

Rules and Regulations

Federal Register

Vol. 67, No. 116

Monday, June 17, 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 and 318

[Docket No. 98–127–2]

Rambutan, Longan, and Litchi From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Hawaiian fruits and vegetables regulations to provide alternative treatments for rambutan, longan, and litchi moving interstate from Hawaii. This action will facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States. We are also consolidating and updating the existing regulations governing the interstate movement of certain fruits from Hawaii in order to make the regulations easier to understand.

DATES: This regulation is effective July 17, 2002. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits

and vegetables from Hawaii. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that exist in Hawaii, including the Mediterranean fruit fly (*Ceratitidis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*).

On July 18, 2001, we published in the **Federal Register** (64 FR 37425–37429, Docket No. 98–127–1) a proposal to amend the regulations by providing alternative treatments for rambutan, longan, and litchi moving interstate from Hawaii. We proposed this action because we determined that it would facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States. In the proposed rule, we also proposed to consolidate and update the existing regulations governing the interstate movement of certain fruits from Hawaii in order to make the regulations easier to understand.

We solicited comments concerning our proposal for 60 days ending September 17, 2001. We received one comment by that date. The comment was from an agricultural scientist. The commenter generally supported the proposed rule and provided additional information for our economic analysis. The commenter also raised a few issues that we have discussed below.

Comment: Whenever inspection for pests is mentioned in the regulations, APHIS should emphasize that only the presence of live (not dead) pests can interrupt a shipment of treated fruits.

Response: Currently, under § 318.13–1, and for the purposes of Part 318 Hawaiian and Territorial Quarantine Notices, plant pests are defined as “the injurious insects and plant diseases referred to in § 318.13,¹ in any stage of development.” We believe that this definition implies that only live plant

¹ Section 318.13 lists the Mediterranean fruit fly (*Ceratitidis capitata* (Wied.)), the melon fly (*Bactrocera cucurbitae* Coq.), the oriental fruit fly (*Bactrocera dorsalis* Hendl.), green coffee scale (*Coccus viridis* (Green)), the bean pod borer (*Maruca testulalis* (Geyer)), the bean butterfly (*Lampides boeticus* (L.)), the Asiatic rice borer (*Chilo suppressalis*), the mango weevil (*Sternonchetus mangiferae* (F.)), the Chinese rose beetle (*Adoretus sinicus* Burm.), and a cactus borer (*Cactoblastis cactorum* (Berg.)) as pests that exist in Hawaii that are new to or not widely prevalent within the continental United States.

pests should be of concern to inspectors, though inspectors, based on their own judgment, may consider the presence of dead plant pests to be evidence of pest activity that could warrant more detailed inspection of the affected commodity. In any case, only the presence of live plant pests would be grounds for taking quarantine action on a shipment of treated fruits or vegetables.

However, since the current definition for “plant pests” does not refer to some pests that may be present in Hawaii, we are revising the definition to reflect the most current usage of the term. For the purposes of 7 CFR part 318, a plant pest will be defined as “any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, nonhuman animal, parasitic plant, bacterium, fungus, virus or viroid, infectious agent or other pathogen, or any article similar to or allied with any of those articles.” We believe this definition, which is taken from the Plant Protection Act (7 U.S.C. 7701–7772), provides adequate assurance that any plant pest can be subject to quarantine action under the regulations in part 318.

Comment: The hot water treatment protocol for longan states that after treatment, hydrocooling for 20 minutes at 75.2 °F is recommended, though not required, to prevent injury to the fruit from the hot water immersion treatment. Hot water treatment is always injurious to fruit quality, so the protocol should use the term “reduce” rather than the term “prevent.”

Response: We agree with the commenter, and are revising the treatment’s hydrocooling recommendation accordingly.

Comment: Recently published data (submitted by the commenter) indicate that the hot water immersion treatment for litchi and longan will also kill the larvae and pupae of moths of the genus *Cryptophlebia*, two species of which attack litchi and longan in Hawaii. A statement to this effect could be added to the final rule.

Response: We had not previously required treatment of longans and litchis for *Cryptophlebia* spp. because we are confident that we can intercept such pests via inspection. As we will continue to inspect for the presence of *Cryptophlebia* spp., we do not believe it

is necessary to refer to *Cryptophlebia* spp. in the final rule with regard to the treatment of longans and litchis. We acknowledge, however, that the ability of the hot water treatment to kill *Cryptophlebia* spp. will contribute to overall quarantine security.

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.

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 this document, we are amending the Hawaiian fruits and vegetables regulations to provide for the interstate movement of rambutan, litchi, and longan from Hawaii after the fruit is treated, under certain conditions, for fruit flies. Under this final rule, those fruits will be allowed to move interstate from Hawaii if they are first inspected and then treated for pests using the following types of treatments:

Fruit	Treatment(s)
Rambutan	High temperature forced air or vapor heat.
Litchi	Vapor heat.
Longan	Hot water.

This action will facilitate the interstate movement of rambutan, longan, and litchi from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

Prior to the adoption of this final rule, the above fruits were already allowed to move interstate from Hawaii if treated with irradiation in accordance with the regulations in § 318.13–4f. Litchi could also be moved interstate from Hawaii if treated with hot water in accordance with the Plant Protection and Quarantine Treatment Manual. Longan and litchi are not allowed to be moved into Florida due to the risk of introducing the litchi rust mite into areas in Florida where longan and litchi are commercially grown.

Providing alternative pest treatment methods for rambutan, litchi, and longan fruits from Hawaii is expected to stimulate growth of the industry and provide access to the larger mainland market.

Production of rambutan in Hawaii decreased from 264,300 pounds in 1997 to about 139,200 pounds in 1998.

Rambutan farm prices increased from \$2.71 per pound to \$3.03 per pound during that period. There are approximately 50 farms in Hawaii that produce rambutan, and each of those farms can be considered to be small entities according to Small Business Administration (SBA) criteria (*i.e.*, a producer with less than \$750,000 in annual sales).

In 1998, the United States produced approximately 2.3 million pounds of litchi, with Hawaii producing 157,000 pounds of litchi, valued at \$309,000, during that same period. There are approximately 75 farms in Hawaii that produce litchi, and each is a small entity according to SBA criteria.

The United States produces approximately 1.4 million pounds of longan (mostly in Florida) annually, with a market value of approximately \$767,000. Hawaii produced approximately 17,000 pounds of longan in 1998, and anecdotal evidence suggests that production has increased since 1998, though no data is available to confirm that suspected trend.

Regardless, any producers of longan in Hawaii are likely to be small entities according to SBA criteria.

Currently, there are 5 fruit packing plants in Hawaii that have a total of 11 high temperature forced air and vapor heat treatment chambers. Four of those chambers have not been used recently and require recertification. In addition, one packing plant has the capability to treat fruits with irradiation. There is one hot water immersion treatment facility that has recently been built in Hawaii, but it has not been certified by USDA.

Vapor heat and high temperature forced air treatments require between 4 and 6 hours of treatment. The cost of treatment ranges from 0.92 to 2.3 cents per pound (approximately \$18.40 to \$46.00 per ton with capital construction costs of about \$0.9 million to \$1.2 million), while irradiation requires about 40 minutes of treatment at a cost of approximately 0.93 to 1.58 cents per pound (approximately \$18.60 to \$31.60 per ton with capital construction cost of about \$2.8 million to \$3.8 million for a freestanding facility).

The recently built commercial continuous-feed hot water immersion treatment unit cost \$75,000 and can process 500–600 pounds of fruit per hour. It is estimated that using hot water treatment as an alternative would cost, taking into account the opportunity cost of capital, labor cost, and fuel cost, about \$13.95 per ton. Unless there is a large volume of fruit available for treatment, the equipment would likely be underutilized. It is unclear whether availability and operation of a hot water

treatment facility would have an effect on other types of treatment facilities in Hawaii.

Producers would be able to utilize existing facilities in Hawaii to treat fruits under the conditions specified in this final rule. Adoption of this final rule will likely result in increased revenue for the existing vapor heat and dry heat facilities in Hawaii.

Additionally, growers in Hawaii may benefit from the increased opportunity for selling their products in a larger and more diverse market and from potential decreases in the cost of treating fruits. If producers respond by planting and harvesting more acreage of these fruits, both consumers and firms that provide treatment services are likely to benefit.

All of the treatment methods would be more economical for owners of facilities and sellers of fruits if the treatments are applied to larger shipments. Initial investments associated with the treatments considered here would depend on the number, capacity, and complexity of required facilities. Costs per pound of fruit treated can rise dramatically when capital-intensive facilities are operated at less than design capacity. This would happen when the commodity is not shipped year round, or when production decreases dramatically (as in the case of a freeze), or if trade patterns or the regulatory environment changes substantially. The effect of underutilized capital equipment on per-unit treatment costs tends to be greater the more expensive the initial capital investment. For example, a recent study estimated that operating strawberry irradiators at 25 percent of their annual throughput capacity can increase the cost of irradiating strawberries by 212 percent, from \$0.034/lb treated (when plant is operated at 100 percent annual capacity) to \$0.106/lb treated (when plant is operated at only 25 percent of capacity).

The economic effects of this rule on mainland growers and prices on the mainland are not expected to be significant. However, mainland consumers of fresh rambutan, litchi, and longan could likely benefit from increased seasonal and regional availability and from the increased variety of fresh fruits, as well as from more stable prices.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

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

Accordingly, we are amending 7 CFR parts 300 and 318 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)(2), by removing the word “and”.

b. In paragraph (a)(3), by removing the period and adding the word “; and” in its place.

c. By adding a new paragraph (a)(4) to read as follows.

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(4) Treatments T102–d–1, T103–e, T106–c, T106–f, and T106–g, dated February 2002.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 is revised to read as follows:

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

4. In § 318.13–1, the definition of *plant pests* is revised to read as follows:

§ 318.13–1 Definitions.

* * * * *

Plant pests. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, nonhuman animal, parasitic plant, bacterium, fungus, virus or viroid, infectious agent or other pathogen, or any article similar to or allied with any of those articles.

* * * * *

5. In § 318.13–2, paragraph (b), the entry for *Allium spp.* is removed and the following entries are added in its place:

§ 318.13–2 Regulated articles.

* * * * *

(b) * * *

Allium spp. (bulb only).

Allium tuberosum.

* * * * *

6. Section 318.13–4b is revised to read as follows:

§ 318.13–4b Administrative instructions; conditions governing the interstate movement from Hawaii of certain fruits for which treatment is required.

(a) *General restrictions.* Fruits listed in this section may only be moved interstate from Hawaii in accordance with this section or in accordance with other applicable sections in this subpart.

(b) *Eligible fruits.* The following fruits may be moved interstate from Hawaii if, prior to interstate movement, they are inspected for plant pests by an inspector and are then treated for fruit flies under the supervision of an inspector with a treatment prescribed in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter: Avocados, bell peppers, carambolas, eggplants, Italian squash, litchi, longan, papayas, pineapples (other than smooth cayenne), rambutan, and tomatoes.

(c) *Subsequent handling.* All handling of fruits subsequent to treatment in Hawaii must be carried out under the supervision of an inspector and according to the inspector's instructions.

(d) *Destination restrictions.* Litchi and longan that are moved interstate from

Hawaii under this section may not be moved into Florida due to the litchi rust mite (*Eriophyes litchi*). Cartons used to carry such fruits must be stamped: “Not for movement into or distribution in FL.”

(e) *Costs and charges.* All costs of treatment and any post-treatment safeguards prescribed by an inspector must be borne by the owner of the fruits or the owner's representative. The services of an inspector during regularly assigned hours of duty and at the usual place of duty are furnished by APHIS without charge.

(f) *Department not responsible for damages.* Treatments prescribed in the PPQ Treatment Manual are judged from experimental tests to be safe for use with the fruits listed in paragraph (b) of this section. However, the Department assumes no responsibility for any damage sustained through or in the course of the treatment, or because of safeguards required by an inspector.

§ 318.13–4d [Removed and Reserved]

7. Section 318.13–4d is removed and reserved.

§ 318.13–4e [Removed and Reserved]

8. Section 318.13–4e is removed and reserved.

§ 318.13–4h [Removed and Reserved]

9. Section 318.13–4h is removed and reserved.

Done in Washington, DC, this 10th day of June 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–15073 Filed 6–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM219, Special Conditions No. 25–204–SC]

Special Conditions: Israel Aircraft Industries, Ltd. Model 1124/1124A Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Israel Aircraft Industries, Ltd. Model 1124/1124A airplanes modified by Duncan Aviation. These airplanes, as