

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Parts 318 and 319**

[Docket No. 00-059-1]

**Movement and Importation of Fruits and Vegetables****AGENCY:** Animal and Plant Health Inspection Service.**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations that govern the movement of fruits and vegetables from Puerto Rico and the U.S. Virgin Islands to require the treatment of pigeon peas (fresh shelled or in the pod) from Puerto Rico for movement into any other area of the United States. In addition, we are amending the regulations to require the treatment of pigeon peas (fresh shelled or in the pod) from the Dominican Republic for importation into any area of the United States except Puerto Rico, and to prohibit the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. These actions are necessary to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

**DATES:** This interim rule is effective January 21, 2003. We will consider all comments that we receive on or before March 24, 2003.

**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. 00-059-1, 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. 00-059-1. 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. 00-059-1" 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:** Mr. Hesham A. Abuelnaga, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-5334.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 through 318.58-16) are designed to prevent the dissemination of plant pests, including diseases, from Puerto Rico and the U.S. Virgin Islands into other parts of the United States. The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56-8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

In this document, we are amending the regulations in "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands" to require the treatment of pigeon peas (fresh shelled or in the pod) from Puerto Rico for movement into any other area of the United States. In addition, we are amending the regulations in "Subpart—Fruits and Vegetables" to require the treatment of pigeon peas (fresh shelled or in the pod) from the Dominican Republic for importation into any area of the United States, except Puerto Rico, and to prohibit the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. We believe that these actions are necessary to protect the United States from the introduction or spread of injurious plant pests.

*Pigeon Peas From Puerto Rico*

In "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands," § 318.58-2, among other things, lists the fruits and vegetables that are considered regulated articles and that must be moved in accordance with the requirements of that section because they present a pest risk to other parts of the United States.

Pigeon peas in the pod are among the fruits and vegetables listed in § 318.58-2(b)(1) that may be moved interstate from Puerto Rico or the U.S. Virgin

Islands when they are free from plant litter, meet the container marking requirements of § 318.58-6, and have either been inspected and certified by an inspector of the Animal and Plant Health Inspection Service (APHIS) as being free from injurious insect infestation or have been subjected to a prescribed treatment. Further, § 318.58-2(b)(1) provides that pigeon peas in the pod from Puerto Rico and the U.S. Virgin Islands may be moved to Baltimore, MD, and Atlantic Coast ports north of Baltimore, MD, without treatment, but must undergo a prescribed treatment under supervision of an inspector if moved to Pacific Coast ports or to Atlantic Coast ports south of Baltimore, MD. The Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at 7 CFR 300.1, lists methyl bromide fumigation as the prescribed treatment for pigeon peas (fresh shelled or in the pod). The pest of concern has been *Maruca testulalis* (the bean pod borer).

Similarly, fresh shelled pigeon peas from Puerto Rico and the U.S. Virgin Islands are among the fruits and vegetables listed in § 318.58-2(b)(2) that may be moved interstate from Puerto Rico and the U.S. Virgin Islands without meeting the certification, marking, treatment, or other requirements of the subpart as long as they are free from plant litter and soil. The fruits and vegetables listed in § 318.58-2(b)(2) are, however, subject to inspection, either in the field or when presented for shipment, as an inspector may require; if injurious insects are detected in the course of an inspection, the movement of the fruit or vegetable may be prohibited or certification and treatment measures may be required.

Individuals leaving Puerto Rico and the U.S. Virgin Islands by aircraft sometimes take pigeon peas (fresh shelled or in the pod) to other parts of the United States. In accordance with § 318.58-10(a), all air passengers must offer their carry-on and check-in baggage and other personal effects for inspection by APHIS inspectors prior to boarding flights from Puerto Rico or the U.S. Virgin Islands to other parts of the United States, except Guam. The purpose of the inspections is to ensure that the baggage does not contain any agricultural articles that could carry plant pests to other parts of the United States.

During these required inspections, inspectors have detected *Melanagromyza obtusa* (pigeon pea pod fly) in untreated pigeon peas (fresh shelled and in the pod) from Puerto Rico. In fact, since February 2000,

inspectors have intercepted the pigeon pea pod fly over 300 times during domestic terminal predeparture inspections of baggage from passengers destined for the United States from Puerto Rico. The pigeon pea pod fly is currently widely distributed in Asia and Australasia, and surveys are ongoing to determine the extent of its distribution in the Caribbean basin. The pigeon pea pod fly is a serious pest of pigeon pea in its natural range and could be of economic concern if it becomes established in North America outside the Caribbean basin.

The natural range for the pigeon pea pod fly is in the warmest climatic zones—equatorial and tropical, so areas of the United States other than Puerto Rico and the U.S. Virgin Islands most at risk for the introduction and establishment of this pest are the warmer southwestern States, southern Florida, and Hawaii. Recent studies have shown that eggs, larvae, and pupae can develop in temperatures ranging from 52 to 56 degrees Fahrenheit, however, and the pigeon pea pod fly has also been found in high concentrations in northern India and Nepal, both of which experience cold winters where the temperatures range from 20 to 50 degrees Fahrenheit. This wide geographic distribution outside its natural range demonstrates some adaptability to adverse climatic conditions, so there exists a moderate risk for the introduction and establishment of the pigeon pea pod fly in the more temperate, northern States as well.

Although the pigeon pea pod fly's primary host is the pigeon pea, it has been reported on alternate host plants in other countries when pigeon pea is unavailable. Since pigeon pea is grown to a limited extent only in southern Florida, the potential impact of this pest on the continental United States would depend upon its ability to find a suitable, alternate host. Studies into potential alternate hosts for the pigeon pea pod fly present in the continental United States, including kidney bean, chick pea, and black-eyed pea, are ongoing but no findings have been confirmed.

Considering that the pigeon pea pod fly is now established in the Caribbean even though its natural range is Asia and Australasia, this pest has demonstrated an ability to disperse and to establish itself readily if suitable hosts and climate are present. The pest's apparent climatic adaptability, as discussed above, combined with its ability to survive on secondary hosts, could lead to its establishment in the continental United States despite the

fact that pigeon pea is not commercially grown here. The potential impact of the establishment of this pest is difficult to predict, but it has a devastating effect on its primary host in its natural range.

To prevent the spread of the pigeon pea pod fly into additional areas of the United States, this interim rule requires all pigeon peas (fresh shelled or in the pod) from Puerto Rico to be treated with methyl bromide, which is known to be effective against the pigeon pea pod fly, for movement into any other part of the United States. This rule places the mandatory treatment requirement for pigeon peas from Puerto Rico in a new paragraph (b)(4) in § 318.58–2. In conjunction with this change, we have amended § 318.58–2(b)(1) and (b)(2) so that the requirements for pigeon peas in those paragraphs now apply only to pigeon peas from the U.S. Virgin Islands.

Prior to this interim rule, § 318.58(c) allowed unrestricted movement of all fruits or vegetables in either direction between Puerto Rico and the U.S. Virgin Islands. At this time, the pigeon pea pod fly has not been detected in the U.S. Virgin Islands; therefore, we are amending § 318.58(c) to specify that the movement of pigeon peas (fresh shelled or in the pod) from Puerto Rico to the U.S. Virgin Islands is restricted, in accordance with § 318.58–2(b)(4).

#### *Pigeon Peas From the Dominican Republic*

In “Subpart—Fruits and Vegetables,” paragraph (e) of § 319.56–2 provides conditions under which fruits or vegetables that are not otherwise restricted by quarantines or other orders may be imported. Under § 319.56–2(e), such fruits and vegetables may be imported under a permit if, among other things, the fruits or vegetables are not attacked in the country of origin by injurious insects, including fruit and melon flies (*Tephritidae*).

Until recently, untreated pigeon peas (fresh shelled or in the pod) from the Dominican Republic were allowed to be imported into the United States under permit in accordance with § 319.56–2(e). Although no commercial shipments of pigeon peas have been exported to the United States from the Dominican Republic in over a decade, individuals arriving in the United States from the Dominican Republic sometimes bring pigeon peas in their baggage, which is subject to inspection by USDA inspectors in accordance with § 319.56–7. During these inspections, USDA inspectors have detected the pigeon pea pod fly in pigeon peas (fresh shelled and in the pod) from the Dominican Republic.

To prevent the introduction of the pigeon pea pod fly from the Dominican Republic into noninfested areas of the United States, this interim rule requires that pigeon peas (fresh shelled or in the pod) from the Dominican Republic be treated with methyl bromide for importation into the United States. We are adding this requirement to § 319.56–2x(a), which lists fruits and vegetables that may be imported only if treated in accordance with the PPQ Treatment Manual. However, because pigeon pea pod fly exists in Puerto Rico, we will not require pigeon peas (fresh shelled or in the pod) from the Dominican Republic to be treated for importation into Puerto Rico.

#### *Mangoes From the British Virgin Islands*

In accordance with § 319.56–2(d), fruits and vegetables from the British Virgin Islands may be imported into the U.S. Virgin Islands without a permit, or other restriction, subject to the requirements in § 319.56–6. Under § 319.56–6, all imported fruits and vegetables, as a condition of entry, are subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a USDA inspector to detect and eliminate plant pests.

The mango seed weevil (*Sternochetus mangiferae*) is a pest of mangoes that is undetectable until the larvae tunnel their way out of the seed, which can make visual detection difficult. However, USDA inspectors in the U.S. Virgin Islands have detected the mango seed weevil on a regular basis in shipments of mangoes from the British Virgin Islands.

In order to ensure that the mango seed weevil is not introduced into the U.S. Virgin Islands, we are amending § 319.56–2(d) to prohibit the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. Although we recently approved an irradiation treatment for mangoes, which has been shown to eliminate the mango seed weevil, we chose prohibition in this case because there does not appear to be commercial shipment of mangoes or other fruits and vegetables from the British Virgin Islands to the U.S. Virgin Islands that would support an irradiation facility in the British Virgin Islands. If, at a later date, an approved irradiation facility is built and operated under a compliance agreement in accordance with the regulations in § 305.2, we will reconsider this prohibition.

#### **Emergency Action**

This rulemaking is necessary on an emergency basis to prevent the introduction of the pigeon pea pod fly

and the mango seed weevil into noninfested areas of the United States where those pests could become established. 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 rule 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. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule requires the treatment of pigeon peas (fresh shelled and in the pod) from Puerto Rico for movement into any other area of the United States. In addition, this rule requires the treatment of pigeon peas (fresh shelled and in the pod) from the Dominican Republic for importation into the United States, except Puerto Rico. This rule also prohibits the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. We believe that these actions are necessary to protect the United States from the spread of injurious plant pests.

#### **Pigeon Peas From Puerto Rico**

Prior to this interim rule, pigeon peas (in the pod) from Puerto Rico were required to be treated only if they were moved to Pacific Coast ports or to Atlantic Coast ports south of Baltimore, MD, and pigeon peas (fresh shelled) from Puerto Rico were required to be treated only if found to be infested with injurious insects. This rule requires the treatment of pigeon peas (fresh shelled or in the pod) from Puerto Rico for movement into any other area of the United States to prevent the spread of the pigeon pea pod fly.

We do not believe that this change will have a significant economic effect on small entities in the United States. In Puerto Rico, pigeon peas are a backyard product and are consumed domestically. During the last 9 years of reported data, the production of pigeon peas in Puerto Rico fluctuated from 2,119 metric tons in 1993, to 454 metric tons in 1996, to 1,062 metric tons in

1998 and 1999, and then remained steady at 1,060 metric tons in 2000 and 2001. In 1993, there were 1,166 farms in Puerto Rico planted with pigeon peas; however, the 1998 U.S. Census of Agriculture reported that there were 660 farms in Puerto Rico planted with pigeon peas, a 43 percent decline in 5 years in the number of farms planted with pigeon peas. During this time, there were no reported commercial shipments from Puerto Rico into other areas of the United States or to foreign destinations.

#### **Pigeon Peas From the Dominican Republic**

Prior to this interim rule, untreated pigeon peas (fresh shelled or in the pod) from the Dominican Republic could be imported into the United States subject to inspection and disinfection at the port of first arrival. This rule requires the treatment of pigeon peas (fresh shelled or in the pod) from the Dominican Republic for importation into any area of the United States except Puerto Rico, to prevent the introduction of the pigeon pea pod fly into noninfested areas of the United States.

We do not believe that this change will have a significant economic effect on small entities in the United States. In 1986, 734 metric tons of pigeon peas from the Dominican Republic were imported into the United States, and in 1991, 12 metric tons of pigeon peas from the Dominican Republic were imported into the United States. Since 1991, there have been no reported commercial imports of pigeon peas from the Dominican Republic into the United States.

#### **Mangoes From the British Virgin Islands**

Until recently, mangoes from the British Virgin Islands were allowed to be imported into the U.S. Virgin Islands without treatment. However, due to the detection of the mango seed weevil in mangoes from the British Virgin Islands, we are prohibiting the importation of mangoes from the British Virgin Islands into the U.S. Virgin Islands. Although we recently approved an irradiation treatment that is effective for mango seed weevil, there is currently no irradiation treatment facility in the British Virgin Islands capable of treating the mangoes in accordance with the phytosanitary regulations in § 305.2.

We do not believe that this change will have a significant economic effect on small entities in the United States because there is apparently no commercial movement of mangoes from the British Virgin Islands to the U.S. Virgin Islands.

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

#### **Executive Order 12988**

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

#### **Paperwork Reduction Act**

This 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 318*

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

##### *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 parts 318 and 319 as follows:

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

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

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

2. In § 318.58, paragraph (c) is revised to read as follows:

##### **§ 318.58 Notice of quarantine.**

\* \* \* \* \*

(c) Except for pigeon peas (fresh shelled or in the pod) moved from Puerto Rico to the U.S. Virgin Islands, which must meet the requirements of § 318.58–2(b)(4), no restrictions are placed on the movement of fruits or vegetables in either direction between Puerto Rico and the U.S. Virgin Islands.

\* \* \* \* \*

3. Section 318.58–2 is amended as follows:

a. By revising paragraph (b)(1) to read as set forth below.

b. In paragraph (b)(2), by removing from the list the words “Pigeonpea

(fresh shelled)” and adding the words “Pigeon peas (fresh shelled) from the U.S. Virgin Islands” in their place.  
 c. By adding a new paragraph (b)(4) to read as set forth below.

**§ 318.58–2 Regulated articles.**

\* \* \* \* \*

(b) \* \* \*

(1) Subject to the conditions provided in this section, and to any treatment prescribed by the Administrator, the following fruits and vegetables may be moved when they are free from plant litter, are marked in compliance with § 318.58–6, and have been inspected by an inspector and certified by the inspector to be free from injurious insect infestation (including the West Indian fruit fly and the bean pod borer) or to have been given prescribed treatment:  
 Citrus fruits (orange, grapefruit, lemon, citron, and lime);  
 Corn (sweet corn on cob);  
 Mangoes (*Mangifera* spp.), no larger than size 8 (no more than 700 g each), when treated as prescribed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter;  
 Peppers;  
 Pigeon peas (in the pod) from the U.S. Virgin Islands and string beans, lima

beans, faba beans, and fresh okra from Puerto Rico or the U.S. Virgin Islands.<sup>1</sup>  
 \* \* \* \* \*

(4) Pigeon peas (fresh shelled or in the pod) from Puerto Rico may be moved to any other area of the United States only if treated in accordance with the Plant Protection and Quarantine Treatment Manual.

**§ 318.58–4a [Amended]**

4. Section 318.58–4a is amended by redesignating footnote 1 and its reference in the text as footnote 2.

**§ 318.58–12 [Amended]**

5. Section 318.58–12 is amended by redesignating footnotes 2 and 3 and their references in the text as footnotes 3 and 4, respectively.

**PART 319—FOREIGN QUARANTINE NOTICES**

6. 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.

7. In § 319.56–2, paragraph (d) is revised to read as follows:

**§ 319.56–2 Restrictions on entry of fruits and vegetables.**

\* \* \* \* \*

(d) Fruits and vegetables grown in the British Virgin Islands may be imported into the U.S. Virgin Islands without further permit other than the authorization contained in this paragraph but subject to the requirements of paragraph (a) of this section, and of §§ 319.56–5, 319.56–6, and 319.56–7, except that:

(1) Such fruits and vegetables are exempted from the notice of arrival requirements of § 319.56–5 when an inspector finds that equivalent information is obtainable from the U.S. Customs Service; and

(2) Mangoes grown in the British Virgin Islands are prohibited entry into the U.S. Virgin Islands.

\* \* \* \* \*

8. In § 319.56–2x, paragraph (a), the table is amended by adding, in alphabetical order, an entry for pigeon peas from the Dominican Republic to read as follows:

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

(a) \* \* \*

Country/locality	Common name	Botanical name	Plant part(s)
* * * * *	* * * * *	* * * * *	* * * * *
Dominican Republic .....	Pigeon peas .....	<i>Cajanus cajan</i> .....	Pod of shelled (Treatment not required for pigeon peas (in the pod or fresh shelled) imported into Puerto Rico.)
* * * * *	* * * * *	* * * * *	* * * * *

\* \* \* \* \*

Done in Washington, DC, this 14th day of January 2003.  
**Peter Fernandez,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*  
 [FR Doc. 03–1211 Filed 1–17–03; 8:45 am]  
**BILLING CODE 3410–34-P**

**DEPARTMENT OF AGRICULTURE**  
**Animal and Plant Health Inspection Service**  
**7 CFR Part 319**  
**[Docket No. 00–068–3]**  
**Cold Treatment for Fresh Fruits; Port of Corpus Christi, TX**  
**AGENCY:** Animal and Plant Health Inspection Service, USDA.  
**ACTION:** Final rule.

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**SUMMARY:** We are amending the regulations to allow, under certain conditions, the cold treatment of imported fruit upon arrival at the maritime port of Corpus Christi, TX. We

have determined that there are biological barriers at this port that, along with certain safeguards, would 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 the fruit undergoes cold treatment. This action will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against fruit flies and other insect pests into the United States.  
**EFFECTIVE DATE:** January 21, 2003.  
**FOR FURTHER INFORMATION CONTACT:** Dr. Inder P. Gadh, Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

<sup>1</sup> These products will be certified for movement to Pacific Coast ports or to Atlantic Coast ports south of Baltimore, MD, only when they have been treated as prescribed in the Plant Protection and

Quarantine Treatment Manual. Such products may be certified for movement to Baltimore, MD, and Atlantic Coast ports north of Baltimore without such treatment, but untreated fresh okra may be so

certified only for immediate processing or consumption in these northern areas.