

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 301 and 319

[Docket No. 94-069-1]

#### Unshu Oranges From Korea

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations governing the importation and interstate movement of citrus fruit to allow, under certain conditions, Unshu oranges grown in citrus-canker free zones on Cheju Island, Republic of Korea, to be imported into the United States and moved interstate. This action would relieve restrictions on the importation into and distribution within the United States of Unshu oranges from Cheju Island, Republic of Korea, without presenting a significant risk of spreading citrus canker.

**DATES:** Consideration will be given only to comments received on or before April 28, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 94-069-1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1228. Please state that your comments refer to Docket No. 94-069-1.

Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Grosser or Mr. Frank Cooper, Senior Operations Officers, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port

Operations, 4700 River Road Unit 139, Riverdale, MD 20737-1228, (301) 734-6799.

#### SUPPLEMENTARY INFORMATION:

##### Background

Citrus canker is a disease which affects citrus, and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in Korea infects the twigs, leaves, and fruit of a wide spectrum of *Citrus* species.

Currently, the regulations in 7 CFR 319.28 (the regulations) prohibit the importation of citrus from Eastern and Southeastern Asia, Japan, Brazil, Paraguay, and other designated areas, except for Unshu oranges (*Citrus reticulata* Blanco var. unshu, also known as Satsuma) grown in citrus canker-free areas in Japan. After meeting certain growing, packing, and inspection requirements, Japanese Unshu oranges may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States. Also, under the regulations in 7 CFR 301.83, Unshu oranges grown in Japan are prohibited from being moved interstate from any quarantined area into or through any nonquarantined area of the United States; all areas of the United States, except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States, are quarantined.

We are proposing to amend the regulations to allow the importation and interstate movement, under identical restrictions, of Unshu oranges grown in citrus canker-free areas on Cheju Island, Republic of Korea. To qualify for importation into the United States, the oranges would have to meet the following requirements:

(1) They must be grown and packed in isolated, canker-free export areas where only Unshu orange trees are grown. These areas must be surrounded by a disease-free buffer zone in which only certain varieties of citrus may be grown;

(2) Korean and U.S. plant protection officials must jointly inspect the canker free export areas and buffer zones, and must jointly inspect Unshu oranges in

the groves prior to and during harvest and in the packinghouses during packing operations;

(3) Before packing, the Unshu oranges must be given a USDA-prescribed surface sterilization with a bleach and water solution;

(4) On boxes in which Unshu oranges are packed and on the tissue paper wrapping of individual Unshu oranges there must be stamped or printed a statement specifying the States into which the Unshu oranges may be imported and from which they are prohibited removal under a Federal plant quarantine;

(5) The Unshu oranges must also be accompanied by a certificate from the Korean Plant Protection Service certifying that the fruit is apparently free of citrus canker.

Also, we are proposing to amend the regulations in § 301.83 to prohibit the movement of Cheju Island Unshu oranges from any quarantined area into or through any nonquarantined area of the United States. The quarantined areas in the United States for Unshu oranges from Cheju Island would be the same as those established for Unshu oranges from Japan.

These safeguards would be adequate to ensure that the Unshu oranges from Cheju Island, Republic of Korea, would not disseminate citrus canker if permitted into the United States.

#### Miscellaneous

Currently, under § 319.28 (b)(1) and (b)(2) of the regulations, the Animal and Plant Health Inspection Service (APHIS) requires that qualified Japanese and U.S. plant pathologists jointly inspect the canker-free export areas, buffer zones, and Unshu oranges. APHIS believes that these joint inspections could be carried out effectively by plant protection officers from APHIS and the country of origin of the Unshu oranges, either Japan or the Republic of Korea, rather than by plant pathologists. Plant protection officers given this duty would be trained to examine trees and fruit for the presence of citrus canker and other diseases. Therefore, we are proposing to allow plant protection officers from APHIS and Japan or the Republic of Korea to carry out these joint inspections.

Also, under § 319.28(a)(1) of the regulations, APHIS prohibits the importation of citrus fruit from eastern, southeastern Asia, and other areas.

Several countries, including India, Burma, Ceylon, Thailand, Indochina, China, and Japan are mentioned. APHIS considers the Republic of Korea to be part of eastern Asia and prohibits the importation of Korean citrus, even though Korea is not specifically listed under § 319.28(a)(1). We are proposing to add the Republic of Korea to this list in order to clarify the prohibition on the importation of Korean citrus.

Finally, under § 319.28(b)(7) of the regulations, Unshu oranges grown in Japan are subject to a final examination at the port of arrival in the United States by APHIS inspectors to determine if they are infected with citrus canker. This requirement is redundant, since § 319.56-6 of the Fruits and Vegetables regulations contains a similar provision that applies to all imported produce. We are proposing, therefore, to remove § 319.28(b)(7) from the regulations.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

This proposed rule would allow Unshu oranges grown on Cheju Island, Republic of Korea, to be imported into and through 45 States after meeting certain requirements.

Unshu oranges are imported for a small market in the United States and sell for two to three times the price of the domestically grown Satsuma tangerines, a citrus fruit similar to the Unshu orange. Imported Unshu oranges are available for only a short period of time each year, from early November into mid-January.

In the 1992-93 growing season, domestic producers grew approximately 362 million pounds of tangerines in Arizona, California and Florida. We estimate annual domestic production of Satsuma tangerines to be about 1.9 to 2.4 million pounds, less than one one-

hundredth of one percent of total tangerine production.

We anticipate that following the promulgation of this rule, the Republic of Korea initially could export about 1.1 million pounds of Unshu oranges to the United States and increase this amount to around 3.3 to 4.4 million pounds within a few years. While 4.4 million pounds of imported Korean Unshu oranges would amount to less than one percent of the total domestic tangerine production, it would constitute twice the annual domestic production of satsuma tangerines. Again, however, these Korean Unshu oranges could cost up to three times as much as domestically produced Satsuma tangerines.

#### **Executive Order 12778**

This proposed rule would allow Unshu oranges to be imported into the United States from Cheju Island, Republic of Korea. If this proposed rule is adopted, State and local laws and regulations regarding Unshu oranges imported under this rule would be preempted while the fruit is in foreign commerce. Fresh Unshu oranges are generally imported for immediate distribution and sale to the consuming public, and would 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. If this proposed rule is adopted, 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**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Docket No. 94-069-1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1228, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

#### **List of Subjects**

##### **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, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 would be amended as follows:

#### **PART 301—DOMESTIC QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

##### **§ 301.83 [Amended]**

2. In § 301.83, paragraph (a) would be amended by adding the phrase "or on Cheju Island, Republic of Korea," immediately following "Japan".

#### **PART 319—FOREIGN QUARANTINE NOTICES**

3. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

##### **§ 319.28 [Amended]**

4. Section 319.28 would be amended as follows:

a. Paragraph (a)(1) would be amended by adding the phrase "the Republic of Korea," immediately following the phrase "Japan and adjacent islands,".

b. Paragraph (b) introductory text would be amended by adding the phrase "or on Cheju Island, Republic of Korea," immediately following "Japan".

c. In paragraph (b)(1), the first sentence would be amended by removing the phrase "Japanese Plant Protection Service" and adding the phrase "plant protection service of the country of origin" in its place; and in the third and sixth sentences, the word "pathologists" would be removed and the phrase "protection officers" would be added in its place and the word "Japan" would be removed and the phrase "the country of origin" would be added in its place.

d. Paragraph (b)(2) would be amended by removing the word "pathologists" and adding the phrase "protection officers" in its place and by removing

the word "Japan" and adding the phrase "the country of origin" in its place.

e. Paragraph (b)(4)(ii) would be amended by removing the phrase "Japanese Plant Protection Service" and adding the phrase "plant protection service of the country of origin" in its place.

f. Paragraph (b)(7) would be removed.

g. In paragraph (f), the word "Japan" would be removed and the phrase "the country of origin of the Unshu oranges" would be added in its place.

Done in Washington, DC, this 22nd day of March 1995.

**Terry L. Medley,**

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

[FR Doc. 95-7600 Filed 3-28-95; 8:45 am]

BILLING CODE 3410-34-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 303 and 359

RIN 3064-AB11

#### Regulation of Golden Parachutes and Other Benefits Which May Be Subject to Misuse

**AGENCY:** Federal Deposit Insurance Corporation (FDIC or Corporation).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FDIC is proposing a rule limiting golden parachute and indemnification payments to institution-affiliated parties by insured depository institutions and depository institution holding companies. The purpose of this rule is to prevent the improper disposition of institution assets and to protect the financial soundness of insured depository institutions, depository institution holding companies, and the federal deposit insurance funds.

**DATES:** Comments must be received by May 30, 1995.

**ADDRESSES:** Send comments to Robert E. Feldman, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to room 400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number: (202) 898-3838.]

**FOR FURTHER INFORMATION CONTACT:** Robert F. Mialovich, Associate Director, Division of Supervision, (202) 898-6918, 550 17th Street, N.W., Washington, D.C.; Michael D. Jenkins, Examination Specialist, Division of Supervision, (202) 898-6896, 1776 F

Street, N.W., Washington, D.C. 20429; Jeffrey M. Kopchik, Counsel, Legal Division, (202) 898-3872; Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

##### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant impact on a substantial number of small entities.

##### Background

Section 2523 of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990<sup>1</sup> (Fraud Act) amended the Federal Deposit Insurance Act (FDI Act) by adding a new section 18(k). Pub. L. No. 101-647, §2523 (1990). This section 18(k)(1) provides that "[t]he Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment". 12 U.S.C. 1828(k)(1). The terms "golden parachute payment" and "indemnification payment" are defined in sections 18(k)(4) and (5)(A) of the FDI Act, respectively. *Id.* at 1828(k)(4) and (5)(A). The statute's proscriptions are applicable to insured depository institutions and depository institution holding companies. *Id.*

On October 7, 1991, the FDIC published a notice of proposed rulemaking entitled "Regulation of Golden Parachutes and Other Benefits Which Are Subject to Misuse" to implement this provision of the Fraud Act. 56 FR 50529 (1991) (to be codified at 12 CFR Part 359). By the end of the sixty day comment period, the FDIC received 186 letters commenting on the proposed regulation. The majority of these comment letters suggested that the FDIC revise the proposed rule in order to strike a more equitable balance between the protection of the deposit insurance funds and the needs of depository institutions and depository institution holding companies to attract

and retain qualified directors and management. Many of the comment letters also suggested certain technical amendments to the proposed rule to make it reflect more accurately the FDIC's intentions as stated in the preamble. A few comment letters requested that no regulation be promulgated. These letters expressed the opinion that abuses should be dealt with on a case-by-case basis through the use of enforcement proceedings. It should be noted that the FDIC was gratified to observe the exceptionally high level of preparation and thought which went into many of the comment letters.

Due to the significant amount of time which has passed since the publication of the first proposed rule (the First Proposal), the FDIC has decided to publish a second proposal for public comment (the Second Proposal). The Second Proposal incorporates many of the suggestions which were made by the commenters to the First Proposal.

##### Summary of the Second Proposal

The golden parachute portion of the Second Proposal affects insured depository institutions seeking to make the golden parachute payments<sup>2</sup> only if the institution is in a "troubled" condition.<sup>3</sup> The proposed regulation would apply to affiliated depository institution holding companies either if the holding company itself is troubled or if it seeks to make a golden parachute payment to an institution-affiliated party (IAP) of a troubled subsidiary insured depository institution. The indemnification portion of the Second Proposal is applicable to all insured depository institutions and their holding companies regardless of their financial condition.

Generally, the Second Proposal prohibits institutions which are insolvent, in conservatorship or receivership, rated "4" or "5", in a troubled condition as defined in the regulations of the appropriate federal banking agency, or which are subject to a proceeding to terminate deposit insurance from making any payment to an institution-affiliated party which is contingent on the termination of that person's affiliation with the institution, except payments of death or disability benefits, payments pursuant to qualified retirement plans and employee welfare

<sup>2</sup> The terms "golden parachute payment" and "golden parachute" are used interchangeably throughout this discussion.

<sup>3</sup> The use of the term "troubled" in this preamble shall refer to an institution or holding company which meets any of the criteria set forth in §§359.1(f)(1)(ii)(A) through (E) of the Second Proposal.

<sup>1</sup> The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 is title XXV of the Crime Control Act of 1990, S. 3266, which was passed by Congress on October 27, 1990 and signed by the President on November 29, 1990.