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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–108–2]

Unshu Oranges from Honshu Island, Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the regulations governing the importation of citrus fruit to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to States that are not commercial citrus-producing States. We will continue to require fumigation if the fruit is distributed to commercial citrus-producing States. This final rule amends the regulations to include a reference to the island of Shikoku, along with the islands of Honshu and Kyushu, as an island from which Unshu oranges may be exported to the United States in accordance with the requirements of the regulations.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne VanDersal, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

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

In an interim rule effective and published in the **Federal Register** on March 3, 2003 (68 FR 9851–9854, Docket No. 02–108–1), we amended the regulations governing the importation of citrus fruit in 7 CFR 319.28 (referred to below as the regulations) to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States was limited to non-citrus-producing States.

Comments on the interim rule were required to be received on or before May 2, 2003. We received one comment by that date. It was from a Japanese government official and is discussed below.

The commenter asked if Unshu oranges grown on the island of Shikoku were eligible for entry under the same conditions included in the interim rule for Honshu-grown Unshu oranges.

Previously, the regulations provided for the importation of Unshu oranges from approved, canker-free growing areas in Japan without specifying any particular islands or geographic areas in Japan. However, when we amended the regulations to provide for the importation of fumigated fruit into citrus-producing States (see 67 FR 4873–4877, Docket No. 99–099–2, published February 1, 2002), it was necessary to name the islands from which fruit could be exported, given the differing conditions that apply based on the origin and destination of the fruit. In that February 2002 final rule, we named only Honshu and Kyushu islands. Although Shikoku Island contains canker-free growing areas, there had been no exports of Unshu oranges to the United States from that island for several years, so we did not include a reference to Shikoku. This comment called our attention to our oversight; therefore, we are amending the regulations in this final rule to allow Unshu oranges grown in approved growing areas on Shikoku Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to States that are not commercial citrus-producing States. As is the case with Unshu oranges from Honshu Island, we will require fumigation if the fruit is distributed to commercial citrus-producing States.

The commenter also asked when Hawaii was added to the list of commercial citrus-producing States, noting that the addition was never clearly explained. The commenter requested specific documentation of the rule in which Hawaii was added.

Hawaii was listed in both the February 2002 final rule cited previously and in the proposed rule that preceded it, which was published in the **Federal Register** on April 18, 2001 (66 FR 19892–19898, Docket No. 99–099–1). Hawaii was added to the list of commercial citrus-producing areas in § 301.75–5 of our domestic citrus canker regulations in a final rule published in the **Federal Register** on December 13, 1985 (50 FR 51228–51234, Docket No. 85–381).

The commenter requested that Japan have the opportunity to discuss specific details regarding box marking and the marking of individual fruit when Japan and the United States meet to prepare the bilateral (operational) workplan [1] for the export of Japanese Unshu oranges to the United States.

With respect to box labeling requirements, the regulations provide some flexibility by requiring only that the individual boxes in which the oranges are shipped be stamped or printed with a statement specifying the States into which the Unshu oranges may be imported, and from which they are prohibited removal under a Federal plant quarantine. The specific manner in which the required box marking will be accomplished will be covered in the bilateral workplan. With respect to individual fruit marking, the regulations currently contain no provisions for the marking of individual fruit. We understand that Japan may wish to mark individual fruit that has been fumigated,

[1] A bilateral workplan is a written agreement between the Animal and Plant Health Inspection Service (APHIS) and a foreign plant protection organization that clarifies the responsibilities of each organization in enforcing APHIS regulations that pertain to preclearance export programs. The workplan also clarifies how specific aspects of the program operate, and may include directives as to how certain pest problems must be remedied. The workplan goes into more detail regarding the day-to-day operation of the program than do the regulations and, because of their separation from the regulations, workplans are flexible and can be revised as needed within the framework established by the regulations based on changing circumstances in the exporting country. Failure of the exporting country to abide by the conditions of the workplan is grounds for suspension, and possibly cancellation, of the export program.

and is thus eligible for entry into commercial citrus-producing States, to distinguish such fruit from non-fumigated Unshu oranges. We will discuss this matter with Japan when we meet to prepare the bilateral workplan.

Miscellaneous

In a final rule published in the **Federal Register** on April 27, 2001 (see 66 FR 21049–21064), paragraph (a) of § 319.28 was divided into paragraphs (a)(1) through (a)(3). Prior to that final rule, those same provisions ran together in a single, undivided paragraph (a). At the end of what is now paragraph (a)(3) are two sentences that read ''Seeds and processed peel of fruits designated in this section are excluded from this prohibition. Such seeds, however, are subject to the requirements of §§ 319.37 through 319.37–27.'' Before we divided paragraph (a), it was clear that the exclusion for seeds and processed peel applied to the entire paragraph. However, now that those sentences are located at the end of paragraph (a)(3), it may appear that the exclusion applies only to paragraph (a)(3). Therefore, for the sake of clarity, we are removing those two sentences from paragraph (a)(3) and placing them in a new paragraph (a)(4).

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

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, this final 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.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, the interim rule amending 7 CFR part 319 that was published at 68 FR 9851–9854 on March 3, 2003, is adopted as a final rule with the following changes:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

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

■ 2. Section 319.28 is amended as follows:

■ a. In paragraph (a)(3), by removing the last two sentences of the paragraph.

■ b. By adding a new paragraph (a)(4) to read as set forth below.

■ c. In paragraph (b)(5), first and third sentences, and paragraphs (b)(7)(i) and (b)(7)(ii), by adding the words ''or Shikoku Island'' after the words ''Honshu Island.''

§ 319.28 Notice of quarantine.

(a) * * *

(4) Seeds and processed peel of fruits designated in this section are excluded from this prohibition. Such seeds, however, are subject to the requirements of §§ 319.37 through 319.37–27.

* * * * *

Done in Washington, DC, this 26th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–4600 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 783

RIN 0560–AG83

Tree Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule provides for implementation, subject to the availability of funds, of the Tree Assistance Program (TAP) authorized by the Farm Security and Rural Investment Act of 2002 (2002 Act). TAP provides assistance to eligible orchardists to replant trees, bushes and vines that were grown for the production of an annual crop and were lost due to a natural disaster.

EFFECTIVE DATE: March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Eloise Taylor, Production, Emergencies and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517. Telephone: (202) 720–9882; e-mail: *Eloise.Taylor@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Sections 10201–10205 of the 2002 Act (7 U.S.C. 8201 *et seq.*) authorized, but did not fund, a Tree Assistance Program (TAP) to provide payments to eligible tree, bush and vine owners who incurred losses due to natural disasters. The statute authorizes payments only for eligible owners who actually replant eligible trees, bushes and vines and who produce annual crops from trees, bushes or vines for commercial purposes. Nursery tree stock and Christmas trees are not covered under TAP because annual crops are not produced from nursery tree stock and Christmas trees. Instead, nursery tree stock and Christmas trees are the crops themselves. The statute also limits payments by specifying that qualifying acres for a person may not exceed 500 in number for all payments under TAP.

Despite the lack of funding at the time, FSA published a proposed TAP rule on August 11, 2003 (68 FR 47499). The Agency received one timely-filed postcard containing one comment. The respondent was of the opinion that it would be easy for applicants to receive TAP benefits based on fraudulent claims.

TAP must be implemented as authorized by Congress. The final rule sets forth the requirements for, and limitations on, receiving TAP benefits. Only applicants with qualifying losses on claims for which appropriations have been made will be paid. The amount of compensation will be based on actual costs. The agency safeguards are believed to be adequate.

Changes From the Proposed Rule

Several revisions were made for greater clarity or effectiveness. The provision in the proposed rule indicating that, in lieu of payments in cash, qualifying losses may be compensated using seedlings sufficient to reestablish a stand, has been removed. FSA does not have seedlings available to be distributed for such a purpose.

Clarifying changes have been made and greater flexibility has been added to the pro-ration provisions of the rule. In the event the total amount of claims as submitted exceeds the available funds, payments will be prorated. Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions.

A provision relating to a gross revenue test has been removed in the absence of a specific statutory provision for it. TAP is authorized by Title X of the 2002 Act, which does not have such a limit, unlike other farm programs