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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2010-0022]

RIN 0579-AD14

Importation of Fresh Unshu Oranges from the Republic of Korea into the Continental United States

AGENCY:

Animal and Plant Health Inspection Service, USDA.

ACTION:

Proposed rule.

SUMMARY:

We are proposing to amend the regulations concerning the importation of citrus fruit to remove certain restrictions on the importation of Unshu oranges from the Republic of Korea that are no longer necessary. Specifically, we propose to remove requirements for the fruit to be grown in specified canker-free export areas and for joint inspection in the groves and packinghouses by the Government of the Republic of Korea and the Animal and Plant Health Inspection Service. We would also clarify that surface sterilization of the fruit must be conducted in accordance with 7 CFR part 305, and we would expand the area in the continental United States where Unshu oranges from the Republic of Korea may be distributed. Finally, we would require that each shipment be accompanied by a phytosanitary certificate containing an additional declaration stating that the fruit was given the required surface sterilization and inspected and found free of *Elsinoe australis*. These proposed changes would make the regulations concerning the importation of Unshu oranges from the Republic of Korea consistent with our domestic regulations concerning the interstate movement of citrus fruit from areas quarantined because of citrus canker.

DATES:

We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES:

You may submit comments by either of the following methods:

• Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0022>) to submit or view comments and to view supporting and related materials available electronically.

• Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0022.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (<http://www.aphis.usda.gov>).

FOR FURTHER INFORMATION CONTACT:

Ms. Meredith C. Jones, Regulatory Coordination Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734-7467.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease that affects citrus and is caused by the infectious bacterium *Xanthomonas citri* subsp. *citri*. Currently, the regulations in 7 CFR 319.28 (referred to below as the regulations) allow the importation of Unshu oranges (*Citrus reticulata* var. *unshu*) from certain areas in Japan and from Cheju Island, Republic of Korea (South Korea), into the United States under permit and after the specified safeguards of a preclearance program have been met to prevent the introduction of citrus canker.

Under the current regulations, Unshu oranges intended for export to the United States from the specified regions in Japan and South Korea must be grown and packed in isolated, canker-free export areas established by the national plant protection organization (NPPO) of the country of origin. The regulations also require the joint inspection of the fruit by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) and the NPPO of the country of origin in the groves prior to and during harvest, and in the packinghouses during packing operations. Surface sterilization of the fruit, as prescribed by the USDA, is required prior to packing. Because commercial citrus-producing areas in the United States have a higher density of citrus plantings than do other areas and unless adequate risk mitigation measures are in place may be more susceptible to the introduction of citrus diseases, Unshu oranges from Cheju Island, South Korea, cannot be imported under the existing regulations into American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands (referred to collectively in this document as commercial citrus-producing States).

Currently, Unshu oranges from South Korea are only being imported into Alaska. Importation of Unshu oranges from South Korea into other authorized areas of the United States was administratively suspended in 2002 due to an increased number of interceptions of fruit with symptoms of citrus canker during inspection at various packinghouses in South Korea. In 2005, however, the NPPO of South Korea requested that APHIS allow the importation of Unshu oranges into the State of

Alaska until the pest risks associated with Unshu oranges from South Korea could be mitigated to a level sufficient to allow shipments to resume to the rest of the United States. In response to that request, APHIS prepared a pest risk analysis (PRA), and on October 25, 2007, we published in the Federal Register (72 FR 60537-60541, Docket No.APHIS-2006-0133) a final rule allowing Unshu oranges into Alaska, provided that the oranges were prepared for shipping in accordance with our requirements for culling, cleaning, and labeling and were accompanied by a phytosanitary certificate stating that the fruit was inspected and determined to be free of citrus canker and arrowhead scale.

The NPPO of the Republic of Korea has more recently submitted a request to APHIS to allow the importation of Unshu oranges from Cheju Island, Republic of Korea, into the continental United States. In response to that request, we have developed an updated PRA, which is based on the previous PRA for imports into Alaska and which incorporates new evidence found in the ensuing 2 years. The updated PRA can be viewed on the Internet on the Regulations.gov Web site or in our reading room.¹[FTREF/](#)

¹Instructions on accessing Regulations.gov and information on the location and hours of the reading room may be found at the beginning of this document under ADDRESSES. You may also request paper copies of the risk analysis by calling or writing the person listed under FOR FURTHER INFORMATION CONTACT.

The updated PRA, Importation of Unshu Orange Fruit, *Citrus reticulata* Blanco var. unshu Swingle, from Korea into the Continental United States (December 2009), identifies two pests, *Xanthomonas citri* subsp. *citri* and *Elsinoe australis* (the causal agents of citrus canker and sweet orange scab, respectively), that are associated with Unshu oranges as quarantine pests. A quarantine pest is defined by the International Plant Protection Convention as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.²[FTREF/](#) *Elsinoe australis*, which we have considered to be a quarantine pest, had not been identified previously as such in relation to the importation of Unshu oranges from South Korea because it had not been known to be present in that country. It was detected in South Korea, however, in 2009. Conversely, arrowhead scale, *Unaspis yanonensis*, which we had identified as a quarantine pest in the earlier version of the PRA that we published in conjunction with the rulemaking allowing Unshu oranges from South Korea to be imported into Alaska, does not fall into that category in the updated PRA. A recent critical review of the scientific literature and our own operational data led us to conclude that, even assuming high quantities of imported fruit infested with armored scale species, such as arrowhead scale, the specific pathway represented by commercially produced fruit shipped without leaves, stems, or contaminants, in accordance with our general requirements for the importation of fruits and vegetables in 319.56-3, poses an extremely low risk of introducing such pests to the U.S. citrus crop.

²International Plant Protection Convention Glossary, (<https://www.ippc.int/index.php?id=1110483>), 2007.

In our updated PRA, the two identified quarantine pests, *Xanthomonas citri* subsp. *citri* and *Elsinoe australis*, were rated as having a medium pest risk potential. Pests receiving a rating within the medium range may require specific

phytosanitary measures in addition to standard port-of-entry inspection.

The PRA included a risk management document outlining the conditions under which Unshu oranges from Cheju Island, Republic of Korea, could safely be imported into the continental United States and Alaska. The conditions include surface treatment of the fruit in accordance with 7 CFR part 305 prior to packing, registration of the packinghouse in which the treatment is applied and the fruit is packed with the NPPO of South Korea, and certification that the fruit has been treated in accordance with the regulations and has been inspected and found to be free of sweet orange scab. Scientific evidence indicates that commercially packed and disinfected fresh citrus fruit is not an epidemiologically significant pathway for the spread of *Xanthomonas citri* subsp. *citri*. Therefore, Unshu oranges from South Korea meeting those conditions can be imported into the United States without posing an epidemiologically significant risk to the U.S. citrus crop of infection with citrus canker. Inspection by the NPPO of South Korea of Unshu oranges for symptoms of sweet orange scab prior to export is considered to offer adequate protection against introducing that disease to the U.S. citrus crop because the symptoms can be detected if present, and if the symptoms are not present, the Unshu oranges are unlikely to be a pathway for sweet orange scab.

We are therefore proposing to incorporate those requirements into the regulations in 319.28 pertaining to the importation of Unshu oranges from South Korea. (As noted above, the existing regulations do require surface sterilization of the fruit as prescribed by the USDA. Because we have determined that the use of a post-harvest disinfectant in accordance with 7 CFR part 305 is the most effective mitigation for citrus canker, we are proposing to state explicitly that the treatment must be conducted in accordance with part 305.) We are also proposing additional changes that would eliminate certain requirements associated with the importation of Unshu oranges from South Korea that we consider no longer to be necessary. Specifically, we would remove the requirements for the oranges to be grown in specified canker-free areas and for joint inspection of the fruit by the South Korean NPPO and APHIS prior to and during harvest and in the packinghouses during packing operations.

Part 305 contains requirements for administering approved treatments. As noted in 305.2(b), approved treatment schedules are set out in the Plant Protection and Quarantine Treatment Manual, available at (<http://www.aphis.usda.gov/import&export/plants/manuals/ports/treatment.shtml>). The approved citrus canker treatment schedule for imported citrus fruit is the same as that for domestic citrus fruit.

Some of the changes we are proposing, in addition to eliminating restrictions that are no longer necessary, would also help to harmonize the regulations with our domestic citrus canker regulations. In a final rule published in the Federal Register on October 22, 2009 (74 FR 54431-54445, Docket No. APHIS-2009-0023), we amended the conditions under which fruit may be moved interstate from an area quarantined for citrus canker by removing certain restrictions that we considered to be no longer necessary. That final rule removed a requirement for an APHIS inspector to be in the packinghouse and inspect fruit leaving an area quarantined for citrus canker, as well as a prohibition on the interstate movement of citrus fruit from quarantined areas to commercial citrus-producing States. Our proposed removal of the requirements for Unshu oranges exported to the United States to have been produced in specified canker-free areas and jointly inspected by the NPPO of South Korea and APHIS in the groves and

packinghouses, and our proposed removal of the prohibition on the exportation of the fruit into commercial citrus-producing States in the continental United States would parallel those changes to the domestic regulations. Similarly, our proposed requirement that South Korean packinghouses be registered with the NPPO of South Korea would also contribute to harmonizing our import requirements with our domestic ones by paralleling a requirement in 301.75-7 that owners or operators of packinghouses where packing of fruit regulated for citrus canker occurs enter into compliance agreements with APHIS.

Reorganization of the Regulations Pertaining to the Importation of Unshu Oranges

The requirements for the importation of Unshu oranges from Japan and South Korea are contained in 319.28(b) and (c) of the current regulations. Paragraph (b) contains provisions applicable to imports from both countries, while the requirements governing the importation of Unshu oranges from South Korea into Alaska, codified in our October 2007 final rule, are found in paragraph (c). Because our PRA covered imports from South Korea only, we are not proposing to make any changes at this time to the requirements regarding the importation of Unshu oranges from Japan. The import requirements discussed in paragraph (b) that heretofore have applied to both countries would, under this proposed rule, remain in effect only for Japan. It is, therefore, necessary to reorganize paragraphs (b) and (c) of 319.28 to separate the provisions for South Korea and Japan. Under this proposed rule, the requirements for the importation of Unshu oranges from Japan would continue to be contained in paragraph (b). The proposed requirements discussed above pertaining to the importation of Unshu oranges from South Korea would be located in paragraph (c). Since the importation of Unshu oranges into Alaska would be subject to the same conditions as fruit imported into other areas of the United States, the Alaska-specific requirements contained in current paragraph (c) would be removed.

Proposed paragraph (c)(1) would state that before packing, the oranges would have to be given a surface sterilization in accordance with part 305. Paragraph (c)(2) would contain the requirement for the packinghouse to be registered with the NPPO of the Republic of Korea. Paragraph (c)(3) would state that the oranges would have to be accompanied by a phytosanitary certificate issued by the NPPO of South Korea that would include an additional declaration stating that the fruit was subjected to the required sterilization and was inspected and found free of *Elsinoe australis*, the causal agent of sweet orange scab. Finally, paragraph (c)(4) would state that the Unshu oranges could be imported into any area of the United States except Hawaii and the U.S. territories listed in that paragraph. The PRA did not evaluate the risk of importing Unshu oranges from South Korea into Hawaii and the listed territories, so we would not remove the restrictions on such imports.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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 the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

This proposed rule would remove certain restrictions on the importation of Unshu

oranges from South Korea that are no longer necessary and expand the area in the continental United States where Unshus from South Korea may be distributed.

The impact of Unshu orange imports from South Korea is expected to be minimal for U.S. domestic producers. The United States does not commercially produce Unshu oranges, and price differences suggest that they are not a close substitute for U.S.-grown mandarin varieties, such as tangerines. Effects of the proposed rule in terms of product displacement may be borne by Japanese exporters, since Japan is currently the other major supplier of Unshu oranges to the United States.

Even if all Unshu orange imports from South Korea were to directly replace a portion of U.S.-grown tangerine consumption, the effect on U.S. producers would be still insignificant. Under such a scenario, annual imports of Unshu oranges from South Korea of 2,000 metric tons (the upper limit of the projected range of imports, which would well surpass the peak import volume of 1,611 metric tons recorded in 2002) would displace only 0.6 percent of fresh tangerines produced by U.S. operations in 2008-2009. Even a small impact such as this for U.S. producers is highly unlikely.

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

Executive Order 12988

This proposed rule would allow Unshu oranges to be imported into the United States from Cheju Island, Republic of Korea. If this proposed rule is adopted, State and local laws and regulations regarding Unshu oranges imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44U.S.C. 3501 et seq.).

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.

<REGTEXT TITLE="7" PART="319">

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319 FOREIGN QUARANTINE NOTICES

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

Authority:

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

and 371.3.

<REGTEXT TITLE="7" PART="319">

2. Section 319.28 is amended by revising paragraphs (b) and (c) to read as follows:

319.28

Notice of quarantine.

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(b) Unshu oranges from Japan. The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. unshu, Swingle [*Citrus unshiu* Marcovitch, Tanaka]), also known as Satsuma mandarin, grown in Japan and imported under permit into any area of the United States except for those areas specified in paragraph (b)(7) of this section: Provided, that each of the following safeguards is fully carried out:

(1) The Unshu oranges must be grown and packed in isolated, canker-free export areas established by the plant protection service of Japan. Only Unshu orange trees may be grown in these areas, which must be kept free of all citrus other than the propagative material of Unshu oranges. The export areas must be inspected and found free of citrus canker and prohibited plant material by qualified plant protection officers of both Japan and the United States. The export areas must be surrounded by 400-meter-wide buffer zones. The buffer zones must be kept free of all citrus other than the following 10 varieties: Buntan Hirado (*Citrus grandis*); Buntan Vietnam (*C. grandis*); Hassaku (*C. hassaku*); Hyuganatsu (*C. tamurana*); Kinkan (*Fortunella* spp. non *Fortunella hindsii*); Kiyomi tangor (hybrid); Orange Hyuga (*C. tamurana*); Ponkan (*C. reticulata*); Unshu (*C. unshiu* Marcovitch, Tanaka [*Citrus reticulata* Blanco var. unshu, Swingle]); and Yuzu (*C. junos*). The buffer zones must be inspected and found free of citrus canker and prohibited plant material by qualified plant protection officers of both Japan and the United States.

(2) In Unshu orange export areas and buffer zones on Kyushu Island, Japan, trapping for the citrus fruit fly (*Bactrocera tsuneonis*) must be conducted as prescribed by the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries and the U.S. Department of Agriculture. If fruit flies are detected, then shipping will be suspended from the export area until negative trapping shows the problem has been resolved.

(3) Inspection of the Unshu oranges shall be performed jointly by plant protection officers of Japan and the United States in the groves prior to and during harvest, and in the packinghouses during packing operations.

(4) Before packing, such oranges shall be given a surface sterilization as prescribed by the U.S. Department of Agriculture.

(5) To be eligible for importation into Arizona, California, Florida, Hawaii, Louisiana, or Texas, each shipment of oranges grown on Honshu Island or Shikoku Island, Japan, must be fumigated with methyl bromide in accordance with part 305 of this chapter after harvest and prior to exportation to the United States. Fumigation will not be required for shipments of oranges grown on Honshu Island or Shikoku Island, Japan, that are to be imported into States other than Arizona, California, Florida, Hawaii, Louisiana, or Texas.

(6) The identity of the fruit shall be maintained in the following manner:

(i) The individual boxes in which the oranges are shipped must 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.

(ii) Each shipment of oranges handled in accordance with these procedures shall be accompanied by a certificate of the plant protection service of Japan certifying that the fruit is apparently free of citrus canker disease.

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

(i) Unshu oranges from Honshu Island or Shikoku Island, Japan, that have been fumigated in accordance with part 305 of this chapter may be imported into any area of the United States except American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(ii) Unshu oranges from Honshu Island or Shikoku Island, Japan, and from Kyushu Island, Japan (Prefectures of Fukuoka, Kumamoto, Nagasaki, and Saga only), that have not been fumigated in accordance with part 305 of this chapter may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands.

(c) Unshu oranges from the Republic of Korea. The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. unshu, Swingle [*Citrus unshiu* Marcovitch, Tanaka]), also known as Satsuma mandarin, grown on Cheju Island, Republic of Korea, and imported under permit into any area of the United States except for those specified in paragraph (c)(4) of this section, Provided, that each of the following safeguards is fully carried out:

(1) Before packing, such oranges shall be given a surface sterilization in accordance with part 305 of this chapter.

(2) The packinghouse in which the surface sterilization treatment is applied and the fruit is packed must be registered with the national plant protection organization of the Republic of Korea.

(3) The Unshu oranges must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of Korea, which includes an additional declaration stating that the fruit was given a surface sterilization in accordance with 7 CFR part 305 and was inspected and found free of *Elsinoe australis*.

(4) The Unshu oranges may be imported into any area of the United States except American Samoa, Hawaii, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

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Done in Washington, DC, this 2nd day of June 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 10????? Filed ???10: 6:37 am]BILLING CODE: 341034S
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