List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—[AMENDED]

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Subpart—Corn Cyst Nematode [Removed and Reserved]

2. Subpart—Corn Cyst Nematode, consisting of §§ 301.90 and 301.90–1 through 301.90–10, is removed and reserved.

Done in Washington, DC, this 3rd day of September 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22942 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

---

7 CFR Part 301

[Docket No. 91–155–20]

Mediterranean Fruit Fly; Removal of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mediterranean fruit fly regulations by removing the quarantined areas in Los Angeles, Orange, and San Bernardino Counties, CA, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from these areas and that restrictions on the interstate movement of regulated articles from these areas are no longer necessary. As a result of the interim rule, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

EFFECTIVE DATE: Interim rule was effective on June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 14, 1996, and published in the Federal Register on June 19, 1996 (61 FR 31003–31004, Docket No. 91–155–19), we amended the Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10) by removing the quarantined areas in Los Angeles, Orange, and San Bernardino Counties, CA, from the list of quarantined areas in § 301.78–3(c). That action relieved unnecessary restrictions on the interstate movement of regulated articles from these areas. Also, as a result of that action, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

Comments on the interim rule were required to be received on or before August 19, 1996. We did not receive any comments by that date. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 61 FR 31003–31004 on June 19, 1996.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 3rd day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22940 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

---

7 CFR Part 319

[Docket No. 95–068–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing, under certain conditions, the cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. We have determined that there are biological barriers at these ports that, along with certain safeguards, prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruit before undergoing cold treatment. We are also requiring that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours. These actions will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56–8 (referred to below as ''the regulations''), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and time requirements vary according to the type of fruit and the pests involved. Detailed cold treatment procedures may be found in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1.

On April 29, 1996, we published in the Federal Register (61 FR 18690–18695, Docket No. 95–068–1) a proposal

to amend the regulations by allowing cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS.

We solicited comments concerning our proposal for 60 days ending June 28, 1996. We received 10 comments by that date. They were from customs brokers, industry representatives, and representatives of State governments. Six commenters supported the proposed rule in its entirety. The remaining four commenters had concerns about portions of the proposed rule. Their concerns are discussed below by topic.

The Maritime Port of Seattle, WA

Two commenters recommended that, in addition to the special conditions outlined for the maritime port of Seattle, WA, in the proposed rule, we also require contingency plans and trap monitoring at this port, as we proposed to require for the airports of Atlanta, GA, and Seattle, WA, and for the port of Gulfport, MS, to reduce further the slight possibility that a fruit fly could escape from the cold treatment facility and could, particularly during summer months, find a suitable microhabitat for colonization. We agree that contingency plans and trap monitoring at the maritime port of Seattle, WA, will help prevent the introduction and establishment of fruit flies near the port, as they will at the other ports. Therefore, we are adding the following special conditions to cold treatment at the maritime port of Seattle, WA:

1. Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

This condition will act as a general safeguard. We are requiring this condition as an extra layer of defense that will trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages to survive past the stage of pupation in the cold treatment facility.

2. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of Plant Protection and Quarantine (PPQ), for handling fruit, including the ability to destroy or dispose of fruit safely.

This condition will ensure that, in the event that a shipment cannot be cold treated promptly or properly, the contents of the shipment can be safely treated by alternative means, destroyed, or disposed of so that fruit flies and other insect pests will not have the opportunity to escape. Examples of adequate contingency plans include the ability to incinerate fruit, to bury fruit, or to re-export fruit.

These additional special conditions, along with the conditions outlined in the proposed rule for the maritime port of Seattle, WA, will help prevent the introduction and establishment of fruit flies and other insect pests in the unlikely event that they escape from shipments of fruit before undergoing cold treatment at the maritime port of Seattle, WA.

The Airport of Atlanta, GA, and the Maritime Port of Gulfport, MS

One commenter expressed concern about the temperate climates in which the airport of Atlanta, GA, and the maritime port of Gulfport, MS, are located. We recognize that these ports are located in areas that experience warmer winter temperatures than the other areas where cold treatment is conducted. However, these ports are not located near commercial citrus-growing areas or other substantial sources of fruit fly host material. We believe that the safeguards outlined in the proposed rule are sufficient to prevent the introduction and establishment of fruit flies and other insect pests from shipments of fruit and vegetables intended for cold treatment. Therefore, we are making no changes to the proposed rule in response to this comment.

Bulk Shipments

One commenter suggested that we prohibit bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit and vegetables intended for cold treatment into the maritime port of Seattle, WA, and the airports of Seattle, WA, and Atlanta, GA. The commenter recommended that we instead require that all shipments entering these ports for cold treatment be packed in containers in order to keep the fruit chilled, limit any exposure to the outdoors, prevent leakage, and serve as a physical barrier to fruit fly escape.

Based on our experience enforcing the regulations, it is extremely rare, particularly at an airport, for shipments of fruit to wait for extended periods of time for cold treatment. Shipments normally move very quickly from the vessel or airplane into the cold treatment facility for treatment. To help ensure prompt treatment of shipments, we require that at all ports approved as locations for cold treatment, advance reservations for cold treatment space be made prior to the departure of a shipment from its port of origin. This condition ensures the expeditious cold treatment of the fruit, limits the shipment's exposure to the outdoors, reduces the likelihood of leakage from a shipment, and minimizes the risk of fruit flies maturing in deteriorating fruit. In addition, though we are allowing bulk shipments of fruit intended for cold treatment to enter the maritime port of Seattle, WA, and the airports of Seattle, WA, and Atlanta, GA, we are requiring these bulk shipments to arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies. We believe that this condition, and the other special conditions for these ports, are sufficient to ensure that shipments that arrive at these ports in cases or bins will not be exposed in such a manner as to allow fruit flies or other insect pests to escape from a shipment. Therefore, we are making no changes to the proposed rule in response to this comment.

Security Measures

One commenter recommended that our proposed security measures for all of the ports be expanded. The commenter suggested that each cold treatment facility have security cameras, that each shipment of fruit be accompanied by APHIS personnel, and that each person living within a 4-mile radius of the cold treatment facility be notified that the facility is holding fruit that may contain exotic plant pests.

We developed special conditions for cold treatment at each port proposed as an approved location for cold treatment so that there would be a multi-layered defense against the escape of fruit flies or other insect pests from shipments of fruit intended for cold treatment. These special conditions are reinforced by the standard requirements for cold treatment, located at § 319.56–2d of the regulations, at all ports that are approved locations for cold treatment. The standard requirements, among other things, require that shipments of fruit intended for cold treatment in the United States must arrive in the United States at a temperature sufficiently low to prevent insect activity and then must be promptly precooled and refrigerated in the approved cold storage warehouse where cold treatment will occur. In addition, the standard requirements provide that fruit intended for cold treatment in the United States be delivered under the supervision of an inspector of PPQ, APHIS, to the approved cold storage warehouse where cold treatment will occur. APHIS officials monitor shipments of fruit intended for cold treatment in the United States through inspections of the shipments at the port of entry and through inspections of the automatic, continuous temperature records

required for each refrigeration. At ports where special conditions apply to cold treatment, APHIS officials monitor adherence to required safeguards as well. Consequently, we feel that we have the necessary security measures in place to prevent the introduction of exotic plant pests into the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Cold Treatment

One commenter stated that the United States should not allow the cold treatment of foreign fruits and vegetables within its borders because of the pest risk to American crops. The same commenter expressed concern that allowing additional ports to be locations for cold treatment would require extra APHIS resources that may not be available. The commenter suggested that we require the costs of cold treatment, including the staffing and operation of the cold treatment facility, to be borne by the exporting party.

Based on our experience enforcing the regulations, we believe that we have the necessary safeguards in place to conduct cold treatment in the United States without presenting an unnecessary risk of the introduction or establishment of exotic plant pests.

Further, we have adequate personnel and other resources at the ports proposed as approved locations for cold treatment to conduct careful monitoring of cold treatment operations and to ensure that the provisions of the regulations are upheld. Regarding the costs of cold treatment, it is routine for importers of fresh fruit to bear the expense of cold treatment. Therefore, we are making no changes to the proposed rule in response to these comments.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this final rule on small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This rule amends the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the cold treatment of imported fruits upon arrival at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. Modern cold treatment facilities have been or are in the process of being constructed at each of these ports. This action will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received no comments on the Initial Regulatory Flexibility Analysis contained in the proposed rule.

Approximately 585.4 million kilograms of fresh fruits and vegetables were imported into the United States through the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA, during fiscal year 1994. The port of Gulfport, MS, handled about 98 percent of the total fresh fruit and vegetable imports for these ports. The ports of Atlanta, GA, and Seattle, WA, handled 0.25 and 1.75 percent, respectively, of the total fresh fruit and vegetable imports for these three ports. During fiscal year 1994, approximately 550,330 kilograms (less than one-tenth of one percent) of the total fresh fruit imports for these ports were cold treated in the country of origin or in transit to the United States and will be eligible for cold treatment upon arrival in the United States. We expect that an additional 20 million kilograms of new and rerouted fresh fruits will be imported through and cold treated at these ports each year.

According to the Small Business Administration, a ''small'' entity involved in the wholesale trade of fresh fruits is one that employs no more than 100 people. Currently, there are 4,388 ''small'' wholesale importers of fresh fruits in the United States. Use of on-site cold treatment facilities at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, may slightly reduce transportation costs for foreign fruit exporters, which, in turn, may slightly reduce transportation costs for domestic importers and, ultimately, may slightly reduce the cost of certain fruits for U.S. consumers. We expect, however, that these reductions in costs will be insignificant.

The alternative to this rule was to make no changes in the regulations. After consideration, we rejected this alternative because it appears that, with the safeguards contained in this rule, the cold treatment of fruit may be conducted at any of the listed ports without significant risk of introducing fruit flies or other injurious plant pests.

Executive Order 12988

This rule allows cold treatment of certain imported fruits to be conducted at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. State and local laws and regulations regarding the importation of fruits under this rule will be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and will 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.

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.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 319.56–2d is amended as follows:

a. In paragraph (b)(1), by revising the second sentence to read as set forth below.

b. By revising paragraph (b)(5)(iv) to read as set forth below.

c. By adding new paragraphs (b)(5)(v), (b)(5)(vi), and (b)(5)(vii) to read as set forth below.

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

* * * * *

(b) * * *

(1) * * * If not so refrigerated, the fruit must be both precooled and refrigerated after arrival only in cold storage warehouses approved by the Deputy Administrator and located at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

* * * * *

(5) * * *

(iv) *Special requirements for the maritime port of Wilmington, NC.* Shipments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit must be cold-treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(v) *Special requirements for the maritime port of Seattle, WA.* Shipments of fruit arriving at the maritime port of Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit must be cold-treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(E) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(F) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

(vi) *Special requirements for the airports of Atlanta, GA, and Seattle, WA.* Shipments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk and containerized shipments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit arriving for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of shipments from aircraft to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(D) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(E) The cold treatment facility must remain locked during non-working hours.

(F) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(G) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

(vii) *Special requirements for the port of Gulfport, MS.* Shipments of fruit arriving at the port of Gulfport, MS, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) All fruit entering the port for cold treatment must move in maritime containers. No bulk shipments (those shipments which are stowed and unloaded by the case or bin) are permitted at the port of Gulfport, MS.

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(C) All shipments of fruit arriving at the port for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(D) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of shipments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) Advance reservations for cold treatment space at the port must be made prior to the departure of a shipment from its port of origin.

(F) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(*1*) All containers must be unloaded within the cold treatment facility; and

(*2*) Untreated fruit may not be exposed to the outdoors under any circumstances.

(G) The cold treatment facility must remain locked during non-working hours.

(H) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(I) During cold treatment, a backup system must be available to cold treat the shipments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(J) The cold treatment facility must have the ability to conduct methyl bromide fumigations on-site.

(K) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

* * * * *

3. In § 319.56–2x(b), the first sentence is revised to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

(b) If treatment has not been completed before the fruits and vegetables arrive in the United States, fruits and vegetables listed above and requiring treatment for fruit flies may arrive in the United States only at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

Done in Washington, DC, this 3rd day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22941 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 240

[INS No. 1612–93]

RIN 1115–AE43

Removal of Obsolete Sections of the Regulation Concerning Temporary Protected Status for Salvadorans

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Immigration and Naturalization Service (Service) regulations by removing those sections relating to Temporary Protected Status (TPS) for Salvadorans under section 303 of the Immigration Act of 1990 (IMMACT). Since the TPS program for Salvadorans expired on June 30, 1992, this action is necessary to remove obsolete language from the Service's regulations.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Chirlin, Adjudications Officer, Residence and Status Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington DC, 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Section 302 of the Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, added section 244A of the Immigration and Nationality Act (Act), establishing Temporary Protected Status (TPS) relief. Upon designation of a foreign state by the Attorney General, TPS affords temporary protection and work authorization in the United States to eligible individuals from a designated foreign state that is experiencing ongoing armed conflict, environmental disaster, or other harmful conditions that would prevent such individuals from returning to that state in safety.

In addition to the general procedures governing TPS under section 244A of the Act, section 303 of IMMACT afforded such protection specifically to nationals of El Salvador for an 18-month period ending on June 30, 1992. The special TPS program for Salvadorans included some special limitations and requirements which were implemented in 8 CFR 240.40 through 240.47. These special procedures for Salvadorans included additions or exceptions to the general TPS procedures in 8 CFR 240.1 through 240.20. The Service published both the general and the specific Salvadoran TPS regulations in the Federal Register as an interim rule on January 7, 1991, at 56 FR 618 and as a final rule on May 22, 1991, at 56 FR 23491.

Under section 303 of IMMACT, TPS designation for El Salvador was to expire on June 30, 1992, unless the Attorney General extended the designation. On June 26, 1992, the Commissioner of the Service announced in the Federal Register at 57 FR 28700 that Salvadoran TPS designation would not be extended.

Although Salvadoran TPS expired, many of the Salvadoran TPS registrants became eligible to apply for a 1-year program of deferred enforced departure (DED) established by presidential order through the June 26, 1992, Federal Register notice. By a Federal Register notice published June 8, 1993, at 58 FR 32157, the Service further extended DED until December 31, 1994, as directed by President Clinton. The Service subsequently extended until April 30, 1996, the DED-related work authorization of Salvadorans whose DED registration expired on December 31, 1994, by a series of Federal Register notices concluding on January 30, 1996, at 61 FR 3053.

Under a court-approved settlement in a lawsuit captioned *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*), eligible TPS and DED Salvadorans are entitled to a *de novo* asylum adjudication. The Sevice will begin to schedule *ABC* class members for asylum interviews on a routine basis.

The Salvadoran TPS program expired on June 30, 1992. The Service therefore finds it appropriate to remove the obsolete regulations concerning the expired Temporary Protected Status program for Salvadorans.

Impact of Removal of Obsolete Sections of the Regulation

The removal of obsolete sections of the regulation will streamline the regulations and decrease confusion. The Service will continue to inform all former Salvadoran TPS registrants who inquire that the program has expired and that they are not eligible for further registration or work authorization under that program.

Basis for Removal of Obsolete Sections of the Regulation Without Advance Notice or Provision for Public Comments

The Service's implementation of this rule as a final rule without advance notice or provision for public comment procedures is based upon the ''good