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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 99-057-1]

Aeration of Imported Logs, Lumber, and Other Unmanufactured Wood Articles That Have Been Fumigated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations for importing unmanufactured wood articles that have been fumigated with methyl bromide or other fumigants by adding a reminder that such articles must be aerated after fumigation in accordance with U.S. Environmental Protection Agency label requirements, the Plant Protection and Quarantine Treatment Manual, and Occupational Safety and Health Administration regulations. Aeration protects port personnel, consignees, and others against possible exposure to dangerous levels of fumigant residue. We are taking this action to increase awareness of the aeration requirement among persons shipping fumigated wood to the United States.

EFFECTIVE DATE: November 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Reeves, Acting Assistant Director, Port Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-8295.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) regulates the importation of logs, lumber, and other unmanufactured wood articles to prevent the introduction into the United States of dangerous plant pests, including forest pests. These regulations

are contained in 7 CFR 319.40-1 through 319.40-11, "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (referred to below as the regulations).

One option for importing certain wood articles involves fumigating the articles with methyl bromide or other fumigants. Section 319.40-7(f) of the regulations contains methyl bromide fumigation standards for logs, lumber, and other regulated wood articles. Other fumigants may be utilized for solid wood packing material from the Peoples Republic of China, including Hong Kong. The Plant Protection and Quarantine (PPQ) Treatment Manual (which is incorporated into the regulations by reference at 7 CFR 300.1) contains fumigation standards for methyl bromide and other fumigants.

When articles are fumigated, the articles must be aerated afterward to ensure that the articles are safe for handling, storage, and transportation. Aeration is required by the Environmental Protection Agency (EPA) in EPA-approved label instructions for all fumigants utilized pursuant to the regulations. Additionally, aeration requirements are set forth in the PPQ Treatment Manual. Furthermore, Occupational Safety and Health Administration (OSHA) regulations contained in title 29 of the Code of Federal Regulations require employers of cargo handlers to determine that the concentration of fumigants is below the level specified as hazardous before the cargo is loaded or discharged.

Recently, APHIS has detected high levels of methyl bromide residue in shipping containers from the Peoples Republic of China, including Hong Kong, that contain fumigated solid wood packing material. These residue levels could pose a health and safety risk to APHIS inspectors at ports of entry and to consignees and other persons who open the shipping containers. APHIS inspectors cannot safely inspect containers with such residues.

Because the recent cases of high levels of residue were all connected with shipments from the Peoples Republic of China, including Hong Kong, APHIS has notified officials in the Peoples Republic of China, including Hong Kong, to remind them of the aeration requirements cited above. However, we believe the requirements would be more

apparent to exporters in these and other countries if we stated them explicitly in the regulations.

Therefore, we are adding the following sentence to the introductory paragraph in § 319.40-7(f), which deals with methyl bromide fumigation: "Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with the Treatment Manual and label instructions approved by the U.S. Environmental Protection Agency."

We are making a parallel change to § 319.40-5(g), which requires that solid wood packing material from China "must be heat treated, fumigated, or treated with preservatives, using a treatment schedule contained in § 319.40-7 or in the Plant protection and Quarantine Treatment Manual." This paragraph authorizes fumigation not only with methyl bromide, but with other fumigants authorized by the PPQ Treatment Manual. In each place where the word "fumigated" appears, we are changing the word "fumigated" to "fumigated and aerated," as a reminder that the PPQ Treatment Manual and EPA-approved label instructions require aeration of all fumigants utilized pursuant to the regulations.

Effective Date

The requirement to aerate fumigated shipments to reduce levels of fumigant to a safe level is already in effect, in the form of EPA-approved label requirements. This requirement is also set forth in the PPQ Treatment Manual. This rule only adds a reference to those requirements to the regulations to increase their visibility to regulated parties. It does not appear that public participation in this rulemaking procedure would make additional relevant information available to the Department.

Accordingly, because the changes contained in this rule are nonsubstantive in nature, we have found that notice and public procedure on this rule are unnecessary. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this is not a substantive change in the regulations, it is exempt from the provisions of Executive Order 12866 and Executive

Order 12988. Finally, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of the Act.

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 in 7 CFR Part 319

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

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.40-5 [Amended]

2. In § 319.40-5, paragraphs (g)(1), (g)(2)(i), (g)(6), and (i) are amended by removing the word "fumigated," each time it appears and adding the phrase "fumigated and aerated," in its place.

§ 319.40-7 [Amended]

3. In § 319.40-7, paragraph (f), the introductory text is amended by adding a third sentence to read as follows: "Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with the Treatment Manual and label instructions approved by the U.S. Environmental Protection Agency."

Done in Washington, DC, this 27th day of October 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-28606 Filed 11-2-99; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV99-928-1 FR]

Papayas Grown in Hawaii; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate from \$0.0063 to \$0.008 per pound of assessable papayas established for the Papaya Administrative Committee (Committee) under Marketing Order No. 928 for the 1999-2000 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of papayas grown in Hawaii. Authorization to assess papaya handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began on July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901; Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 155 and Order No. 928, both as amended (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, papaya handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable papayas beginning July 1, 1999, and continue

until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 1999-2000 and subsequent fiscal years from \$0.0063 per pound to \$0.008 per pound of assessable papayas.

The papaya marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of papayas. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998-1999 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 22, 1999, to discuss the crop estimate, budget, and assessment rate for the 1999-2000 fiscal year. On July 15, 1999, the Committee completed a mail ballot on the crop estimate and assessment rate, and on an eight-to-one vote, adopted a crop estimate of 40 million pounds of