

PROEXAG II



EXPORT INDUSTRY TECHNOLOGY SUPPORT PROJECT (AGRICULTURAL COMPONENT)

**THE HOUSTON CORRIDOR FOR TRANSHIPPING RESTRICTED
CENTRAL AMERICAN PRODUCE**

Assignment Number: ST-107

PREPARED BY:

Mary Quinlan

THROUGH

Chemonics International Consulting Division
2000 M Street, Northwest
Suite 200
Washington, D.C. 20036

(Contract AID No. 596-0165-C-00-1296-00)

UNDER THE AUSPICES OF:

United States Agency for International Development (USAID)
Regional Office for Central American Programs (ROCAP)
Guatemala City, Guatemala

September 1992

The Houston Corridor for Transshipping Restricted Central American Produce

Report to PROEXAG II, by Mary Quinlan
September 12, 1992

Background

Restrictions for entry of a number of crops into the United States have made transshipment on to alternative markets (Canada, Europe, Japan) an important strategy for PROEXAG efforts to open up markets for Central American produce. Fruit fly host material is particularly restricted and under present policy will not be considered for transshipment through Southern Florida, which is the transportation hub for most maritime and air transport from Central America.

Although Northeast ports are generally acceptable as transshipment points, the lack of non-stop transportation to that region has lead PROEXAG to explore the Houston Corridor as an option.

Definition of the Houston Corridor

The Houston Corridor was defined through publication in the Federal Register as a corridor allowing for the entry of avocado and citrus from Mexico. The corridor's parameters were expanded to include Galveston in later publications. Although mangoes are not actually mentioned in the publications, transit of untreated mangoes from Mexican had been allowed through the same corridor.

The proposal was to allow transit of Mexican produce through an area that is already infested with Mexican Fruit Fly (*Anastrepha ludens*) since much of the Mexican cargo is transported by truck. Houston's air and sea ports are included. We believed that this ruling would apply to Central American produce as well. In fact rumor was that a Canadian firm, Crown, had already used this corridor but that was never confirmed.

Our understanding of the concept was based on an interpretive letter from APHIS Permit Unit in 1990 (R. Griffin). Review of the full set of regulations gives a more clear picture of the extent -- and the limitations -- of the Houston Corridor concept.

Background on Central American Companies Applications for Transshipment

PROEXAG introduced the idea of the Houston Corridor to Central American exporters through reports and memoes by 1990.

In 1991 companies attempting to utilize the corridor ran into some resistance, but their efforts were not well documented nor were they reported to PROEXAG so that the status was still not clear. Gary Neman, a rambutan exporter, considered the problem to be the Texas State Department of Agriculture. Panfilo Tabora, who met with officials in Hyattsville, repeated that the corridor could not be used. William Brandt spoke of attempting to use it for mangoes with no success. No documentation of a request appeared, however.

In June, 1992, the case arose of Frutesa's pitahaya shipments to Canada needing a US transshipment point. After encountering difficulties in the route through Mexico with a direct flight on to Vancouver, Gloria Elena Polanco sought other routings and was turned down. On review of her documentation, however, one could see that the possibility of Houston was not clearly requested. Requests mentioned options through Los Angeles, with stop over in San Jose, California, or through Southern Florida. Therefore, we resubmitted the request focusing on the Texas option exclusively. Because the preferred carrier went to a Dallas hub instead of the Houston airport, we asked for a transit permit through one of those airports.

In July, 1992, I met with the current head of the Permits Unit of APHIS/PPQ, Mr. Victor Harabin. He was not optimistic but agreed to review our proposal. Key points to be considered are outlined in attachment 3.

Concerns Related to the Use of the Corridor

Some points that had not been clear previously in the APHIS consideration of requests to use this corridor are the species of fruit fly in the originating country and the work load of the inspectors at the US port. The situation in Mexico is entirely different than Central America in the area of fruit fly species. Although my professional opinion is that Anastrepha species can be as damaging or more so than the Med Fly (Ceratitis capitata), US policy is heavily slanted towards restricting produce from Med Fly areas. Mexico is considered Med Fly free, and certainly the northern produce areas are. This concern had not been clear earlier.

An application by a large multinational firm to ship citrus from Central America through the Houston Corridor had also been rejected because of the pest situation on citrus in that region. This product will not be approved so there is no reason to resubmit a request for that commodity.

The other issue of relevance to our cases is the work load at the US port of entry. Extremely heavy work load is one of the major reasons that Southern Florida ports will never be considered for transshipment of restricted produce, along with the proximity of agricultural production that is especially susceptible to pest infestation.

Apparently Houston is suffering heavy work loads so that our proposal for Dallas as the first port of entry in the US was actually more acceptable to the review staff than Houston. (Note: transshipment through Dallas would be a new policy but it is included in the current Hawaii proposal as well.)

Status of the Request for Use of the Corridor on to Canada

Despite the favorable reaction to the Dallas proposal, APHIS/PPQ Permit Unit decided to deny the request at this time. The reason was somewhat political, however, and may change by next season.

A proposal to transship restricted produce from Hawaii, the Virgin Islands and Puerto Rico is under review (proposal is attached). The industry groups in these countries have been very critical of APHIS for allowing foreign restricted produce to transship while denying their

"domestic" produce the same privilege. The view in APHIS is that approval of a new transshipment route for Central America at this time would focus the animosity of the US industry groups on that region, particularly if the Hawaii proposal is denied. (Note: Although each permit is issued on a case by case basis, APHIS considers issuing a permit to a group like Frutesa this year as setting precedent for other applications from that region.)

It appeared more prudent to wait until the Hawaii proposal is passed and then reapproach the Central America issue.

Future Action

Proposals for transit through locations such as Orlando, Florida, where KLM will be stopping are not worth submitting unless some major shift in policy occurs in the future.

In order to judge Central America's possibilities at the moment, I have reviewed the commentary on the Hawaii proposal. A list of those submitting comments follows the proposal. In general the comments were positive, although many expressed concern that better safe guards need to be taken. The idea of a sealed or even locked container was proposed and defined in most commentaries. I believe based only on the commentary that the proposal will be approved, but with revision in the safe guards for transit.

Although not typical of the commentary on the Hawaii proposal, I am also enclosing a copy of the comments from CCT. Their point of view is interesting and might be repeated for the Central American proposals in the future.

I will continue to monitor the Hawaii proposal and suggest a good time to resubmit Central American proposals.

Recommendations

I am enclosing all of the relevant materials on this topic for PROEXAG II. I recommend that some materials be treated CONFIDENTIALLY (e.g. individual company proposals). But this is also a good opportunity to make sure that files are complete in any office wishing to follow the topic of transshipment.

PROEXAG II

Proyecto de Apoyo
las Exportaciones de
Productos No Tradicionales

Chemonics-ROCAP

Dale T. Krigsvold
Post Harvest & Pest
Management Specialist


Centro Empresarial, 9^{ma} Piso Torre I
Tel. 502/2/33-70-82(83)(84) Fax:33-70-81

Ave. 15-45 Zona 10
010 Guatemala, Guatemala

MEMORANDUM

TO: MARY QUINLAN
INTERCONNECT

DATE: June 24, 1992

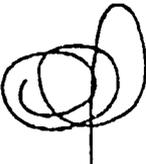
REFERENCE: HOUSTON CORRIDOR

As promised, attached are photocopies of some communications that seem to indicate that the concept of the Houston Corridor does exist. Due to uncertainty over market prices and air transport connections to Canada, the Panamanians decided to ship direct to Europe.

DTK/ea
CC: file
FILE (MMQUINLAN.DTK'ea(24Jun92))

GREXPAN

Gremial de Exportadores de Producción No Tradicionales de Panamá

TO: DALE KRIGSVOLD/EXITOS
FROM: MARCOS MORENO/GREXPAN 
DATE: JUNE 9, 1992
REF: HOUSTON SEALED CONTAINER INTRANSIT TO CANADA

Dale:

This just came in in reference to what I had mentioned to you over the telephone about GLOBAL REFRIGERATED WAREHOUSES in Houston. Goldie Waghalter had previously contacted Carlos De Obaldia at Fundación ANDE and he wrote back to her upon our request to help us out on the possible Rambutan export from Panama.
Saludos!!!

TELEFONO (507) 74 - 1616 * FAX (507) 74 - 1664 * APARTADO 1146, DAVID, CHIRIQUI, REPUBLICA DE PANAMA

50741664

GREXPAN

5

GLOBAL REFRIGERATED WAREHOUSES

Goldie Weghalter, President
4612 Huleache
Bellake TX 77401-5116
Phone or Fax: 713-866-5546

June 2, 1992

Carlos G. de Obaldia
FUNDACION ANDC
FAX: 507-27-4186

Dear Mr. Obaldia:

Thank you for your fax. It is possible to export fruit and vegetables or flowers infested with the mediterranean fruit fly or other pests to Canada via Houston by obtaining a special permit from the U.S. Department of Agriculture. The USDA suggests that a U.S. company be the permittee and I am considering offering that service. The fruit and vegetable permit is good for two years and the flower permit is good for one year. It takes approximately 10 days to receive the permit after receipt of a letter requesting the permit. The shipment must be sealed and will be held in-bond in my facility. USDA and Customs may still choose to inspect, but have assured me that they will work with me to develop a procedure to allow the shipment to advance. Attached is a letter explaining the process.

As we understand the procedure, a letter from you describing the shipment, how it is to be transported, how it is packaged, whether the cargo is bulk or containerized etc. would be sent to me. I would submit your letter along with my request for a permit to the USDA. Within 10 days we should hear from USDA on whether the permit is issued.

I have requested rates and airline routes and frequencies for Houston/Canada and Houston/Europe from a freight forwarder. Continental and American have direct service to Canada. Continental, Lufthansa, Air France, British Airways, and KLM serves Paris, Frankfurt, London and Amsterdam. Northwest also flies direct to Tokyo via Los Angeles and Anchorage for a two day delivery and no change in plane. The rates vary from the

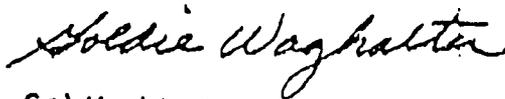
6

published rates depending on the type of cargo, size of the shipment, requirements for refrigeration aboard the aircraft, etc.

Please let me know as soon as possible the types of products, size of the shipment, the frequencies planned and the final destination city in Canada and Europe. The freight forwarder is a consolidator and thinks he can save you money, but must have the above information before he can give you a quote.

My cold storage facility is due to open this summer. I can assure you that we will do everything possible to meet your needs.

Cordially,



Goldie Waghalter

Attachment

From : CANAPA DE COMERCIO 253653

Jun. 03. 1982 04:37 PM
Jun 03 1982

FD-4

PHONE No. : 713 666 5546

From : Goldie Waghalter



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg
Hyattsville, MD
20707
Permit Unit

Room 632, Federal Building
Hyattsville, Maryland 20782

Transit Shipments

Routine shipments of fruits and vegetables in transit through the United States require a permit issued by the Plant Protection and Quarantine (PPQ) Permit Unit. Transit permits describe specific safeguards required by the U.S. Department of Agriculture in addition to the in-bond conditions necessary for U.S. Customs.

Parties interested in procuring a transit permit must first submit a letter to the Permit Unit which describes the details of the proposed shipments. The applicant must provide information regarding the means of transport and packaging, and whether the cargo is containerized or bulk. We also need to know if the cargo will be stored for any length of time in the United States or if it will be exported immediately and directly. The port of entry, the port of exit, and the carriers involved must also be identified.

We suggest that foreign concerns enlist a reputable individual or firm resident in the United States to apply as the permittee on transit permit requests. Following receipt of the pertinent information, a processing period of up to ten days may be necessary before a permit can be issued. Applicants are notified as soon as possible if we are unable to issue a transit permit or if we require additional information in order to process a particular request.

Any questions or concerns with regard to transit permits should be directed to this office at Area Code (301) 436-8645 or telefax (301) 436-5786.

Sincerely,

Head, Permit Unit
Port Operations
Operational Support
Plant Protection and Quarantine

8



fax (504) 52-7852

PROYECTO DE APOYO A LA EXPORTACION DE PRODUCTOS AGRICOLAS NO-TRADICIONALES DE CENTRO AMERICA Y PANAMA

Memorandum

May 27, 1991

TO: Miguel Bonilla, Director, FPX

FROM: Mary Quinlan, Regulatory Affairs, PROEXAG

REF: *Mary Quinlan*
Transport Costs for Houston Transshipment of Restricted Produce (e.g. Tropical Fruit)

This is a draft response to the information I was assigned to obtain during the valuable meeting held in FPX on the mango industry.

Initial calls have resulted in information below. I would not consider it final, however, until I can meet with the official at APHIS/USDA to confirm if my interpretation of what might be required (i.e. sealed container, such as E-container for air freight, and shipment in bond) is all they would require. I will try to get you the final information within the week.

As for the smaller treatment plant design, I believe that Dr. Tabora of FHIA, who was given some tasks in that area, will be in Washington, DC, within two weeks so I have faxed him to ask status of that work and see if we should set up any meetings to pursue the proposal.

Mr. Galindo was also tentatively coming to Washington, DC. If he is still planning to be here soon, please tell him to contact me so that we can review the follow up to the meeting that was held on the mango industry. I think, with FPX coordination, the matters we discussed in that meeting could lead to some solid results.

On another topic, John Lamb told me that there was good response on the seminar on Japan. I am glad to hear it. I have not yet had time to send responses to the questions I received, but have it on my agenda.

I enjoyed meeting you and working with Ms. Avila and Mr. Galindo. Please let me know if it is better to send information in my Spanish with possible need for editing, or in English which FPX can translate. It is easiest to contact me at my own office or through the Chemonics Washington, DC, office.

My office telephone and fax if (202) 543-5821.

After shipping by sea or air to Houston, your bonded cargo could go by air at the following rates:

Houston to London (British Air or Continental)

Minimum	\$70
Under 45 kilos	\$9.04/kilo
45-100 kilos	\$7.16/kilo
Over 100 kilos	\$5.33/kilo
Over 300 kilos	\$3.78/kilo
Over 500 kilos	\$2.82/kilo

(weight is total, fruit and container)

An exporter in Panama had asked me for the following route, which might be of interest for Honduras for some product other than mangoes:

There is no direct flight from Houston to Toronto. One option is to stop in Chicago. To truck to Chicago from Houston is generally \$0.15/lb (I do not know additional cost for bonded). To fly Houston-Chicago it is \$0.70/lb.

Chicago to Toronto

Minimum	\$23
Under 100 lbs	\$0.54/lb
At 100 lbs or more	\$0.39/lb
Over 100 lbs	\$0.33/lb

(weight is total, fruit and container)

Please note quotes to London were in kilos, to Canada in pounds.

The source of the quotes gave me an idea of what to expect in Houston. Handling fee is \$100; a bonded truck to drive from one airplane to the other runs around \$30; in bond walk through is \$25; and entry is \$65. (I was not sure on what entry means if it is not "entering" the US but remaining in bond. Nor did person calling me know -- other department.) See attached information of other rates from the freight forwarders I contacted. *(Included in final report next week)*

HOUSTON
FAC 2215

TELEFAX TRANSMITTAL

HOUSTON, TEXAS 77008
TELEX 201112, FAX (713) 861-3447
TELEPHONE (713) 861-3658

HOUSTON INTERCONTINENTAL AIRPORT
HOUSTON, TEXAS 77032
TELEX 168839, FAX (713) 821-7471
TELEPHONE (713) 821-7637

TO: INTERCONNECT

DATE: MAY 29, 1991 PAGE 1 OF

ATTN: MARY QUINLAN

FROM: CINDY ALLEE

RE: RATES TO LONDON & CALGARY

HOUSTON TO LONDON

MINIMUM	-45 KG	45 KG	100KG	500KG
70.00	9.04	2.12	1.50	1.50

*Contract rate
(better than first noted)*

HOUSTON TO CALGARY

MINIMUM				
45.00	2.76	1.84	1.84	1.70

*~~direct~~ through
Salt Lake City*

(NOTE- THESE ARE PRIORITY RATES)

THESE RATES ARE ON DELTA AIRLINES - THEY ARE SMALL AIRCRAFT AND THEIR MAXIMUM WEIGHT PER PIECE IS 300 LBS. AN E CONTAINER'S DIMENSIONS ARE FINE.

OUR HANDLING FEE IS \$50.00 PER SHIPMENT. IF YOU EXPECT TO SHIP TRY TO LET US KNOW IN ADVANCE SO THAT WE CAN HAVE YOU DO A CREDIT APPLICATION. OTHERWISE OUR COMPANY POLICY IS CASH IN ADVANCE. IF YOU HAVE ANY QUESTIONS PLEASE



WTS of HOUSTON, INC.

P.O. BOX 60846 AMF
HOUSTON, TEXAS 77205

TELEX 277927, FAX (713) 821-7471
713/821-7637

FMC 2335
LATA NO. 0119042
MC LICENSE NO. 10286

Attn: Mary

HOUSTON IMPORT SERVICE FEES

BROKERAGE FEES:	OCEAN	AIR
*Consumption Entry	95.00	85.00
Informal Entry	75.00	55.00
Quota/Live Entry	100.00	100.00
Drawback Entry	100.00	100.00
**T.I.B. Entry	125.00	125.00
Transportation Entry	75.00	55.00
Warehouse Entry	100.00	100.00
Warehouse Withdrawal	50.00	35.00
**Carnets	55.00	55.00

ALL ENTRIES ARE SUBJECT TO FOLLOWING:

Regular Messenger Fee	21.00	14.00
Customs Examinations	Cost	Cost

WHEN APPLICABLE THE FOLLOWING WILL BE CHARGED IN ADDITION:

Extra Invoices after (5)	1.50 ea.	1.50 ea.
Extra Classifications (5)	1.50 ea.	1.50 ea.
Proforma Invoice	10.00	10.00
Direct Discharge	25.00	n/a
Manipulation Permit	25.00	15.00
Attendance/Marking	15.00	15.00
Food & Drug Entry	10.00	10.00
Attendance to USDA	5.00	n/a
Claims, Petitions & Protest	25.00	25.00
Split Deliveries	5.00 ea.	5.00 ea.
Split Invoicing	5.00 ea.	5.00 ea.
Overtime Clearance		150.00

The above do not apply to project shipments, charters or tankers.
T.I.B. and Carnets, time extensions add \$45.00



ANIMAL AND PLANT HEALTH INSPECTION SERVICE

TELECOPIER TRANSMITTAL SHEET

TO Mary Quinlan	OFFICE Interconnect	CITY AND STATE Washington, DC
OFFICE TELEPHONE NUMBER (202) 543-5821	FAX TELEPHONE NUMBER (202) 543-5821	DATE June 5, 1991

SUBJECT
Requested Information

REMARKS

This will serve to clarify important points with regard to the current transit policies which include Houston as a port for the movement of prohibited fruits and vegetables moving in transit through a designated corridor for shipment to Canada and other foreign destinations.

Current safeguard regulations contain specific provisions for the transit movement of prohibited avocados and citrus from Mexico. The regulations are designed to allow the transit movement of untreated fruit fly host material through a specific corridor which includes the port of Houston.

Only avocados and citrus are formally authorized in the CFR's. However, in actual practice, transit permits are issued for the movement of many other fruits and vegetables (i.e., mangoes) which are prohibited because of tropical pests such as fruit flies. These permits utilize the corridor described in the regulations as a means to provide a measure of added protection.

In addition, transit permits will contain provisions which describe other specific conditions under which transit movement is authorized. Such provisions are necessary to address variables such as pest risk, the packaging or means of shipping, and the resources or facilities available for safeguarding at certain locations.

(CONTINUED)

FROM Mr. Robert L. Griffin	OFFICE Permit Unit, USDA-PPQ	CITY AND STATE Hyattsville, Maryland
OFFICE TELEPHONE NUMBER (301) 436-8845	FAX TELEPHONE NUMBER (301) 436-5780	DATE

Ms. Mary Quinlan

In the case of Houston, the greater port area also includes an international airport. Routine transit shipments into (and out of) the Houston airport may be authorized under permit provided our port office agrees that the conditions are operationally workable and adequate quarantine safeguards can be provided. Houston presents a unique opportunity for transit shipping cargo by air, sea, or overland, as well as a combination of these conditions.

On a one time basis, the port may use the authority provided in the safeguard regulations to develop a transit authorization which addresses the immediate need. However, routine shipments are best authorized under a Hyattsville-issued written permit which describes minimum safeguard conditions as well as any specific points needed to address individual port situations.

In most instances, the movement of containerized cargo is easiest to authorize because safeguards and cargo control are facilitated. Bulk cargo requires additional resources and stricter safeguards which may not be possible or practical at every port. (Houston is currently accommodating bulk and containerized cargo moving by air, sea, or overland).

All transit shipments must move under U.S. Customs bond and often under a Plant Protection and Quarantine seal. Shipments may be authorized under a transit permit issued in Hyattsville for I.E. (Immediate Exportation), T&E (Transportation and Exportation), or R.C. (Residue Cargo) movement.

An I.E. shipment must be exported from the port where it arrives within a specific time period, usually from 1 to 3 days, depending on the cargo connection available at the port. Exportation must be directly to a foreign destination.

A T&E shipment will be authorized to move in bond and/or under seal to another U.S. port for immediate exportation. Shipments of this nature cannot be transloaded, reconsolidated, diverted, or otherwise manipulated except under Plant Protection and Quarantine (PPQ) supervision at the port of entry or the port of exit. Movement must be by the most direct route (or within a designated corridor). Export shipments cannot be diverted or manipulated without the prior authorization of PPQ.

Residue cargo moves through a single U.S. port without being removed from the carrier. This cargo may be bulk or containerized. R.C. permits for high risk cargo may stipulate that cargo holds will not be opened while the carrier is in the United States.

14

order to be considered for transit permits, prospective shippers need to
ite to the Permit Unit and provide a detailed description of the commodities
d conditions under which they propose to ship. Important information
cludes:

- the commodities and condition (fresh, frozen, etc.)
- the commodity package (carton, bins, etc.)
- the shipping package (container, pallet, bulk, etc.)
- the means of transport (air, sea, overland)
- the carriers (Pan am, Sealand, etc.)
- the port(s) of entry and exit
- whether storage or transloading privileges are required at either the
port of entry or the port of exit
- means to contact permit applicant or responsible party for problems
in the United States

important information prospective shippers may need to know includes:

- We prefer to issue permits to U.S. concerns, but transit permits are
sometimes issued to foreign applicants when there is no contact in
the United States.
- A transit permit does not imply enterability of the shipment into the
third country. It is the shipper's responsibility to ensure that
each shipment meets the entry requirements of the destination
country. Shipments returned to the United States may be refused.
- Shipments of commodities admissible into the United States may be
inspected at the port of entry in lieu of receiving a transit
authorization. Treatments may be prescribed by PPQ based on
inspection findings. The decision to opt for inspection rests with
the Officer in Charge at the port of entry.
- Documented permit violations can provide the basis for revoking or
amending the permit and can result in penalties against the
permittee.
- PPQ reserves the right to refuse or require treatment or other
safeguards beyond those described in a transit permit if we determine
that such measures are necessary to control the risk for the
introduction of potentially destructive pests.

15



November 5, 1990

Ms. Janice Honigberg
JL Honigberg Associates
5737 Howard Street
Niles, Illinois 60648

Dear Ms. Honigberg:

John Lamb suggested I share with you the enclosed memo on the status of Houston area ports (sea and air) as an entry point for some fresh agricultural products which normally cannot enter a Gulf or Southern port. To use this route, a more detailed request for import permit is required since the Animal and Plant Health Inspection Service (APHIS) would need to verify the handling and transport of the product until it reaches an area where it would normally be allowed entry, or is re-exported.

If you have any questions on this matter, feel free to contact me at (202) 543-5821 or through Diana Bejarano of the Chemonics office in Washington, DC, telephone (202) 466-5340. Mr. Robert Griffin of APHIS Port Operations, who signed the letter, would be able to field your request for importing a specific shipment. If you do use this route, PROEXAG would appreciate hearing how it works out.

Sincerely,

Mary Quinlan
Regulatory Affairs Liaison

enclosure

PROEXAG



PROYECTO DE APOYO A LA EXPORTACION DE PRODUCTOS AGRICOLAS NO-TRADICIONALES DE CENTRO AMERICA Y PANAMA

November 5, 1990

Mr. Bill Knott
Crown Sales
80 Park Lawn Road
Suite 201
Toronto, Ontario
CANADA M8Y 3H8

Dear Mr. Knott:

John Lamb suggested I share with you the enclosed memo on the status of Houston area ports (sea and air) as an entry point for some fresh agricultural products which normally cannot enter a Gulf or Southern port. I understand that you are already using this route, but perhaps do not have anything about it from APHIS in writing.

If you have any questions on this matter, feel free to contact me at (202) 543-5821 or through Diana Bejarano of the Chemonics office in Washington, DC, telephone (202) 466-5340. Mr. Robert Griffin of APHIS Port Operations, who signed the letter, would be able to field your request for importing a specific shipment. If you do use this route, PROEXAG would appreciate hearing how it works out.

Sincerely,

A handwritten signature in cursive script that reads "Mary Quinlan".

Mary Quinlan
Regulatory Affairs Liaison

enclosure

A small, handwritten mark in the bottom right corner of the page, which appears to be a stylized letter 'M' or the number '11'.

PROEXAG



PROYECTO DE APOYO A LA EXPORTACION DE PRODUCTOS AGRICOLAS NO-TRADICIONALES DE CENTRO AMERICA Y PANAMA

November 5, 1990

Mr. Donald Allee
General Sales Manager
Port of Houston
P.O. Box 2562
Houston, Texas 77252

Dear Mr. Allee:

In case you had not heard, I left the USDA Caribbean Basin program earlier this year and am working independently on regulatory and marketing issues. One of my primary clients is the PROEXAG project, which is described in the enclosed flier. I thought you might be interested that some of the Central American exporters we work with have asked about the status that Houston has for transshipping products such as mangoes, which normally could not be shipped through a Southern or Gulf port. In response, I prepared the enclosed memo with the relevant section from a letter from APHIS on the matter. My understanding is that the shipment would have to arrive directly to Houston and could not stop at another point in the US prior to that.

If you have additional information on this or the USDA-approved cold storage capacity that is going in at the port, please let me know so that we could better respond to questions we receive on this issue. I am also curious if you have any idea the volume of products entering your port under this category.

I may be reached at (202) 543-5821 or by mail at: 508 15th Street, SE, Washington, DC 20003. Feel free to pass this letter on to another section of the Port Authority if more appropriate.

Sincerely,

A handwritten signature in cursive script that reads "Mary Quinlan".

Mary Quinlan
Regulatory Affairs Liaison

enclosure

PROEXAG



PROYECTO DE APOYO A LA EXPORTACION DE PRODUCTOS AGRICOLAS NO-TRADICIONALES DE CENTRO AMERICA Y PANAMA

Memorandum

October 16, 1990

From: Mary Quinlan, Liaison on Regulatory Affairs *M.Q.*
To: Exporters with interest in transshipping prohibited product through a US port

Attached is an official explanation of the special status which Houston and Galveston ports have been accorded by APHIS in relation to transshipment of products otherwise prohibited entry into the US or restricted to the Northern ports. The justification for this status is the lack of susceptible agricultural zones in that corridor. This status, therefore, could not be extended to other Gulf maritime or land ports of entry such as New Orleans or Nogales.

Another point of interest is that a company already in the Houston port area is constructing additional cold storage facilities and have already discussed obtaining USDA approval for these structures. A USDA-approved facility may be used for cold storage that is required as a quarantine treatment.



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

October 1, 1990

Ms. Mary M. Quinlan
Chemonics
2000 M Street, NW.
Suite 200
Washington, DC 20036

Dear Ms. Quinlan:

This will provide you with additional information related to topics discussed in our meetings of September 7 and 20, 1990. Your concerns touch a variety of issues which have been organized and presented here as topical discussions.

-
-
-
-

Ms. Mary M. Quinlan

2

Transit Shipping through Houston, Texas:

Current safeguard regulations allow for us to authorize under permit the transit movement of mangos, avocados, and citrus through the port of Houston (and/or Galveston) for immediate export by sea or air, or overland transport within a designated corridor through the United States to northern ports for export.

The issuance of transit permits is contingent upon our ability to enforce the safeguards necessary to reduce to a negligible level the possibility of pest introduction and establishment. Aside from requiring that transit cargo be shipped under U.S. Customs bond, we must also ensure that the means of transport, any transloading, storage, and handling is adequately controlled by Plant Protection and Quarantine (PPQ) while the shipment is in the United States.

We request that each permit applicant provide assurance that the cargo is admissible to the destination country and describe in detail the conditions for all transit shipments which are proposed. This information will be evaluated against our safeguard requirements and the ability of PPQ port personnel to control the cargo in question.

Transit permits describe specific requirements and safeguards. Cargo which is not (or cannot) be handled under the conditions of the permit is not eligible for transit shipping and may be refused or require inspection/treatment. Transit shipments which are returned to the United States may also be refused or require inspection/treatment.

We trust you will find this information useful.

Sincerely,

Robert L. Griffin
Head, Permit Unit
Port Operations
Operational Support

EXITOS

DATE: JULY 16, 1992

TO: DK, Exitos/Guatemala cc: Mary Quinlan, InterConnect ; 202)543 5821

FROM: PDM, Chemonics home office

SUBJ: "HOUSTON CORRIDOR" AIR CARGO OPTIONS FROM GUATEMALA TO
CANADA (Pitahaya, rambutan, other tropical fruits)

1. Mary Quinlan has been in touch with Vic Harabin of USDA/APHIS per your request. She asked me to pass along to you that APHIS at this point seems more keen on Dallas than Houston. Vic told Mary that a multinational (he thought Dole) had asked about (and been denied something), didn't mention product, etc. Mary is trying to be very specific about products (rambutan and pitahaya) and few products. Expects answer by mid-week next week. She asked me for picture of E container for APHIS. Will send her what I have (dimensions, and probably a design of one).

Initial info on "e" container,
 we're looking for a photo.

Transportation / Equipment

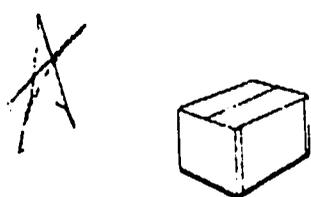
21

These equipment specifications reflect industry standards, however weight limitations are federally-regulated and enforced on U.S. highways.

Air cargo containers

Refrigerated

- LD3** Maximum cargo weight 1400 kg (3100 lb)
 Dry ice system 56 kg (125 lb) CO₂
 Internal measure 1460 x 1430 x 1410 mm
 (57 x 56 x 55 in)
 Usable volume 3.5 cu m (122 cu ft)
 Aircraft 747, L1011, DC10, A300, 767
- LD7/9** Maximum cargo weight 5450 kg (12,000 lb)
 Dry ice system 91 kg (200 lb) CO₂
 Internal measure 2940 x 2020 x 1430 mm
 (115 x 56 x 56 in)
 Usable volume 8.6 cu m (305 cu ft)
 Aircraft 747, L1011, DC10, 707 and DC8 freighters
- LD5/11** Maximum cargo weight 3200 kg (7100 lb)
 Dry ice system 56 kg (125 lb) CO₂
 Internal measure 2940 x 1430 x 1430 mm
 (115 x 56 x 56 in)
 Usable volume 6.0 cu m (210 cu ft)
 Aircraft 747, L1011, DC10



Fiberboard air cargo containers, shipper supplied

- EH** Maximum cargo weight 132 kg (290 lb)
 External measure 920 x 560 x 560 mm
 (36 x 22 x 22 in)
 Maximum top loading capability 272 kg
 (600 lb)
 Aircraft All

E Maximum cargo weight 218 kg (482 lb)
 External measure 1070 x 740 x 650 mm
 (42 x 29 x 25 in)
 Maximum top loading capability 272 kg
 (600 lb)
 Aircraft All

- CO8** Maximum cargo weight 866 kg (1909 lb)
 External measure 1070 x 1470 x 1140 mm
 (42 x 58 x 45 in)
 Maximum top loading capability 272 kg
 (600 lb)
 Aircraft 747, L1011, DC10, A300, A310, 767
- CO7** Insert for LD3 containers.
 Maximum cargo weight 1360 kg (3000 lb)
 External measure 1480 x 1420 x 1480 mm
 (57 x 56 x 57 in)
 Maximum top loading capability 544 kg (1200 lb)
 Aircraft 747, L1011, DC10, A300, A310, 767

(107 cm x 74 cm x 65 cm)
 42" x 29" x 25 5/8" Shipper
 Owned Container
 This unit is for use on all Aircraft
 Rate Classification E
 Max External Dimensions LxWxH
 107 x 74 x 65 cm
 42 x 29 x 26 5/8 inch
 Max Gross Weight 226 kgs, 498 lbs.

I will send this
 by mail or courier
 because it may
 not transmit well
 by fax.

b) dep. Guat 10:22 a.m. American #990
arr. Dallas 2:50 p.m.
dep. Dallas 6:59 p.m. America #1093
arr. Portland 8:32 p.m.
dep. Portland 12:45 noon Delta #1409
arr. Vancouver 1:46 p.m.

Rate: same as (a)

c) dep. Guat 10:22 a.m. American #990
arr. Dallas 2:50 p.m.
dep. Dallas 5:16 p.m. American #212
arr. Chicago 7:44 p.m.
dep. Chicago 9:45 a.m. United #357
arr. Vancouver 12:03 noon

Obs: best option to Vancouver in PDM's opinion

Rate: same as (a)

d) dep. Guat 7:00 a.m. Continental #824
arr. Houston 10:35 a.m.
dep. Houston 6:45 a.m. Continental #179
arr. Denver 8:00 a.m.
dep. Denver 6:22 p.m. Continental #1003
arr. Vancouver 9:13 p.m.

Rate: 100-300 kilos, \$3.30/kilo, 300-500 kilos, \$2.63/kilo. Ck for better rate with sales rep.

e) dep. Guat 7:00 a.m. Continental #824
arr. Houston 10:35 a.m.
dep. Houston 7:42 a.m. Continental
arr. Newark 12:06 noon
dep. Newark 2:20 p.m. Air Canada
arr. Toronto 3:46 p.m.

Obs: later flight from Newark at 5:30 p.m., arriving Toronto 7:20 p.m.

Rate: same as (d) above.

f) dep. Guat 10:22 a.m. American #990
arr. Dallas 2:50 p.m.
dep. Dallas 5:10 p.m. American #458
arr. Toronto 9:12 p.m.

Obs: best option to Toronto, in PDM's opinion.

Rate: up to 100 lbs. \$1.34/lb., 100-660 lbs., \$1.21/lb., 660-1100 lbs., \$1.04/lb.

23

InterConnect

508 15th Street, SE, Washington, DC 20003 Telephone or FAX (202) 543-5821

FAX TRANSMISSION

DATE: July 16, 1992

TO: Victor Harabin
Permits Unit, APHIS

FAX NO.: (301) 436-5786

FROM: Mary Quinlan, President
InterConnect
(202) 543-5821 (fax and phone)

NUMBER OF PAGES (including cover): 3

COMMENTS:

vic, This is what I have gotten on transport.

2. Regarding routings to Vancouver and Toronto, I spoke with American Airlines Air Cargo (800) 827-4622 and Continental Air Cargo (800) 481-2456. Continental mentioned about need for adequate time for USDA and Customs inspection and clearance, referred to Transport and Export permit, etc. American needs minimum 6 hours on interline cargo, hence sometimes the overnight connection.

I think best option to Vancouver is (c) with American via Dallas and Chicago, connecting to Vancouver with United. I think the best option to Toronto is (f) with American via Dallas. Once we know weight, we should try to get a better rate than those quoted below. This can be done locally, or if you know weights now and frequency/timing of shipments, I'd be glad to do so from this end.

Routings and rates are described as follows:

- a) dep. Guat 10:22 a.m. American #990
- arr. Dallas 2:50 p.m.
- dep. Dallas 10:50 a.m. American #451
- arr. San Jose 12:21 p.m.
- dep. San Jose 12:54 p.m.
- arr. Vancouver 3:17 p.m.

Problem: San Jose, CA stopover. This option does not look good.

Rate: Guat - Vancouver: up to 100 kilos, \$3.53/kilo; 100-300 kilos, \$3.16/kilo; 300 to 500 kilos, \$2.81/kilo. Worth negotiating with sales rep once weight is known.

24



FAX #2510, July 15th, 1992.

Frutas Tropicales de Guatemala, S.A.

TO: MARY QUINLAN - INTER CONNECT
 CC: BRUCE BROWER - PROEXAG
 DALE KRIGSVOLD
 FM: GLORIA ELENA POLANCO

Just got copy of your fax of today to Bruce Brower and here is the information you request. Hope we succeed in obtaining the permit for the pitahayas before this season ends the last week of July.

1) The Guatemala red pitahaya's scientific name is *Hylocereus Undatus*.

2) It is shipped in corrugated cartons where we pack counts of 9 or 12 fruits per carton. The average net weight of a carton is 7.5 lbs. We are willing and able to pack 15 of these in a large overcarton (E Container) that would not be opened at all until arrival in Vancouver.

3) Continental Airlines flight 824 departs Guate for Houston at 07:00 hours, arriving in Houston at 10:35 hours. Then Continental Airlines flight 1676 departs Houston at 12:25 hours and arrives in Denver at 13:40 hours, then Continental Airlines flight 1003 departs Denver at 18:22 hours and arrives in Vancouver at 21:03 hours.

Then through Dallas there is American Airlines 990 departing Guatemala at 10:22 hours, arriving Dallas at 14:50 hours, connecting AA/1715 at 16:04 hours arriving Vancouver at 21:15 hours. This flight has a stop over in San José, California, but not airplane change.

I think there is also a Delta flight Houston-Vancouver, but it's too late right now and I can't find anyone to give me details, so we'll just have to leave this one as an "if".

4) We are seeking this permit to ship Pitahayas to David Oppenheimer and Associates of 3462 Cornett Road, Vancouver, B.C., V5R 2H1, Canada to whom we regularly ship other products, such as Mini-Veags and Asparagus through Los Angeles airport. We already shipped Pitahayas to them last year. The volume is really very small and we do not expect it to be above 40-50 cartons per week.

As you may know, Frutesa has been the only Guatemalan exporter of Pitahayas for the past 6 years and it is unlikely that many people will suddenly become interested since it is a very small market, as is natural for a very exotic fruit that is virtually unknown to consumers.

Best of luck in your meeting tomorrow and you let us know the outcome as soon as possible.

Gloria E. Polanco
 Gloria E. Polanco,
 General Manager.

DAVID OPPENHEIMER AND ASSOCIATES

F A C S I M I L E

FAX NO: (604) 435-4199

PHONE: (604) 435-4111

TO: CLARK
FRUTESA

FROM: MARGARET GUY

DATE: JUNE 10, 1992

~~NOW, I HAVE SENT A FAX TO USDA IN HYATTSVILLE MARYLAND
ONCE AGAIN ASKING WHY WE CANNOT HAVE PITAHAYAS TRANSIT
THROUGH U.S. WE HAVE PRODUCT COMING FROM NEW ZEALAND THAT
IS NOT ALLOWED INTO HAWAII YRT THIS IS A POINT WHERE ALL
FLIGHTS GO THROUGH AND WE HAVE BEEN ALLOWED TO SHRINK WRAP
OR SEAL THE CONTAINERS OR BOXES AND THEN IT IS ALLOWED TO
TRAVEL THROUGH HAWAII. TRYING TO FIND OUT IF THIS IS
POSSIBLE SO IT CAN TRAVEL THROUGH THE U.S. BUT WE NEED TO
KNOW FOR SURE THAT WE CAN GET THE ARRIVALS INTO VANCOUVER
FIRST~~

REGARDS MARG

of the United States that is bounded on the west and south by a line extending from El Paso, Texas, to Salt Lake City, Utah, to Portland, Oregon, and due west from Portland, and on the east and south by a line extending from Brownsville, Texas, to Houston, Texas, to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville. These boundaries were established in the regulations to protect plants and plant products in the United States from the avocado seed weevil, the avocado seed moth, and the Mexican fruit fly, which are hosted by avocados and are widely distributed in Mexico. The Mexican fruit fly is a serious pest of many kinds of fruits that are grown in the United States, including almost all varieties of citrus, and would present a significant pest risk to many U.S. crops. These pests could become established in the southeastern and western United States and would pose a significant pest risk in areas of the United States where host fruits are commercially grown.

We have received requests from shipping companies that transport Mexican avocados to add Galveston, Texas, to the list of ports in § 352.29(b) through which these avocados may transit the United States. The shippers desire to use the port at Galveston as an alternative to Houston, Texas, which is located approximately 40 miles northwest of Galveston, since many of the ships that could be used to transport avocados are loaded at the port of Galveston.

We have studied the pest risk attendant to allowing the movement of avocados from Mexico through Galveston, Texas, and we have determined that there would be no increased risk to plants and plant products in the United States if this movement were allowed. First, the avocados would move through the United States under Customs bond, as set forth under § 352.29(e), and in accordance with the applicable safeguard provisions of Part 352 and the requirements set forth in § 352.29. Second, avocados are a poor host for the Mexican fruit fly, and because avocados are not commercially grown in the Galveston/Houston area, there would be no additional pest risk. Third, the prevailing climate in Galveston is inhospitable to the plant pests hosted by avocados and they would be unlikely to survive long enough to pose a pest risk.

Based upon our analysis, we believe that allowing shippers to move Mexican avocados within the same region of Texas to a port 40 miles southeast of Houston would not increase the risk of

introducing plant pests into areas of the United States that would be endangered by those pests.

Section 352.29(f) of the regulations would be revised to reflect that the eastern and southern boundary of the area through which avocados from Mexico may transit the United States would be bounded by a line extending from Brownsville, Texas, to Galveston, Texas (instead of Houston, Texas), to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If implemented, the proposed rule would allow avocados from Mexico to be transported through the port of Galveston, Texas, in accordance with safeguard provisions of Part 352, for export to third countries. Persons involved in this process include the avocado owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on small entities would be limited to small increases or decreases to shipping costs paid by the avocado owners or exporters.

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.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

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.)

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Postal Service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR Part 352 would be amended as follows:

1. The authority citation for Part 352 would continue to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.29 [Amended]

2. In § 352.29(b), the words "Galveston or" would be added immediately following the words "only at the following ports:"

3. In § 352.29(f), the words "Houston, Texas," would be removed and the words "Galveston, Texas," would be added in their place.

Done in Washington, DC, this 20th day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15022 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-31-M

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A39; DA-88-047]

Milk in the Southern Michigan Marketing Area; Decision on Proposed Amendment to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision changes the plant location adjustments to prices under the Southern Michigan order. The amendments were proposed by four dairy farmer cooperatives that supply about 87 percent of the market's milk.

The changes would replace the current seven pricing zones with just three zones (zero, minus five cents, and minus seven cents) and increase the rate of adjustment at plants outside the zones from one cent to 2.25 cents per hundredweight per 10 miles or fraction

Proposed Rules

Federal Register

Vol. 55, No. 78

Monday, April 23, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 352

(Docket No. 89-193)

Untreated Oranges, Tangerines, and Grapefruit From Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Quarantine Safeguard Regulations to allow certain movements of untreated oranges, tangerines, and grapefruit from Mexico through Galveston, Texas, for export. This action appears warranted because it can be done without posing an increased pest risk to plants and plant products in the United States. It would give shippers the alternative of moving untreated Mexican oranges, tangerines, and grapefruit to the port at Galveston, Texas, by water route or truck for export from Galveston by water route, or, for bonded rail movements, moving the fruit from the port of entry through a slightly enlarged corridor northward for export.

DATES: Consideration will be given only to comments received on or before May 8, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89-193. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8845.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR part 352 (the regulations) provide requirements applicable to most plants, plant products, and related articles, including oranges, tangerines, and grapefruit from Mexico, that are moved through the United States for export.

Section 352.30 provides specific requirements for untreated oranges, tangerines, and grapefruit from Mexico. These include requirements concerning permits, notice of arrival, origin and period of entry, inspections, safeguards, and additional conditions for movement overland and by water route.

The ports through which untreated oranges, tangerines, and grapefruit from Mexico may enter for overland movement are: Nogales, Arizona; or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas. (These ports are referred to below as "overland ports of entry.") There are provisions for overland movement from these ports by rail, aircraft, and trucks.

Under the provisions of § 352.30(b)(3)(iii), trucks may be used to haul untreated oranges, tangerines, and grapefruit from Mexico to shipside, or to approved refrigerated storage pending lading aboard ship, in Brownsville, Texas, or alongside refrigerator cars or aircraft at any of the overland ports of entry for movement to a foreign country.

With respect to bonded rail movement, § 352.30(b)(4) specifies the boundaries of a corridor through which the shipments may move by direct route, in Customs bond and under Customs seal, without diversion or change of Customs entry en route, from the overland ports of entry to the port of exit en route to Canada or to an approved North Atlantic port in the United States for export to another foreign country. The southern and eastern boundaries of this corridor are bounded by a line drawn from Brownsville, Texas, through Houston, Texas, and Kinder, Louisiana, to Memphis, Tennessee, and then to

Louisville, Kentucky, and due east from Louisville.

Section 352.30(c)(1) names Brownsville as the only Texas port of entry for untreated oranges, tangerines, and grapefruit moving by water route from Mexico through the United States to a foreign country. The regulations include further restrictions, such as stowing requirements, for exportation from Brownsville by water.

All these restrictions were established in the regulations to protect plants and plant products in the United States from the Mexican fruit fly, which is hosted by citrus fruit and widely distributed in Mexico. The Mexican fruit fly is a serious pest of many kinds of fruits that are grown in the United States, including almost all varieties of citrus. These pests could become established in the southeastern and western United States and would pose a significant pest risk in areas of the United States where host fruits are commercially grown.

We have received requests, from shipping companies that transport untreated citrus fruit from Mexico, to allow untreated oranges, tangerines, and grapefruit to move through Galveston, Texas, for export by water route. The shippers desire to use the port at Galveston as an alternative to Brownsville, Texas, since many of the ships that could be used to transport untreated citrus fruit are loaded at the port of Galveston.

We have studied the pest risk attendant to allowing the movement of untreated oranges, tangerines, and grapefruit from Mexico through Galveston, Texas, and we have determined that there would be no increased risk to plants and plant products in the United States if the requested movement through Galveston for export by water route, and, in addition, movement as far southeast as Galveston by bonded rail, were allowed in accordance with the applicable safeguard regulations of part 352. Galveston is located approximately 40 miles southeast of Houston, Texas. Houston is currently listed on the southeast boundary of the corridor for transit by bonded rail. (Further information concerning our analysis can be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT.")

Therefore, we are proposing to amend § 352.30. We would add Galveston as an

alternative to Brownsville for export by water route of untreated oranges, tangerines, and grapefruit from Mexico. Also, we would add Galveston as a port of entry for such fruit moving by water route from Mexico through the United States to a foreign country. In addition, we would add Galveston as a port to which trucks may be used to haul such fruit to shipside, or to approved refrigerated storage pending loading aboard ship, for movement to a foreign country. Further, we would replace Houston, Texas, with Galveston on the boundary line for the corridor through which untreated oranges, tangerines, and grapefruit from Mexico would be allowed to transit the United States by bonded rail.

The effect of these actions would be to allow untreated oranges, tangerines and grapefruit from Mexico to transit the port of Galveston, Texas, for the types of movements indicated in the previous paragraph for export to foreign countries, in accordance with the safeguard regulations of part 352, and thereby slightly enlarge the area through which this citrus would be allowed to transit the United States.

In addition, currently the introduction of § 352.30 appears to indicate that the provisions of this section apply only to the movement of oranges, tangerines, and grapefruit from Mexico in transit to foreign countries via United States ports on the Mexico border. Paragraph (a)(1) of § 352.30 also appears to indicate that its requirements also apply to the same type of movement for untreated oranges, tangerines, or grapefruit. We are proposing to amend these provisions to clarify that the provisions of § 352.30, and the requirements of paragraph (a)(1) of this section, apply to all movements permitted by § 352.30. In addition, we are proposing to amend § 352.30(e) to clarify that it applies to treated fruit imported through United States ports, as opposed to United States ports on the Mexican border.

Public Comment Period

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. The shipping season for oranges, tangerines and grapefruit from Mexico ends in May. This change should be made promptly so that interested shippers can benefit from the option of using Galveston for the transit of this fruit before it season.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If implemented, the proposed rule would allow untreated oranges, tangerines and grapefruit from Mexico to transit the port of Galveston, Texas, in accordance with the safeguard regulations of part 352, for export to foreign countries. Persons involved in this process include the citrus owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on small entities would be limited to small increases or decreases to shipping costs paid by the citrus owners or exporters.

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.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

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.).

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants,

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR part 352 would be amended as follows:

1. The authority citation for part 352 would continue to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2250; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.30 [Amended]

2. In § 352.30, in the introductory text, in paragraph (a)(1), and in paragraph (e), the phrase "on the Mexican border" is removed.

3. In paragraph (b)(3)(iii) of § 352.30, "Brownsville," would be removed and "Brownsville or Galveston," would be added in its place.

4. In paragraph (b)(4)(i) of § 352.30, the word "Houston" would be removed and "Galveston" would be added in its place both times it appears.

5. In paragraph (c)(1) of § 352.30, "or Galveston," would be added immediately following "Brownsville,".

6. In the heading for paragraph (c)(3) and in paragraph (c)(3)(i) of § 352.30, "or Galveston" would be added immediately following "Brownsville".

7. In paragraph (c)(3)(ii) of § 352.30, "Brownsville," would be removed and "Brownsville or Galveston," would be added in its place.

Done in Washington, DC, this 17th day of April 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-9283 Filed 4-20-90; 8:45 am]

BILLING CODE 3410-34-M

Rules and Regulations

Federal Register

Vol. 55, No. 109

Wednesday, June 6, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 352

[Docket No. 90-076]

Untreated Oranges, Tangerines, and Grapefruit from Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Quarantine Safeguard Regulations to allow certain movements of untreated oranges, tangerines, and grapefruit from Mexico through Galveston, Texas, for export. This action is warranted because it can be done without posing an increased pest risk to plants and plant products in the United States. It gives shippers the alternative of moving untreated Mexican oranges, tangerines, and grapefruit to the port at Galveston, Texas, by water route or truck for export from Galveston by water route, or, for bonded rail movements, moving the fruit from the port of entry through a slightly enlarged corridor northward for export.

EFFECTIVE DATE: June 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR part 352 (the regulations) provide requirements applicable to most plants, plant products, and related articles, including oranges, tangerines, and grapefruit from

Mexico, that are moved through the United States for export.

Section 352.30 provides specific requirements for untreated oranges, tangerines, and grapefruit from Mexico. These include requirements concerning permits, notice of arrival, origin and period of entry, inspections, safeguards, and additional conditions for movement overland and by water route.

In a document published in the Federal Register on April 23, 1990 (55 FR 15232-15233, Docket No. 89-193), we proposed to amend the Plant Quarantine Safeguard Regulations by (1) Adding Galveston as an alternative to Brownsville for export by water route of untreated oranges, tangerines, and grapefruit from Mexico; (2) adding Galveston as a port of entry for such fruit moving by water route from Mexico through the United States to a foreign country; (3) adding Galveston as a port to which trucks may be used to haul such fruit to shipside, or to approved refrigerated storage pending loading aboard ship, for movement to a foreign country; and (4) replacing Houston, Texas, with Galveston on the boundary line for the corridor through which untreated oranges, tangerines, and grapefruit from Mexico would be allowed to transit the United States by bonded rail.

Comments on the proposed rule were required to be received on or before May 8, 1990. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after date of publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for oranges, tangerines, and grapefruit from Mexico is in progress. Making this rule effective upon publication may allow interested shippers to benefit from the option of using Galveston for the transit of this fruit before the end of this year's shipping season.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule allows untreated oranges, tangerines and grapefruit from Mexico to transit the port of Galveston, Texas, in accordance with the safeguard regulations of part 352, for export to foreign countries. Persons involved in this process include the citrus owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on small entities will be limited to small increases or decreases to shipping costs paid by the citrus owners or exporters.

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.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501, *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under Number 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.)

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Postal Service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR part 352 is amended to read as follows:

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

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2250; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.30 [Amended]

2. In § 352.30, in the introductory text, in paragraph (a)(1), and in paragraph (e), remove the phrase "on the Mexican border".

3. In paragraph (b)(3)(iii) of § 352.30, remove "Brownsville," and add "Brownsville or Galveston," in its place.

4. In paragraph (b)(4)(i) of § 352.30, remove the word "Houston", both times it appears, and add "Galveston" in its place.

5. In paragraph (c)(1) of § 352.30, add "or Galveston," immediately following "Brownsville,".

6. In the heading for paragraph (c)(3) and in paragraph (c)(3)(i) of § 352.30, add "or Galveston" immediately following "Brownsville".

7. In paragraph (c)(3)(ii) of § 352.30, remove "Brownsville," and add "Brownsville or Galveston," in its place.

Done in Washington, DC, this 31st day of May 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-13075 Filed 6-5-90; 8:45 am]

BILLING CODE 3410-34-M



ANIMAL AND PLANT HEALTH INSPECTION SERVICE

TELECOPIER TRANSMITTAL SHEET

TO Mary Quinlan	OFFICE Interconnect	CITY AND STATE Washington, DC
OFFICE TELEPHONE NUMBER (202) 543-5821	FAX TELEPHONE NUMBER (202) 543-5821	DATE June 5, 1991

SUBJECT
Requested Information

REMARKS

This will serve to clarify important points with regard to the current transit policies which include Houston as a port for the movement of prohibited fruits and vegetables moving in transit through a designated corridor for shipment to Canada and other foreign destinations.

Current safeguard regulations contain specific provisions for the transit movement of prohibited avocados and citrus from Mexico. The regulations are designed to allow the transit movement of untreated fruit fly host material through a specific corridor which includes the port of Houston.

Only avocados and citrus are formally authorized in the CFR's. However, in actual practice, transit permits are issued for the movement of many other fruits and vegetables (i.e., mangoes) which are prohibited because of tropical pests such as fruit flies. These permits utilize the corridor described in the regulations as a means to provide a measure of added protection.

In addition, transit permits will contain provisions which describe other specific conditions under which transit movement is authorized. Such provisions are necessary to address variables such as pest risk, the packaging or means of shipping, and the resources or facilities available for safeguarding at certain locations.

(CONTINUED)

FROM Mr. Robert L. Griffin	OFFICE Permit Unit, USDA-PPQ	CITY AND STATE Hyattsville, Maryland
OFFICE TELEPHONE NUMBER (301) 436-8845	FAX TELEPHONE NUMBER (301) 436-5786	DATE

NUMBER OF PAGES INCLUDING TELECOPIER TRANSMITTAL SHEET: 3

BT

In the case of Houston, the greater port area also includes an international airport. Routine transit shipments into (and out of) the Houston airport may be authorized under permit provided our port office agrees that the conditions are operationally workable and adequate quarantine safeguards can be provided. Houston presents a unique opportunity for transit shipping cargo by air, sea, or overland, as well as a combination of these conditions.

On a one time basis, the port may use the authority provided in the safeguard regulations to develop a transit authorization which addresses the immediate need. However, routine shipments are best authorized under a Hyattsville-issued written permit which describes minimum safeguard conditions as well as any specific points needed to address individual port situations.

In most instances, the movement of containerized cargo is easiest to authorize because safeguards and cargo control are facilitated. Bulk cargo requires additional resources and stricter safeguards which may not be possible or practical at every port. (Houston is currently accommodating bulk and containerized cargo moving by air, sea, or overland).

All transit shipments must move under U.S. Customs bond and often under a Plant Protection and Quarantine seal. Shipments may be authorized under a transit permit issued in Hyattsville for I.E. (Immediate Exportation), T&E (Transportation and Exportation), or R.C. (Residue Cargo) movement.

An I.E. shipment must be exported from the port where it arrives within a specific time period, usually from 1 to 3 days, depending on the cargo connection available at the port. Exportation must be directly to a foreign destination.

A T&E shipment will be authorized to move in bond and/or under seal to another U.S. port for immediate exportation. Shipments of this nature cannot be transloaded, reconsolidated, diverted, or otherwise manipulated except under Plant Protection and Quarantine (PPQ) supervision at the port of entry or the port of exit. Movement must be by the most direct route (or within a designated corridor). Export shipments cannot be diverted or manipulated without the prior authorization of PPQ.

Residue cargo moves through a single U.S. port without being removed from the carrier. This cargo may be bulk or containerized. R.C. permits for high risk cargo may stipulate that cargo holds will not be opened while the carrier is in the United States.

30

In order to be considered for transit permits, prospective shippers need to write to the Permit Unit and provide a detailed description of the commodities and conditions under which they propose to ship. Important information includes:

- the commodities and condition (fresh, frozen, etc.)
- the commodity package (carton, bins, etc.)
- the shipping package (container, pallet, bulk, etc.)
- the means of transport (air, sea, overland)
- the carriers (Pan am, Sealand, etc.)
- the port(s) of entry and exit
- whether storage or transloading privileges are required at either the port of entry or the port of exit
- means to contact permit applicant or responsible party for problems in the United States

Important information prospective shippers may need to know includes:

- We prefer to issue permits to U.S. concerns, but transit permits are sometimes issued to foreign applicants when there is no contact in the United States.
- A transit permit does not imply enterability of the shipment into the third country. It is the shipper's responsibility to ensure that each shipment meets the entry requirements of the destination country. Shipments returned to the United States may be refused.
- Shipments of commodities admissible into the United States may be inspected at the port of entry in lieu of receiving a transit authorization. Treatments may be prescribed by PPQ based on inspection findings. The decision to opt for inspection rests with the Officer in Charge at the port of entry.
- Documented permit violations can provide the basis for revoking or amending the permit and can result in penalties against the permittee.
- PPQ reserves the right to refuse or require treatment or other safeguards beyond those described in a transit permit if we determine that such measures are necessary to control the risk for the introduction of potentially destructive pests.

34

InterConnect

508 15th Street, SE, Washington, DC 20003 Telephone or FAX (202) 543-5821

FAX TRANSMISSION

URGENT

DATE: July 15, 1992

TO: Bruce Brower, PROEXAG II
CC. John Lamb, c/o Chemonics office in DC

FAX NO.: (502-2) 33-7081

FROM: Mary Quinlan, President *Mary*
InterConnect
(202) 543-5821 (fax and phone)

NUMBER OF PAGES (including cover): 2

COMMENTS:

Bruce, I have just talked to the Permits Unit since people were out or in meetings earlier this week. The initial reaction on Houston is that they did a pest risk review when a multinational (Vic thinks it was Dole, does not remember) asked to transit citrus via Houston. The original ruling was for Mexico but Griffin thought it would apply to Central America. This pest risk assessment concluded that it should not be allowed for Central America.

On the other hand, when I question further Vic was willing to meet with me to see if rambutan and pitahaya (two crops being researched as non-host fruits) could be transferred at an airport. He will even consider Dallas. He does not want us to encourage anyone yet. Please do not share this memo. I will have a more substantial answer within a week.

beyond 2 companies involved

Vic will allow my firm to represent these requests. I have more data on Gloria Elena's proposal than on the rambutans from Panama which JL has mentioned as urgent also. I need the following by COB today if possible (I leave my office tomorrow for meeting at 8:00 am my time). Vic will be gone Friday through Tuesday so Thurs, 16 meeting is best chance til July 23.

- 1) product (for pitahaya please state variety or at least color because they are finding differences in susceptibility for fruit flies)
- 2) how it will be shipped in as much detail as possible -- will it be in cartons that go on to the supermarket or in bulk, will it be containerized in the air plane. What safe guards will be taken (e.g. shrink wrap or seal on container)
- 3) airline to be used, bond agent to be used, routing (schedule also), and final destination. Name, etc. of exporter and of importer in Canada.

Volumes or weights and estimated shipment dates if possible.



I think a statement noting all other options will not work (and reason perhaps) would help, although I have gone over every option he suggested.

I have some of this for Polanco, but if she could rewrite it in one letter it would be quicker for me. If I do not hear from anybody, I will try to represent the idea with what I have from her.

He said to forget citrus entirely. He also said to forget Miami, LA, and so forth.

We will start with the urgent cases of pitahaya and rambutan and deal with mangoes, etc later as a strategy. I am a little encouraged on the Dallas possibility.

He is concerned about saying yes to something and having a flood of shipments due to man power to monitor. I talked about how few exporters there are on these two products so that it should not be a big problem.

JL - please cc PDM on this to avoid repeating. Fax me info on flights available if that is ready. Thanks.

1/18

InterConnect

508 15th Street, SE, Washington, DC 20003 Telephone or FAX (202) 543-5821

FAX TRANSMISSION

DATE: July 30, 1992

TO: PROEXAG II Team, HO, Miami office

FAX NO.: 331-8202

FROM: Mary Quinlan, President *Mary*
InterConnect
(202) 543-5821 (fax and phone)

NUMBER OF PAGES (including cover): 1

COMMENTS:

The ruling on the transshipment of any fruit fly host material from Central America through Houston or Dallas is no for now. Previously it would have been definitely no, but now there are some changes going on in transshipment policy which will affect the Central American proposal. A proposal to ship fruit fly host material from Hawaii through Dallas (and some other previously unallowed ports) is in the commentary period. Comments end August 15 and then it will take a few months to review those comments and decide on a regulation. Victor Harabin feels that it would be a mistake to approve anything from another country (except the existing coverage for Mexico) to transship Dallas or Houston now in case they do not approve the Hawaii proposal. That would set the Hawaii and US growers in general against the Central Americans and cause a lot of political problems.

Although this ruling is negative, Victor agreed that I contact him about the idea in about 6 months after the Hawaii proposal is settled. If they rule positively on that, then there is a good chance we could proceed with our proposal. So, we will have to try next season instead of this one.

I wanted to get this out to you all quickly since Frutesa in particular is waiting and there is no need to pursue the information on rambutan at this time. I will prepare a brief report and follow up on it at the appropriate time in the future as well. Any questions, fax me. I will be out August 5-12.



PROEXAG II

PROYECTO DE APOYO A LA EXPORTACION DE PRODUCTOS AGRICOLAS NO-TRADICIONALES DE CENTRO AMÉRICA Y PANAMA

TO : MARY QUINLAN
COMPANY : INTERCONNECT
FAX N° : 202 543-5821

DATE : 07/14/92
TIME : 7:47 am

PAGES: ² (INCLUDING COVER PAGE)

FROM : *Dale T. Kringsvold*
RE. : DALE T. KRIGSVOLD, Post Harvest & Pest Management Specialist.
HOUSTON CORRIDOR

MESSAGE :

Attached is a copy of a negative reply sent by Harabin to Oppenheimer inre a request to transit Los Angeles with Guatemalan Pitahayas.

DTK'ca
CC. file
FILE{FXQUINLAN.DTK'ca(14Jul92)}

JUL 13 92 MON
United States
Department of
Agriculture

8:13
Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

June 10, 1992

Mrs. Margaret Guy
David Oppenheimer & Associates
3462 Cornett Rd.
Vancouver, BC V5M 2H1 Canada

Dear Mrs. Guy:

This is in response to your request for permission to transit Guatemalan pitahayas through the United States enroute to Canada. I apologize for you not receiving a reply since you initially made this request in July 1991, but I could find no record of your request in our files.

Pitahayas from Guatemala are prohibited into the United States because they are a host to fruit flies including the Mediterranean fruit fly (*Ceratitis papicata*). It has long been Animal and Plant Health Inspection Service (APHIS) policy to deny transit movement of fruit fly hosts through warm climate areas of the United States. Your letter did not describe the details of the proposed transit movement, but we could issue a transit permit for movement through North Atlantic ports (north of and including Baltimore, Maryland), and the port of Seattle, Washington.

Please supply the following information concerning the shipment:

- Means of transport
- Packaging of shipment
- Whether the cargo is containerized or in bulk
- Port of transit within the United States
- Total time the shipment will be stored or exported immediately
- Port of entry and export within the U.S.
- Name of carrier(s) involved in transport

Following receipt of the requested information, a processing period of up to ten days may be necessary before we issue a permit. We will notify you as soon as possible if we are unable to issue a transit permit or if we require additional information.

Feel free to call me with any questions or concerns at (301) 436-8645. Again, my apologies for our late response.

Sincerely,

Victor Hazbin
Victor Hazbin
Head, Permit Unit
Port Operations
Operational Support
Plant Protection and Quarantine

OPTIONAL FORM NO. 10 (7-89)

FAX TRANSMITTAL

TO: Margaret Guy
FROM: Victor Hazbin
PHONE: (301) 436-8645
FAX: (301) 436-5224

GENERAL SERVICES ADMINISTRATION





United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

June 18, 1992

Mrs. Margaret Guy
David Oppenheimer & Associates
3462 Cornett Rd.
Vancouver, BC V5M 2H1 Canada

Dear Mrs. Guy:

This is a response to your request (June 11, 1992 fax) for permission to transit Guatemalan pitahayas through Los Angeles, California enroute to Canada.

We cannot grant you a transit permit under the conditions that you have described in your fax message. The only conditions under which we would authorize transit movement through Los Angeles, California is when the fruit is carried as residual cargo on board the aircraft in a secure cargo compartment which is not opened while in the United States, or in a sealed air freight container such as an LD1, LD3, LD5 or LD9 which remains on board the aircraft.

We consider the transfer of prohibited cargo in Los Angeles from one carrier, even when plastic shrink wrapped, to another to present an unacceptable pest risk. Based on this unacceptable pest risk, we cannot issue a transit permit.

We hope you will understand our position of protecting American agriculture. Feel free to call us with any questions or concerns at (301) 436-8645.

Sincerely,

Victor Harabin

Victor Harabin
Head, Permit Unit
Port Operations
Operational Support
Plant Protection and Quarantine

CLARK
JUST RECIEVED THIS
LETTER. THOUGHT I
WOULD PASS THIS ALONG.
NOT GOOD NEWS.

REGARDS
MARGARET.



40

regulations would require that the fruits and vegetables be moved in sealed containers (except during certain transloading of air shipments from container to container, as discussed below), there would be no need to require segregation of containers. Commingling in the same container of fruits and vegetables being moved under this proposal and articles that are to remain in the United States would pose a significant pest and disease risk.

Movement of Fruits and Vegetables

We would also require that shipments that arrive in the continental United States under these proposed provisions enter and leave the continental United States at ports staffed by APHIS inspectors. APHIS inspectors would need to be present to (1) verify and track movement of shipments by receiving copies of limited permits, (2) ensure that containers or means of conveyance are sealed, (3) supervise certain transloading and ensure that further movement is in compliance with the regulations, and (4) prescribe actions as permitted by the proposed regulations. Our proposal includes a footnote indicating where to obtain a list of ports staff by APHIS inspectors.

It would additionally be required that transportation through the continental United States be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables, and as set forth in the transit permit. Requiring movement by the most direct route would help ensure that any pest risk from the shipment would be minimized, by ensuring that shipments do not linger unnecessarily in the continental United States.

It should be noted that the most direct route to the final destination may not include the shortest route through the United States. For example, it is possible that a shipment that enters the United States at an east coast port for ultimate shipment to western Canada could move to that destination more directly across the United States to its west coast, then to western Canada, than it could by moving from the east coast port to eastern Canada, then across Canada. This would provide shippers with reasonable and practical routes that might be unavailable if the shipper were required to move the cargo directly out of the continental United States without regard to its final destination.

Any temporary storage in the continental United States of fruits and vegetables shipped under the proposed provisions would have to be in a

location and for a duration set forth in the transit permit. Areas used for such storage would have to be either locked or guarded at all times.

Only repackaging described in the transit permit would be allowed, except for that allowed in extenuating circumstances by an APHIS inspector upon determination by the inspector that the repackaging would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No change in quantity from that described in the limited permit would be allowed. No remarking would be allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit would be allowed unless authorized by an APHIS inspector upon determination by the inspector that the change would not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors. In order to ensure that shipments can be tracked and safeguarded, it is necessary for APHIS to know which route the cargo is taking through the continental United States, as set forth in the transit permit. However, we believe that practical considerations, such as changes in shipping schedules and the opportunity for more expeditious or economical shipping routes, warrant our allowing alternative itineraries when approved by an inspector, as set forth in the regulations, when such diversion would not pose a pest or disease risk. All movement in the continental United States would have to be carried out within a specified area, as discussed in this Supplementary Information under the heading "Authorized Movement Area."

Sealed Containers

To guard against pest and disease introduction, it is necessary that fruits and vegetables transported under the proposed provisions be contained in sealed containers. We would define "sealed (sealable) container" to mean a completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. We would describe sealed containers for sea shipments as being distinct and separable from the means of conveyance carrying them when

arriving in an in transit through the continental United States. We would describe sealed containers used for air shipments arriving in the continental United States as being distinct and separable from the means of conveyance carrying them, and would describe sealed containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States as being either distinct and separable from the means of conveyance carrying them, or the means of conveyance itself. The rationale for each of these provisions in the definition is set forth below under the headings "Shipments by Sea," "Shipments by Air," and "Overland Shipments."

Shipments by Sea

Most of the provisions we are proposing would apply both to shipments to the United States by air and those by sea. However, we believe that the differences between air transport and sea transport make it necessary to set forth certain provisions that differ according to the method of transport.

The types of containers used for sea shipments can be transferred directly to another ship or a railcar, or be used as part of a trailer truck. (The lack of availability of air carriers at seaports would make transfer of sea shipments to aircraft impracticable). Therefore, we are proposing to prohibit cargo arriving by sea from Hawaii, Puerto Rico, or the Virgin Islands under this proposed rule from being removed from the sealed container containing the cargo when it arrives in the United States, except under extenuating circumstances and when authorized by an APHIS inspector upon determination by the inspector that transferring the cargo from the original container to another container would not significantly increase the risk of introducing plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. We believe that this prohibition is both warranted and necessary because the longer transit time associated with sea shipments, combined with an anticipated high volume of sea shipments and the normal delays related to handling and opening sea containers, would contribute to an increased and unacceptable risk of pest introduction. We believe further that, under normal shipping conditions, it is unlikely that the removal of fruits and vegetables from the original sea container would be necessary or practical. For the same reasons, we would define "sealed

(sealable) container" with regard to sea shipments as being distinct and separable from the means of conveyance carrying the container—i.e., the sealed container would not be the ship itself.

The proposed provisions would allow sea shipments arriving from Hawaii, Puerto Rico, or the Virgin Islands into or through the continental United States under the proposal to be transloaded once from a ship to another ship or, alternatively, once from a ship to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export. No other transloading of sea shipments would be allowed, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of introducing plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

In order to accommodate standard shipping practices, we believe it is appropriate to allow shipments transloaded from a ship to a truck or railcar at the port of arrival to be transloaded back to a ship at the port of export. An APHIS inspector would be present in each case to accept a copy of the limited permit, and would be able to ensure that shipments transloaded back to a ship at the port of export actually leave the continental United States. However, allowing additional transloading as the shipments transit the continental United States would occasion additional handling of the shipment that we believe is unnecessary under standard shipping practices, and that increases the risk of unauthorized diversion of the shipment. Because of limited APHIS personnel resources, it generally would not be possible to supervise and monitor transloading beyond the port of arrival and the port of export.

Transloading sea containers from a ship to another ship, or from a ship to a truck or railcar is the industry standard for the movement of sea containers. Certain trucks and railcars are specially designed to receive and transport sea containers overland, and both trucks and railcars can usually be brought alongside a ship for direct loading or unloading of sea containers. Typically, however, sea containers are not designed to be transloaded into aircraft, or an aircraft directly into a ship is possible. Therefore, we are not proposing to include this option.

Any storage in the continental United States of fruits and vegetables shipped

under this proposed rule would have to be for a duration and in a location authorized under the conditions of the transit permit.

The requirements regarding the transloading of sea shipments would not be as extensive as those regarding air shipments, described below, because, as discussed above, it would be required that sea shipments remain in their original containers, except under extenuating circumstances. For the reasons discussed below, however, air shipments would be permitted to be removed from their original containers for transloading.

Shipments by Air

Containers for air shipments often cannot practically be transferred to other aircraft or other means of conveyance, either because of their size or configuration. This means that transferring cargo shipped by air to another means of conveyance may require transloading the cargo from the original shipping container into another container or directly into another means of conveyance, such as the hold of an aircraft or a truck trailer. To accommodate this need, while at the same time providing adequate safeguards against pest and disease introduction, we are proposing certain requirements for air shipments. We are proposing that shipments arriving in and moving through the continental United States by air under this proposed rule may be transloaded only once within the continental United States, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that inspectors are available to provide supervision. Transloading of air shipments would have to be done in the presence of an APHIS inspector. As with sea shipments, we believe the number and type of transloadings that would be allowed for shipments arriving by air would be the minimum necessary to accommodate standard shipping practices, while at the same time guarding against unauthorized diversion of the shipment.

Because, practically speaking, landing facilities are not located close enough to either railheads or shipping docks to allow for direct transloading into railcars or ships, we would provide that shipments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct

route to the final destination of the shipment. Such transloading would be authorized only if the following conditions are met: (1) The transloading is done into sealable containers; (2) the transloading is carried out within the secure area of the airport—i.e., that area of the airport that is open only to personnel authorized by the airport security authorities; (3) any storage of the shipment is in an area that is within a permanent building, and the cargo is completely surrounded by a fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and (4) APHIS inspectors are available to provide the supervision required by the proposed provisions.

In our proposed definition of "sealed (sealable) container," we would provide that sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in the continental United States, but that sealed (sealable) containers used for air shipments after transloading in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself. Shipping air cargo arriving in the continental United States under this proposed rule in containers distinct and separable from the aircraft would be necessary for the cargo to be segregated from other cargo that may be offloaded in the continental United States.

We are also proposing to provide that shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS to stop at only one other port within the designated corridor, except as authorized by an APHIS inspector, upon determination by the inspector that another stop would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided the second port is staffed by APHIS inspectors. We believe that this extra stop would accommodate the practical needs of air shipments, such as refueling, without significantly increasing the risk of pest and disease spread or imposing a significant additional burden on APHIS resources. No transloading other than that described above would be allowed, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not

* and we are unaware of any

Proposed Rules

Federal Register

Vol. 54, No. 121

Monday, June 26, 1989

7 CFR Part 352

[Docket No. 88-214]

Avocados From Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Quarantine Safeguard

Regulations by adding Galveston, Texas, to the list of ports through which avocados from Mexico may be moved. We believe this action is warranted to allow avocados from Mexico to transit the United States through Galveston, Texas. This action would give shippers the alternative of importing and exporting Mexican avocados from the port at Galveston, Texas, instead of transporting them to the port at Houston, Texas. It would also slightly enlarge the corridor through which avocados would be allowed to transit the United States.

DATE: Consideration will be given only to comments received on or before August 25, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-214. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR Part 352 (the regulations) provide requirements applicable to most plants, plant products, and related articles, including avocados from Mexico, that are moved through the United States for export. These requirements include permits, notice of arrival, marking requirements, ports of arrival, inspections, safeguards, carriers, and routes of travel through the United States.

Section 352.29 provides specific requirements for avocados from Mexico, and restricts the ports through which they may enter to the following: Houston, Texas; the border ports of Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas; Nogales, Arizona; and those ports within the area

Rules and Regulations

Federal Register

Vol. 54, No. 203

Monday, October 23, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 352

[Docket 89-155]

Avocados From Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Quarantine Safeguard Regulations by adding Galveston, Texas, to the list of ports through which avocados from Mexico may be moved. Allowing avocados from Mexico to transit the United States through Galveston, Texas, will give shippers the alternative of importing and exporting Mexican avocados from the port at Galveston, Texas, instead of Houston, Texas, and will slightly enlarge the corridor through which avocados will be allowed to transit the United States.

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 430-6799.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR part 352 (the regulation) provide requirements applicable to most plants, plant products, and related articles, including avocados from Mexico, that are moved through the United States for export. These requirements include permits, notice of arrival, marking requirements, ports of arrival, inspections, safeguards,

carriers, and routes of travel through the United States.

In a document published in the *Federal Register* on June 28, 1989 (54 FR 26767-26768, Docket Number 88-214), we proposed to amend the regulations (1) by adding Galveston, Texas, to the list of ports in § 352.29(b) through which avocados from Mexico may transit the United States and (2) by revising § 352.29(f) to reflect that the eastern and southern boundary of the area through which avocados from Mexico may transit the United States would be extended by a line extending from Brownsville, Texas, to Galveston, Texas (instead of Houston, Texas), to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville.

Comments on the proposed rule were required to be received on or before August 25, 1989. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will allow avocados from Mexico to be transported through the port of Galveston, Texas, in accordance with safeguard provisions of part 352, for export to third countries. Persons involved in this process include the avocado owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on the small entities will be limited to small

increases or decreases to shipping costs paid by the avocado owners or exporters.

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.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

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.)

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Postal Service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR Part 352 is amended as follows:

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

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.29 [Amended]

2. In § 352.29(b), the words "Galveston or" are added immediately following the words "only at the following ports:"

§ 352.29 [Amended]

3. In § 352.29(f), the words "Houston, Texas," are removed and the words "Galveston, Texas," are added in their place.

Done in Washington, DC, this 17th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24931 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-34-M

Proposed Rules

Federal Register

Vol. 57, No. 135

Tuesday, July 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 91-094]

Fruits and Vegetables From Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands of the United States that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met. This amendment would provide growers and shippers in Hawaii, Puerto Rico, and the Virgin Islands additional cargo routes to foreign destinations, without significantly increasing the risk of introducing plant diseases and pests into the continental United States.

DATES: Consideration will be given only to comments received on or before August 13, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-094. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Peter Grosser, Senior Operations Officer, Permit Unit, Port Operations, PPD, APHIS, USDA, room 632, Federal

Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to amend two subparts in the "Hawaiian and Territorial Quarantine Notices" (7 CFR part 318). The regulations in 7 CFR part 318, among other things, quarantine Hawaii, Puerto Rico, and the Virgin Islands of the United States (referred to below as the Virgin Islands) to prevent the spread of dangerous plant diseases and insect infestations that are not widely prevalent or distributed within and throughout the United States. The two subparts we are proposing to amend are "Hawaiian Fruits and Vegetables" (7 CFR 318.13 et seq.) and "Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 et seq.). We refer to these regulations, respectively, as the Hawaii regulations and the Puerto Rico-Virgin Islands regulations.

The Hawaii regulations govern the movement of raw and unprocessed fruits and vegetables, cut flowers, rice straw, mango seeds, and cactus plants and cactus parts, from Hawaii into or through the continental United States, Guam, Puerto Rico, and the Virgin Islands. The Puerto Rico-Virgin Islands regulations govern the movement of raw and unprocessed fruits and vegetables from Puerto Rico and the Virgin Islands into or through Guam, Hawaii, and the continental United States. The Puerto Rico-Virgin Islands regulations also govern the movement of cactus plants and parts of cactus plants from the Virgin Islands into or through Guam, Puerto Rico, and the continental United States.

Of the articles governed by the Hawaii regulations and the Puerto Rico-Virgin Islands regulations, some are absolutely prohibited movement into the continental United States. Others are prohibited such movement if they fail to meet certain qualifying criteria. The prohibition on movement into the continental United States includes a ban on movement through the continental United States in transit to another country. However, such a ban on transiting unfairly restricts the movement of domestic fruits and vegetables when compared to transit authorizations that are available under 7 CFR part 352 for prohibited fruits and vegetables moving in transit through the

United States from foreign sources. The regulations in 7 CFR part 352 contain a number of safeguards to ensure that the articles transiting the United States do not pose a significant risk of introducing or spreading plant pests or diseases in the United States.

A number of parties involved in the growing and shipping of fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands have requested that we amend the regulations to allow movement of those fruits and vegetables into or through the continental United States for export to a foreign destination. Such a change would provide growers and shippers in those locations access to cargo routes similar to those available to foreign growers and shippers.

We believe that, with certain safeguards, fruits and vegetables otherwise prohibited movement into or through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands can transit a certain corridor of the continental United States en route to a foreign destination without posing a significant plant pest or disease risk. Therefore, in this document, we are proposing to allow such movement, subject to the criteria and restrictions discussed in this "Supplementary Information," below. Shipments that are moved in accordance with the proposed criteria and restrictions would not be further restricted by the provisions of 7 CFR part 301, which impose restrictions on the interstate movement of certain articles to protect against the spread of plant pests and diseases. We believe that the stringent safeguards established by these proposed provisions would be sufficient to protect against the spread of such plant pests and diseases. For the same reason, shipments moved under these proposed regulations would not be further restricted by the provisions of 7 CFR 318.30 and 318.30a, which impose restrictions on the movement of sweetpotatoes from Hawaii, Puerto Rico, and the Virgin Islands of the United States to other parts of the United States.

Transit Permits

We are proposing that you would have to obtain a transit permit from us for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables that are otherwise prohibited movement into or

through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands. We would define "transit permit" as a written authorization issued by the Administrator for the movement into or through the continental United States of fruits and vegetables that are en route to a foreign destination and that are otherwise prohibited movement under the regulations. We would define "continental United States" to mean the 48 contiguous States, Alaska, and the District of Columbia. Transit permits would authorize one or more shipments over a designated period of time.

The application for a transit permit would have to indicate the following: (1) The specific types of fruits and vegetables to be shipped; (2) the means of conveyance to be used to transport the fruits and vegetables into and through the continental United States; (3) the port of arrival in the continental United States and the location of any subsequent stop; (4) the location of, and the time needed for, any storage in the continental United States; (5) any location in the continental United States where the fruits and vegetables would be "transloaded," which we would define as being transferred from one sealable container to another sealable container, from one means of conveyance to another means of conveyance, or from a sealable container directly into a means of conveyance; (6) the means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export; (7) the estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export; (8) the port of export; and (9) the name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

The information on the application would allow us to determine whether the conditions described by the applicant would meet certain safeguards set forth in the proposed regulations, and whether Animal and Plant Health Inspection Service (APHIS) resources at designated locations would be sufficient to provide the services necessary under the proposed regulations. The inclusion of a United States address, either that of the applicant or of an agent for acceptance of service of process, would facilitate our ability to communicate

with the permittee regarding problems or violations.

The transit permit would allow us to monitor closely the shipments in the United States, by describing an itinerary that would have to be followed and setting forth a listing of means of conveyance to be used. However the transit permit would not specify the quantity of fruits and vegetables to be shipped, which might vary over time. That information would be included on a limited permit, discussed below.

A transit permit would be issued only if the following conditions are met: (1) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo would take place, and, in the case of air shipments, at any other stop in the continental United States, as indicated on the application for the transit permit and authorized by the proposed regulations; (2) the information on the application indicates that the proposed movement would comply with the provision in this section applicable to the transit permit; and (3) during the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under either § 318.13-18 or § 318.58-18, unless the transit permit has been reinstated upon appeal. This last provision would be necessary to ensure that applicants who have had a transit permit withdrawn under the procedures described in §§ 318.13-18 and 318.58-18 are not able to reapply immediately. We believe this provision is necessary to discourage violations of the regulations, and to ensure that plant pests and diseases are not introduced into the continental United States.

Limited Permits

In addition to obtaining a transit permit approving the movement, you would be required to obtain a limited permit to accompany the fruits and vegetables being shipped into or through the continental United States. We would provide that a limited permit would be issued by an APHIS inspector if he or she determines that the specific type and the quantity of the fruits and vegetables to be shipped are accurately described in the accompanying documentation (e.g., the manifest, waybill, and bill of lading), and establishes that the shipment has been prepared in compliance with the provisions we are proposing. To facilitate inspection by an inspector, we would require that the fruits and vegetables be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of the

proposed provisions. A limited permit would be required for each specific shipment, in contrast to transit permits, which could cover multiple shipments over time. A copy of the limited permit would have to be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where a shipment is authorized to stop or where overland shipments change means of conveyance.

A limited permit would allow us to verify that shipments leaving Hawaii, Puerto Rico, or the Virgin Islands are in compliance with applicable provisions of the transit permit when shipped. Additionally, the limited permit would provide a means of documenting the movement of the shipment following issuance of the limited permit. This would be necessary to ensure that the cargo moves in compliance with the transit permit and to allow for documentation of violations.

Marking Requirements

Under the marking requirements in proposed §§ 318.13-17(c) and 318.58-12(c), each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit through the continental United States under the provisions we are proposing would be required to be conspicuously marked with a printed label that includes a description of the specific type and the quantity of the fruits and vegetables, the fact that they were grown in either Hawaii, Puerto Rico, or the Virgin Islands, as applicable, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States is Prohibited."

We believe that the proposed marking requirements would dissuade shippers and brokers from diverting cargo prohibited distribution in the United States back into the United States for distribution, and would alert cargo handlers and others who might not be familiar with the restrictions in the transit permit and limited permit that the fruits and vegetables are not for distribution in the United States.

Handling of Articles

Fruits and vegetables moved into or through the continental United States under the proposed provisions would not be permitted to be commingled in the same sealed container with articles that are intended for entry and distribution into the continental United States. Because the proposed

significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

Overland Shipments

Our proposed definition of "sealed (sealable) container" would state that a sealed (sealable) container used for overland shipments in the continental United States may be either distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself. This definition would take into account the fact that shipments arriving in the continental United States by air under this proposal may be removed from a shipping container used on the aircraft and loaded into a truck trailer or railcar. As discussed above under "Shipments by Sea," cargo arriving by sea would have to remain in the sealed container in which they arrive, which, under standard industry practice, are used either as the trailer portion of a truck trailer, or are loaded intact onto a railcar.

Temperature Requirement

The risk of any plant pests that might be present in the shipment maturing or propagating is reduced by chilling the cargo. Chilling the cargo also generally retards the ripening of fruits and vegetables. Ripened fruits and vegetables are more attractive to pests and more conducive to propagation of pests. Therefore, we are proposing that, except for time spent on aircraft and except for up to 24 hours for transloading, fruits and vegetables moved into or through the continental United States under these proposed provisions must, from the time they leave either Hawaii, Puerto Rico, or the Virgin Islands, as applicable, be kept in containers, means of conveyance, or facilities in which the temperature is 60° F or lower. We are not applying this requirement to fruits and vegetables on aircraft, for two reasons. First, aircraft are generally not equipped with refrigeration capabilities. Second, air shipments are generally of a relatively brief duration, so refrigeration in such cases would not contribute significantly to reducing the plant pest risk. We are allowing up to 24 hours for transloading without chilling of the fruits and vegetables to meet the practical needs of removing fruits and vegetables from means of conveyance or containers. If the temperature exceeds 60° F for 24 hours or less, the additional pest risk would be minimal.

Authorized Movement Area

Fruits and vegetables currently prohibited movement from Hawaii, Puerto Rico, and the Virgin Islands, if allowed movement into all parts of the continental United States, would pose the greatest risk in those areas of the United States where climate and host materials are most similar to those of the areas where the fruits and vegetables originated. For this reason, we are proposing that the port of arrival, port of export, ports for air stops, and overland movement of fruits and vegetables transiting the continental United States under these proposed provisions would be limited to a defined corridor that includes all States in the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas (except as discussed below), and Virginia. Movement would be allowed through Dallas/Forth Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into the designated corridor by the shortest route. Shipments through the United States would have to begin and end their movement through the continental United States at locations staffed by APHIS personnel.

Dallas/Fort Worth would be included within the designated corridor because it is an important air cargo connection point, and because it is sufficiently distant from more tropical locations in Texas where pest establishment would be more likely. Movement from Dallas/Fort Worth into the designated corridor by the shortest route would be required to ensure that shipments arriving at Dallas/Fort Worth do not linger unnecessarily outside the corridor, thereby increasing the potential for pest or disease introduction.

Prohibited Materials

We are proposing provisions to make clear which persons would be responsible for ensuring that means of conveyance and containers brought into or through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands en route to a foreign destination and those subsequently brought back into the United States from a foreign destination after transiting the United States are clean and free of materials prohibited entry into the continental United States under 7 CFR chapter III. We would provide that the person in charge of or in possession of a sealed

container used for movement into or through the continental United States under this proposed rule would be responsible for ensuring that the sealed container is carrying only those fruits and vegetables authorized by the required transit permit.

We would also set forth provisions regarding means of conveyance and containers returned to the United States from a foreign destination after previously transiting the continental United States. Based on standard shipping practices, we expect that means of conveyance or containers used to transport fruits and vegetables into or through the continental United States under the proposed provisions would sometimes be sent back to the United States from their destination country empty for further use. To ensure that these means of conveyance or containers contained therein pose no risk of pest introduction upon their return to the United States, we are proposing to require that the person in charge of or in possession of such a means of conveyance or container would have to ensure that the means of conveyance or container is free of materials prohibited importation into the United States under the regulations in 7 CFR chapter III.

Withdrawal of Transit Permits and Limited Permits

We are also proposing to add provisions for withdrawal of transit permits in the Hawaii regulations, and for the withdrawal of transit permits and limited permits in the Puerto Rico-Virgin Islands regulations. We would provide that the document in question may be withdrawn, orally or in writing, if an inspector determines that its holder has not complied with all conditions under the regulations for the use of the document. The regulations would provide that if the cancellation is oral, the decision and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. We would allow the holder of the document 10 days after receipt of written notification of the withdrawal to appeal the decision. The appeal would have to state all of the facts and reasons upon which the person relies to show that the document was wrongfully withdrawn. We would provide that the Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. In cases where there is a conflict as to any material fact, a hearing would be held to resolve the conflict. Rules of practice concerning

such a hearing would be adopted by the Administrator.

We would also provide that authorization by APHIS of movement of fruits and vegetables into or through the continental United States under the proposed regulations does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country would be subject to all applicable regulations, including "Subpart—Fruits and Vegetables" of 7 CFR part 319, and 7 CFR part 352.

Responsibility for Compliance

In order to facilitate enforcement of the regulations, we would provide that any restrictions and requirements under the proposed provisions with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under the proposed provisions would apply to any person who, respectively, brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person would be deemed to be a violation of the proposed provisions.

Definitions

We are proposing to add or revise certain definitions to clarify the meaning of the proposed regulations. We are also proposing to revise the definition of "person" in the Hawaii regulations to make it consistent with the definition of "person" elsewhere in 7 CFR, and we are proposing to revise the definition of "inspector" in the Hawaii regulations to make it consistent with the definition in the Puerto Rico-Virgin Islands regulations. Additionally, we are proposing to revise the definition of "limited permit" in the Hawaii and Puerto Rico-Virgin Islands regulations to reflect its proposed use for fruits and vegetables moved into or through the continental United States in accordance with the proposed regulations.

Miscellaneous

Current § 318.58-7 contains a reference to § 318.58-12. Currently, § 318.58-12 is reserved and contains no provisions. However, in this proposed rule, we are proposing to include certain

new provisions under § 318.58-12, which we do not intend to be referenced by § 318.58-7. We are therefore proposing to amend current § 318.58-7 to remove the reference to § 318.58-12. We are also proposing to make no substantive changes to §§ 318.13-10 and 318.58-10 to clarify the intent of these provisions regarding the attachment of certificates or limited permits.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

In accordance with 7 U.S.C. 162, the Secretary of Agriculture is authorized to promulgate regulations governing the interstate movement of plants and plant products from a State or territory of the United States that is quarantined to prevent the spread of a dangerous plant disease or insect infestation new to or not widely prevalent or distributed within or throughout the United States. This proposed rule would allow the movement into and through the continental United States of fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands that would otherwise be prohibited. This movement would have to be carried out under restrictions that appear necessary to prevent the spread of dangerous plant diseases and insect infestations. We believe that this amendment to the regulations would provide additional cargo routes to shippers in Hawaii, Puerto Rico, and the Virgin Islands, without significantly increasing the introduction of plant diseases and pests into the continental United States.

This proposed rule would primarily benefit growers and shipping businesses in Hawaii, Puerto Rico, and the Virgin Islands. Current regulations allow prohibited fruits and vegetables from

foreign sources to be shipped, under certain conditions, through the United States in transit to a third country. However, these same routes are closed to prohibited fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands. Currently, cargo connections are such that very limited direct flights or shipping routes exist between the locations in question and Europe and Canada. The proposed provisions would provide growers and shippers in Hawaii, Puerto Rico, and the Virgin Islands access to cargo routes similar to those available to foreign growers and shippers.

Puerto Rican growers/shippers have indicated that Canada represents a significant potential market for their vegetable crops. Similarly, both Canada and Europe are potential markets for Hawaiian produce, particularly fruits. However, the current lack of economical shipping routes makes shipment of certain fruits and vegetables to these destinations cost-prohibitive. The amount of produce that might transit the continental United States under these proposed regulations is unknown. Most of the requests to APHIS have been from growers/shippers of major crops such as pineapples and papayas from Hawaii. It is anticipated that a market for other nontraditional and exotic crops will develop as regulations are relaxed.

We considered two alternatives to the proposed regulations. The first was to defer any regulatory action in anticipation of the development of more direct shipping and air cargo routes between the locations in question and Canada and Europe that would bypass the continental United States. If and when these routes were established, we would reexamine the need to allow otherwise prohibited materials to transit the continental United States. This alternative was ruled out because we believe the low risk of pest introduction from the proposed regulations does not warrant the length of time that is likely to be involved before more accessible cargo routes could be in operation. We also considered proposing no changes at any time to the current regulations. In light of the low risk of pest and disease introduction under the proposed regulations, this option was deemed unduly restrictive.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule have been submitted for approval the Office of Management and Budget. Your written

such movement

LL

comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 884, Federal Building, 8506 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

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 12778

This proposed rule would allow fruits and vegetable from Hawaii, Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met. All State and local laws regarding such fruits and vegetable would be preempted. No retroactive effect is to be given to this proposed rule. This proposed rule would require administrative proceedings before parties may file suit in court with regard to the withdrawal of transit permits and limited permits as provided in proposed §§ 318.13-16 and 318.58-16. Thus, the administrative remedies set forth in §§ 318.13-16 and 318.58-16 must be exhausted before parties may file suit in court.

List of Subjects in 7 CFR Part 318

Agricultural commodities, Guam, Hawaii, Plant diseases, Plant pests, Plants (Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

Accordingly, we are proposing to amend 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 1506b, 1506d, 1506e, 1506f, 161, 162, 184a, 1827; CFR 2.17, 2.51, and 371.2(c).

2. Section 318.13-1 would be amended by revising the definitions of "Inspector", "Limited permit" and "Person", and by adding definitions of

"Continental United States", "Interstate", "Means of conveyance", "Sealed (sealable) container", "State", "Transit permit", and "Transloading" in alphabetical order to read as follows:

§ 318.13-1 Definitions.

Continental United States. The 48 contiguous States, Alaska, and the District of Columbia.

Inspector. An inspector of the Plant Protection and Quarantine Programs, United States Department of Agriculture.

Interstate. From any State into or through any other State.

Limited permit. A document issued by an inspector for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment, in conformity with a compliance agreement; or (2) Movement into or through the continental United States in conformity with a transit permit.

Means of conveyance. For the purposes of § 318.13-17 of this subpart, "means of conveyance" shall mean a ship, truck, aircraft, or railcar.

Person. Any individual, corporation, company, society, association, or other organized group.

Sealed (sealable) container. A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

State. Each of the 50 States of the United States, the District of Columbia,

Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories and possessions of the United States.

Transit permit. A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise prohibited movement by the subpart into or through the continental United States. Transit permits authorize one or more shipments over a designated period of time.

Transloading. The transfer of cargo from one sealable container to another, from one means of conveyance to another, or from a sealable container directly into a means of conveyance.

3. Section 318.13-3 would be amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding a new paragraph (c) to read as follows:

§ 318.13-3 Conditions of movement.

(c) To a foreign destination after transiting the continental United States. Fruits and vegetables from Hawaii otherwise prohibited movement from the State of Hawaii into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with § 318.13-17 of this subpart.

4. Section 318.13-4 would be amended by revising paragraph (d) to read as follows:

§ 318.13-4 Conditions governing the issuance of certificates or limited permits.

(d) *Limited permits.* (1) Limited permits may be issued by an inspector for the movement of noncertified regulated articles designated in § 318.13-3(b) of this subpart.

(2) Limited permits may be issued by an inspector for the movement of fruits and vegetables otherwise prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.13-17 of this subpart.

5. Section 318.13-6 would be revised to read as follows:

§ 318.13-6 Container marking and identity.

Except as provided in § 318.13-17(c) of this subpart, shipments of regulated articles moved in accordance with this subpart must have the following information clearly marked on each

container, or, for shipments of multiple containers or bulk products, on the waybill, manifest, or bill of lading accompanying the articles: Nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and, the number of the certificate or limited permit authorizing movement, if one was issued.

§ 318.13-8 (Amended)

6. In § 318.13-8, in the first sentence, the words "the port of departure and/or the port of arrival." would be removed, and the words "the port of departure, the port of arrival, and/or any other authorized port." would be added in their place.

§ 318.13-10 (Amended)

7. In § 318.13-10, at the end of paragraph (f)(1), the reference "§ 318.13-3(d)" would be removed and "§ 318.13-3(e)" would be added in its place.

8. In § 318.13-10, paragraph (f)(2) introductory text would be revised and a new paragraph (f)(3) would be added to read as follows:

§ 318.13-10 Inspection of baggage, other personal effects, and cargo.

(f)

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker, and without a certificate attached to the cargo or a limited permit attached to the cargo if the cargo is moved:

(3) Cargo moved in accordance with § 318.13-17 of this subpart that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the shipment.

§ 318.13-16 (Amended)

9. In § 318.13-16, the section heading would be amended by adding "transit permits," immediately after "certificates,".

10. Section 318.13-16 would be amended by adding "transit permit," immediately after "certificate," in the first sentence and in the third sentence.

11. In § 318.13-16, the fourth sentence would be amended by removing the words "certificate or limited permit" and adding in their place the words "certificate, transit permit, or limited permit".

12. A new § 318.13-17 would be added to read as follows:

§ 318.13-17 Transit of fruits and vegetables from Hawaii into or through the continental United States.

Fruits and vegetables from Hawaii otherwise prohibited movement from the State of Hawaii into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section and any other applicable provisions of this subpart. Any additional restrictions on such movement that would otherwise be imposed by part 301 of this chapter and §§ 318.30 and 318.30a of this part shall not apply.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved into or through the continental United States from Hawaii. Application for a transit permit must be made in writing.* The transit permit application must include the following information:

(i) The specific types of fruits and vegetables to be shipped;

(ii) The means of conveyance to be used to transport the fruits and vegetables into or through the continental United States;

(iii) The port of arrival in the continental United States, and the location of any subsequent stop;

(iv) The location of, and the time needed for, any storage in the continental United States;

(v) Any location in the continental United States where the fruits and vegetables are to be transloaded;

(vi) The means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export;

(vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;

(viii) The port of export; and
(ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

(i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place, and, in the case of air shipments, at any interim stop in the continental United States, as indicated on the application for the transit permit;

(ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and

(iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.13-18 of this subpart, unless the transit permit has been reinstated upon appeal.

(b) *Limited permit.* Fruits and vegetables shipped from Hawaii into or through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air shipment is authorized to stop or where overland shipments change means of conveyance. An inspector will issue a limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits and vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. The fruits and vegetables shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the shipment of fruits and vegetables has been prepared in compliance with the provisions of this section.

(c) *Marking requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit into or through the continental United States under this section must be conspicuously marked, prior to the sealing of the container in Hawaii, with a printed label that includes a description of the specific type and quantity of the fruits and vegetables, the fact that they were grown in Hawaii, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States is Prohibited."

(d) *Handling of fruits and vegetables.* Fruits and vegetables shipped into or through the continental United States from Hawaii in accordance with this section may not be commingled in the same sealed container with articles that

* Applications for transit permits should be submitted to the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6506 Belcrest Road, Hyattsville, MD 20782.

are intended for entry and distribution in the continental United States. The fruits and vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits and vegetables exit the continental United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (g), and (h) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits and vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into the designated corridor by the shortest route. Movement through the continental United States must begin and end at locations staffed by APHIS inspectors.¹⁰

(f) *Movement of fruits and vegetables.* Transportation through the continental United States shall be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables and set forth in the transit permit. No change in the quantity of the original shipment from the described in the permit is allowed. No remarking is allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector that the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors.

(g) *Shipments by sea.* Except as authorized by this paragraph, shipments arriving in the continental United States by sea from Hawaii may be transloaded

once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the original sealed container except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(h) *Shipments by air.* (1) Shipments arriving in the continental United States by air from Hawaii may be transloaded only once in the continental United States. Transloading of air shipments must be carried out in the presence of an APHIS inspector. Shipment arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transit permit and as provided in paragraph (h)(2) of this section. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air shipments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—i.e., that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage is within a permanent building, and the cargo is completely surrounded by a

fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (h)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a shipment arriving in the United States into another aircraft, shipments that arrive by air may be transloaded into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Duration and location of storage.* Any storage in the continental United States of fruits and vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits and vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present.

(j) *Temperature requirement.* Except for time spent on aircraft, and except for up to 24 hours for transloading, fruits and vegetable moved into or through the continental United States under this section must, from the time they leave Hawaii, be kept in sealed containers, or the sealed containers kept in facilities, in which the temperature is 60° F or lower.

(k) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the continental United States under this section must ensure that the sealed container is carrying only those fruits and vegetables authorized by the

¹⁰ For a list of ports staffed by APHIS inspectors, contact the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6506 Belcrest Road, Hyattsville, MD 20782.

transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(l) Authorization by APHIS of the movement of fruits and vegetables into or through the continental United States under this section does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country shall be subject to all applicable regulations, including "Subpart—Fruits and Vegetables" of part 319 of this chapter, and part 352 of this chapter.

(m) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who, respectively, brings into, maintains, unloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person shall be deemed to be a violation of the proposed provisions.

13. Section 318.58-1 would be amended by removing the paragraph designations, placing the definitions in alphabetical order, and adding new definitions of "Administrator," "Animal and Plant Health Inspection Service," "Continental United States," "Interstate," "Limited permit," "Means of conveyance," "Person," "Sealed (sealable) container," "State," "Transit permit," and "Transloading" in alphabetical order to read as follows:

§ 318.58-1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the Animal and Plant Health Inspection Service authorized to act in the Administrator's stead.

Animal and Plant Health Inspection Service. The Animal and Plant Health

Inspection Service of the United States Department of Agriculture (APHIS).

Continental United States. The 48 contiguous States, Alaska, and the District of Columbia.

Interstate. From any State into or through any other State.

Limited permit. A document issued by an inspector for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment, in conformity with a compliance agreement; or

(2) Movement into or through the continental United States in conformity with a transit permit.

Means of conveyance. For the purposes of § 318.58-12 of this subpart, "means of conveyance" shall mean a ship, truck, aircraft, or railcar.

Person. Any individual, corporation, company, society, association, or other organized group.

Sealed (sealable) container. A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that can be closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories and possessions of the United States.

Transit permit. A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise

prohibited movement by this subpart into or through the continental United States. Transit permits authorize one or more shipments over a designated period of time.

Transloading. The transfer of cargo from one sealable container to another, from one means of conveyance to another, or from a sealable container directly into a means of conveyance.

14. Section 318.58-3 would be amended by redesignating paragraphs (b) and (c), as paragraphs (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

§ 318.58-3 Conditions of movement.

(b) *To a foreign destination after transiting the continental United States.* Fruits and vegetables from Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement from those territories into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with § 318.58-12 of this subpart.

15. Section 318.58-4 would be amended by revising the section heading and the introductory text, and by adding a new paragraph (c) to read as follows:

§ 318.58-4 Issuance of certificates or limited permits.

Under the following conditions, an inspector may issue a certificate or limited permit for the movement of regulated articles to be moved in accordance with this subpart:

(c) An inspector may issue a limited permit for the movement of fruits and vegetables otherwise prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.58-12 of this subpart.

§ 318.58-7 [Amended]

16. In § 318.58-7, the reference "§§ 318.58-8 and 318.58-12," would be removed and a reference "§ 318.58-8," would be added in its place; and the designations "(a)", "(b)", and "(c)" would be removed, and the word "and" would be added in place of the designation "(c)".

§ 318.58-8 [Amended]

17. In § 318.13-8, in the first sentence, the words "the port of departure and/or the port of arrival," would be removed, and the words "the port of departure, the port of arrival, and/or any other authorized port," would be added in their place.

transloads

§ 318.58-10 (Amended)

18. In § 318.58-10, at the end of paragraph (f)(1), the reference "§ 318.58-3(c)" would be removed and "§ 318.58-3(d)" would be added in its place.

19. In § 318.58-10, paragraph (f)(2) introductory text would be revised and a new paragraph (f)(3) would be added to read as follows:

§ 318.58-10 Inspection of baggage, other personal effects, and cargo.

(f) . . .

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker and without a certificate attached to the cargo or a limited permit attached to the cargo, if the cargo is moved:

(3) Cargo moved in accordance with § 318.58-12 of this subpart that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the shipment.

20. A § 318.58-12 would be added to read as follows:

§ 318.58-12 Transit of fruits and vegetables from Puerto Rico and the Virgin Islands of the United States into or through the continental United States.

Fruits and vegetables from Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement from those territories into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section and any other applicable provisions of this subpart. Any additional restrictions on such movement that would otherwise be imposed by part 301 of this chapter and §§ 318.30 and 318.30a of this part shall not apply.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved into or through the continental United States from Puerto Rico or the Virgin Islands of the United States. Application for a transit permit must be made in writing.²

² Applications for transit permits should be submitted to the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

The transit permit application must include the following information:

- (i) The specific types of fruits and vegetables to be shipped;
- (ii) The means of conveyance to be used to transport the fruits and vegetables into or through the continental United States;
- (iii) The port of arrival in the continental United States, and the location of any subsequent stop;
- (iv) The location of, and the time needed for, any storage in the continental United States;
- (v) Any location in the continental United States where the fruits and vegetables are to be transloaded;
- (vi) The means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export;
- (vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;
- (viii) The port of export; and
- (ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

- (i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place, and, in the case of air shipments, at any interim stop in the continental United States, as indicated on the application for the transit permit;
- (ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and
- (iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.58-16 of this subpart, unless the transit permit has been reinstated upon appeal.

(b) *Limited permit.* Fruits and vegetables shipped from Puerto Rico or the Virgin Islands of the United States into or through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air shipment is authorized to stop or where overland shipments change means of conveyance. An inspector will issue a

limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits and vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. The fruits and vegetable shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the shipment of fruits and vegetables has been prepared in compliance with the provisions of this section.

(c) *Marking requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit into or through the continental United States under this section must be conspicuously marked, prior to the sealing of the container in Puerto Rico or the Virgin Islands of the United States, with a printed label that includes a description of the specific type and quantity of the fruits and vegetables, the fact that they were grown in Puerto Rico or the Virgin Islands of the United States, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States is Prohibited."

(d) *Handling of fruits and vegetables.* Fruits and vegetables shipped into or through the continental United States from Puerto Rico or the Virgin Islands of the United States in accordance with this section may not be commingled in the same sealed container with articles that are intended for entry and distribution in the continental United States. The fruits and vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits and vegetables exit the continental United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (g), and (h) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits and vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through

Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that subsequently transloaded into trucks for overland movement from Dallas/Forth Worth into the designated corridor by the shortest route.

Movement through the continental United States must begin and end at locations staffed by APHIS inspectors.*

(f) *Movement of fruits and vegetables.* Transportation through the continental United States shall be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables as set forth in the transit permit. No change in the quantity of the original shipment from that described in the limited permit is allowed. No remarking is allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors.

(g) *Shipments by sea.* Except as authorized by this paragraph, shipments arriving in the continental United States by sea from Puerto Rico or the Virgin Islands of the United States may be transloaded once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the original sealed container, except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided

that APHIS inspectors are available to provide supervision.

(h) *Shipments by air.* (1) Shipments arriving in the continental United States by air from Puerto Rico or the Virgin Islands of the United States may be transloaded only once in the continental United States. Transloading of air shipments must be carried out in the presence of an APHIS inspector. Shipments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transit permit and as provided in paragraph (h)(2) of this section. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air shipments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—i.e., that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage is within a permanent building, and the cargo is completely surrounded by a fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (h)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a shipment arriving in the United States into another aircraft, shipments that arrive by air may be transloaded into a truck

trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Duration and location of storage.* Any storage in the continental United States of fruits and vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits and vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present.

(j) *Temperature requirement.* Except for time spent on aircraft, and except for up to 24 hours for transloading, fruits and vegetables moved into or through the continental United States under this section must, from the time they leave Puerto Rico or the Virgin Islands of the United States, be kept in sealed containers, or the sealed container kept in facilities, in which the temperature is 60°F or lower.

(k) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the continental United States under this section must ensure that the sealed container is carrying only those fruits and vegetables authorized by the transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(l) Authorization by APHIS of the movement of fruits and vegetables into or through the continental United States under this section does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country shall be subject to all applicable regulations, including

* For a list of ports staffed by APHIS inspectors, contact the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Handwritten initials: AH

"Subpart—Fruits and Vegetables" of part 319 of this chapter, and part 352 of this chapter.

(m) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who, respectively, brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person shall be deemed to be a violation of the proposed provisions.

§ 318.58-16 [Amended]

21. In § 318.58-16, the section heading would be revised to read "Cancellation of certificates, transit permits, or limited permits."

22. In § 318.58-16, the words ". transit permit, or limited permit" would be added immediately following the word "certificate" in the following places:

- a. The first sentence;
- b. The third sentence; and
- c. The fourth sentence.

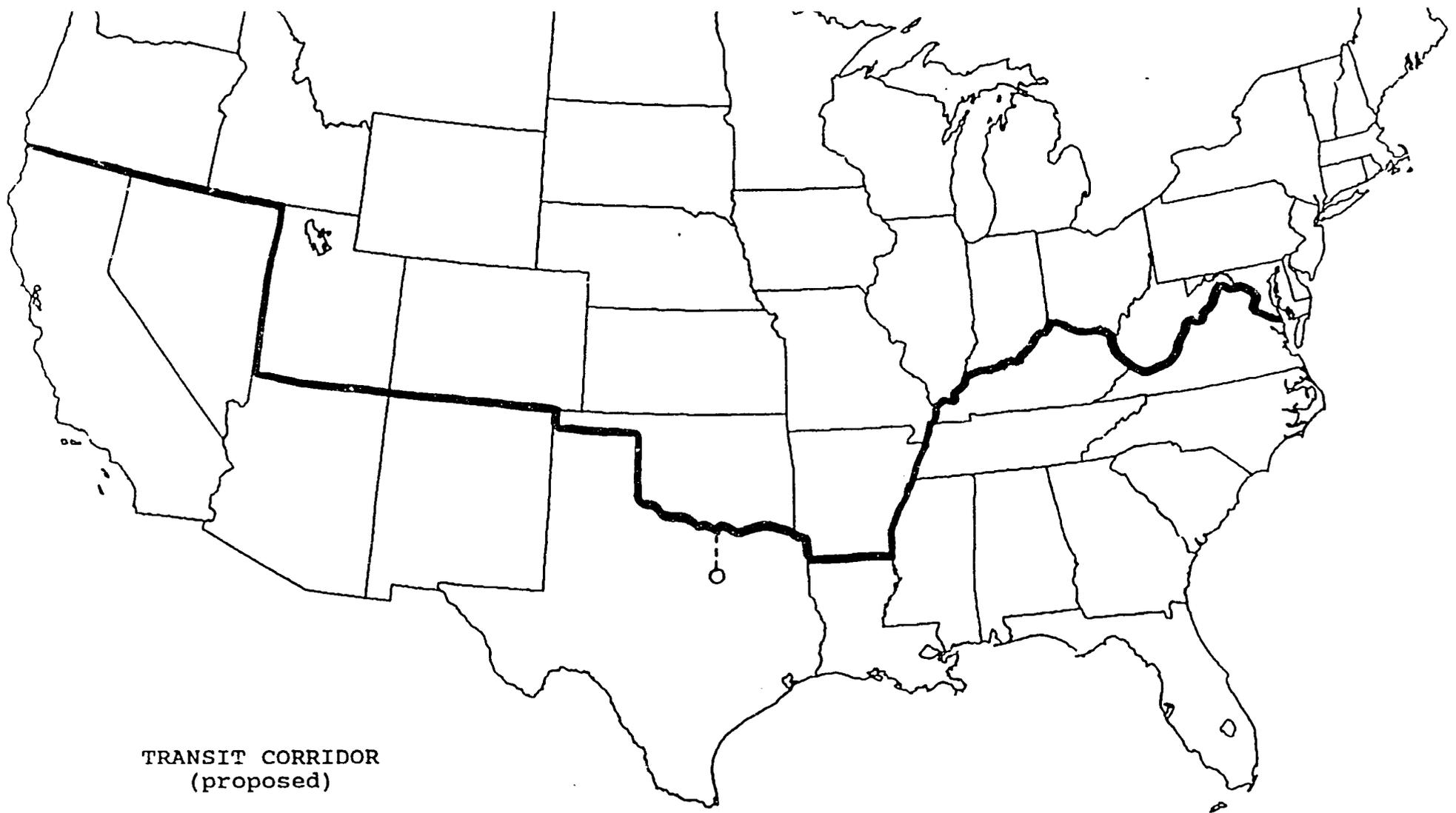
Done in Washington, DC, this 8th day of July 1992.

Loonie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

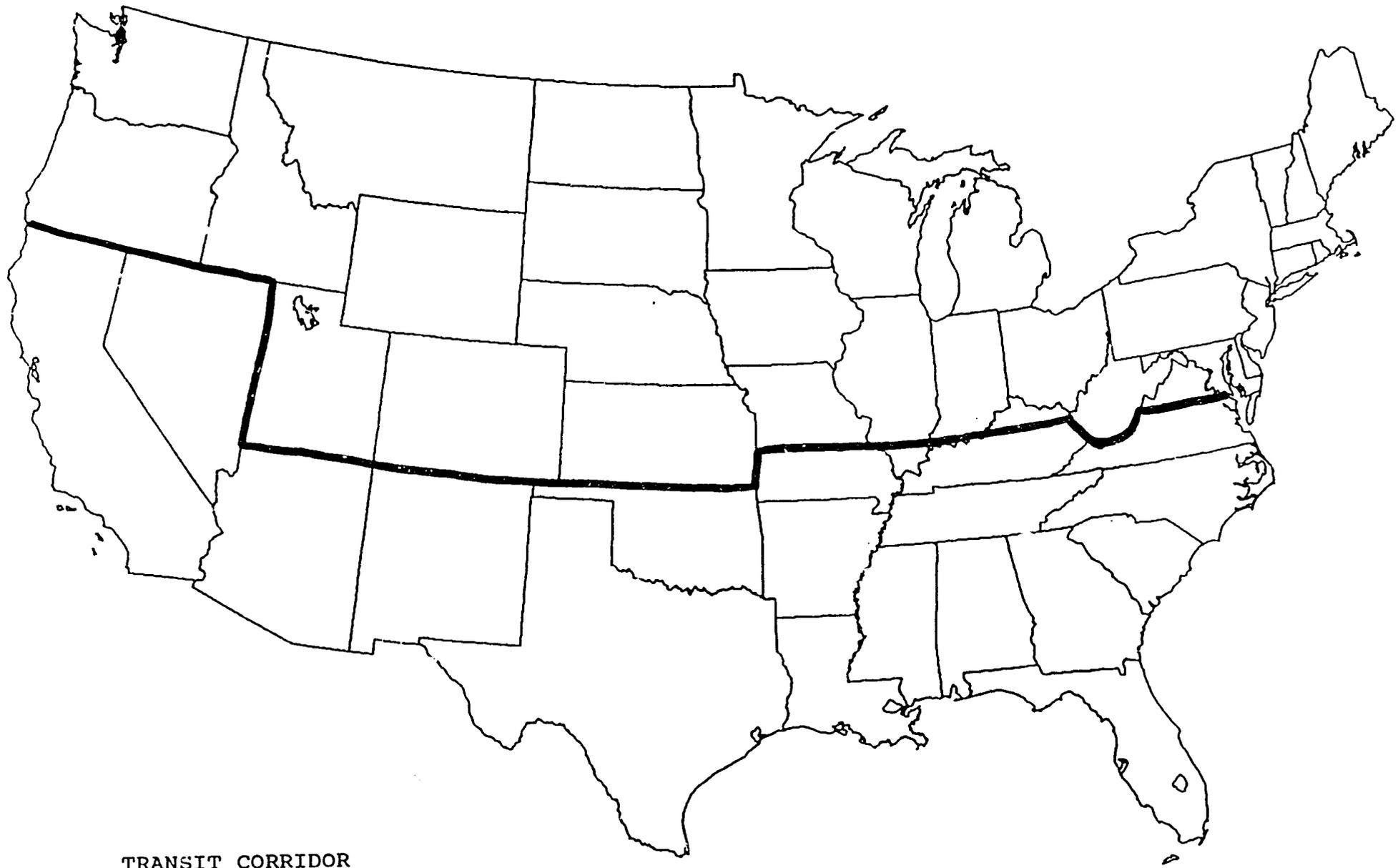
[FR Doc. 92-16149 Filed 7-9-92; 4:48 pm]

BILLING CODE 3410-34-B



**TRANSIT CORRIDOR
(proposed)**

Prohibited F&V
from Hawaii, Puerto Rico
and the Virgin Islands



TRANSIT CORRIDOR
Cotton & Okra



TRANSIT CORRIDOR
Mango from Mexico



TRANSIT CORRIDOR

Avocado and Citrus
from Mexico

9. Jim Cassel, President 08/13/92
Hawaii Banana Industry Association, Inc.
P.O. Box 36
Waimea, Kauai, HI 96796

10. Isi A. Siddiqui 08/13/92
Assistant Director
Division of Plant Industry
Department of Food and Agriculture
1220 N Street, P.O. Box 942871
Sacramento, CA 94271-0001

11. Delan A. Perry, Secretary 08/13/92
Big Island Papaya Growers Association
P.O. Box 537
Pahoa, HI 96778

LATE COMMENTS

1. JoAnn A. Yukimura, Mayor 08/14/92
4396 Rice Street, Suite 101
Lihue, HI 96766

2. Alfonso L. Davila-Silva, Secretary 08/14/92
Commonwealth of Puerto Rico
Department of Agriculture
P.O. Box 10163
Santurce, PR 00908

3. Bob Crawford, Commissioner of Agriculture 08/17/92
(signed by Richard Gaskalla, Director)
Florida Dept. of Agriculture & Consumer Services
Division of Plant Industry
1991 SW 34th St., PO Box 147100
Gainesville, FL 32614-7100

4. Michael G. Roberts, Corporate Counsel 08/17/92
Crowley Maritime Corporation
1500 K Street, NW, Suite 425
Washington, DC 20005

5. Aaron Hegerfeldt 08/18/92
V-P Hawaii Avocado Association
Hilo, Hawaii

6. Don J. Heinz 08/18/92
President
Hawaiian Sugar Planters' Association
Aiea, Hawaii

4/1

U.S. DEPARTMENT OF AGRICULTURE
ANIMAL & PLANT HEALTH INSPECTION SERVICE

FRUITS & VEGETABLES
FROM HAWAII, PUERTO RICO
AND THE VIRGIN ISLANDS

DOCKET NO. 91-094

COMMENTS OF CROWLEY MARITIME CORPORATION

Crowley Maritime Corporation ("Crowley") submits these comments in response to the Department's Notice that it is considering revising its regulations governing the in-transit movement of certain restricted agricultural products that originate in Hawaii, Puerto Rico and the Virgin Islands and move into or through the continental United States en route to foreign markets. As discussed below, Crowley strongly supports the concept of equalizing trading conditions involving the sale abroad of restricted produce, whether the produce originates abroad or in the United States. The proposed rule is clearly a step in the right direction. It does not, however, level the playing field. It leaves U.S. producers in Hawaii, Puerto Rico and the Virgin Islands at a competitive disadvantage for no discernable safety reason. Crowley therefore suggests that Part 352 of the Department's rules, which govern the in-transit movement of restricted plant materials originating abroad, be amended to cover movement of the produce covered by this proposal.

DISCUSSION

Crowley subsidiary Crowley American Transport, Inc. is the third largest U.S.-owned and -operated ocean carrier. Crowley

67
8-17-92

provides substantial services in the domestic trades between the mainland and Hawaii, Puerto Rico and the Virgin Islands. Crowley is the leading carrier in the U.S.-South America trade and a major participant in other international trades involving Central America and the Caribbean. Crowley has been a leader in offering service to customers in the agriculture industry using increasingly sophisticated temperature-controlled and ventilated containers. This has expanded the ocean transportation of fruits, vegetables and other products that previously moved only by air (if at all) due to their short shelf-life. The tremendous cost advantages inherent in ocean transportation have in turn allowed producers to explore markets on a hemispheric and global basis. Crowley has consistently responded by expanding the resources our customers need to get their products to market. Crowley is thus vitally interested in this proceeding as it will impact on the markets Crowley serves and would impose regulatory compliance requirements on ocean carriers.

Crowley wholeheartedly supports the Department's initiative in proposing a rule to permit the transshipment of certain restricted produce from Hawaii, Puerto Rico and the Virgin Islands. Regulations prohibiting the entry or transit of these products have an obvious detrimental impact on ocean carriers as well as producers. This is acceptable where reasonably necessary to carry out the Department's mission to protect against the dissemination of plant pests and diseases. But the Department must also constantly test the regulations it administers to confirm whether they are truly needed to promote policy objectives, or whether they go too far and unduly hinder economic activity.

The entire purpose of this proposal is to replace extremely rigid restrictions and prohibitions on certain produce movements with a more flexible regime whereby risks and safeguards are more closely matched on a case-by-case basis. As stated in the notice, such a flexible regime has long been in effect for the same kinds of produce transiting the U.S. from foreign sources in order to facilitate trade in plant materials. We are not expert in botany, entomology or other sciences needed to assess plant pest dissemination risks. It would not appear, however, that a more rigid regulatory regime should apply to exports of plant material from U.S. sources than from foreign sources. The risks would seem to be similar and a stricter regime only harms U.S. producers to the benefit of foreign producers.

While Crowley supports the concept of adding flexibility to the system, we question whether the proposed rule would in fact "level the playing field" for U.S. producers. Under Part 352, procedures for the movement of restricted plants originating abroad are to "impose a minimum of impediment to foreign commerce, consistent with proper precaution against plant pest dissemination." 7 C.F.R. §352.3(d). Emphasis is placed on the local inspector's evaluation of the risks involved in a particular shipment or stream of commerce in light of all relevant circumstances. Obviously, the inspectors draw upon the expertise and supervision of APHIS personnel at the regional and national level.

Because Part 352 requires the agency's experts to exercise judgment and discretion, the absolute restrictions in Parts 319, 320, 321 and 330 do not apply to plant movements in foreign commerce. 7 C.F.R. §352.2(a). Part 352 contemplates substantial

flexibility. Usually a "general authorization" is all that is required, although specific oral or written permits may be needed in certain circumstances. 7 C.F.R. §352.5(a). In each case, however, the inspector must be satisfied that the movement is safe based on all relevant factors, such as the plant species, the potential plant pests involved, the manner of dissemination of the pests, the effects of dissemination, the cargo containment, the extent and logistics of the movement, etc.

Many of these factors are covered by the proposed rule. In at least four major areas, however, the proposed rule would impose inflexible and/or more costly procedures as compared to Part 352. The effect would be to handicap trade in certain restricted produce solely because it originates in the U.S. Those areas are:

1. Permits. The proposed rule would appear to require two permits for each move -- one to cover the particular cargo stream (the "transit" permit), and a second to cover a particular shipment within that stream (the "limited" permit). This could suffocate trade. In some instances, it may be appropriate to separately approve and document the procedures applicable to particular types of moves in addition to the move itself. Transcontinental rail movements (minilandbridge), for example, involving transloading and relatively high risk materials should be very carefully controlled and thoroughly documented. On the other hand, the transshipment of sealed containers within a marine terminal, which can be accomplished with virtually no risk, would not require separate written APHIS approval if foreign-originating plants are involved and should not for U.S.-originating plants.

Procedures implemented under Part 352 provide adequate documentation for APHIS to verify and enforce compliance with its requirements. The bill of lading and/or manifest can be stamped to show the applicable restriction. For shipments moving off the terminal, a separate U.S.D.A. seal can be placed on the container and recorded. In-transit, bonded transport documents can be required so that the carrier would face a severe financial penalty for non-compliance with APHIS requirements. A variety of other more or less restrictive procedures could be implemented depending on the move. Requiring shippers and/or carriers to obtain affirmative approval from APHIS each time they move a shipment of restricted produce could seriously hamper trade. It may also be less effective from a safety standpoint in comparison to the financial incentives involved where in-transit bonds are used.

2. Labelling. The proposal that the "smallest unit" be marked with a warning statement would impose substantial and costs on U.S. producers. Because this requirement does not apply to foreign procedures, we question whether it should apply across-the-board to U.S. producers.

3. Transloading. Most shipments would involve full container-load (FCL) movements not requiring transloading. However, a significant less-than-containerload (LCL) market, which may require transloading in the U.S., could easily develop to the benefit of domestic producers. Further, transloading may be needed to handle split destination shipments, to meet road weight restrictions, to utilize different equipment required at foreign locations, and for other reasons. Hence, the assumption that all affected plant materials could move intermodally from and to all potential markets

in a single ocean container, while generally valid, is subject to several significant exceptions. A blanket prohibition on transloading subject only to "extenuating circumstances" is clearly inappropriate.

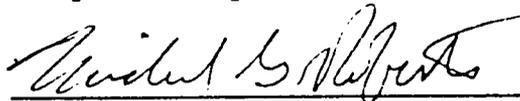
4. Geographical Limits. Particularly onerous is the absolute ban on moving plant materials through Southern states. This is illustrated by the exception for air movements through Dallas/Fort Worth (DFW). While DFW is an important cargo connection point for American Airlines and United Airlines (among others), Atlanta is an important point for Delta Air Lines, Charlotte is important to USAir, etc. Norfolk, Wilmington (N.C.), Charleston, Savannah, Jacksonville, Fort Lauderdale and Miami are all important U.S. East Coast ports of call for U.S. and foreign ocean carriers. Most if not all of these ports have the facilities to handle restricted plant materials, have done so where foreign produce is involved, and could likely handle restricted domestic produce as safely as DFW. They would be completely off-limits under the proposal.

If restrictions are eased, CAT could pursue the market for transporting, for example, Puerto Rico-Europe produce exports. CAT would handle the cargo through connecting carrier arrangements with transatlantic carriers. Because of its limited shelf life, the produce might have to move to Europe directly from the first port of call after San Juan, which would be Jacksonville or Fort Lauderdale. The proposed blanket prohibition on moving cargo through a Southern port would preclude such shipments, and does not appear to be justified.

The foregoing only highlights some of the major differences between Part 352 and the proposed rule. The effect of these

differences is to disadvantage U.S. producers and U.S. carriers in competing against foreign producers and carriers. To be sure, the proposal is a major improvement over the status quo. It would be better from a commercial and competitiveness standpoint, however, if the desired result were accomplished simply by incorporating into Part 352 appropriate amendments to cover in-transit shipments of restricted domestic produce. Crowley respectfully submits that such an approach would promote regulatory uniformity and better reduce the uncertainty and unnecessary restrictions that currently hamper the export of U.S. produce.

Respectfully submitted,



Michael G. Roberts
Corporate Counsel
Crowley Maritime Corporation
1500 K Street, N.W.
Suite 425
Washington, D.C. 20005
(202) 737-4728

Dated: August 13, 1992

Memorandum

TO: RF
FROM: Mary Quinlan, Regulatory Affairs, PROEXAG
REF: Transport Costs for Houston Transshipment of Restricted Produce (e.g. Tropical Fruit)

RF: I am still working on the Amsterdam and other Canadian city quotes and have not been able to reach Griffin, but thought you may want this to get started. I will work on having complete information asap, and will retransmit the whole thing so this can be discarded when completed information is sent. MQ

After shipping by sea or air to Houston, your bonded cargo could go by air at the following rates:

Houston to London (British Air or Continental)

minimum	\$70
under 45 kilos	\$9.04/kilo
45-100 kilos	\$7.16/kilo
over 100 kilos	\$5.33/kilo
over 300 kilos	\$3.78/kilo
over 500 kilos	\$2.82/kilo

(weight is total, fruit and container)

There is no direct flight from Houston to Toronto. One option is to stop in Chicago. To truck to Chicago from Houston is generally \$0.15/lb (I do not know additional cost for bonded). To fly Houston-Chicago it is \$0.70/lb.

Chicago to Toronto

minimum	\$23
under 100 lbs	\$0.54/lb
at 100 lbs or more	\$0.39/lb
1100 lbs	\$0.33/lb

(weight is total, fruit and container)

Please note quotes to London were in kilos, to Canada in pounds.

The source of the quotes gave me an idea of what to expect in Houston. Handling fee is \$100; a bonded truck to drive from one airplane to the other runs around \$30; in bond walk through is \$25; and entry is \$65. (I was not sure on what entry means if it is not "entering" the US but remaining in bond. Nor did person calling me know -- other department.) See attached information of other rates from the freight forwarders I contacted.

61

"domestic" produce the same privilege. The view in APHIS is that approval of a new transshipment route for Central America at this time would focus the animosity of the US industry groups on that region, particularly if the Hawaii proposal is denied. (Note: Although each permit is issued on a case by case basis, APHIS considers issuing a permit to a group like Frutesa this year as setting precedent for other applications from that region.)

It appeared more prudent to wait until the Hawaii proposal is passed and then reapproach the Central America issue.

Future Action

Proposals for transit through locations such as Orlando, Florida, where KLM will be stopping are not worth submitting unless some major shift in policy occurs in the future.

In order to judge Central America's possibilities at the moment, I have reviewed the commentary on the Hawaii proposal. A list of those submitting comments follows the proposal. In general, the comments were positive, although many expressed concern that better safe guards need to be taken. The idea of a sealed or even locked container was proposed and defined in most commentaries. I believe based only on the commentary that the proposal will be approved, but with revision in the safe guards for transit.

Although not typical of the commentary on the Hawaii proposal, I am also enclosing a copy of the comments from CCT. Their point of view is interesting and might be repeated for the Central American proposals in the future.

I will continue to monitor the Hawaii proposal and suggest a good time to resubmit Central American proposals.

Recommendations

I am enclosing all of the relevant materials on this topic for PROEXAG II. I recommend that some materials be treated CONFIDENTIALLY (e.g. individual company proposals). But this is also a good opportunity to make sure that files are complete in any office wishing to follow the topic of transshipment.

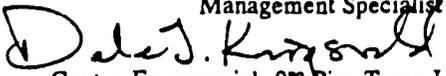
PROEXAG II

Proyecto de Apoyo
las Exportaciones de
Productos No Tradicionales

Ave. 15-45 Zona 10
1010 Guatemala, Guatemala

Chemonics-ROCAP

Dale T. Krigsvold
Post Harvest & Pest
Management Specialist


Centro Empresarial, 9^{ma} Piso Torre I
Tel. 502/2/33-70-82(83)(84) Fax:33-70-81

MEMORANDUM

TO: MARY QUINLAN
INTERCONNECT

DATE: June 24, 1992

REFERENCE: HOUSTON CORRIDOR

As promised, attached are photocopies of some communications that seem to indicate that the concept of the Houston Corridor does exist. Due to uncertainty over market prices and air transport connections to Canada, the Panamanians decided to ship direct to Europe.

DTK/ea
CC: file
FILE [MMQUINLAN.DTK*ea(24Jun92)]

GREXPAN

Comité de Exportadores de Producción No Tradicionales de Panamá

TO: DALE KRIGSVOLD/EXITOS
FROM: MARCOS MORENO/GREXPAN
DATE: JUNE 9, 1992
REF: HOUSTON SEALED CONTAINER INTRANSIT TO CANADA

Dale:

This just came in in reference to what I had mentioned to you over the telephone about GLOBAL REFRIGERATED WAREHOUSES in Houston. Goldie Waghalter had previously contacted Carlos De Obaldia at Fundación ANDE and he wrote back to her upon our request to help us out on the possible Rambutan export from Panama.
Saludos!!!

TELEFONO (507) 74 - 1616 * FAX (507) 74 - 1664 * APARTADO 1146, DAVID, CHIRIQUI, REPUBLICA DE PANAMA

507741664

GREXPAN