fruits other than mangosteen that were included in the July 2006 proposal, we note that the regulations governing the movement of these fruits from Hawaii are substantially less restrictive than the requirements we proposed for their importation from Thailand. The commodities moved interstate from Hawaii may be irradiated at lower doses, and do not have to be grown in a registered production area. In addition, some steps necessary to allow importation of commodities from foreign countries, such as the development of a bilateral workplan, are not necessary when allowing movement of commodities within the United States, which can expedite the approval process for those commodities.

One commenter asked whether Hawaii should have the option to regulate the importation of agricultural commodities into Hawaii based on the risk of introduction of agricultural pests,

superseding APHIS' regulations. The commenter was concerned that APHIS might become overwhelmed and ineffective as time goes on.

As noted in the proposed rule and in this final rule under the heading "Executive Order 12988," "State and local laws and regulations regarding litchi, longan, mango, mangosteen, pineapple, and rambutan imported under this rule will be preempted while the fruit is in foreign commerce." We are confident that we will be able to effectively enforce the requirements of this rule.

Economic Issues

Many of the comments we received addressed economic issues, and specifically the economic analysis included in the proposed rule.

Several commenters were concerned that the importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand would have adverse economic effects on domestic producers of those fruits. The comments we received focused on adverse effects on producers in the States of Florida and Hawaii.

Several commenters stated that most of Florida's production of the six fruits in the proposal is moved interstate and is not consumed locally. Two commenters stated that estimates of the value of commercial production in Florida of litchi, longan, and mango are over \$25 million a year. Two commenters stated that imports of tropical fruits from Mexico have had a devastating effect on domestic grower prices in Florida over the past 5 to 6 years.

Other commenters stated that the majority of Hawaiian production of litchi and the vast majority of Hawaiian production of longan and rambutan is moved interstate to the U.S. mainland. One commenter stated that in 2005, 600,000 pounds of rambutan were treated for interstate movement from Hawaii, and the commenter assumed that the production for the local market exceeded that amount. Two commenters stated that Hawaii has been increasing production of the six fruits named in the proposed rule from year to year, increasing planted acreage as well.

These commenters also stated that the volume of production has allowed for expansion from the traditional market segment for these fruits, ethnic grocery stores, to gourmet grocery stores; the commenters expected that eventually, production of these fruits would reach mainstream grocery stores and produce markets on the U.S. mainland. Many of these commenters also noted that the effects they cited would likely affect

small entities. Two commenters specifically cited litchi as being vulnerable to foreign competition, stating that litchi from Taiwan had flooded the Hawaiian litchi market in the fall of 2006 and crowded out Hawaiian production. Another commenter asked APHIS to consider a detailed economic study on the economic impacts that the proposed changes may have on Hawaiian businesses. One commenter stated generally that APHIS should support local agriculture and oppose the practice of shipping fruits over long distances.

Our discussion of the markets for which domestic tropical fruit is produced may not have been clear in the proposed rule. Specifically, our reference to production for the local market needs to be clarified. As the commenters stated, these fruits are destined primarily for specialty stores—ethnic grocery stores and gourmet grocery stores. They have not been produced in commercial quantities for widespread distribution to mainstream grocery stores. We have amended the economic analysis in this final rule to reflect this.

As a signatory to the IPPC, the United States has agreed not to prescribe or adopt phytosanitary measures concerning the importation of plants, plant products, and other regulated articles unless such measures are made necessary by phytosanitary considerations and are technically justified. Protecting domestic tropical fruit producers from foreign competition does not constitute a technical justification. We believe that the mitigations in this final rule will adequately address the risk posed by the importation of these six tropical fruits from Thailand.

The commenters who questioned the data we used in preparing the economic analysis in the proposed rule did not provide any citations of their own. Some of the data supplied by the commenters appear to be incorrect; for example, National Agricultural Statistics Service (NASS) data indicate that 600,000 pounds is more rambutan than was produced for the processed and fresh market combined in 2005. Nevertheless, we have undertaken to find additional data and have updated the economic analysis where appropriate. However, the conclusions of the economic analysis have not changed.

The economic analysis in the proposed rule stated that "Hawaii's production of pineapples for the fresh market has remained relatively stable over the last two decades." Two

commenters questioned this statement. One stated that fresh pineapple production in Hawaii declined by 18 percent from 2003 to 2005. Another stated that, according to NASS data, from 2001 to 2005, annual pineapple production in Hawaii fell from 323,000 to 212,000 tons, value dropped from \$96 million to \$79 million, and acreage fell from 20,100 to 14,000. These commenters also mentioned that Del Monte-Hawaii recently closed its Hawaiian pineapple production operation because foreign producers could provide pineapples at lower cost.

With regard to the first comment, our statement in the proposed rule was that production has remained relatively stable over the last two decades; we did not focus on the short term, as the commenter did. The decline of 18 percent in Hawaiian fresh pineapple production over the years from 2003 to 2005, when compared with the 54 percent decline in the production of pineapples for the processing market over the same time period, is not large. However, we have expanded our discussion of this issue in the economic analysis below to improve clarity.

The data the second commenter cited, from <http://www.nass.usda.gov/hi/fruit/pine.htm>, match the data cited in the proposed rule. Hawaii produced 323,000 tons of pineapples in 2001 for both the fresh and processed markets, rather than just the fresh market, which was the production referred to in the economic analysis in the proposed rule. The other numbers cited by the commenter also include pineapple production for both the fresh and processed market. We acknowledged in our economic analysis in the proposed rule that Hawaiian pineapple production for the processed market has declined to nearly 19 percent of what it was 20 years ago.

The Del Monte decision predated the publication of the proposed rule.

One commenter stated that stiff anti-dumping penalties have been imposed on shippers of Thai canned pineapple that is exported to the United States.

APHIS does not play any role in investigating or enforcing compliance with international trade laws.

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.

Note: In our July 2006 proposed rule, we proposed to add the conditions governing the

importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand as § 319.56–2ss. In this final rule, those conditions are added as § 319.56–2uu.

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.

This final rule amends the fruits and vegetables regulations to allow the importation into the United States of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand. As a condition of entry, these fruits must be grown in production areas that are registered with and monitored by the national plant protection organization of Thailand, treated with irradiation in Thailand at a dose of 400 gray, and subject to inspection. The fruits must also be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been treated with irradiation in Thailand. In the case of litchi, the additional declaration must also state that the fruit had been inspected and found to be free of *Peronophythora litchii*, a fungal pest of litchi. Additionally, under this final rule, litchi and longan imported from Thailand may not be imported into or distributed to the State of Florida, due to the presence of the litchi rust mite in Thailand. This action allows the importation of litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand into the United States while continuing to provide protection against the introduction of quarantine pests into the United States.

This rule is not expected to have any significant effect on APHIS program operations since the relevant commodities are currently allowed importation into the United States from various other regions subject to different treatments. Current regulations already set out a course of action if, on inspection at the port of arrival, any actionable pest or pathogen is found and identified. The use of irradiation as a pest mitigation measure reduces the Agency's dependence on other mitigations such as methyl bromide fumigation. The final rule prohibits the distribution of litchi and longan from

Thailand into Florida due to the litchi rust mite, *A. litchi*.

U.S. Production and Imports

Historically, the United States has not produced the fruits covered in this final rule in any quantity, with the exception of mangoes and pineapples. Mangoes were produced in some quantity in Florida, but production has not been recorded since 1997. Mangoes are still produced in southern Florida along with approximately two dozen other minor tropical fruits. However, these fruits, including litchi, longan, and mango, are primarily destined for the local fresh market, according to a report produced by the Florida Department of Agriculture and Consumer Services.⁷

A record of the production of most of these fruits is kept by the Hawaii Field Office of the National Agricultural Statistics Service. The "Hawaii Tropical Specialty Fruits" report published by this office shows that Hawaii produces all of the fruits covered by the final rule; however, mangosteen production is included in the category "Other" to avoid disclosure of individual operations. Production and price data for the Hawaiian fruit may be found in table 1. With the exception of pineapple, production figures account for both the processing and fresh markets. Disaggregated data are not available. As evidenced in the table, production of longan, litchi, mango, and rambutan has trended upward over the past few years. This seems to indicate a growth in the specialty tropical fruit industry in Hawaii.

Although Hawaii's production of pineapples for the fresh market has remained relatively stable over the last two decades, production intended for the processed market is merely 19 percent of what it was 20 years ago. More recently, production of pineapple for the fresh market has trended slightly downward. From 2000 to 2005, fresh market production declined by 13 percent. Production of pineapples for the processing market fell 54 percent over the same period. Production of longan, litchi, mango, and rambutan is a fraction of pineapple production in Hawaii and is directed to specialty markets.

⁷ Florida Department of Agriculture and Consumer Services. *Florida Agriculture Statistical Directory 2006*. Online publication: http://www.florida-agriculture.com/pubs/pubform/pdf/Florida_Agricultural_Statistical_Directory.pdf.

TABLE 1.—PRODUCTION AND FARM PRICES OF TROPICAL FRUIT PRODUCED IN HAWAII, 2000–2005¹

Year	Longan		Litchi		Mango		Rambutan		Pineapple ³	
	Production (1,000 lb)	Farm price (\$ per lb)	Production (1,000 lb)	Farm price (\$ per lb)	Production (1,000 lb)	Farm price (\$ per lb)	Production (1,000 lb)	Farm price (\$ per lb)	Production (1,000 lb)	Farm price (\$ per lb)
2000	24	4.02	(²)	(²)	207	0.93	220	2.98	244	0.29
2001	37	3.05	(²)	(²)	242	0.86	205	3.01	220	0.31
2002	46	3.20	77	2.64	377	0.92	257	3.01	234	0.31
2003	114	3.33	88	2.84	481	0.86	306	2.73	260	0.30
2004	121	3.41	102	2.42	391	0.92	278	2.60	208	0.32
2005	142	3.09	111	2.61	530	1.11	400	2.51	212	0.30

¹ Mangosteen production is included in a residual category to avoid disclosure of individual operations.

² Data not shown separately to avoid disclosure of individual operations.

³ Pineapple data includes only production destined for the fresh market. Production is not apportioned to the processing and fresh markets for the other commodities.

Source: USDA, National Agricultural Statistics Service (NASS), Hawaii Field Office, "Hawaii Tropical Specialty Fruits," August 8, 2006.

Based on available data, imports of mangoes and pineapples far exceed domestic production (table 2).

Furthermore, it appears that imports do not compete with domestic production. In the case of litchis, longans, mangoes, mangosteens, and rambutans, it appears that domestic production is sold mainly

in specialty markets. Pineapples, on the other hand, seem more widely distributed, but their production has remained fairly consistent over the years with fluctuations in production in a consistent range despite increased imports from abroad. This information indicates very little correlation between

domestic production and foreign imports. Movements of pineapple processing facilities to countries in South America have occurred due to the lower costs of production in these countries rather than increasing imports in the United States.

TABLE 2.—U.S. IMPORTS OF MANGO, MANGOSTEEN, AND PINEAPPLE, 2000–2005

	Mango	Mangosteen ¹	Pineapple
	1,000 lb		
2000	528,868	40	² 711,292
2001	541,329	226	² 715,651
2002	³ 587,048	137	894,446
2003	613,816	136	1,050,855
2004	609,237	104	1,126,672
2005	³ 515,058	52	1,273,401

¹ Statistics include guavas and mangosteens. Source: Global Trade Atlas.

² Includes fresh and frozen. Source: Economic Research Service (ERS) Fruit and Tree Nut Yearbook.

³ Statistics include guavas and mangos. Source: ERS Fruit and Tree Nut Yearbook.

Thailand's Production and Exports

Thailand is the leading producer of pineapple in the world. Much of their production is geared toward international markets, although the

majority of this is not fresh production. Over the last 5 years, only 0.27 percent of the country's fresh production has been exported, as seen in table 3. Additionally, Thailand produces a

significant amount of mangoes. However, as is the case with pineapples, only a small proportion—0.82 percent—of mango production is exported for the fresh market.

TABLE 3.—THAI PRODUCTION AND EXPORTS OF MANGO AND PINEAPPLE, 2000–2004

	Mango			Pineapple		
	Production	Exports	Exports as percentage of production	Production	Exports	Exports as percentage of production
	(metric tons)			(metric tons)		
2000	1,633,479	8,755	0.54	2,248,375	4,995	0.22
2001	1,700,000	10,829	0.64	2,078,286	6,471	0.31
2002	1,700,000	8,736	0.51	1,738,833	4,561	0.26
2003	1,700,000	8,098	0.48	1,899,424	4,874	0.26
2004	1,700,000	33,097	1.95	1,997,000	5,736	0.29

Source: FAOSTAT data, 2006.

Thailand also produces longans, litchis, mangosteens, and rambutans. Production data for each of these comes from Thailand's Office of Agriculture Economics (OAE). Table 4 shows that

production of rambutan far exceeded that of longan and mangosteen. Farm prices, on the other hand, were much higher for longan and mangosteen. In economic terms, this result is not

surprising since higher levels of supply foster lower prices. Production and price data on litchis were not available.

TABLE 4.—THAI PRODUCTION AND PRICE OF LONGAN, MANGOSTEEN, AND RAMBUTAN, 2000–2004

	Longan		Mangosteen		Rambutan	
	Production (metric tons)	Farm price (\$ per kg)	Production (metric tons)	Farm price (\$ per kg)	Production (metric tons)	Farm price (\$ per kg)
1999	163,900	0.76	160,800	0.66	601,000	0.41
2000	417,300	0.65	168,200	0.60	618,000	0.33
2001	250,100	0.63	197,200	0.51	617,000	0.25
2002	420,300	0.28	244,900	0.44	619,000	0.15
2003	396,700	0.38	203,800	0.65	651,000	0.19

Source: OAE, 2006.

According to a press release of the Thai Minister of Agriculture and Cooperatives posted on the Web site of the National Bureau of Agricultural Commodity and Food Standards in Thailand, that country is capable of producing approximately 5 million metric tons (MT) of the fruits covered in the final rule. This production may be divided as follows: 80,000 MT of litchi (lychee), 200,000 MT of mangosteen, 500,000 MT of rambutan, 500,000 to 700,000 MT of longan, 1.8 million MT of mango, and 2 million MT of pineapple. Given the production data reported by the OAE, these production values seem reasonable. However, only a fraction of this is likely to be exported given historical export data, as well as the fact that the existing irradiation facility will not be able to accommodate these estimated volumes of fruit. Since a new facility will not be constructed until regulations are in place, it is not likely that Thailand will be able to treat and ship volumes of this magnitude in the immediate future.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Section 604 of the Act requires agencies to prepare and make available to the public a final regulatory flexibility analysis (FRFA) describing any changes made to the rule as a result of comments received and the steps the agency has taken to minimize any significant economic impacts on small entities. Section 604(a) of the Act specifies the content of a FRFA. In this section, we address these FRFA requirements.

Summary of Significant Issues Raised During Comment Period

The majority of the comments received concerned the potential market losses of domestic producers that would result from the implementation of this rule. As a signatory to the IPPC, the United States has agreed not to prescribe or adopt phytosanitary

measures concerning the importation of plants, plant products, and other regulated articles unless such measures are made necessary by phytosanitary considerations and are technically justified. Therefore, no changes were made to the rule in response to these comments. Several comments concerned the availability of domestically produced fruit. APHIS only has data on production and farm prices for the fruit in question and was not able to obtain any information on its distribution. However, other comments pointed to the fact that domestically grown fruit is mainly distributed to ethnic grocery stores and produce markets. This would indicate that domestically produced fruit serves specialty markets rather than mainstream retail markets. As no other data were supplied to APHIS as proof of wider distribution, no changes were made to the economic analysis.

A detailed discussion of comments on the economic analysis is available earlier in this document.

Description and Estimated Number of Small Entities Regulated

The final rule may affect domestic producers of the six tropical fruits, as well as firms that import these commodities. It is likely that the entities affected are small according to SBA guidelines. A discussion of these impacts follows.

Affected U.S. tropical fruit producers are expected to be small based on 2002 Census of Agriculture data and SBA guidelines for entities in the farm category Other Noncitrus Fruit Farming (NAICS 111339). The SBA classifies producers in this farm category with total annual sales of not more than \$750,000 as small entities. APHIS does not have information on the size distribution of the relevant producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States in 2002. Of this number, approximately 97 percent had annual sales in 2002 of less than \$500,000, which is well below the SBA's small entity threshold of \$750,000 for

commodity farms. This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 623 mango and 34 pineapple farms that may be affected by this rule also qualify as small. In the case of fresh fruit and vegetable wholesalers, establishments in NAICS 424480 with not more than 100 employees are considered small by SBA standards. In 2002, there were a total of 5,397 fresh fruit and vegetable wholesale trade firms in the United States. Of these firms, 4,644 firms operated for the entire year. Of those firms that were in operation the entire year, 4,436 or 95.5 percent employed fewer than 100 employees and were, therefore, considered small by SBA standards. Thus, domestic producers and importers that may be affected by the rule are predominantly small entities.

Based on the data available to APHIS, it does not appear that domestic production of litchi, longan, mango, mangosteen, pineapple, and rambutan markedly competes with imports of these fruits. Domestic production is generally destined for specialty markets, such as ethnic grocery stores and local produce markets. Distribution of these fruits does not appear to be mainstream. Thus, the imports from Thailand are unlikely to substantially affect these markets. Additionally, imports from Thailand are not likely to significantly increase the overall level of imports. It is more reasonable to assume that they will at least partially substitute for imports from other countries like Mexico, depending on relative prices.

Domestic import firms may benefit from more open trade with Thailand, with more import opportunities available to them because of the additional source of these tropical specialty fruits. In any case, it is not likely that the effects of importing litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand will have large repercussions for either domestic producers or importers of these tropical fruits.

Executive Order 12988

This final rule allows litchi, longan, mango, mangosteen, pineapple, and rambutan to be imported into the United States from Thailand. State and local laws and regulations regarding litchi, longan, mango, mangosteen, pineapple, and rambutan imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and 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 litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand 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 1500–1508), (3) USDA regulations implementing NEPA (7 CFR 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR 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 0579–0308.

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 rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Lists of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

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 parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

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

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding, under Thailand, new entries for litchi, longan, mango, mangosteen, pineapple, and rambutan to read as follows:

§ 305.2 Approved treatments.

*	*	*	*	*
(h)	*	*	*	
(2)	*	*	*	
(i)	*	*	*	

Location	Commodity	Pest	Treatment schedule
*	*	*	*
Thailand			
*	Litchi	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR.
	Longan	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR.
	Mango	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR.
	Mangosteen	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR.
	Pineapple	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR.
	Rambutan	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR.
*	*	*	*

⁸Go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the docket ID field, enter APHIS–2006–0040,

"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.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. 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.

■ 4. A new § 319.56–2uu is added to read as follows:

§ 319.56–2uu Administrative instructions: Conditions governing the entry of certain fruits from Thailand.

Litchi (*Litchi chinensis*), longan (*Dimocarpus longan*), mango (*Mangifera indica*), mangosteen (*Garcinia mangoestana* L.), pineapple (*Ananas comosus*) and rambutan (*Nephelium lappaceum* L.) may be imported into the United States from Thailand only under the following conditions:

(a) *Growing conditions.* Litchi, longan, mango, mangosteen, pineapple, and rambutan must be grown in a production area that is registered with and monitored by the national plant protection organization of Thailand.

(b) *Treatment.* Litchi, longan, mango, mangosteen, pineapple, and rambutan must be treated for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, with irradiation in accordance with § 305.31 of this chapter. Treatment must be conducted in Thailand prior to importation of the fruits into the United States.

(c) *Phytosanitary certificates.* (1) Litchi must be accompanied by a phytosanitary certificate with an additional declaration stating that the litchi were treated with irradiation as described in paragraph (b) of this section and that the litchi have been inspected and found to be free of *Peronophythora litchi*.

(2) Longan, mango, mangosteen, pineapple, and rambutan must be accompanied by a phytosanitary certificate with an additional declaration stating that the longan, mango, mangosteen, pineapple, or rambutan were treated with irradiation as described in paragraph (b) of this section.

(d) *Labeling.* In addition to meeting the labeling requirements in § 305.31, cartons in which litchi and longan are packed must be stamped “Not for importation into or distribution in FL.”

(Approved by the Office of Management and Budget under control number 0579–0308)

Done in Washington, DC this 15th day of June 2007.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–12023 Filed 6–20–07; 8:45 am]

BILLING CODE 3410–34-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 301**

[TD 9333]

RIN 1545-BG64

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 6404(g)(2)(E) of the Internal Revenue Code on the suspension of any interest, penalty, addition to tax, or additional amount with respect to listed transactions or undisclosed reportable transactions. The temporary regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, and the Tax Relief and Health Care Act of 2006. The temporary regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on June 21, 2007.

Applicability Date: These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

FOR FURTHER INFORMATION CONTACT: Stuart Spielman, (202) 622–7950 (not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules under section 6404(g) relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to

listed transactions or undisclosed reportable transactions. Section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685, 743) (RRA 98), added section 6404(g) to the Code, effective for taxable years ending after July 22, 1998. Section 6404(g) generally suspends interest and certain penalties if the IRS does not contact a taxpayer regarding possible adjustments to the taxpayer's liability within a specified period of time. Section 903(c) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1652) (AJCA), excepted from the general interest suspension rules any interest, penalty, addition to tax, or additional amount with respect to a listed transaction or an undisclosed reportable transaction, effective for interest accruing after October 3, 2004. Section 303 of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577, 2608–09) (GOZA), modified the effective date of the exception from the suspension rules for certain listed and reportable transactions. Section 426(b) of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922, 2975), provided a technical correction regarding the authority to exercise the “reasonably and in good faith” exception to the effective date rules. Section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 112, 200), extended the current eighteen-month period within which the IRS can, without suspension of interest, contact a taxpayer regarding possible adjustments to the taxpayer's liability to thirty-six months, effective for notices provided after November 25, 2007.

Explanation of Provisions

If an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the IRS does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. A notice is timely if provided before the close of the eighteen-month period (thirty-six month period, in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period