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**List of Subjects in 7 CFR Part 301**

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

■ Accordingly, we are amending 7 CFR part 301 to read as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ 1. The authority citation for part 301 is revised to read as follows:

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.75-1 is amended by adding, in alphabetical order, definitions of *budded citrus nursery stock*, *budded container/greenhouse grown citrus plants*, *budded field grown citrus plants*, *certified citrus nursery stock*, *commercial citrus nursery*, *liner or rootstock*, and *seedlings* to read as follows:

**§ 301.75-1 Definitions.**

\* \* \* \* \*

*Budded citrus nursery stock.* Liners or rootstock citrus plants that have been grafted with a portion of a stem or branch with a vegetative bud (also known as budwood) that are maintained 1 month after grafting or until the plant reaches marketability.

*Budded container/greenhouse grown citrus plants.* Individual, budded citrus nursery stock maintained in climate-controlled greenhouses in 4-or 6-inch diameter pots until it is sold for commercial use.

*Budded field grown citrus plants.* Individual, budded citrus nursery stock maintained in the fields until it is sold for commercial use.

\* \* \* \* \*

*Certified citrus nursery stock.* Citrus nursery stock, such as trees or plants, grown at a nursery that is in compliance with State certification requirements and approved for producing citrus nursery stock for commercial sale.

\* \* \* \* \*

*Commercial citrus nursery.* An establishment engaged in, but not limited to, the production of certified

citrus nursery stock, including plants for planting or replanting in commercial groves or for wholesale or retail sales.

\* \* \* \* \*

*Liner or rootstock.* Culled seedlings in the growing stage prior to the budding process.

\* \* \* \* \*

*Seedlings.* Certified citrus seeds densely planted in seed beds and allowed to germinate and grow until their viability as liners or rootstock can be assessed.

\* \* \* \* \*

**§ 301.75-16 [Amended]**

■ 3. In § 301.75-16, paragraph (c) is amended by removing the words "Citrus Canker Project" and adding the words "Citrus Canker Eradication Program" in their place, and by removing the words "Project, Attn:" and by adding the words "Program, Attn:" in their place.

■ 4. In Subpart—Citrus Canker, a new § 301.75-17 is added to read as follows:

**§ 301.75-17 Funds for the replacement of certified citrus nursery stock.**

Subject to the availability of appropriated funds, a commercial citrus nursery may be eligible to receive funds to replace certified citrus nursery stock in accordance with the provisions of this section.

(a) *Eligibility.* A commercial citrus nursery may be eligible to receive funds to replace certified citrus nursery stock removed to control citrus canker if the nursery stock was removed pursuant to a public order after September 30, 2001, and before January 10, 2006.

(b) *Certified citrus nursery stock payments.* A commercial citrus nursery that is eligible under paragraph (a) of this section to receive funds to replace certified citrus nursery stock will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment calculated using the following rates:

Type of certified nursery stock	Payment (dollars)
Seedlings .....	0.18/plant.
Liners or rootstock .....	1.50/plant.
Budded field grown citrus plants.	4.00/plant.
Budded container/greenhouse citrus plants.	4.50/plant.
Citrus nursery stock in containers for wholesale or retail sale:	
1 gallon .....	5.00/container.
3 gallon .....	10.00/container.
5 gallon .....	15.00/container.
7 gallon .....	20.00/container.
Larger than 7 gallon ..	26.00/container.

(c) *How to apply for certified nursery stock replacement funds.* The form necessary to apply for funds to replace certified nursery stock may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Eradication Program, 6901 West Sunrise Boulevard, Plantation, FL 33313. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and type of the certified nursery stock removed. If the certified nursery stock was planted in pots, the inventory should specify the size of the container. If the certified nursery stock was bare root plants or in a temporary container, the inventory should specify whether the plant was non-budded or budded. The completed application must be sent to the USDA Citrus Canker Eradication Program, Attn: Commercial Compensation, 10300 Sunset Dr., Suite 150, Miami, FL 33173. Claims for certified nursery stock must be received by August 7, 2006.

Done in Washington, DC, this 1st day of June 2006.

**Charles D. Lambert,**  
*Acting Under Secretary for Marketing and Regulatory Programs.*

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 319**

[Docket No. 03-048-3]

**Importation of Fruits and Vegetables; Untreated Citrus From Mexico**

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to provide for the importation of untreated citrus (grapefruit, sweet oranges, and tangerines) from Mexico for processing under certain conditions. We believe the conditions under which untreated citrus from Mexico will be allowed importation to be sufficient for safeguarding fruit that are moving from Mexico to Texas. This action will relieve unnecessary restrictions while continuing to protect against the introduction of quarantine pests through imported fruits.

**DATES:** *Effective Date:* July 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Lamb, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1228; (301) 734-4312.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56-8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

On March 31, 2005, we published in the **Federal Register** (70 FR 16431-16445, Docket No. 03-048-1) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We also proposed to recognize areas in several countries as free from certain fruit flies; add an alternative treatment for specified commodities; provide for the importation of untreated citrus from Mexico for processing under certain conditions; eliminate or modify existing treatment requirements for specified commodities; and to add, modify, or remove certain definitions and make other miscellaneous changes.

We solicited comments concerning our proposal for 60 days ending May 31, 2005. We received 29 comments by that date. They were from representatives of State governments, industry organizations, importers and exporters, producers, scientists, and individuals.

We addressed the majority of the comments in another final rule, which was published in the **Federal Register** on December 8, 2005 (70 FR 72881-72892, Docket No. 03-048-2). In that final rule, we took final action on all aspects of our March 2005 proposed rule except for the proposed provisions regarding the importation of untreated citrus from Mexico into the United States for processing, about which six commenters raised specific concerns (two other commenters supported the proposed provisions). In order to give ourselves additional time to consider the issues raised by those six commenters regarding those proposed provisions without delaying final action on the other aspects of the proposed rule, our December 2005 final rule stated that we would issue another document in the **Federal Register** in the future regarding the importation of

untreated citrus from Mexico into the United States for processing.

In this final rule, we address the comments we received regarding the proposed provisions regarding the importation of untreated grapefruit, sweet oranges, and tangerines from Mexico for processing. The issues raised by the commenters are discussed below.

*General Comments*

Several commenters questioned the proposed program in general, asking why the Animal and Plant Health Inspection Service (APHIS) would consider allowing potentially infested fruit to be imported into areas of Texas where a substantial amount of money is being spent to maintain and upgrade the Mexican fruit fly (*Anastrepha ludens*) suppression program. These commenters stated that allowing untreated citrus fruit to be imported would exacerbate the Mexican fruit fly situation in Texas, a situation they noted has been complicated by Arizona and California denying market access for most Texas oranges and grapefruit due to the April 2005 detection of live Mexican fruit fly larvae in two truckloads of treated grapefruit shipped from Texas. The commenters stated that those detections highlight the need to review and expand the suppression activities in south Texas, and the absolute need to prevent, so far as possible, the introduction of additional flies from Mexico.

The protocol governing the fruit fly trapping activities in Mexican production areas required by this rule, monitored under an APHIS-approved quality control program, will provide a level of phytosanitary security that will be equivalent to the strengthened Texas Lower Rio Grande Protocol for 2005/2006. According to the trapping protocol, if just one Mexican fruit fly, sapote fruit fly (*A. serpentina*), or Mediterranean fruit fly (*Ceratitis capitata*, Medfly) is found, exports from the production site of origin will be prohibited until other measures have been taken to ensure the absence of fruit flies in the site. APHIS must approve these measures and consider them effective before permitting the production site to resume exports. Measures could include increased trapping densities, pesticide applications, or other measures that would correspond with conditions for interstate movement of fruit from production sites in the United States where fruit flies are detected. This requirement would ensure that imported untreated citrus originates from areas with low prevalence for Mexican fruit fly and freedom from

sapote fruit fly and Medfly. In addition, this rule's requirements for packing the fruit in insect-proof cartons or covering the fruit with insect-proof mesh or a plastic tarpaulin for transit will further mitigate the pest risk. Lastly, because the citrus will be moving from Mexico to Texas for immediate juicing rather than consumption, it will present a significantly lower risk of pest introduction than fruit intended for consumption because the process of juicing itself is a mitigation measure.

One commenter stated that the Mexican fruit fly populations in Mexico are several times (sometimes even a hundredfold) greater than those in Texas and that lowering these populations to the levels in Texas would be an enormous task for Mexican growers. Similarly, another commenter stated that there are so many fruit flies of various species infesting wild and domestic citrus and other hosts in Mexican production areas that nothing short of a massive suppression program would have any practical hope of success. The first commenter stated that releasing sterile flies alone would not accomplish the goal of lowering Mexican fruit fly populations levels in Mexico's production areas and recommended that a systems approach be employed to reduce those population levels to the levels found in Texas. These commenters stated that until such a reduction is realized, which one of the commenters questioned as even being possible, the shipment of untreated fruit into Texas poses a serious risk of pest introduction.

Mexican fruit fly is native to Mexico and it is true that there are parts of Mexico that are heavily infested, but there are also parts of Mexico that have been recognized as free areas for Mexican fruit fly by APHIS (see § 319.56-2(h) of the regulations). It will be the obligation of the Mexican growers, in cooperation with the national plant protection organization (NPPO) of Mexico, to ensure that fruit destined to the United States for juicing meets all the requirements outlined in this rule to mitigate any pest risk. All of the independent requirements, including trapping and the preventative release program, need to be met before citrus for juicing is allowed entry into areas of the United States that are listed in 7 CFR 301.64-3 as quarantined areas for the Mexican fruit fly.

One of the commenters noted that while Mexico is seeking to export untreated citrus to the United States, Mexican authorities continue to require that shipments of citrus fruit from Texas to Mexico be treated.

Untreated citrus from Mexico will be exported to specific areas in the State of Texas for the sole purpose of processing (juicing). This scenario is not the same as citrus shipments from Texas destined to Mexico for consumption. In addition, untreated Mexican citrus will be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin during its movement to Texas to further mitigate the risk of introducing fruit flies.

One commenter asked if the activities called for under the proposed provisions would be paid for and supported by the Mexican Government, or if the U.S. Government intended to provide funding for the necessary activities in Mexican production areas and during the transport of the fruit into the United States.

Cost of the Mexican program will be borne by Mexico. In some cases, such as the preventative release program, costs will be shared by APHIS and Mexico. In this example, APHIS will pay for flies to be dropped in Mexico, which may aid in the certification of fruit for exportation into the United States. We note, however, that assisting Mexico in reducing fruit fly levels along the border will be beneficial in keeping our own fruit fly levels down as well.

One commenter stated that it was unclear as to whether Mexican producers wanted to export fruit year round or only into a zone in South Texas when trapping within a particular portion of the Mexican fruit fly quarantined area in Texas indicates an increase in fruit fly levels, thus triggering the application of additional suppression and mitigation measures in that area.

At this time we are unsure as to the exporting intentions of Mexican producers; however, there is nothing in this rule to prevent them from exporting citrus year round.

Several commenters viewed the proposed provisions as an erosion of U.S. phytosanitary security standards. One commenter, noting that the regulations already provide for the importation of fruits and vegetables from fruit-fly-free production areas, stated that APHIS should not lower its standards to require only a low prevalence of reproducing fruit flies in production areas, especially with respect to areas in Mexico where there is a variety of indigenous fruit fly populations.

We disagree with the assertion that there is an erosion of phytosanitary security standards. This rule requires that the fruit must originate from an area that has a low prevalence of Mexican fruit fly and is free of Medfly and sapote

fruit fly, as is the case in the areas in Texas into which fruit will be allowed importation for processing. In addition, the preventative release program mirrors that which is required in areas quarantined for Mexican fruit fly in Texas. Because the entry of the fruit will be limited to an area with similar pest conditions, we have concluded that untreated Mexican citrus can be safely imported under the prescribed conditions. Further, fruits and vegetables imported into the United States from fruit-fly-free production areas are typically imported for fresh consumption and may be moved throughout the country, whereas the citrus imported under this rule must be sent directly to processing and may only enter areas of the United States where similar pest conditions prevail.

One commenter requested that if the proposal is adopted, APHIS provide his organization an opportunity to review the importation guidelines in order to evaluate the adequacy of the safeguarding measures.

Details of the program will be included in a bilateral workplan developed jointly with APHIS and the NPPO of Mexico. Once the final rule is effective and the workplan has been finalized, copies of the workplan may be obtained by contacting Dr. Ed Gersabeck, International Services, APHIS, 4700 River Road Unit 65, Riverdale, MD 20737-1228; (301) 734-7550.

One comment stated that the proposed rule was unnecessary because there is only one juice processing facility in operation in the three counties in Texas to which Mexican citrus could be transported and that facility will not process Mexican citrus.

While the commenter is correct that there is currently only one juice processing facility in the three Texas counties subject to this rule, we have no evidence that this facility will not process Mexican citrus. In addition, there is the possibility that other juice processing facilities will be established once this final rule becomes effective.

One commenter stated that the failure of a similar program established for Spanish clementine growers shows that allowing the entry of Mexican citrus into the United States is unwise.

We disagree with the commenter's evaluation of and comparisons between the Spanish clementine import regulations and this Mexican citrus rule. The Spanish clementine import program has functioned effectively. In any case, it is important to note again that the untreated Mexican citrus covered by this rule will only be allowed entry into three counties in Texas where it will be

transported directly to a juice processing facility for juicing, and only under the conditions specified in this rule.

One commenter noted that two reports issued in the past 2 years by the Government Accountability Office (GAO) stated that the efficacy of APHIS' pest exclusion program has been reduced since these responsibilities were transferred to the Department of Homeland Security (DHS). The commenter added that inspection responsibilities should rest with APHIS inspectors until DHS inspectors can be properly and thoroughly trained.

We believe that the problems identified in the GAO reports cited by the commenter have been addressed. Following the creation of DHS, there was a need to provide pest exclusion training to those Immigration and Naturalization Service, U.S. Border Patrol, and U.S. Customs Service personnel who were transferred to DHS' Bureau of Customs and Border Protection (CBP), just as the mission of CBP dictated the need to provide cross-training in other specialties to those APHIS personnel who were transferred to CBP. Planning and delivering training for all these personnel necessarily had to be accomplished over time, but all CBP inspection personnel have now been fully and satisfactorily trained in pest exclusion.

One commenter stated that the California Department of Food and Agriculture discovered Mexican fruit fly larvae in fumigated grapefruit from Texas at a State border inspection station, and noted that APHIS was still investigating how the larvae were able to circumvent the existing system that is in place to prevent such incidents from occurring.

The citrus fruit that will be allowed entry into Texas under this rule will be going directly to a juice processing facility, and the processing that occurs there will eliminate any fruit fly risk with respect to the product that will be moved out of that facility. No whole fruit originating from Mexico that is imported under this program will be allowed entry into California or any other State.

#### *Trapping*

One commenter stated that the proposed trapping density of one trap per 10 hectares for Mexican fruit fly and sapote fruit fly was too high, especially considering that a sterile fly release program will be employed in production areas and the surrounding buffer areas. This commenter noted that a density of 1 trap per 10 hectares is equivalent to 10 traps per square

kilometer or 25 traps per square mile, which he stated is 2.5 times higher than the trapping density called for under the risk assessment criteria of the North American Plant Protection Organization (NAPPO) for a high-risk area, and higher than the 5 traps per square mile trapping density employed in the United States under preventive release programs in Florida, Texas, and California. The commenter further stated that such a high number of traps will result in the capture of numerous sterile flies, which could jeopardize the effectiveness of that aspect of the program. Based on these considerations, the commenter recommended that the trapping density be reduced to no more than two traps per square mile.

In response to this comment, we have reduced the trapping density in this final rule to two traps per square kilometer (one trap per 50 hectares) for *Anastrepha* spp. fruit flies. This trapping density is consistent with the levels called for in the International Atomic Energy Agency's (IAEA) guidelines<sup>1</sup> for the monitoring of suppression areas for *Anastrepha* spp. fruit flies.

Several commenters did not support allowing growers in Mexico to conduct the required trapping, even if the trapping is subject to monitoring under an APHIS-approved quality control program and the fruit has to be accompanied by a phytosanitary certificate issued by the Mexican Government attesting that the trapping and other requirements have been met. These commenters pointed out that U.S. growers do not conduct trapping and stated that such an activity must be a Government function.

Growers will not be solely responsible for conducting trapping as previously indicated. Traps will be set and monitored by employees of the Mexican NPPO and it will be the responsibility of the Mexican NPPO to ensure that growers are complying with the regulations. APHIS will review trapping records and will ultimately determine if the level of compliance is sufficient to provide an appropriate level of protection for the United States.

Some commenters noted that, while the proposed rule would require the use of APHIS-approved traps, it did not specify how often those traps must be checked, how the traps must be maintained, or how often trapping

results must be reported to Mexican and U.S. authorities.

Such details of Mexico's fruit fly trapping program are included in APHIS's and Mexico's bilaterally agreed upon fruit fly management plans. The details of the trapping program will be determined upon a site review and included in a workplan to be signed by both APHIS and the NPPO of Mexico. As stated previously, once the final rule is effective and the workplan has been finalized, copies of the workplan may be obtained by contacting APHIS' International Services at the address provided the response to the earlier comment regarding workplans.

One commenter recommended that, at the very least, a fruit cutting component should be included to check for fruit fly larvae as a backup to field trapping.

Fruit cutting will not be necessary because the fruit will be going directly to processing plants for juicing in Texas. We believe that the additional safeguards against fruit fly infestation from the time of harvest until processing in the United States, such as packing the fruit in insect-proof cartons or containers or covering fruit with insect-proof mesh or plastic tarpaulin, will be sufficient at preventing the risk of pest introduction while the fruit is in transit through Mexico and into Texas.

Two commenters noted that under the proposed program, the capture of a Mexican fruit fly, sapote fruit fly, or Medfly in a production site or buffer area would result in exports from that production area being prohibited until APHIS determines that the phytosanitary measures taken have been effective to allow the resumption of exports from that production site. One commenter stated that the program must provide for the suspension of exports upon the capture of any *Anastrepha* spp. fruit fly, not just Mexican fruit fly or sapote fruit fly. The other commenter asked what specific criteria the Administrator would use to determine that the phytosanitary measures taken have been effective to allow the resumption of export from that production site.

The fruit fly prevalence requirements in Mexico mirror the low prevalence program currently in place in Texas and will ensure that low prevalence levels of reproducing Mexican fruit flies are maintained throughout production sites. The reason the program calls for suspension of imports upon capture of any Mexican fruit fly or sapote fruit fly, but no other *Anastrepha* spp., is because these two fruit flies are the only *Anastrepha* spp. fruit flies present in the Mexican production areas that infest citrus. Specific requirements and

criteria which the Administrator will use to determine whether risk mitigation has been achieved will be agreed upon by APHIS and the NPPO of Mexico and included in the bilateral workplan for this program.

#### *Fruit Fly Control*

Several commenters were concerned that the suppression activities called for in the proposal were focused solely on Mexican fruit fly and would have no effect on Mediterranean fruit fly, sapote fruit fly, or any other of several potentially damaging fruit fly pests that are commonplace in Mexico. The commenters stated that all other economically important *Anastrepha* species, as well as Medfly, must be comprehensively addressed in the program's requirements.

In addition to the Mexican and sapote fruit fly systems approach, our proposal set forth specific provisions regarding Medfly. Our proposal also stated that APHIS-approved traps and lures be placed in the production sites and surrounding 1.5 mile buffer areas at a rate of one to four traps per 250 hectares. As stated previously, we will suspend imports from a production site if any Mexican fruit fly, sapote fruit fly, or Medfly is captured. We believe it is appropriate to adopt a trapping-only approach to monitor for Medfly because Medfly is largely confined to the southern part of Mexico, and there are ongoing Medfly suppression and eradication activities throughout Mexico. We are not conducting a preventative release program for the sapote fruit fly because we consider citrus to be a poor host of sapote fruit fly. Further, we are unaware of any governmental or non-governmental entities that are producing populations of sterile sapote fruit flies at this time. Nevertheless, the Mexican NPPO must ensure that production sites are free of sapote fruit fly to be eligible for the program under this final rule.

Several commenters questioned the commitment of Mexican authorities to pursuing an active and effective fruit fly control program. These commenters stated that before any untreated citrus can be exported to the United States, Mexico must construct and maintain an efficient, effective suppression program for all fruit flies—not just Mexican fruit fly—that produces proven results over time.

Before exports can begin, the NPPO of any of our trading partners wishing to export a commodity that was previously prohibited entry must submit an acceptable workplan to APHIS for review, and APHIS oversight is incorporated into those plans. In the

<sup>1</sup> *Trapping Guidelines for Area-Wide Fruit Fly Programmes*, published by the Insect Pest Control Section of the Joint FAO/IAEA Division, IAEA, Vienna, Austria, November 2003. Available at <http://www.iaea.org/programmes/nafa/d4/public/d4-trapping.html>.

case of untreated Mexican citrus, we believe that the mitigation measures we have prescribed are appropriate and will be effective. Because APHIS will conduct oversight of the program, if at any time it appears that a production site is not maintaining sufficient mitigation measures, APHIS will suspend exports from that site.

#### *Use of Terms*

One commenter recommended that, for the sake of clarity, the introductory text of the section should state that the fruit may be imported for "extracting juice" rather than the broader term "processing."

We agree with this commenter, therefore, in § 319.56–2rr, in the introductory text, we are replacing the word "processing" with the words "extracting juice."

One commenter disagreed with the statement in the proposed rule that the Mexican fruit fly quarantined areas in Texas are under an APHIS-approved preventative release program. This commenter stated that a preventative release program is used in areas with a high risk for an infestation but where an infestation does not exist.

The International Plant Protection Convention (IPPC) defines a preventative release program as a program that would prevent the indigenous fruit fly population from reaching a level to require a regulatory change. We consider the program in Texas to be a preventative release program because the goal of the preventative release program is to prevent the indigenous population from reaching a level to require regulatory action.

One commenter recommended that, to avoid ambiguity, phrases such as low prevalence zone, preventative release program, production site, and buffer zone should be defined. Another commenter stated that the United States and Mexico appear to have differing concepts of what constitutes a low prevalence zone, and until those concepts are reconciled, the proposal should not be finalized. On a similar note, a third commenter asked what the criteria would be for designating an area as a low prevalence zone and who would make that determination.

The IPPC defines an area of low prevalence as an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control, or eradication measures.

A buffer zone is defined as an area in which a specific pest does not occur or occurs at a low level and is officially controlled, that either encloses or is adjacent to an infested area, an infested place of production, an area of low prevalence, a pest-free area, a pest-free place of production, or a pest-free production site, and in which phytosanitary measures are taken to prevent spread of the pest.

*Production site* is defined in § 319.56–1 as a defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, or premises.

As stated previously, the IPPC defines preventative release program as a program that would prevent the indigenous fruit fly population from reaching a level to require a regulatory change.

The specific areas included in the low prevalence zone will be identified in the bilateral workplan between APHIS and Mexico.

#### *Economic Analysis*

Some of the commenters disputed the statements in the proposed rule's economic analysis that the proposed program would positively affect U.S. citrus processing plants and the U.S. trucking industry. The commenters stated that it is unlikely that new facilities would be built simply because Mexican citrus becomes available for processing, and noted that the operators of the only citrus processing plant in the area into which imports would be allowed have indicated that they do not need or want to process Mexican citrus. The commenters further stated that even if the processing plant did elect to accept the fruit, there would be no benefit to domestic trucking firms because that plant is only about 5 miles north of the primary port of entry at Pharr/Reynosa.

As stated previously, we have no evidence that the citrus processing facility in Texas will not process Mexican citrus. Our proposed rule stated that any positive effects on the U.S. citrus processing or trucking industries would depend upon the volume of citrus Mexico was exporting to the United States. However, the commenter is correct that we made a statement that the U.S. citrus processing industry would be positively affected by this final rule. While we expect citrus processing plants to benefit from increased citrus imported for

processing, the benefits would depend upon the amount of citrus being imported from Mexico. However, in light of what the commenter said about the location of the citrus processing plant, we have revised the economic analysis in this final rule by removing the statement that the U.S. trucking industry will benefit from the imports of untreated citrus from Mexico.

#### **Miscellaneous**

In our May 2005 proposed rule, we proposed to add the conditions governing the importation of untreated citrus from Mexico as § 319.56–2nn. In this final rule, those conditions are added as § 319.56–2rr.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

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

This rule has been reviewed under Executive Order 12866. 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.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

This final rule amends the fruits and vegetables regulations to provide for the importation of untreated citrus (grapefruit, sweet oranges, and tangerines) from Mexico for processing under certain conditions. We believe the conditions under which untreated citrus from Mexico will be allowed importation to be sufficient for safeguarding fruit that are moving from Mexico to Texas. This action will relieve unnecessary restrictions while continuing to protect against the introduction of quarantine pests through imported fruits.

We used all available data to estimate the potential economic effects of allowing the fruits specified in this rule to be imported into the United States. However, some of the data we believe would have been helpful in making this determination was not available at the time the analysis for the proposed rule was prepared. We invited public comment on the potential effects of our proposed rule on small entities, in particular the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received one comment that raised issues specific to the economic considerations associated

with the provisions for the importation of untreated citrus from Mexico for processing. Those issues are discussed earlier in this document.

The total value of the citrus industry to the Texas economy is more than \$200 million. The total crop value to the growers tops \$50 million annually.<sup>2</sup> Three counties account for all the citrus acreage/production in Texas (about 27,000 acres total). Specifically, Hidalgo County accounts for 85 percent of the citrus acreage, Cameron County accounts for 14 percent of the acreage, while Willacy County accounts for only about 1 percent only. The Texas citrus industry is dominated by grapefruit and oranges, as less than 100 acres in the counties are dedicated to other citrus. Texas Citrus Exchange (TCX) is the only juice processor operating in the three counties. In some cases, local citrus production cannot fully supply the facility's production capacity. TCX uses local oranges to produce fresh orange juice; however, to satisfy the demand for frozen concentrated orange juice, TCX uses imported fruit. In 2005, Texas-produced oranges satisfied only 25 percent of TCX production capacity. At the same time, Texas grapefruit can fully satisfy the plant's grapefruit juice production capacity.<sup>3</sup>

TCX sells its concentrated citrus juice either to wholesale centers (U.S. and foreign) where it can be further mixed with citrus juice from other sources, or sent directly to grocery stores. The concentrate is commonly sold in bulk to Florida packers to be blended with Florida concentrate, and some is sold to out-of-State distributors for repacking under private labels. It is also repacked as frozen concentrate and single strength and blended juices marketed under the private labels of the respective processor.

The TCX juice processing plant employs more than 100 people but fewer than 500, and thereby qualifies as a small-entity fruit and juice manufacturing business (North American Industry Classification System [NAICS] category 311411).<sup>4</sup> Presently, there are about 12 independent and 3 cooperative shippers of citrus operating in the 3 Texas

counties.<sup>5</sup> We do not have any information on their size.

This rule could be expected to have a positive effect on the TCX juice processing plant by providing it an additional source of citrus for juicing. Shippers could be expected to gain as well, due to the expected increase in the volume of citrus shipped in the area. The economic impact will depend on the volume of citrus imported from Mexico. We do not expect citrus producers in the area to be harmed by the rule, since most of the citrus processed by TCX into juice is already supplied by other sources.

#### Effects on Small Entities

The Regulatory Flexibility Act requires agencies to consider the economic impact of their regulations on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between differently sized entities.

We are amending the regulations to allow grapefruit, sweet oranges, and tangerines from areas of Mexico where certain fruit flies occur to be imported into the United States for processing under certain conditions. Those conditions include a requirement that the processing plants must be located within an area in Texas that is under an APHIS-approved preventative release program using sterile insect technique for Mexican fruit fly.

This change in the regulations has the potential to positively affect U.S. citrus processing plants. These businesses and their surrounding areas are expected to benefit. However, the exact amount of financial gain and the extent of the expected economic impact will depend upon the volume of citrus fruit that enters the United States for processing.

Between 2000 and 2002, the United States produced an average of 15 million metric tons of citrus fruits annually. During that same period, Mexico produced an average of 4.9 million metric tons of citrus fruits annually. Mexican consumers greatly favor fresh citrus over processed citrus, thus the majority of Mexican citrus produced is consumed domestically, with around 6 percent of average annual production serving as exports. Therefore, given the relatively small amount of Mexican production when compared to U.S. production levels, coupled with the small percentage of Mexican production that is exported, the economic effects of this rule are expected to be small.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (*see* "Paperwork Reduction Act" below).

#### Executive Order 12988

This final rule allows citrus to be imported into the United States from Mexico. State and local laws and regulations regarding citrus imported under this rule will be preempted while the fruit is in foreign commerce. Fresh citrus will be imported for immediate juicing in certain areas of Texas, and will remain in foreign commerce until it is processed. 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 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0264.

#### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, 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 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56-2rr is added to read as follows:

<sup>2</sup> The Texas Citrus Industry, Julian W. Sauls, Texas Cooperative Extension, July 2005. Web site <http://aggie-horticulture.tamu.edu/citrus/>.

<sup>3</sup> Personal communication with Jay Mudden, Texas Citrus Exchange (TCX-Juice Division), Mission, Hidalgo County, TX.

<sup>4</sup> Small Business Size Standards by NAICS Industry, Subsector 311—Food Manufacturing, Size Standards in number of employees, § 121.201, 13 CFR Ch. 1 (1-1-04 Edition), page 290.

<sup>5</sup> Taylor, Hall, and Molina. Texas Agricultural Extension Service. The Texas A&M University System. Texas Citrus Grower Marketing Outlets. Web site <http://aggie-horticulture.tamu.edu/citrus/>.

**§ 319.56–2rr Administrative instructions; conditions governing the importation of untreated grapefruit, sweet oranges, and tangerines from Mexico for processing.**

Untreated grapefruit (*Citrus paradisi*), sweet oranges (*Citrus sinensis*), and tangerines (*Citrus reticulata*) may be imported into the United States from Mexico for extracting juice if they originate from production sites in Mexico that are approved by APHIS because they meet the following conditions and any other conditions determined by the Administrator to be necessary to mitigate the pest risk that such fruits pose:

(a) *Application of sterile insect technique.* Production sites, and a surrounding 1.5 mile buffer area, must be administered under an APHIS-approved preventative release program using sterile insect technique for the Mexican fruit fly (*Anastrepha ludens*).

(b) *Fruit fly trapping protocol.* (1) *Trapping densities.* In areas where grapefruit, sweet oranges, and tangerines are produced for export to the United States, APHIS approved traps and lures must be placed in production sites and a surrounding 1.5 mile buffer areas as follows:

(i) For Mexican fruit fly (*Anastrepha ludens*) and sapote fruit fly (*A. serpentina*): One trap per 50 hectares.

(ii) For Mediterranean fruit fly (*Ceratitis capitata*): One to four traps per 250 hectares.

(2) *Fruit fly catches.* Upon trapping of a Mexican fruit fly, sapote fruit fly, or Mediterranean fruit fly in a production site or buffer area, exports from that production site are prohibited until the Administrator determines that the phytosanitary measures taken have been effective to allow the resumption of export from that production site.

(3) *Monitoring.* The trapping program must be monitored under an APHIS-approved quality control program.

(c) *Safeguarding.* Fruit must be safeguarded against fruit fly infestation using methods approved by APHIS from the time of harvest until processing in the United States.

(d) *Phytosanitary certificate.* Each shipment must be accompanied by a phytosanitary certificate issued by Mexico's national plant protection organization that contains additional declarations stating that the requirements of paragraphs (a), (b), and (c) of this section have been met.

(e) *Ports.* The harvested fruit may enter the United States only through a port of entry located in one of the Texas counties listed in § 301.64–3(c) of this chapter.

(f) *Route of transit.* Harvested fruit must travel on the most direct route to

the processing plant from its point of entry into the United States as specified in the import permit. Such fruit may not enter or transit areas other than the Texas counties listed in § 301.64–3(c) of this chapter.

(g) *Approved destinations.* Processing plants within the United States must be located within an area in Texas that is under an APHIS-approved preventative release program using sterile insect technique for Mexican fruit fly.

(h) *Compliance agreements.* Processing plants within the United States must enter into a compliance agreement with APHIS in order to handle grapefruit, sweet oranges, and tangerines imported from Mexico in accordance with this section. APHIS will only enter into compliance agreements with facilities that handle and process grapefruit, sweet oranges, and tangerines from Mexico in such a way as to eliminate any risk that exotic fruit flies could be disseminated into the United States, as determined by APHIS.

(Approved by the Office of Management and Budget under control number 0579–0264)

Done in Washington, DC, this 2nd day of June 2006.

**Kevin Shea,**

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

[FR Doc. E6–8935 Filed 6–7–06; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 979

[Docket No. FV06–979–1 FR]

#### Melons Grown in South Texas; Termination of Marketing Order 979

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule, termination of order.

**SUMMARY:** This final rule terminates the Federal marketing order for melons grown in South Texas (order) and the rules and regulations issued thereunder. The Department of Agriculture (USDA) has determined the order should be terminated given the declining status of the industry.

**DATES:** *Effective Date:* June 9, 2006.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; telephone: (559) 487–5110, Fax: (559) 487–5906; or Kathleen

M. Finn, Formal Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action is being taken pursuant to § 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act”, and § 979.84 of the order.

USDA is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule terminates the Federal marketing order for melons grown in South Texas and the rules and regulations issued thereunder. The order contains authority to regulate the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). At a meeting held on September 7, 2005, the Committee recommended terminating the order.