

# Rules and Regulations

Federal Register

Vol. 67, No. 199

Tuesday, October 15, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 300, 301, and 319

[Docket No. 02-071-1]

#### Cold Treatment of Fruits

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by revising the cold treatment schedules under which fruits are treated for the Mediterranean fruit fly (Medfly) and other specified pests. Based on a review of those treatment schedules, we have determined that it is necessary to extend the duration of cold treatment for Medfly. We are also amending the regulations for importing fruits and vegetables to provide that inspectors at the port of first arrival will sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the cold treatment. These actions are necessary to protect against the introduction and dissemination of Medflies into and within the United States.

**DATES:** This interim rule is effective October 15, 2002. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of October 15, 2002. We will consider all comments that we receive on or before December 16, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-071-1, Regulatory Analysis and Development,

PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-071-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-071-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual), which is maintained by the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), contains approved treatment schedules for agricultural commodities and is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1.

The PPQ Treatment Manual contains three cold treatment schedules for the treatment of fruits for the Mediterranean fruit fly (Medfly). Those schedules are prescribed to treat commodities for a variety of pests, including Medfly, that occur in the regions from which the commodities originate. The three schedules are:

*T107-a.* Target pests: *Ceratitis capitata* (Medfly) or *Eutetranychus orientalis* (Oriental citrus mite).

Temperature	Exposure Period (days)
32 °F or below .....	10
33 °F or below .....	11
34 °F or below .....	12
35 °F or below .....	14
36 °F or below .....	16

*T107-c.* Target pests: Species of *Anastrepha* (other than *Anastrepha ludens*) or *C. capitata* (Medfly).

Temperature	Exposure period (days)
32 °F or below .....	11
33 °F or below .....	13
34 °F or below .....	15
35 °F or below .....	17

*T107-f.* Target pests: *Bactrocera cucurbitae* (Melon fly), *Bactrocera dorsalis* (Oriental fruit fly), *C. capitata* (Medfly), and *Eutetranychus orientalis* (Oriental citrus mite).

Temperature	Exposure period (days)
32 °F or below .....	10
33 °F or below .....	11
34 °F or below .....	12
35 °F or below .....	14

T107-a generally applies to commodities imported from Europe, Africa, western Asia, and Central America, while T107-c generally applies to commodities from South America and the Caribbean. T107-f applies to a few select commodities imported from eastern Asia. T107-a and T107-f are also used to treat fruits moving interstate from Hawaii or from any areas of the continental United States that may, from time to time, be quarantined because of Medfly.

#### Medfly in Cold-Treated Clementines

Between November 20 and December 11, 2001, live Medfly larvae were intercepted in clementines from Spain that had been imported into the United States subject to cold treatment schedule T107-a. In response to the Medfly interceptions, APHIS suspended the importation of Spanish clementines pending an investigation into the cause of the infestations. Prior to November and December 2001, there had never been multiple confirmed finds of

Medfly larvae in fruit of any kind that had been legally imported into the mainland United States from any source.

As part of its response to the Medfly larvae finds in Spanish clementines, APHIS is sponsoring additional research on the application of cold treatments for imported fruits. In addition, APHIS asked a panel composed of APHIS regulatory personnel and USDA technical experts on fruit flies to conduct a review of available scientific literature related to the efficacy of the T107—a cold treatment for Medfly, with the intention of using the panel's findings as guidelines on the future application of cold treatment for Medfly.

The panel completed its evaluation and found that the previously approved T107—a cold treatment schedule, while providing a very high level of Medfly mortality, lacks evidence to support that it provides Probit 9 level quarantine security (e.g., a survival rate of no more than 0.0032 percent of target pests) in all cases. Based on its review of the available scientific literature and of all factors involved in quarantine cold treatments against Medfly eggs and larvae, the panel recommended increasing the length of the required cold treatment at each temperature by 2 days. The panel's recommendations are contained in a document entitled "Evaluation of cold storage treatment against Mediterranean Fruit Fly, *Ceratitis capitata* (Wiedemann) (Diptera:Tephritidae)" (May 2, 2002) (referred to elsewhere in this document as the "cold treatment evaluation"). To provide support for the panel's recommendations, USDA's Office of

Risk Assessment and Cost-Benefit Analysis did a quantitative analysis of available data, including data recently made available by the Australian Department of Agriculture. This analysis, entitled "Quantitative Analysis of Available Data on the Efficacy of Cold Treatment Against Mediterranean Fruit Fly Larvae" (September 2002) (referred to elsewhere in this document as the "quantitative analysis"), concluded that there is uncertainty as to whether treatments of less than 14 days and at temperatures in the 32–33 °F range will achieve the Probit 9 level of security. Therefore, we have decided to eliminate those treatment options. Both the cold treatment evaluation and the quantitative analysis can be viewed on the Internet at <http://www.aphis.usda.gov/oa/clementine/index.html>. Copies may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Determination by the Secretary**

#### Determination by the Secretary

In this document, APHIS is revising the cold treatment schedules that are used to treat fruits for infestation with Medfly in order to prevent the introduction of Medfly into the United States or the dissemination of Medfly within the United States.

Under § 412(a) of the Plant Protection Act (7 U.S.C. 7712), the Secretary of Agriculture may prohibit or restrict the importation, entry, and interstate movement of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of a plant pest or noxious weed into or within the United States.

The Secretary has determined that it is not necessary to prohibit the

importation or interstate movement of the fruits that have been eligible for entry or interstate movement if cold treated with schedules T107–a, T107–c, or T107–f. This determination is based on the finding that the application of the extended cold treatment as described in this document, in addition to all other existing applicable requirements, will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. The factors considered in arriving at this determination include: (1) The findings of the cold treatment evaluation, (2) the findings of the quantitative analysis on the efficacy of cold treatment, and (3) the findings of USDA technical experts.

Therefore, we are amending the PPQ Treatment Manual by revising treatment schedules T107–a, T107–c, and T107–f. Treatment T107–a is revised by eliminating cold treatment options of less than 14 days and lower than 34 °F and extending the remaining treatments by 2 days, as shown in the following table, and by removing the Oriental citrus mite from the list of target pests. (Cold treatment for the Oriental citrus mite will now be applied according to the revised T107–f, which is described later in this document.) There should be no effect on fruit quality due to the increased holding times, based on anecdotal information from New Zealand's Ministry of Agriculture and Forestry. We are confident that the revised treatment schedules will provide Probit 9 level quarantine security.

*T107–a*. Target pests: *Ceratitis capitata* (Medfly).

Temperature	Previous exposure period (days)	Revised exposure period	Temperature	Exposure period (days)	Temperature	Exposure period (days)
32 °F or below.	10	No longer an approved treatment.	34 °F or below .....	15	32 °F or below .....	11
33 °F or below.	11	No longer an approved treatment.	35 °F or below .....	17	33 °F or below .....	13
34 °F or below.	12	14 days.	<p>In conjunction with changing treatment schedule T107-a and establishing treatment schedule T107-a-1, we are changing treatment schedules T107-c and T107-f by removing Medfly from the list of target pests for each treatment. Treatment T107-c, which had been used for commodities requiring treatment for Medfly and <i>Anastrepha</i> spp. fruit flies (except <i>A. ludens</i>), will now be limited to species of <i>Anastrepha</i> (other than <i>A. ludens</i>). Similarly, treatment T107-f, which had been used for commodities requiring treatment for Medfly, melon fly, Oriental fruit fly, or Oriental citrus mite, will now be limited to melon fly, oriental fruit fly, or oriental citrus mite. The revised T107-c and T107-f treatment schedules are as follows:</p> <p>T107-c. Target pests: Species of <i>Anastrepha</i> (other than <i>Anastrepha ludens</i>).</p>			
35 °F or below.	14	16 days.				
36 °F or below.	16	18 days.				

T107-f. Target pests: *Bactrocera cucurbitae* (Melon fly), *Bactrocera dorsalis* (Oriental fruit fly), and *Eutetranychus orientalis* (Oriental citrus mite).

We are also establishing a new treatment schedule for use in cases where commodities need to be treated for both Medfly and *Anastrepha* spp. fruit flies (other than *A. ludens*). Such commodities, which have been subject to treatment T107-c in the past, will now need to be treated in accordance with treatment T107-a-1, as follows:

T107-a-1. Target pests: *Ceratitis capitata* (Medfly) and species of *Anastrepha* (other than *A. ludens*).

Temperature	Exposure period (days)
32 °F or below .....	10
33 °F or below .....	11
34 °F or below .....	12
35 °F or below .....	14

Following is a list of all fruits, by country, that are affected by these changes to the PPQ Treatment Manual.

(Note: In the following table, which was drawn from the PPQ Treatment Manual, varieties of *Citrus reticulata* such as clementines and satsumas are covered by the general term "tangerines.")

Country	Commodity	Previous treatment	New treatment
Algeria .....	Ethrog Grape, <sup>1</sup> Grapefruit, Tangerine, Pear, Plum .....	T107-a .....	T107-a (revised).
Argentina .....	Apple, Apricot, Cherry, Grape, <sup>2</sup> Kiwi, Peach, Pear, Plum, Nectarine, Quince, Pomegranate.	T107-c .....	T107-a-1.
Armenia .....	Grape <sup>1</sup> .....	T107-a .....	T107-a (revised).
Austria .....	Grape <sup>1</sup> .....	T107-a .....	T107-a (revised).
Azerbaijan .....	Grape <sup>1</sup> .....	T107-a .....	T107-a (revised).
Belarus .....	Grape <sup>1</sup> .....	T107-a .....	T107-a-1.
Belize .....	Ethrog .....	T107-a .....	T107-a (revised).
	Carambola .....	T107-c .....	T107-c.
Bosnia .....	Ethrog .....	T107-a .....	T107-a (revised).
Brazil .....	Apple, Grape .....	T107-c .....	T107-a-1.
Bulgaria .....	Grape <sup>1</sup> .....	T107-a .....	T107-a (revised).
Chile <sup>3</sup> .....	Apple, Apricot, <sup>4</sup> Cherry, Grape <sup>5</sup> Kiwi, <sup>6</sup> Loquat, Nectarine, <sup>4</sup> Peach, <sup>4</sup> Pear, Persimmon, Plum, Plumcot, Quince, Sand Pear.	T107-a .....	T107-a (revised).
China .....	Sand Pear, Ya Pear .....	T107-f .....	T107-f.
Columbia .....	Grape .....	T107-c .....	T107-c.
Costa Rica .....	Ethrog .....	T107-a .....	T107-a (revised).
Croatia .....	Ethrog .....	T107-a .....	T107-a (revised).
Cyprus .....	Ethrog, Grape <sup>1</sup> , Grapefruit, Orange, Tangerine .....	T107-a .....	T107-a (revised).
Dominican Republic .....	Grape .....	T107-c .....	T107-c.
Ecuador .....	Ethrog .....	T107-a .....	T107-a (revised).
	Apple, Grapefruit, Orange, Tangerine .....	T107-c .....	T107-a-1.
Egypt .....	Grape <sup>1</sup> , Orange, Pear .....	T107-a .....	T107-a (revised).
El Salvador .....	Ethrog .....	T107-a .....	T107-a (revised).
Estonia .....	Grape <sup>1</sup> .....	T107-a .....	T107-a (revised).
France .....	Apple, Ethrog, Grape <sup>1</sup> , Kiwi, Pear .....	T107-a .....	T107-a (revised).
Georgia .....	Grape <sup>1</sup> .....	T107-a .....	T107-a (revised).
Germany .....	Grape <sup>1</sup> .....	T107-a .....	T107-a (revised).
Greece .....	Ethrog, Grape, <sup>1</sup> Kiwi, Orange, Pomegranate, Tangerine .....	T107-a .....	T107-a (revised).
Guatemala .....	Ethrog .....	T107-a .....	T107-a (revised).
Guyana .....	Apple, Orange .....	T107-c .....	T107-c.
Haiti .....	Apricot, Pomegranate .....	T107-c .....	T107-c.
Honduras .....	Ethrog .....	T107-a .....	T107-a (revised).
Hungary .....	Grape <sup>1</sup> .....	T107-a .....	T107-a (revised).
India .....	Litchi .....	T107-f .....	T107-f.
Israel, incl. Gaza .....	Apple, Apricot, Ethrog, Grape, <sup>1</sup> Grapefruit, Litchi, Loquat, Nectarine, Orange, Peach, Pear, Persimmon, Pomegranate, Pummelo, Plum, Tangerine.	T107-a .....	T107-a (revised).

Country	Commodity	Previous treatment	New treatment
Italy	Ethrog (North Atlantic ports only), Grape, <sup>1</sup> Grapefruit, Kiwi, Orange, Persimmon, Tangerine.	T107-a	T107-a (revised).
Jordan	Apple Persimmon	T107-a	T107-a (revised).
Kazakhstan	Grape <sup>1</sup>	T107-a	T107-a (revised).
Kyrgyzstan	Grape <sup>1</sup>	T107-a	T107-a (revised).
Latvia	Grape <sup>1</sup>	T107-a	T107-a (revised).
Lebanon	Apple	T107-a	T107-a (revised).
Libya	Grape <sup>1</sup>	T107-a	T107-a (revised).
Lithuania	Grape <sup>1</sup>	T107-a	T107-a (revised).
Luxembourg	Grape <sup>1</sup>	T107-a	T107-a (revised).
Macedonia	Ethrog	T107-a	T107-a (revised).
Martinique	Ethrog	T107-a	T107-a (revised).
Mexico	Carambola	T107-c	T107-c.
Moldova	Grape <sup>1</sup>	T107-a	T107-a (revised).
Morocco	Apricot, Ethrog, Grape, <sup>1</sup> Grapefruit, Orange, Peach, Pear, Plum, Tangerine.	T107-a	T107-a (revised).
Panama	Ethrog	T107-a	T107-a (revised).
Peru	Grape	T107-c	T107-a-1.
Portugal	Ethrog, Grape <sup>1</sup>	T107-a	T107-a (revised).
Russia	Grape <sup>1</sup>	T107-a	T107-a (revised).
Slovenia	Ethrog	T107-a	T107-a (revised).
South Africa	Apple, Grape, Pear	T107-a	T107-a (revised).
Spain	Apple, Ethrog, Grape, <sup>1</sup> Grapefruit, Loquat, Orange, Ortanique, Tangerine.	T107-a	T107-a (revised).
Switzerland	Kiwi	T107-c	T107-a (revised).
Syrian Arab Republic	Grape <sup>1</sup>	T107-a	T107-a (revised).
Taiwan	Ethrog, Grape <sup>1</sup>	T107-a	T107-a (revised).
Tajikistan	Carambola	T107-f	T107-f.
Tanzania	Grape <sup>1</sup>	T107-a	T107-a (revised).
Trinidad & Tobago	Grapefruit, Orange, Tangerine	T107-c	T107-c.
Tunisia	Ethrog, Grape, <sup>1</sup> Grapefruit, Orange, Peach, Pear, Plum, Tangerine.	T107-a	T107-a (revised).
Turkey	Ethrog, Grape, Orange	T107-a	T107-a (revised).
Turkmenistan	Grape <sup>1</sup>	T107-a	T107-a (revised).
Ukraine	Grape <sup>1</sup>	T107-a	T107-a (revised).
Uruguay	Apple, Grape, <sup>1</sup> Nectarine, Peach, Pear, Plum	T107-c	T107-a-1.
Uzbekistan	Grape <sup>1</sup>	T107-a	T107-a (revised).
Venezuela	Grape, Grapefruit, Orange, Tangerine	T107-c	T107-a-1.
Zimbabwe	Apple, Kiwi, Pear	T107-a	T107-a (revised).

<sup>1</sup> Treatment T101-h-2 also required for this commodity if imported from designated country.  
<sup>2</sup> Treatment T101-i-2 also required for this commodity if imported from designated country.  
<sup>3</sup> From Arica Province of Region 1 or Chanaral Township of Region 3 only.  
<sup>4</sup> Treatment T101-a-3 also required for this commodity if imported from designated country.  
<sup>5</sup> Treatment T101-i-2-1 also required for this commodity if imported from designated country.  
<sup>6</sup> Treatment T104-a-1 also required for this commodity if imported from designated country.

**Movement of Domestically Produced Fruits**

In our domestic quarantine notices in 7 CFR part 301, Subpart-Mediterranean Fruit Fly (§§ 301.78 through 301.78-10) contains regulations pertaining to the interstate movement of host material from areas of the continental United States that may, from time to time, be quarantined because of Medfly. In § 301.78-10, paragraph (b)(3) sets out a cold treatment schedule for regulated citrus fruit that has been harvested. That schedule has been the same as schedule T107-a in the PPQ Treatment Manual, so we are revising § 301.78-10(b)(3) in this interim rule so that the schedule set out in that paragraph is consistent with the revised schedule T107-a in the PPQ Treatment Manual.

The Hawaiian and Territorial Quarantine Notices are contained in 7 CFR part 318. Part 318 does not set out

any cold treatment schedules, but refers instead to the PPQ Treatment Manual. Therefore, no changes need to be made to part 318.

**Monitoring Treatment Effectiveness**

In our foreign quarantine notices in 7 CFR part 319, Subpart-Fruits and Vegetables (§§ 319.56 through 319.56-6) contains regulations for importing fruits and vegetables into the United States. In conjunction with the changes to the cold treatment schedules for Medfly, we are also amending § 319.56-2d, “Administrative instructions for cold treatments of certain imported fruits.” Specifically, we are providing that, at the port of first arrival in the United States, an inspector will sample and cut fruit from each shipment that has been cold treated for Medfly to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the shipment will be held until

an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the prescribed cold treatments do not appear to be effective against Medfly, APHIS may suspend the importation of fruit from the originating country and conduct an investigation into the cause of the deficiency. We believe that these additional precautions will provide assurance that the revised cold treatment schedules are effective against Medfly.

This rule does not allow the importation or interstate movement of any commodities that were not previously allowed to be imported or moved interstate subject to cold treatment and other applicable requirements.

**Immediate Action**

Immediate action is necessary to protect against the introduction into and

dissemination within the United States of Medflies. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

### Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this interim rule on small entities. Based on the information we have, there is no basis to conclude that adoption of this interim rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, and interstate movement of any plant, plant product, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of a plant pest into or within the United States.

In this interim rule, we are amending the PPQ Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by revising the cold treatment schedules under which fruits are treated for Medfly and other specified pests. We are also amending the cold treatment schedule in our

domestic Medfly regulations to be consistent with the changes to the PPQ Treatment Manual. Based on a review of those treatment schedules, we have determined that it is necessary to extend the duration of cold treatment for Medfly.<sup>1</sup> The revisions are described in detail earlier in this document. This action is necessary to protect against the introduction or dissemination of Medflies into and within the United States.

In addition, we are amending the regulations for importing fruits and vegetables to provide that inspectors at the port of first arrival will sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the cold treatment. If a single live Medfly in any stage of development is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the prescribed cold treatments do not appear to be effective against Medfly, APHIS may suspend the importation of fruit from the originating country and conduct an investigation into the cause of the deficiency.

Fruit cutting and inspection charges associated with the interim rule will more than likely be small. APHIS, in a regulatory impact analysis (RIA) conducted for a rulemaking related to the importation of clementines from Spain (referred to below as the clementine RIA),<sup>2</sup> indicates that bulk shipments of fruit will more than likely pass inspection because the proportion of fruit infested with live Medfly will more than likely be extremely low after the application of the revised cold treatment schedules. In addition, the amount of fruit that is cut in the United States will more than likely be low relative to the value of imports, amounting to between 0.24 percent and

0.31 percent of gross import value. As a result, we state at the outset that costs associated with cutting and inspecting fruit will not have a significant negative economic impact on a substantial number of small importers.

The United States Small Business Administration (SBA) defines a small fruit importer (NAICS 42248, Fresh Fruit and Vegetable Wholesalers) as one with 100 or fewer employees. It is not clear if the majority of U.S. importers of fruits from countries known to be infested with Medfly are designated as small entities under SBA's size standards; however as we demonstrate below, economic impacts associated with this rule are not expected to be significant.

Import data for 1996–2000 for fruits that require cold treatment for Medfly under the revised schedule T107–a are shown in Table 1. Import data are not reported separately for all of the fruits that are subject to cold treatment for Medfly, so similar fruits are combined into categories in Table 1.<sup>3</sup> Import data for litchis, pomegranates, and carambola are not available, and there were no imports of mountain papaya and very few imports of cherries that required cold treatment for Medfly during 1996–2000; therefore, data for these fruits are not included in Table 1.

In order to estimate costs associated with extending Medfly cold treatment periods, it is necessary to estimate 2002 import levels, because additional cold treatment expenses vary with the amount of imported fruit. We base the 2002 import level for ethrogs on the 5-year average, because annual growth rates were extremely volatile during 1996–2000. We base the 2002 import level for pears and quinces on the 2000 import level because the import data provided little guidance regarding a likely value for 2002. We base the 2002 import level for clementines, ortaniques, and tangerines on the 2000 import level and annual import growth in 2000 because growth rates were highly volatile during the preceding years and imports apparently leveled off in 1999.<sup>4</sup> We report estimates of 2002 import levels for these and the remaining fruits in Table 1.

<sup>3</sup> USDA–FAS, “U.S. imports and import values for various fruit.” Available on the Internet at: <http://www.fas.usda.gov/ustrade/>.

<sup>4</sup> In particular, expected imports for 2002 are given by  $x(1 + y)^2$ , where  $x$  denotes the import value for 2000 and  $y$  denotes import growth for 2000.

<sup>1</sup> Certain commodities that are subject to the extended cold treatment, *i.e.*, commodities that are subject to treatment for Medfly and *Anastrepha* spp. (except *Anastrepha ludens*), will not necessarily be subject to additional days of cold treatment due to the fact that treatment for *Anastrepha* spp. is already longer than the extended Medfly treatment requires. Thus, such commodities may be subject to 1 additional day of treatment, or none at all, depending on the temperature at which they are held. Nevertheless, for the purposes of this analysis, we assume that all commodities will be subject to additional days of treatment.

<sup>2</sup> “Amending Import Rules for Clementines from Spain: Regulatory Impact Analysis.” Animal and Plant Health Inspection Service. Riverdale, MD. Available on the Internet at <http://www.aphis.usda.gov/oa/clementine/index.html>.

TABLE 1.—FRUIT IMPORTS THAT ARE SUBJECT TO T107 COLD TREATMENT FOR MEDFLY.\*

Commodity	Average import level (1,000 kg)	Weighted import level (\$/kg)	Average import value (\$1,000)	Percentage of world imports	Expected imports 2002 (1,000 kg)
Apple .....	4,128	\$0.86	\$3,550	2.52	<sup>1</sup> 4,128
Apricot .....	4	2.48	10	0.23	<sup>14</sup>
Clementine, ortanique, and tangerine .....	52,176	1.43	74,354	86.32	<sup>2</sup> 95,952
Ethrog .....	160	2.79	446	32.17	<sup>1</sup> 160
Grape .....	33,399	426.18	14,234	3.29	<sup>3</sup> 52,369
Grapefruit and pummelo .....	356	0.91	323	3.31	<sup>1</sup> 356
Kiwi .....	6,080	1.05	6,384	6.91	<sup>16</sup> 080
Orange .....	6,361	1.07	6,776	8.34	<sup>16</sup> 361
Peach and nectarine .....	10	0.95	10	0.02	<sup>3</sup> 17
Pear and quince .....	35,915	0.96	34,478	44.81	<sup>4</sup> 58,228
Plum, loquat, persimmon, and plumcot .....	124	0.99	123	0.54	<sup>4</sup> 513

\* Imports, prices, and percentages of world imports are averages for 1996–2000. Prices are weighted averages converted to 2002 dollars, using the consumer price index for fresh fruit (from U.S. Bureau of Labor Statistics). Data are from USDA–FAS, “U.S. imports and import values for various fruit,” except for grapes, which are from Bureau of Census data: 080610, U.S. fresh grape imports. Quantity data for grapes are in cubic meters; grape prices are in dollars per cubic meter.

<sup>1</sup> Five-year average.

<sup>2</sup> Based on the 2000 import level and annual import growth for 2000.

<sup>3</sup> Based on the 2000 import level and average annual import growth for 1999 and 2000.

<sup>4</sup> The 2000 import level.

As shown in Table 1, very low percentages of apple, apricot, cherry, grape, grapefruit and pummelo, kiwi, mountain papaya, orange, peach and nectarine, and plum, loquat, persimmon, and plumcot imports undergo cold treatment for Medfly; as a result, the interim rule will likely not affect a substantial number of small importers of these fruits. Thirty-two percent of ethrogs, 44 percent of pears and quinces, and 86 percent of clementines, ortaniques, and tangerines must be cold treated for Medfly. Therefore, the interim rule may affect a substantial number of U.S. importers of these fruits and we estimate economic impacts for these fruits. We do not estimate economic impacts for the remaining fruits because it is unlikely that a substantial number of small importers of those fruits will be significantly affected by the interim rule. Furthermore, economic impacts for ethrogs, pears and quinces, and clementines, ortaniques, and tangerines can be considered as representative of the economic impacts for the other fruits.

The overwhelming majority of cold-treated fruit imports are treated aboard ship while in transit to the United States, although treatment can also be carried out at authorized ports. When cold treatment is conducted in transit, the treatment period must be met before unloading. For countries with sailing times to the United States longer than the extended treatment periods, the interim rule will only lead to increases in cold treatment costs. For countries with sailing times to the United States shorter than the extended treatment periods, the interim rule will lead to

increases in cold treatment and shipping costs. To account for the extended treatment periods in these instances, vessels will either adjust sailing times to coincide with the length of the treatment period, sit at the dock, or go into anchorage near the U.S. port. As a result, labor, fuel, and opportunity costs associated with delaying shipments of other cargoes will more than likely be added to shipping charges.

Costs associated with extending treatment periods have been estimated for clementine imports from Spain, in the clementine RIA cited earlier in this analysis. We use the same parameters and methods to estimate additional cold treatment expenses for clementines, ortaniques, and tangerines. It costs approximately \$0.50 per day to cold treat a pallet of fruit at U.S. ports. This provides an approximate upper bound on cold treatment costs because most fruits are cold treated in transit, which may be less expensive on average. We therefore use this as our unit cost to calculate cold treatment expenses in the analysis.

Historically, the Spanish have exported clementines, ortaniques, and tangerines to the United States under the 11 day (33 °F) or 12 day (34 °F) cold treatment schedules. As a result, Spanish clementines, ortaniques, and tangerines shipped to the United States will undergo at least 2 to 3 days (34 °F) of extra cold treatment. We assume the average bulk shipment will undergo an additional 2.5 days of cold treatment. The following daily charges will likely be added to the cost of shipping clementines, ortaniques, and tangerines to the United States: \$10,000 chartering

fee (although this fee is highly variable depending on the availability of bulk ships); \$2,160 docking fee (\$0.27 per metric ton with an average ship size of 8,000 metric tons); \$990 fuel at anchorage fee (five to six tons at \$180 per ton); and \$0.50 per pallet cold treatment fee.

These cost figures are based on recent charges quoted by a representative from Lauritzen, a company that specializes in the bulk shipment of fruit. Ninety percent of clementines, ortaniques, and tangerines shipments come into the United States in bulk shipments. Using a bioeconomic model, which incorporates variation in clementines designated for export to the United States and fruit cutting and rejection of shipments in Spain according to farm-level variation in numbers of fruit infested with Medflies, additional shipping and cold treatment expenses averaged \$1.23 million ( $\pm$ \$15,000, with 95 percent confidence). U.S. imports of clementines averaged 88,461 metric tons ( $\pm$ 1,042 metric tons). As a result, total regulatory expenses were \$13.92 per metric ton, or \$5.57 per metric ton per day. Average import price in the United States was \$1.05 per kilogram, thus import value averaged \$92.65 million. Total regulatory expenses were therefore 1.33 percent of gross value.

These estimates can be used to estimate regulatory costs associated with shipments of clementines, ortaniques, and tangerines from Spain, Morocco, Israel, and Italy. Applying the \$13.92 per metric ton fee to 95,952 metric tons (Table 1), total regulatory costs, assuming fruits are cold treated for an additional 2.5 days on average, are \$1.34 million. To determine whether

these costs are significant, we estimated the value of clementine, ortanique, and tangerine imports for 2002 using the Spanish clementine import demand curve estimated in the clementine RIA. Plugging in the expected 2002 import level and converting the price to 2002 dollars using the consumer price index for oranges, including tangerines,<sup>5</sup> gives a price of \$0.84 per kilogram.<sup>6</sup> Using this expected price, the expected value of imports for 2002 is approximately \$78.47 million. Additional treatment expenses associated with the interim rule amount to only 1.7 percent of this total and, as a result, the interim rule will likely not have a significant negative economic impact on small importers of clementines, ortaniques, and tangerines, even in the unlikely event that importers bear the entire economic burden.<sup>7</sup>

We use the same parameters and methods to estimate additional cold treatment expenses for ethrogs, pears, and quinces under the assumption that these fruits and clementines, ortaniques, and tangerines have roughly the same dimensions. For ethrogs, assuming an additional 2.5 days of cold treatment and shipping expenses, total regulatory costs for 2002 came to \$2,227. This amounts to only 0.5 percent of the estimated value of ethrog imports for 2002 (\$446,400), which is based on the estimated import level (160 metric tons) and the weighted average price (\$2.79 per kilogram) during 1996–2000 (see Table 1). As a result, the interim rule will more than likely not have a significant negative economic impact on small importers of ethrogs.

For pears and quinces, additional cold treatment expenses for 2002 came to \$1.3 million, which amounts to 2.32 percent of the estimated value of pear and quince imports for 2002 (\$56 million), based on the estimated import level (58,228 metric tons) and weighted average price (\$0.96 per kilogram) during 1996–2000 (see Table 1). During 1996–2000, 95 percent of the pear and quince imports from regions with Medfly came from Argentina, and the remainder came from China, South Africa, and Spain. The direct sailing time from Argentina is approximately 10 days, which is 4 days less than the

shortest treatment period. As a result, this rule will add an additional 4 days of cold treatment and shipping charges for shipments of pears and quinces to the United States from Argentina. Total regulatory expenses for 2002 are \$1.30 million, which amounts to 2.32 percent of the estimated value of pear and quince imports for 2002 (\$56 million), based on the estimated import level (58,228 metric tons) and weighted average price (\$0.96 per kilogram) during 1996–2000 (Table 1).

Countries that import citrus from the United States may change their cold treatment guidelines to reflect the changes being made to our cold treatment requirements; however, such changes would only affect U.S. exporters in the event of a Medfly outbreak in the continental United States. Indirect impacts of this rule, therefore, are highly uncertain and depend on the probability that Medflies are introduced and become established, as well as the regional extent of outbreaks and the efficiency with which they are controlled and eradicated. Because potential economic impacts on U.S. fruit importers are low relative to import values and because Medfly outbreaks within the United States will more than likely be confined to particular areas and eradicated efficiently, this rule will likely not have a significant negative economic impact on a substantial number of small exporters in the United States. However, in the event of a Medfly outbreak, exporters who wish to export affected commodities from areas quarantined for Medfly should expect to pay an additional \$5.57 per metric ton per day of extra cold treatment. For example, exports from quarantined areas on the west coast to Asia would have to undergo an additional 2.5 days of cold treatment; therefore, each metric ton of affected produce would cost an additional \$13.92 to ship. The same cost schedule applies to affected commodities on the east coast destined for European markets. Because shipment times from the west coast to Europe and from the east coast to Asia are longer than the revised cold treatment periods, this rule would have no impact on the cost schedules associated with those exports.

### Summary

With the exception of small importers of ethrogs, clementines, ortaniques, pears, quinces, and tangerines, our analysis shows that the interim rule will more than likely not significantly affect a substantial number of small importers of fruits in the United States. Further, our analysis shows that the economic

impact on small importers of ethrogs, clementines, ortaniques, pears, quinces, and tangerines will more than likely not be significant. Further, our analysis shows that the interim rule will not significantly affect a substantial number of small fruit exporters. Nonetheless, we request public comments on our analysis and invite the submission of additional data regarding affected entities, whether small or large.

This interim rule contains no new information collection requirements.

### Executive Order 12988

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

### Paperwork Reduction Act

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

### List of Subjects

#### 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

#### 7 CFR Part 301

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

#### 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR Chapter III as follows:

### PART 300—INCORPORATION BY REFERENCE

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

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

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

a. In paragraph (a)(3), by removing the word “and”.

b. In paragraph (a)(4), by removing the period and adding the word “; and” in its place.

c. By adding a new paragraph (a)(5) to read as set forth below.

<sup>5</sup> U.S. Bureau of Labor Statistics, “Consumer price index—oranges, including tangerines, not seasonally adjusted.” Available on the Internet at <http://data.bls.gov/labjava/outside.jsp?survey=cu>.

<sup>6</sup> The y-intercept of the demand curve is \$3.71 and the coefficient on kilograms of imports is –3.01E–08.

<sup>7</sup> This would be the case, for example, if import demand was perfectly inelastic and export supply was perfectly elastic. Available data indicate that import demand is elastic and that export supply is not perfectly elastic.

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

(a) \* \* \*

(5) Treatments T107-a, T107-a-1, T107-c, and T107-f, dated September 2002.

\* \* \* \* \*

**PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

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

4. In § 301.78-10, paragraph (b)(3) is revised to read as follows:

**§ 301.78-10 Treatments.**

\* \* \* \* \*

(b) \* \* \*

(3) *Cold treatment:* 14 days at 1.11 °C. (34 °F.) or below; 16 days at 1.67 °C. (35 °F) or below; or 18 days at 2.22 °C. (36 °F.) or below.

\* \* \* \* \*

**PART 319—FOREIGN QUARANTINE NOTICES**

5. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 166, 450, 7711-7714, 7718, 7731, 7732, and 7751-7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

6. In § 319.56-2d, a new paragraph (b)(8) is added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(8) *Inspection of fruits after cold treatment for Mediterranean fruit fly.* An inspector will sample and cut fruit from each shipment cold treated for Mediterranean fruit fly (Medfly) to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section do not appear to be effective against the Medfly, APHIS may suspend the importation of fruits from the originating country and conduct an

investigation into the cause of the deficiency.

\* \* \* \* \*

Done in Washington, DC, this 8th day of October, 2002.

**Peter Fernandez,**

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

[FR Doc. 02-26063 Filed 10-11-02; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF AGRICULTURE**

**Rural Business-Cooperative Service**

**7 CFR Part 1942**

**RIN 0570-AA32**

**Rural Business Enterprise Grants and Television Demonstration Grants**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) adopts its interim rule published May 16, 2001 (66 FR 27013-27014), as a final rule without change. This action makes the revision to the definition of small and emerging private business enterprise final. The intended effect will ensure that grantees can assist small businesses in rural areas without eligibility restrictions for the use of technological innovations or commercialization of new products or processes.

**EFFECTIVE DATE:** October 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Amy Cavanaugh, Rural Development Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW, Washington, DC 20250, Telephone (202) 690-2516. The TDD number is (800) 877-8339 or (202) 708-9300.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This rule has been determined to be non-significant and has not been reviewed by the Office of Management and Budget.

**Programs Affected**

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.769, Rural Development Grants.

**Paperwork Reduction Act**

There are no reporting and recordkeeping requirements associated with this rule.

**Intergovernmental Review**

The Rural Business Enterprise Grant (RBEG) Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," and in 7 CFR part 3015, subpart V.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

**Civil Justice Reform**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) retroactive effect will be given to this rule starting August 11, 1988; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal