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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 301

[Docket No. 96-069-3]

High-Temperature Forced-Air Treatments for Citrus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, to allow navel oranges from Mexico and areas of the United States that are infested with plant pests in the genus *Anastrepha*, which includes *A. ludens*, the Mexican fruit fly, to be treated with a high-temperature forced-air process currently approved for tangerines, oranges other than navel oranges, and grapefruit from these areas. This action provides an additional option for treating navel oranges from these areas.

DATES: This rule will be effective on September 13, 1999 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before August 12, 1999. The incorporation by reference of the material listed in the rule is approved by the Director of the Federal Register as of September 13, 1999.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to: Docket No. 96-069-3, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 96-069-3.

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

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Grosser, Senior Import Specialist, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737-1236; (301) 734-6799; or e-mail ronald.c.campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

To prevent the spread of plant pests into or within the United States, the U.S. Department of Agriculture (USDA) restricts the importation and interstate movement of many articles, including fruits. As a condition of movement, some fruits are required to be treated for plant pests in accordance with title 7 of the Code of Federal Regulations (CFR). The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual) of the USDA's Animal and Plant Health Inspection Service (APHIS) contains approved treatment schedules and is incorporated by reference into the CFR at 7 CFR 300.1.

Pursuant to 7 CFR 319.56-2x, USDA allows tangerines, oranges, and grapefruit from Mexico to be imported into the United States if treated in accordance with the PPQ Treatment Manual. In addition, USDA regulates the interstate movement of certain articles from areas of the United States where outbreaks of the Mexican fruit fly have occurred (currently, parts of Texas and California). The pertinent regulations are at 7 CFR 301.64 through 301.64-10; acceptable treatments for the regulated articles are listed in 301.64-10.

On December 30, 1997, we published in the **Federal Register** (62 FR 67761 67763, Docket No. 96-069-1) a

proposed rule to, among other things, amend the PPQ Treatment Manual to include high-temperature forced-air treatments for tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States affected with pests in the genus *Anastrepha*, which includes *A. ludens*, the Mexican fruit fly. We also proposed to amend 7 CFR 300.1 to show that the PPQ Treatment Manual had been so changed and to amend 301.64-10(e) of the Mexican fruit fly regulations to indicate that grapefruit, oranges (except navel oranges), and tangerines from areas of the United States infested with the Mexican fruit fly may be treated with high-temperature forced air in accordance with the PPQ Treatment Manual. The high-temperature forced-air treatments we proposed were developed by the USDA's Agricultural Research Service (ARS) in conjunction with APHIS PPQ Methods Development.

We solicited comments for 60 days ending March 2, 1998. We received 28 comments by that date. They were from Mexican citrus producers, USDA employees, a State government, and a citrus industry association. The commenters generally supported the adoption of the proposed high-temperature forced-air treatments. However, some of the commenters suggested changes or clarifications to the proposed treatments. A comment provided by the ARS researchers who did the research upon which the proposed high-temperature forced-air treatments were based suggested the inclusion of a high-temperature forced-air treatment for navel oranges. The ARS commenters stated that research proving the quarantine security of the treatment for navel oranges was performed shortly after the completion of the research on the treatments for oranges other than navel oranges, tangerines, and grapefruit.

After carefully considering the comments, we published a final rule in the **Federal Register** on December 10, 1998 (63 FR 68161-68165, Docket No. 96-069-2), that, among other things, amended the PPQ Treatment Manual to include a single high-temperature forced-air treatment (described below) for tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States affected with pests in the genus *Anastrepha*. We

also amended 7 CFR 300.1 to show that the PPQ Treatment Manual had been so changed and 301.64–10(e) of the Mexican fruit fly regulations to indicate that high-temperature forced air in accordance with the PPQ Treatment Manual can be used to treat grapefruit, oranges (except navel oranges), and tangerines for movement from areas of the United States infested with the Mexican fruit fly.

In the preamble to the final rule, we stated that we had reviewed the completed data provided by ARS concerning the inclusion of a high-temperature forced-air treatment for navel oranges and had determined that the treatment would be effective for navel oranges as well. We also indicated that we would soon publish in the **Federal Register** a direct final rule to allow the use of the treatment on navel oranges. We did not include the treatment for navel oranges in the final

rule because the proposed rule had not addressed navel oranges. Therefore, we are now amending the PPQ Treatment Manual to add navel oranges to the list of fruits that may be treated with high-temperature forced air for pests in the genus *Anastrepha*. We are also amending 7 CFR 300.1 to show that the PPQ Treatment Manual has been so revised. We are also amending 301.64–10(e) to remove the exception for navel oranges so that all types of oranges from areas of the United States quarantined under the Mexican fruit fly regulations may be treated with high-temperature forced air as specified in the PPQ Treatment Manual. The high-temperature forced-air treatment that will be authorized is described below.

Treatment Procedure

The treatment must be administered in sealed, insulated chambers; the air may be heated in the chambers, or hot air may be introduced into the

chambers. The number of temperature probes must be approved in advance during the chamber certification procedure. Place the temperature probes into the centers of the largest fruit in the load. Place the fruit inside the chamber, seal it, and begin the treatment. The target temperature is 44 °C (111.2 °F). Throughout the treatment, record the fruit center temperatures at least once every 2 minutes. If it takes less than 90 minutes for the fruit to reach the target temperature, the fruit must remain at the target temperature for any additional time needed to reach 90 minutes, plus another 100 minutes. If the fruit takes 90 minutes or more to reach the target temperature, the fruit must remain at the target temperature for an additional 100 minutes only. Hydrocooling after treatment is optional. The treatment is for fruit of the following sizes:

Fruit variety	Standard pack count ¹	Container size (bu)	Maximum weight (g)	Maximum diameter (in)
Tangerines	120	4/5	245 (8.6 oz)	Not specified.
Navel oranges	100	1 1/5	450 (15.9 oz)	3 13/16.
Oranges (other than navel)	100	1 3/5	468 (16.4 oz)	3 13/16.
Grapefruit	70	1 3/5	536 (18.8 oz)	4 5/16.

¹ Standard pack count is an index based on the approximate number of fruit of uniform diameter that fit into a bushel container of the size indicated.

Examples of Treatment Administration

- 1. If the center temperature of fruit located in the coolest location inside a forced-air chamber required 112 minutes to reach 44 °C, then the total treatment time for the fruit load would be 212 minutes (112 minutes approach time to target temperature + 100 minutes treatment time at target temperature).
- 2. If the center temperature of fruit located in the coolest location inside a forced-air chamber required 80 minutes to reach 44 °C, then the total treatment time for the fruit load would be 190 minutes (80 minutes approach time to target temperature + 10 additional minutes so that approach time is the required 90 minutes in duration + 100 minutes treatment time at target temperature).

Note: Tolerance data may be obtained from the USDA–ARS Subtropical Research Center, Crop Quality & Fruit Insects, 2301 S. International Blvd., Weslaco, TX 78596, or the USDA–APHIS–PPQ Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565.

Dates

We are publishing this rule without a prior proposal because we view this

action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**. Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published. As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will

publish a document to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document. **Executive Order 12866 and Regulatory Flexibility Act** This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866. This rule, which allows the use of a process involving high-temperature forced air for treating navel oranges from areas of Mexico and the United States infested with plant pests of the genus *Anastrepha* (which includes *A. ludens*, the Mexican fruit fly), could affect producers and treatment administrators in areas in Texas and California regulated for the Mexican fruit fly and U.S. importers of citrus from Mexico. The effect of this rule in California should be almost nonexistent as avocados are the major crop in the area in California where an outbreak of the Mexican fruit fly has occurred. Regulated areas in Texas comprise a major citrus-growing region of the

United States. Four of the five regulated production areas in Texas were infested with Mexican fruit flies in fiscal year (FY) 1996 and FY 1997. In treating fruit for export and for shipment to other U.S. citrus-growing areas, producers generally use methyl bromide fumigation, although other options are available. More than 90 percent of the fruit treated are grapefruit; the rest are oranges. In FY 1996, 5.4 million pounds of citrus from regulated areas of Texas were fumigated, and this amount increased to 19.2 million pounds in FY 1997. Ninety percent of the treated fruit is shipped to California, and 10 percent, to Mexico.

Eight fumigation companies treat citrus shipped from the regulated areas of Texas. The fumigation facilities are located in the packing sheds of major packing houses. Some are private companies; others operate as cooperatives. All of the fumigation companies can be considered small entities by Small Business Administration standards (annual revenue less than \$5 million, averaged over 3 years).

The use of high-temperature forced air as an alternative treatment for navel oranges could lead to a slight reduction in revenue for the fumigation companies, if the new treatment is found by the growers to be financially preferable. At growers' meetings in the area, the possibility of building and operating one or two high-temperature forced-air treatment facilities as cooperative ventures has been discussed. However, the consensus has been that more information is needed before the sizable expenditures such facilities would require are made. Producers remain concerned about the speed with which the fruit could be treated and the risk of fruit being damaged by the high temperatures. Producers are unlikely to replace fumigation with the proposed high-temperature forced-air process until these issues are resolved to their satisfaction.

Mexico is a major supplier of oranges to the United States, providing one-third or more of all oranges imported. Mexico exported 7,633 metric tons of oranges (worth about \$3.7 million) to the United States in 1996; 10,461 metric tons of oranges (\$4.9 million) in 1997; and 9,103 metric tons of oranges (\$4.2 million) in 1998. Navel oranges represent approximately 25 percent of the oranges imported from Mexico.

Importations of citrus that originate in certain areas of the State of Sonora, Mexico, considered to be free of the

Mexican fruit fly require certification only. Oranges are the only fruit exported to the United States from these areas.

Citrus imports from the rest of Mexico must be treated for *Anastrepha* species. Methyl bromide fumigation has been and continues to be an acceptable treatment, and, as of December 10, 1998, high-temperature forced-air has been acceptable for use on tangerines, oranges other than navel oranges, and grapefruit. A facility capable of treating citrus with high-temperature forced air has been built in Mexico; however, it is not yet in operation. The Mexico Citrus Exporters Association estimates that use of the new facility could lead to annual exports to the United States of an additional 453 metric tons (1 million pounds) of navel oranges. To put this estimate in perspective, this amount is 4.9 percent of the total Mexican orange imports into the United States in 1998.

Citrus producers in the regulated areas in Texas are expected to monitor the experiences of Mexican producers with the new treatment and reassess its future adoption. Effects of this rule on fumigation companies in the regulated areas of Texas (and on any fumigation companies that may serve producers in the regulated areas in California) are expected to be negligible to nonexistent. The proposed treatment will provide another alternative for producers and fumigation companies.

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 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

This rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 301

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

Accordingly, we are amending 7 CFR parts 300 and 301 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a) introductory text is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through June 1999 has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–10 [Amended]

4. In 301.64–10, paragraph (e), the words “(except navel oranges)” are removed.

Done in Washington, DC, this 6th day of July 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17613 Filed 7–12–99; 8:45 am]

BILLING CODE 3410–34–P