

responsible for enforcing other statutes and regulations governing disposal of the regulated garbage to the end that such disposal shall be adequate to prevent the dissemination of plant pests and livestock or poultry diseases and comply with applicable laws for environmental protection. The inspectors, in maintaining surveillance over regulated garbage movements and disposal, shall coordinate their activities with the activities of representatives of the U.S. Environmental Protection Agency and other Federal, State, and local agencies also having jurisdiction over such regulated garbage.

(d) *Garbage generated in Hawaii*—(1) *Applicability*. This section applies to garbage generated in households, commercial establishments, institutions, and businesses prior to interstate movement from Hawaii, and includes used paper, discarded cans and bottles, and food scraps. Such garbage includes, and is commonly known as, municipal solid waste.

(i) Industrial process wastes, mining wastes, sewage sludge, incinerator ash, or other wastes from Hawaii that the Administrator determines do not pose risks of introducing animal or plant pests or diseases into the continental United States are not regulated under this section.

(ii) The interstate movement from Hawaii to the continental United States of agricultural wastes and yard waste (other than incidental amounts (less than 3 percent) that may be present in municipal solid waste despite reasonable efforts to maintain source separation) is prohibited.

(iii) Garbage generated onboard any means of conveyance during interstate movement from Hawaii is regulated under paragraph (c) of this section.

(2) *Restrictions on interstate movement of garbage*. The interstate movement of garbage generated in Hawaii to the continental United States is regulated as provided in this section.

(i) The garbage must be processed, packaged, safeguarded, and disposed of using a methodology that the Administrator has determined is adequate to prevent the introduction and dissemination of plant pests into noninfested areas of the United States.

(ii) The garbage must be moved under a compliance agreement in accordance with paragraph (e) of this section. APHIS will only enter into a compliance agreement when the Administrator is satisfied that the Agency has first satisfied all its obligations under the National Environmental Policy Act and all applicable Federal and State statutes to fully assess the impacts associated

with the movement of garbage under the compliance agreement.

(iii) All such garbage moved interstate from Hawaii to any of the continental United States must be moved in compliance with all applicable laws for environmental protection.

(e) *Compliance agreement and cancellation*—(1) Any person engaged in the business of handling or disposing of garbage in accordance with this section must first enter into a compliance agreement with the Animal and Plant Health Inspection Service (APHIS). Compliance agreement forms (PPQ Form 519) are available without charge from local USDA/APHIS/Plant Protection and Quarantine offices, which are listed in telephone directories.

(2) A person who enters into a compliance agreement, and employees or agents of that person, must comply with the following conditions and any supplemental conditions which are listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the introduction and dissemination into or within the United States of plant pests and livestock or poultry diseases:

(i) Comply with all applicable provisions of this section;

(ii) Allow inspectors access to all records maintained by the person regarding handling or disposal of garbage, and to all areas where handling or disposal of garbage occurs;

(iii)(A) If the garbage is regulated under paragraph (c) of this section, remove garbage from a means of conveyance only in tight, covered, leak-proof receptacles;

(B) If the garbage is regulated under paragraph (d) of this section, transport garbage interstate in sealed, leak-proof packaging approved by the Administrator;

(iv) Move the garbage only to a facility approved by the Administrator; and

(v) At the approved facility, dispose of the garbage in a manner approved by the Administrator and described in the compliance agreement.

(3) Approval for a compliance agreement may be denied at any time if the Administrator determines that the applicant has not met or is unable to meet the requirements set forth in this section. Prior to denying any application for a compliance agreement, APHIS will provide notice to the applicant thereof, and will provide the applicant with an opportunity to demonstrate or achieve compliance with requirements.

(4) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector

finds that the person who has entered into the compliance agreement has failed to comply with this section. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(5) Where a compliance agreement is denied or canceled, the person who entered into or applied for the compliance agreement may be prohibited, at the discretion of the Administrator, from handling or disposing of regulated garbage.

(Approved by the Office of Management and Budget under control numbers 0579-0015, 0579-0054, and 0579-0292)

Done in Washington, DC, this 17th day of August 2006.

**Kevin Shea,**

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

[FR Doc. E6-13968 Filed 8-22-06; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 352

[Docket No. 00-086-2]

#### Untreated Oranges, Tangerines, and Grapefruit From Mexico Transiting the United States to Foreign Countries

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to allow untreated oranges, tangerines, and grapefruit from Mexico to be moved overland by truck or rail to Corpus Christi and Houston, TX, for export to another country by water. We

are taking this action in response to requests by the port authorities of Corpus Christi and Houston, TX. We are also requiring that untreated oranges, tangerines, and grapefruit from Mexico transiting the United States for export to another country be shipped in sealed, refrigerated containers and insect-proof packaging and via routes that avoid citrus production areas. We are taking this action to provide additional protection against the possible introduction of fruit flies via untreated oranges, tangerines, and grapefruit from Mexico that transit the United States.

**EFFECTIVE DATE:** October 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dave Hanken, Senior Staff Officer, or Ms. Candace Funk, Staff Officer, Quarantine Policy, Analysis, and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1236; (301) 734-8295.

**SUPPLEMENTARY INFORMATION:**

**Background**

The plant quarantine safeguard regulations in 7 CFR part 352 relieve restrictions for certain products or articles that are classified as prohibited or restricted products or articles under our other regulations in title 7. Such articles include fruits and vegetables that are moved into the United States for: (1) A temporary stay where unloading or landing is not intended, (2) unloading or landing for transshipment and exportation, (3) unloading or landing for transportation and exportation, or (4) unloading and entry at a port other than the port of first arrival. Fruits and vegetables that are moved into the United States under these circumstances are subject to inspection and must be handled in accordance with conditions assigned under the safeguard regulations to prevent the introduction and dissemination of plant pests.

The regulations in § 352.30 (referred to below as the regulations) address the movement into or through the United States of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States en route to foreign countries. The regulations currently allow untreated oranges, tangerines, and grapefruit from Mexico to enter the United States at the ports of Nogales, AZ, or Eagle Pass, El Paso, or Laredo, TX. The fruit may then be moved, under certain conditions, by truck or railcar to the seaport at Galveston, TX, for export by water to another country. The port authorities of Corpus Christi and Houston, TX, have requested that those ports be added to the regulations as ports to which untreated Mexican

oranges, tangerines, and grapefruit may be moved for export by water.

In response to these requests, on December 4, 2001, we published in the **Federal Register** (66 FR 63004-63007, Docket No. 00-086-1) a proposal to amend the regulations by adding Corpus Christi and Houston, TX, to the list of ports to which we allow untreated oranges, tangerines, and grapefruit from Mexico to be moved overland by truck or rail for export by water to another country. We took this action based on our finding that the risk posed by allowing untreated oranges, tangerines, and grapefruit to transit the United States for export at the ports of Corpus Christi and Houston, TX, would be no different than the risk currently posed by in-transit shipments of untreated oranges, tangerines, and grapefruit moved from Mexico to Galveston, TX, for export.

The regulations in § 352.30(b) prescribe that trucks transporting untreated oranges, tangerines, and grapefruit from Mexico on overland routes either must be of the van type or must have a tarpaulin tightly tied down over the cargo. In our December 2001 proposed rule, we proposed to amend these regulations to require that such fruit be transported in sealed, refrigerated containers of the type commonly used by the maritime and commercial trucking industries. Fruit flies are known to exist in some areas of Mexico where oranges, tangerines, and grapefruit are grown, and the areas that untreated oranges, tangerines, and grapefruit from Mexico may transit within the United States while en route to export include some citrus-producing areas. Given those circumstances, we believed the transport conditions in place should be amended to better assure protection against the introduction of fruit flies into the United States. The requirement that untreated oranges, tangerines, and grapefruit be shipped in sealed, refrigerated containers would help, we stated, to reduce the risk of such an introduction.

We also proposed to update the regulations in § 352.30(e), which contains a cross-reference to our regulations in § 319.56-2h that list areas in Mexico that are free of certain fruit flies. Paragraph (e) of § 352.30 names only Sonora as a region in Mexico free of fruit flies; however, other regions of Mexico have been listed in § 319.56-2(h) as being free of fruit flies since § 352.30(e) was established. We proposed to eliminate the reference to Sonora and simply refer to the list of fruit fly-free areas in § 319.56-2(h) to make the regulations consistent.

We solicited comments concerning our proposal for 60 days ending February 4, 2002. We received 5 comments by that date. They were from industry representatives and representatives of State governments. They are discussed below by topic.

Two commenters wanted APHIS to withdraw the proposed rule on the grounds that any rule that might increase the risk of fruit flies being introduced into the United States should be opposed. One commenter cited the discovery of Mediterranean fruit fly larvae in cold-treated Spanish clementines in 2001 in arguing that allowing untreated oranges, tangerines, and grapefruit to transit the United States for eventual export posed an unacceptable risk. This commenter also noted that recent fruit fly eradication programs in Florida and California have been costly.

As stated above, APHIS currently allows untreated oranges, tangerines, and grapefruit to transit the United States under certain conditions for eventual export to another country from the seaport at Galveston, TX. We proposed to allow such fruit to be exported from Corpus Christi and Houston, TX, based on our finding that the risk posed by allowing untreated oranges, tangerines, and grapefruit to transit the United States for export at the ports of Corpus Christi and Houston, TX, would be no different than the risk currently posed by in-transit shipments of untreated oranges, tangerines, and grapefruit moved from Mexico to Galveston, TX, for export. Therefore, we believe there is no increase in the risk of introduction of fruit flies into the United States associated with allowing in-transit shipments of untreated oranges, tangerines, and grapefruit to be moved from Mexico to Corpus Christi or Houston, TX.

It is true that if the ability to use the ports at Corpus Christi and Houston, TX, made the process of exporting more convenient or less costly for Mexican exporters of oranges, tangerines, and grapefruit, a greater volume of the fruits in question might move through the United States, which could potentially increase the risk of introducing fruit flies. However, the proposed rule included new safeguards not found in the current regulations against the possible introduction of fruit flies. In response to comments we received on the proposed rule, this final rule retains those proposed new safeguards and adds additional safeguards, which include insect-proof packaging, transportation of the fruit in refrigerated containers, transportation and exportation permits, required

supervision by inspectors of transloading if it is necessary, and verification of the seals on the containers. Because we are adding these safeguards for shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States, we believe we are not relaxing our regulations or increasing the risk of introduction of fruit flies into the United States.

One of the commenters stated that allowing untreated oranges, tangerines, and grapefruit to transit the United States for eventual export from Galveston, TX, as is currently allowed by the regulations, poses an unacceptable risk of introducing fruit flies into the United States. The commenter requested that shipments of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States be suspended immediately if any breaches in biological security are identified.

We believe that the safeguards we are adding to the regulations in this final rule, as summarized above, minimize the risk of introducing fruit flies or other plant pests into the United States via shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States for eventual export. If we become aware of a breach in biological security or any other evidence indicating that these shipments pose a higher risk of plant pest introduction than we had previously believed, we will take any actions we deem necessary to address this risk. These actions may include, but may not necessarily be limited to, suspending these shipments.

Two commenters expressed concerns about the seals the proposed rule specified would be used on refrigerated containers carrying untreated oranges, tangerines, and grapefruit from Mexico to ensure that the containers are not opened before arrival at the port of export. One commenter asked APHIS to clarify that the containers should be sealed prior to entering the United States and remain sealed until shipments have departed Texas and other southern States where fruit fly host material exists. Another commenter stated that border inspectors in the Rio Grande Valley often break open the seals on shipping containers to perform inspections. Accidents during shipping or investigations of such accidents could also result in the seals being broken. Once a seal is broken, the untreated oranges, tangerines, and grapefruit could be mixed with other citrus.

We agree that it is important to maintain the integrity of the seals on

containers in which untreated oranges, tangerines, and grapefruit from Mexico transit the United States. Therefore, we are adding a requirement to the final rule that an inspector at the port of entry must be contacted immediately if the seal on a container of untreated oranges, tangerines, or grapefruit is broken, for any reason, before the container leaves the United States. The inspector will then be able to assess the situation and take appropriate action to reduce the risk of introducing fruit flies. We are also requiring that, if untreated fruit from Mexico is transloaded to another container, the transloading must be supervised by an inspector and a replacement official seal must be applied to the container to which the fruit is moved. We believe that these measures will enable inspectors to take any required corrective action quickly and effectively if a seal is broken during transit.

**Note:** To reflect the reassignment of some inspection duties to the Bureau of Customs and Border Protection, we have replaced the definition of *inspector* in § 352.1 with the following definition: "Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part." We have also amended references to representatives and seals of the Plant Protection and Quarantine Programs to simply refer to inspectors and seals, respectively.

One commenter supported allowing untreated oranges, tangerines, and grapefruit from Mexico to transit the United States for eventual export, but took issue with the proposed safeguards, saying that more safeguards should be in place to allow for unexpected delays caused by mechanical failure, lack of refrigeration, human error, or other causes. Other commenters asked generally for more safeguards to be added for such shipments.

We have carefully reviewed the safeguards in the proposed rule for transporting untreated oranges, grapefruit, and tangerines by truck, and we have decided to make several changes in addition to the changes described above. In this final rule, we are adding a requirement that the untreated oranges, grapefruit, and tangerines must be shipped in insect-proof boxes or crates that prevent the escape or entry of adult, larval, or pupal fruit flies. Insect-proof boxes or crates will help ensure that any fruit flies that may be present in the fruit, regardless of life stage, are prevented from emerging from the containers while the fruit transits the United States for export.

This final rule also specifies that the temperature in refrigerated containers must be maintained at 60°F or lower. Refrigerating the containers to this temperature will inhibit pupation in any fruit flies that may be present in the untreated oranges, tangerines, and grapefruit, thereby preventing the fruit flies from emerging from the containers into the United States. An inspector must be notified if the cooling system of any refrigerated container fails, and untreated oranges, tangerines, and grapefruit that are transported in a refrigerated container whose cooling system fails must be transloaded into a container with an operable cooling system under the conditions described above. This will ensure that the untreated oranges, grapefruit, and tangerines are adequately refrigerated and that an inspector supervises the transfer of untreated oranges, tangerines, and grapefruit to another container if they are not.

We are also adding a requirement that a transportation and exportation permit must be issued by an inspector for shipments of these fruits. This permit can be obtained only from APHIS headquarters. The transportation and exportation permit allows the untreated fruit to transit the country on the condition that it must not enter the commerce of the United States.

Currently, the regulations require that the owner of the oranges, tangerines, and grapefruit to be shipped procure a formal permit as provided in § 352.6; paragraph (a) of that section refers the reader to § 352.5 to see the requirements for permits for shipping plants and plant products. Paragraph (a) of § 352.5 states that a permit required under the regulations "may consist of a general authorization, as set out in paragraphs (b), (c), or (d) of this section or § 352.11, or it may be a specific permit." This final rule makes this general requirement more specific, allowing shippers to know in advance what permit they will have to secure. This additional permit requirement also enables inspectors to know the routing of shipments of untreated oranges, tangerines, and grapefruit from Mexico while they are transiting the United States, facilitating intervention should it prove necessary.

We are also requiring that all shipments of untreated oranges, tangerines, and grapefruit from Mexico through the United States must move in U.S. Customs bond. Previously, we had required that air and rail shipments of these fruits move in U.S. Customs bond; this final rule extends that requirement to shipments transported by truck and vessel. We believe that the requirement

that truck and vessel shipments must move in U.S. Customs bond will serve as an additional safeguard.

Together, these safeguards will augment the safeguards described in the proposed rule to minimize the risk of introduction of fruit flies or other plant pests due to shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States.

One commenter welcomed the safeguards specified in the proposed rule but argued further that these safeguards should apply to all fruit fly host material transported from Mexico to or through the United States and to shipments of fruit fly host material transported not only by truck but also by rail.

We agree that rail shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States should employ the same safeguards that truck shipments of those fruits do. Accordingly, we have amended the regulations on rail shipments of untreated oranges, tangerines, and grapefruit to indicate that such untreated fruit may only be shipped in insect-proof packaging and in sealed, refrigerated containers. Those containers will also be required to maintain a temperature of 60 °F or below while in transit. Shippers of containers shipped by rail will have to follow the requirement that an inspector must be notified if the seal on the containers is broken or if the refrigeration system in the container breaks down, as well as the requirement that authorized personnel supervise the transfer of untreated oranges, tangerines, and grapefruit from one container to another. They will also move under a transportation and exportation permit. We believe that these safeguards will help to protect against the introduction of fruit flies into the United States associated with untreated oranges, tangerines, and grapefruit from Mexico transiting the United States by rail.

Extending the safeguards to cover all fruit fly host material transported from Mexico to or through the United States is beyond the scope of this rulemaking, and we cannot address it in this final rule.

One commenter urged APHIS to clarify restrictions on the transportation of shipments of untreated oranges, tangerines, and grapefruit in the regulations. Current APHIS policy, this commenter stated, is to reroute such shipments through Laredo, TX, and away from the Rio Grande Valley citrus production area. There is presently no restriction on the routes such shipments must follow in the regulations. The commenter expressed concern that if

overland transportation of untreated oranges, tangerines, and grapefruit through the Rio Grande Valley citrus production area was not clearly prohibited, shipments of untreated oranges, tangerines, and grapefruit would traverse that area. Since fruit flies may be present in untreated oranges, tangerines, and grapefruit from Mexico, allowing shipments of these fruits to traverse the Rio Grande Valley, which has many potential fruit fly hosts, would increase the risk of introduction of fruit flies into the United States.

We agree that this restriction needs to be clarified in the regulations. Therefore, we have added a provision to the regulations stating that no shipment of untreated oranges, tangerines, or grapefruit shall traverse the counties of Cameron, Hidalgo, Starr, and Willacy, TX, which together comprise the Rio Grande Valley citrus production area.

We have additionally specified that truck shipments shall only traverse the territory within the United States bounded on the west by a line starting at Laredo, TX, on to El Paso, TX, to Salt Lake City, UT, and then to Portland, OR, and on the east by a line drawn from Laredo, TX to Hebbronville, TX, to Corpus Christi, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, and then to Louisville, KY, and routes directly northward. This ensures that truck shipments of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States en route to Canada will not pass through any areas in Texas where citrus is produced.

Paragraph (a)(4)(ii) of the regulations has required that shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States via truck be convoyed by an inspector from the point of arrival in the United States to the point of unloading or move under such other safeguards as the inspector shall provide. Because we are adding these route restrictions and a requirement for a transportation and exportation permit to shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States via truck, we no longer believe the requirement that truck shipments move under convoy is necessary, and we have removed it in this final rule.

The proposed rule included a revised description of the area through which shipments of untreated oranges, tangerines, and grapefruit may traverse the United States via rail. However, our proposed revision would have allowed rail shipments of these fruits to traverse the Rio Grande Valley citrus-producing area. Therefore, we are rewording that description so that it is identical to the

territory that truck shipments of untreated oranges, tangerines, and grapefruit may traverse, as described above.

One commenter requested that APHIS conduct fruit fly trapping in areas in the United States that have commercial, ornamental, or native plants that could serve as fruit fly hosts and through which untreated oranges, tangerines, and grapefruit from Mexico are moved. The commenter requested that this additional trapping be undertaken in the coastal area from Brownsville to Port Arthur, TX, and in any other areas through which untreated oranges, tangerines, and grapefruit may be moved.

APHIS already surveys this area for fruit flies, because it is close to areas in Mexico where fruit flies exist. By clarifying that shipments of untreated oranges, tangerines, and grapefruit may not move through the Rio Grande Valley citrus production area, as defined above, we have ensured that such shipments will not be transported through any areas in Texas where citrus is produced. This step reduces the risk that fruit flies may be introduced into the United States due to these shipments. Under these circumstances, we do not believe that additional fruit fly trapping is necessary or warranted at the present time. If, in the future, we find evidence that additional fruit fly trapping is necessary, we will take appropriate action.

#### Miscellaneous

This final rule requires that all untreated oranges, tangerines, and grapefruit from Mexico transiting the United States be moved in refrigerated containers, whether transported by rail or by truck, and that the containers must maintain a temperature of 60 °F or less. Therefore, we are removing § 352.30(b)(4)(ii), which sets out icing requirements for refrigerator cars transported by rail that are no longer relevant to such transport under this final rule. In addition, § 352.30(c)(3), which specifies requirements for transport of untreated oranges, tangerines, and grapefruit from Mexico in refrigerated holds of ships leaving from the United States, is no longer applicable, as the untreated fruit must be transported in refrigerated containers whose seal may not be broken except by an inspector or after the container has left the United States. Therefore, we are removing this paragraph.

In addition, we are making several changes to § 352.30(a) to change references to refrigerated cars or trucks to refer to refrigerated containers, and we are removing § 352.30(b)(1) because

it sets out a packaging requirement that is not relevant if all untreated oranges, tangerines, and grapefruit are shipped in sealed, refrigerated containers.

Finally, paragraph (b)(5) of the regulations sets out requirements for the transportation of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States via air carrier. These requirements have included transporting the shipment under U.S. Customs bond and without change of Customs entry in the United States. Because we are making it a general requirement that shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States must move under U.S. Customs bond, we are removing that requirement from this paragraph. In addition, given that this final rule requires that the fruit be shipped in sealed, refrigerated containers, we do not believe the requirement that the shipment move under the same Customs entry is necessary, and we have removed it. Paragraph (b)(5) also states that if an emergency occurs en route to the port of export that will require transshipment to another carrier, the owner should apply to the Plant Protection and Quarantine Programs for information as to applicable conditions. We are simplifying this requirement to indicate that if such an emergency occurs, the owner must contact an inspector immediately.

We are also making miscellaneous nonsubstantive changes to the

regulations for the purpose of clarity and ease of reading.

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.

**Effective Date**

As described above, this final rule adds several safeguards against the introduction of fruit flies into the United States via untreated oranges, tangerines, and grapefruit from Mexico transiting the United States to the regulations. Because persons currently engaged in transporting such fruit when it is in the United States will need some time to implement the changes we are making in this final rule, we have set the effective date for this final rule at 60 days after publication in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

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

This final rule amends the regulations to allow untreated oranges, tangerines, and grapefruit from Mexico to be moved overland by truck or rail to Corpus Christi and Houston, TX, for export to another country by water. We are taking this action in response to requests by the port authorities of Corpus Christi

and Houston, TX. This final rule will also require that untreated oranges, tangerines, and grapefruit from Mexico transiting the United State for export to another country be shipped in sealed, refrigerated containers and insect-proof packaging and via routes that avoid citrus production areas. We are taking this action to provide additional protection against the possible introduction of fruit flies via untreated oranges, tangerines, and grapefruit from Mexico that transit the United States.

For the 4 years 2000 through 2003, the amount of in-transit Mexican citrus shipped through the United States was relatively small, ranging in volume between 2 percent and 10 percent compared to the quantities of Mexican citrus imported into the United States (table 1). In 2004, there was a notable increase in the in-transit quantity; the amount equaled 23 percent of Mexican citrus imported by the United States (10.5 thousand metric tons, compared to 46.3 thousand metric tons).

For the years 2000 through 2004, the percentage of in-transit Mexican citrus that was shipped to Texas ports varied between 15 percent in 2001 and 93 percent in 2003 (table 2). The availability of the two additional ocean ports in Texas will help accommodate growth of this in-transit corridor. More than 43 percent of untreated Mexican citrus that transited the United States between 2000 and 2004 entered the country through a Texas port (maritime, airport, or land-border).

TABLE 1.—ORANGES, TANGERINES, AND GRAPEFRUIT FROM MEXICO IMPORTED INTO THE UNITED STATES AND TRANSITING THE UNITED STATES TO ANOTHER COUNTRY

Fresh and dried oranges, tangerines, and grapefruit imported into the United States from Mexico			Oranges, tangerines, and grapefruit from Mexico transiting the United States en route to another country
Year	Value (\$1,000)	Volume (metric tons)	Volume (metric tons)
2000 .....	11,369	57,770	4,419 (8 percent of imports that go into U.S. commerce).
2001 .....	8,628	50,209	3,562 (7 percent of imports that go into U.S. commerce).
2002 .....	9,292	53,804	5,487 (10 percent of imports that go into U.S. commerce).
2003 .....	11,934	64,000	1,337 (2 percent of imports that go into U.S. commerce).
2004 .....	6,982	46,319	10,576 (23 percent of imports that go into U.S. commerce).

Harmonized Schedule codes: Oranges (HS 080510), grapefruit (080540) and tangerines (080520).  
 Source: UN Trade Statistics U.S. Import data (6 digit), Web site: <http://fasnet.usda.gov/untrdscripts/unreport.exe>.  
 Source: USDA/APHIS/PPQ data from the ports, compiled by Robert English, PPQ.  
 In-transit produce is not included in U.S. imports of Mexican oranges, grapefruits, and tangerines.

TABLE 2.—VOLUME OF ORANGES, TANGERINES, AND GRAPEFRUIT FROM MEXICO TRANSITING THE U.S. TO ANOTHER COUNTRY (METRIC TONS)

Year	Total Mexican oranges, tangerines, and grapefruit in-transit through all eligible U.S. ports	In-transit through Texas ports <sup>1</sup>	In-transit through non-Texas ports
2000 .....	4,418.1	1,610.6 (36 percent of total in-transit) .....	2,808.5

TABLE 2.—VOLUME OF ORANGES, TANGERINES, AND GRAPEFRUIT FROM MEXICO TRANSITING THE U.S. TO ANOTHER COUNTRY (METRIC TONS)—Continued

Year	Total Mexican oranges, tangerines, and grapefruit in-transit through all eligible U.S. ports	In-transit through Texas ports <sup>1</sup>	In-transit through non-Texas ports
2001 .....	3,561.9	535.0 (15 percent of total in-transit) .....	3,026.9
2002 .....	5,487.2	3,252.1 (59 percent of total in-transit) .....	2,235.1
2003 .....	1,337.2	1,249.2 (93 percent of total in-transit) .....	88.0
2004 .....	10,576.0	2,500.5 (24 percent of total in-transit) .....	8,075.5

Harmonized Schedule codes: Oranges (HS 080510), grapefruit (080540) and tangerines (080520).

<sup>1</sup> Maritime ports: Galveston, TX; Land border ports: Laredo, TX; El Paso, TX; Eagle Point, TX; Airports: Houston, TX; Austin, TX.

Source: USDA/APHIS/PPQ data from the ports, compiled by Robert English, PPQ.

Currently, the Houston port is the second-largest among U.S. ports in terms of trade volume.<sup>1</sup> Two major railroads, 150 trucking lines, and two international airports connect the port of Houston to the rest of the continental United States, Canada, Mexico, and beyond. It is estimated that 1,263 firms were operating within Houston’s port authority in 2005, providing services to the cargo and vessels at the marine terminals. They contribute over 144,500 jobs to the area and generate over \$10 billion in business revenue annually. The port also contributes to the welfare of the local economy, generating over \$640 million in State and local taxes annually.

It is estimated that 312 firms were operating within Corpus Christi’s port authority in 2003.<sup>2</sup> The port employed some 11,859 people directly; an estimated 19,060 indirect jobs and 8,930 induced jobs within the regional economy could be attributed to the port’s operations. The 312 firms had a combined annual payroll of more than \$555.8 million in direct wages and salaries, with an average salary of \$48,600.

In 2003, the port of Corpus Christi began operating a refrigerated warehouse facility that has resulted in revenues of over \$100,000 annually. The cold storage facility includes rooms with freezing and chilling capabilities, a treatment facility, and rail and truck docks that are temperature-controlled. This facility can serve the growing market for refrigerated shipments of citrus fruit exported from Mexico to other countries.

<sup>1</sup> Port of Houston Authority, Economic Impact. See: <http://www.portofhouston.com/geninfo/economicimpact.html>.

<sup>2</sup> Martin Associates, February 2004: The Local and Regional Economic Impacts of the Port of Corpus Christi. See: <http://www.portofcorpuschristi.com/pdfs/Economic%20Impact%20Report.pdf>.

Increased volumes of in-transit oranges, tangerines, and grapefruit received from Mexico resulting from the addition of the two ocean ports are expected to generate additional business for the U.S. trucking industry. Mexican trucks are confined to narrow commercial zones that extend 20 kilometers, at most, within the U.S. border, at which point they are required to transfer their goods to U.S. haulers.

Additional Federal expenses associated with increased workloads or personnel needed to monitor the loading and unloading of in-transit shipments of untreated oranges, tangerines, and grapefruit at the two ports are expected to be funded by the respective port authorities.

Although the rule is expected to increase the volume of oranges, tangerines, and grapefruit from Mexico that transit the United States, the risk of introduction of pests, specifically fruit flies, is not expected to increase. Additional safeguards against the possible introduction of fruit flies have been included in this final rule, such as insect-proof packaging, transportation of the fruit in refrigerated containers, transportation and exportation permits, and repeated checks of the seals on the containers.

**Impact on Small Entities**

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their regulations on small entities. The Small Business Administration (SBA) has established size criteria using the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm.

Small businesses at the ports of Houston and Corpus Christi will benefit by this rule to the extent that they are involved in handling the in-transit shipments of untreated oranges,

tangerines, and grapefruit arriving at their ports. Small businesses at the port of Galveston could experience some negative economic effects because of the rule, if in-transit shipments are diverted from Galveston to the Corpus Christi or Houston ports. There are approximately 1,263 firms operating at the port of Houston and 312 firms at the port of Corpus Christi. There is also an unknown number of firms located near the two ports that provide services related to port activities. The number of affected entities that can be considered small is unknown. During the comment period for our proposed rule we did not receive any information on the number of small entities that might be affected.

Firms within the U.S. freight trucking industry (NAICS category 48411) will benefit from the rule by providing transportation services for the Mexican oranges, tangerines, and grapefruit between U.S. land ports and the ocean ports of Corpus Christi and Houston. The majority of U.S. trucking businesses (81 percent) are considered small entities according to SBA criteria.

U.S. firms overall will benefit from the availability of the two additional ocean ports to handle and export in-transit oranges, tangerines, and grapefruit from Mexico, to the extent that the shipments handled at these two ports are additional volumes rather than diversions that would otherwise transit through the seaport of Galveston or elsewhere.

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

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires

intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

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

#### Paperwork Reduction Act

The proposed rule that preceded this final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, due to changes made in response to comments, the information collection burden in this final rule includes 200 hours that were not included in the proposed rule. Specifically, the additional hours are for the trucking industry and shippers to obtain permits for moving untreated oranges, tangerines, or grapefruit through the United States, which were added to the coverage of the final rule. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted this information collection requirement for approval to the Office of Management and Budget (OMB). OMB has approved the information collection for a period of 6 months under control number 0579-0303. We plan, in the near future, to request continuation of that approval for 3 years.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in 7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 352 as follows:

### PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

■ 1. The authority citation for part 352 continues to read as follows:

**Authority:** 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 352.1, paragraph (b), the definition of *inspector* is revised to read as follows:

#### § 352.1 Definitions.

\* \* \* \* \*

(b) \* \* \*

*Inspector.* Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

\* \* \* \* \*

■ 3. Section 352.30 is amended as follows:

■ a. By revising the section heading to read as set forth below.

■ b. In the introductory text, by adding the word "untreated" before the word "oranges."

■ c. In paragraph (a)(3), in the paragraph heading, by removing the words "refrigerator cars and aircraft" and adding the words "refrigerated containers" in their place, and in the first sentence after the paragraph heading, by removing the words "Refrigerator cars and aircraft" and adding the words "Refrigerated containers" in their place.

■ d. By revising paragraph (a)(4)(ii) to read as set forth below.

■ e. In paragraph (a)(4)(iii), by removing the words "trucks, refrigerator cars, aircraft, and ships" and adding the words "refrigerated containers" in their place.

■ f. By revising paragraph (b) to read as set forth below.

■ g. By removing paragraph (c)(3).

■ h. By revising paragraph (e) to read as set forth below.

■ i. By adding an OMB paperwork citation to read as set forth below.

#### § 352.30 Untreated oranges, tangerines, and grapefruit from Mexico.

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(ii) Untreated oranges, tangerines, and grapefruit arriving from Mexico at authorized ports in the United States for movement to a foreign country shall be loaded into refrigerated containers and preinspected by an inspector for freedom of citrus leaves before entry into the United States or be accompanied by an acceptable certificate from an inspector as to such

freedom. Refrigerated containers loaded with untreated oranges, tangerines, and grapefruit that are not free of such leaves will be denied entry into the United States.

\* \* \* \* \*

(b) *Additional conditions for overland movement of certain untreated fruit.*

Untreated oranges, tangerines, and grapefruit from Mexico may move overland through the United States to a foreign country only in accordance with the following additional conditions:

(1) *Ports of entry.* Such fruit may enter only at Nogales, AZ, or Eagle Pass, El Paso, or Laredo, TX.

(2) *General transit conditions.* The following conditions apply to all shipments of untreated oranges, tangerines, and grapefruit from Mexico transiting the United States for movement to a foreign country:

(i) The fruit must be packed in insect-proof boxes or crates that prevent the escape or entry of adult, larval, or pupal fruit flies.<sup>4</sup>

(ii) Boxes or cartons of fruit must be enclosed in sealed, refrigerated containers of the type commonly used by the maritime or commercial trucking industry. An official seal must be applied to the container at the port of entry. The seal must not be removed except by an inspector, or after the shipment has left the United States.

(iii) The temperature in the refrigerated containers in which the fruit is transported must be maintained at 60 °F or lower.

(iv) If the seal on the containers in which such fruit is shipped is found to have been broken, for any reason, before the container leaves the United States, or if the cooling system in the containers fails at any point during transit, an inspector at the port of entry must be contacted immediately.

(v) A transportation and exportation permit must be issued by an inspector for each shipment. This permit can be obtained from APHIS headquarters.<sup>5</sup>

(vi) If untreated fruit is transloaded to another container while in the United States, the transloading must be supervised by an inspector and a replacement official seal must be applied to the container to which the fruit is moved.

<sup>4</sup> If there is a question as to whether packaging is adequate, send a request for approval of the packaging, together with a sample of the packaging, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606.

<sup>5</sup> To obtain this permit, contact the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Unit, 4700 River Road Unit 133, Riverdale, MD 20737.

(vii) Shipments of such fruit must move by direct route, in Customs bond and under official seal, without diversion or change of entry en route, from the port of entry to the port of exit or to an approved port in the United States for export to another foreign country.

(viii) Shipments of such fruit may not traverse the counties of Cameron, Hidalgo, Starr, or Willacy, TX. Shipments of such fruit may only traverse areas listed under each type of carrier listed below.

(3) *Truck movement.* Trucks may haul refrigerated containers of such fruit from Mexico to shipside, or to approved refrigerated storage pending lading aboard ship, in Corpus Christi, Galveston, or Houston, TX, or alongside railway carriers or aircraft at the ports named in paragraph (b)(2) of this section for movement to a foreign country. Shipments of such fruit via truck may traverse only the territory within the United States bounded on the west by a line starting at Laredo, TX, on to El Paso, TX, to Salt Lake City, UT, and then to Portland, OR, and on the east by a line drawn from Laredo, TX to Hebbroville, TX, to Corpus Christi, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, and then to Louisville, KY, and routes directly northward.

(4) *Rail movement.* Shipments must move by direct route from the port of entry to the port of exit or to an approved North Atlantic port in the United States for export to another foreign country, as follows: The fruit may be entered at Nogales, AZ, only for direct rail routing to El Paso, TX, after which it shall traverse only the territory bounded on the west by a line drawn from Laredo, TX, to El Paso, TX, to Salt Lake City, UT, and then to Portland, OR, and on the east by a line drawn from Laredo, TX, to Hebbroville, TX, to Corpus Christi, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, and then to Louisville, KY, and routes directly northward. Such fruit may also enter the United States from Mexico at any port listed in paragraph (b)(1) of this section, for direct eastward rail movement, without diversion en route, for reentry into Mexico.

(5) *Air cargo movement.* Shipments of such fruit may move by direct route as air cargo, without change of entry while in the United States en route from the port of entry, to Canada. If an emergency occurs en route to the port of export that will require transshipment to another carrier, an inspector at the port of entry must be contacted immediately.

\* \* \* \* \*

(e) *Untreated fruit from certain municipalities in Mexico.* Oranges,

tangerines, and grapefruit in transit to foreign countries may be imported from certain municipalities in Mexico listed in § 319.56–2(h) of this chapter in accordance with the applicable conditions in §§ 319.56 through 319.56–8 of this chapter.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0579–0303)

Done in Washington, DC, this 17th day of August 2006.

**Kevin Shea,**

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

[FR Doc. E6–13986 Filed 8–22–06; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2005–22876; Directorate Identifier 2005–NE–39–AD; Amendment 39–14734; AD 2006–17–13]

**RIN 2120–AA64**

**Airworthiness Directives; RECARO Aircraft Seating GmbH & Co. (RECARO) Model 3410 Seats**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain RECARO Model 3410 302, 303, 306, 307, 314, 316, 317, 791, 792, and 795 series seats. This AD requires replacing the existing attachment bolts for the seat belts with longer attachment bolts. This AD results from a report of short attachment bolts that don't allow enough thread to properly secure the locknuts. We are issuing this AD to prevent a seat belt from detaching due to a loose locknut and attachment bolt, which could result in injury to an occupant during emergency conditions.

**DATES:** This AD becomes effective September 27, 2006. The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of September 27, 2006.

**ADDRESSES:** You can get the service information identified in this AD from RECARO Aircraft Seating GmbH & Co. K, Technical Publications, Daimlerstrasse 21, 74523 Schwebisch Hall, Germany; Telephone 49 791 503 7183; fax 49 791 503 7220.

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in

Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7170.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain RECARO Model 3410 302, 303, 306, 307, 314, 316, 317, 791, 792, and 795 series seats. We published the proposed AD in the **Federal Register** on February 8, 2006 (71 FR 6420). That action proposed to require replacing the existing attachment bolts for the seat belts with longer attachment bolts.

**Examining the AD Docket**

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

One commenter, the Boeing Airplane Company, asks us to remove the 737 aircraft minor model designator “–200” from the applicability of this AD. Boeing states that research of the configurations for all delivered Boeing 737–200 airplanes failed to reveal any of the affected seats installed on those airplanes. However, Boeing states that RECARO reported to Boeing that seats were installed in a 737–200 airplane. Boeing believes an operator installed the seats after production of the airplane. Boeing also has records of installing seats with the affected model numbers on 737–700 and 737–800 airplanes. Boeing states that those seats incorporate the longer bolts specified in RECARO service bulletin SB–No.: 3410–25MR477, Revision 3, dated May 17, 2004, and we should use the generic 737 designation without a minor model designator. We partially agree. This AD applies to the RECARO seat models identified in paragraph (c) of this AD.