

# Rules and Regulations

Federal Register

Vol. 68, No. 41

Monday, March 3, 2003

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 Part 319

[Docket No. 02–108–1]

#### Unshu Oranges From Honshu Island, Japan

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

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

**SUMMARY:** We are amending the regulations governing the importation of citrus fruit to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to non-citrus-producing States. We will continue to require fumigation if the fruit is distributed to citrus-producing States. This action is warranted to relieve a restriction that is not needed to mitigate pest risk.

**DATES:** This interim rule is effective March 3, 2003. We will consider all comments that we receive on or before May 2, 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. 02–108–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–108–1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 02–108–1” 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:** Ms. Jeanne VanDersal, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–6799.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

Currently, the regulations in 7 CFR 319.28 (referred to below as the regulations) prohibit the importation of citrus from designated areas, with certain exceptions. One exception is for Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma mandarin) grown in citrus canker-free areas in Japan or on Cheju Island, Republic of Korea. After meeting certain growing, packing, and inspection requirements, Unshu oranges from these areas of Japan and the Republic of Korea may be imported into approved areas of the United States. Also, under the regulations in 7 CFR 301.11, the Unshu oranges may not be moved interstate from an approved area into or through any State, territory, or possession where importation is prohibited under part 319.

Unshu oranges from Kyushu Island, Japan, and Cheju Island, Republic of Korea, may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern

Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands. The importation of Unshu oranges from Honshu Island, Japan, had been similarly restricted, but in a final rule published in the **Federal Register** on February 1, 2002 (67 FR 4873–4877, Docket No. 99–099–2), we amended the regulations to provide for the importation of Unshu oranges from Honshu Island, Japan, into the citrus-producing States of Arizona, California, Florida, Hawaii, Louisiana, and Texas and required those oranges be fumigated with methyl bromide after harvest and prior to exportation to the United States. As a result of that final rule, Unshu oranges from Honshu Island, Japan, may be imported into any area of the United States except American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

The fumigation requirement was to ensure that Unshu oranges moved into citrus-producing areas of the United States would not introduce mealybugs, mites, and scale insects that could become established in climates where citrus is grown.

In the proposed rule (66 FR 19892–19898, Docket No. 99–099–1, published April 18, 2001) that preceded the February 2002 final rule, we acknowledged that these pests, if introduced into non-citrus-producing areas, would likely not survive due to the effects of climate and lack of host material. We applied the fumigation requirement to all shipments of Unshu oranges from Honshu Island so that there would be no restrictions on the distribution of the fruit within those areas of the United States where its importation is authorized.

We were unaware, however, of the potential economic consequences of this action for producers of Unshu oranges on Honshu Island who had, prior to the February 2002 final rule, been able to ship the Unshu oranges to non-citrus-producing areas of the United States without the mandatory fumigation. The government of Japan has informed us that the fumigation requirement has seriously curtailed this market, creating an economic hardship for Japanese growers and exporters.

Because fumigation is not a necessary pest risk mitigation measure if the Unshu oranges are not distributed in citrus-producing areas of the United States, this interim rule removes the

fumigation requirement for Unshu oranges from Honshu Island that will be distributed only in non-citrus-producing areas of the United States. To effect this change, we have amended § 319.28(b)(5) to specify that fumigation is required only for Unshu oranges from Honshu Island, Japan, that are to be imported into Arizona, California, Florida, Hawaii, Louisiana, or Texas. In addition, we have revised § 319.28(b)(7) to specify the different importation restrictions that apply to fumigated and unfumigated fruit produced on Honshu Island. This latter change will also serve to support the box marking provisions of § 319.28(b)(6)(i), which require the individual boxes in which the oranges are shipped to be stamped or printed with a statement specifying the States into which the Unshu oranges may be imported and from which they are prohibited removal.

#### Miscellaneous

In order to distinguish between *Citrus reticulata* Blanco varieties *unshu* and *satsuma*, we are removing the reference to Unshu oranges as also being known as Satsumas. Instead, we will refer to Unshu oranges as also being known as Satsuma mandarins. This distinction is important because the Unshu orange or Satsuma mandarin (*Citrus reticulata* Blanco var. *unshu*) is the variety imported from Japan. This variety is not grown commercially in the United States; however, another variety, the Satsuma (*Citrus reticulata* Blanco var. *satsuma*) is grown commercially in California.

#### Immediate Action

This rule relieves a restriction that is not necessary to mitigate pest risk. Immediate action is warranted to alleviate the negative economic effects that Japanese growers and exporters face as a result of our requirement to fumigate Unshu oranges from Honshu Island that are shipped to non-citrus-producing areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. 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.

We are amending the regulations governing the importation of citrus fruit to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to non-citrus-producing States. We will continue to require fumigation if the fruit is distributed to citrus-producing States. This action is warranted to relieve a restriction that is not needed to mitigate pest risk.

Our economic analysis for the changes in this document is set forth below. It provides an analysis of the potential effects on small entities as required by the Regulatory Flexibility Act.

Unshu oranges are a variety of mandarin orange currently allowed to be imported to the United States from Honshu Island, Japan, as long as they are fumigated with methyl bromide after harvest and before exportation. As a consequence of this interim rule, only Unshu oranges from Honshu Island that are destined for citrus-producing States will still require fumigation. Shipments of Unshu oranges from Honshu Island that are imported into non-citrus-producing States will not require methyl bromide fumigation, and the phytosanitary requirements will essentially revert to those that were in place before January 28, 2002.

Unshu oranges are a specialty fruit associated with the Christmas holiday season. They have a limited area of distribution in the United States and are significantly higher priced than domestically grown mandarin varieties that are similarly loose-skinned and seedless. The analysis focuses on these characteristics in describing the expected economic effects of this interim rule on small entities.

Unshu oranges from Japan are imported into the United States during a 1-month period, from about Thanksgiving until the latter part of December.<sup>1</sup> The fruit is purchased as a Christmas season specialty, and serves a traditional gift-giving role among Asian ethnic groups in particular, although

demand is broadening to include all segments of the population.

In addition to a relatively short period of importation, the U.S. market for Unshu oranges is geographically limited. An estimated 70 percent of Unshu orange imports from Japan are sold in Alaska, and the remaining 30 percent are sold in the northwestern United States.

The niche market for Unshu oranges in the United States is all the more apparent when the quantity imported is compared to Canadian import levels. Whereas 8 to 10 containers of Unshu oranges from Japan may be imported in 1 season by the United States, as many as 300 containers are shipped per season to Canada, with sales beginning at least a month earlier than in the United States.

One type of citrus grown commercially in California that is somewhat similar to the Unshu orange is the Satsuma. The wholesale price of Satsumas is less than 50 cents per pound.<sup>2</sup> The wholesale import price of Unshu oranges ranges between \$0.80 and \$1 per pound.<sup>3</sup> This price difference is another indication of the distinct market for Unshu oranges in the United States. It is unlikely that they would substitute for domestically grown mandarins, particularly given their current geographical distribution.

Even if there were greater likelihood of substitutability, the quantity of Unshu oranges imported is too small to significantly affect U.S. demand for domestically grown mandarins. Table 1 shows imports of Unshu oranges from Japan and South Korea, 1998–2001. There was a significant increase in 2001 over 2000, due to imports from Korea increasing eleven-fold. Over the 4-year period, Japan's exports to the United States averaged about 282 metric tons. When the total quantity of imports for 2001 (3,087 metric tons) is compared to total U.S. tangerine production for the 2001–2002 season (419,000 metric tons), Unshu orange imports represent less than 1 percent of domestic tangerine production.<sup>4</sup>

<sup>2</sup>Nearly all commercial production takes place in Fresno, Kern, and Tulare Counties, CA. Of these, only Fresno County has maintained information specific to Satsuma: In 1999, there were 650 acres, yields averaged 4.94 tons of fresh fruit per acre, and the price was about \$1,000 per ton (Bruce Clayton, Office of the Fresno County Agricultural Commissioner).

<sup>3</sup>\$18 to \$22 per 22-pound box, Jerry Kraft, personal communication.

<sup>4</sup>NASS, "Citrus Fruits, 2002 Summary," p. 4. NASS data aggregate mandarin citrus under the heading "tangerine." Tangerine and mandarin both refer to *Citrus reticulata* varieties. If in fact the significant increase in imports from South Korea in 2001 was recorded in error, then Unshu orange

<sup>1</sup>Information on Unshu orange imports from Japan into the United States and Canada provided by Rob Johns and Jerry Kraft of David Oppenheimer Ltd & Associates, the sole North American importer of Unshu oranges from Japan.

TABLE 1.—UNSHU ORANGE IMPORTS (IN KILOGRAMS) FROM JAPAN AND SOUTH KOREA, 1998–2001

Year	Japan	South Korea	Total
2001	247,681	2,839,200	3,086,881
2000	100,830	255,120	355,950
1999	388,918	403,050	791,968
1998	392,289	None	392,289

Source: APHIS port of entry data.

NOTE: Product designation varies by port, and therefore the annual totals may be subject to error.

There were no Unshu oranges imported into the United States from Japan for the 2002 season. The reason given by the importing firm is that there is a high risk that much of the fruit would not be marketable because of the effects of methyl bromide fumigation on quality. This interim rule, by rescinding the methyl bromide fumigation requirement for Unshu oranges imported from Honshu Island into non-citrus-producing States, will remove this marketing risk. Imports should then resume at a level comparable to that of recent years. The fumigation requirement will remain for imports into citrus-producing States. There is no history of such imports, and given the possible ill effects of fumigation on the quality of the fruit, near term sales to citrus-producing States would appear unlikely.

The entities affected by this rule will be U.S. retailers who sell Unshu oranges from Japan. Supermarkets and other grocery stores are considered small entities by the Small Business Administration if they have annual receipts of \$23 million or less, and establishments primarily engaged in retailing fresh fruits and vegetables are considered small if their annual receipts are \$6 million or less.<sup>5</sup> Most retailers that are expected to be affected by this rule are small entities. However, given the brief import period for this fruit and its geographically limited distribution, the number of retail establishments that may be affected is not expected to be substantial. Stores that do sell Unshu oranges will benefit from not having to rely solely on imports from South Korea. However, the benefit should be relatively small given that South Korea is the dominant supplier. In 2001, 92 percent of Unshu orange imports were supplied by South Korea and 8 percent by Japan.<sup>6</sup>

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not

imports would represent that much smaller a percentage of domestic tangerine production.

<sup>5</sup>North American Industrial Classification System (NAICS) code 445110, Supermarkets and Other

have a significant economic impact on a substantial number of small entities.

**Executive Order 12988**

This rule allows Unshu oranges to be imported into non-citrus-producing areas of the United States from Honshu Island, Japan, without fumigation. State and local laws and regulations regarding Unshu oranges imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and 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 information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 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 part 319 as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

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

**Authority:** 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.28, paragraph (b) is amended as follows:

Grocery (except Convenience) Stores, and NAICS code 445230, Fruit and Vegetable Markets.

<sup>6</sup>If fumigated fruit had been imported in 2002 under the regulations in place for the shipping season, then a benefit of this rule would be any

a. In the introductory text, by adding the word “mandarin” after the word “Satsuma”.

b. By revising paragraphs (b)(5) and (b)(7) to read as set forth below:

**§ 319.28 Notice of quarantine.**

\* \* \* \* \*

(b) \* \* \*

(5) To be eligible for importation into Arizona, California, Florida, Hawaii, Louisiana, or Texas, each shipment of oranges grown on Honshu Island, Japan, must be fumigated with methyl bromide after harvest and prior to exportation to the United States. Fumigation must be at the rate of 3 lbs./1,000 cu. ft. for 2 hours at 59 °F or above at normal atmospheric pressure (chamber only) with a load factor of 32 percent or below. Fumigation will not be required for shipments of oranges grown on Honshu Island, Japan, that are to be imported into States other than Arizona, California, Florida, Hawaii, Louisiana, or Texas.

\* \* \* \* \*

(7) The Unshu oranges may be imported into the United States only through a port of entry listed in § 319.37–14 that is located in an area of the United States into which their importation is authorized. The following importation restrictions apply:

(i) Unshu oranges from Honshu Island, Japan, that have been fumigated in accordance with paragraph (b)(5) of this section may be imported into any area of the United States except American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(ii) Unshu oranges from Honshu Island, Japan, that have not been fumigated in accordance with paragraph (b)(5) of this section; Unshu oranges from Kyushu Island, Japan (Prefectures of Fukuoka, Kumamoto, Nagasaki, and Saga only); and Unshu oranges from Cheju Island, Republic of Korea, may be imported into any area of the United

price reduction resulting from forgone fumigation expenses. However, since fumigated Unshu oranges are not being imported, the appropriate comparison is imports without fumigation versus no imports.

States except American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands.

\* \* \* \* \*

Done in Washington, DC, this 26th day of February, 2003.

**Peter Fernandez,**

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

[FR Doc. 03-4875 Filed 2-28-03; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM240, Special Conditions No. 25-227-SC]

#### **Special Conditions: Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D and 25F 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 Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc. These airplanes, as modified, will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of the Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) and Air Data Sensor. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is February 21, 2003. Comments must be received on or before April 2, 2003.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM240, 1601 Lind Avenue SW.,

Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM240. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2799; facsimile (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **FAA's Determination as to Need for Public Process**

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on

which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### **Background**

On August 17, 2002, Royal Air, Inc., 2141 Airport Road, Waterford, Michigan 48327, applied for a supplemental type certificate (STC) to modify Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D and 25F airplanes approved under Type Certificate No. A10CE. The Learjet Model 24/25 series airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weights of up to 15,000 pounds. These airplanes operate with a 2-pilot crew and can seat 6 to 8 passengers. The modification incorporates the installation of the Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) and Air Data Sensor. The ADDU digital air data computing altimeter provides flight critical functions. These advanced systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

#### **Type Certification Basis**

Under the provisions of 14 CFR 21.101, Amendment 21-69, effective September 16, 1991, Royal Air must show that the Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D and 25F airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21-77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The original type certification basis for the modified Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D and 25F airplanes includes 14 CFR part 25, dated February 1, 1965, through Amendments 25-2 and 25-4; and 14 CFR part 25, dated February 1, 1965, through Amendment 25-18, except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A10CE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25, 25A, 25B, 25C, 25D and