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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 02–081–3]

RIN 0579–AB77

#### Importation of Clementines, Mandarins, and Tangerines From Chile

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to allow the importation, under certain conditions, of clementines, mandarins, and tangerines from Chile into the United States. Based on the evidence in a recent pest risk assessment and an accompanying risk management document, we believe these articles can be safely imported from all provinces of Chile, provided certain conditions are met. This action provides for the importation of clementines, mandarins, and tangerines from Chile into the United States while continuing to protect the United States against the introduction of plant pests.

**EFFECTIVE DATE:** January 10, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanne VanDersal, Import Specialist, Phytosanitary Issues Management Staff, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–8, referred to below as the regulations), prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests. The

Government of the Republic of Chile has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow the importation into the United States of clementines, mandarins, and tangerines from Chile under certain conditions without methyl bromide fumigation. Chile also requested that we allow methyl bromide fumigation to remain an option for clementines, mandarins, and tangerines that do not meet the requirements of the systems approach or in case pests are found during routine inspections.

On October 22, 2002, we published a notice in the **Federal Register** (67 FR 64862–64863, Docket No. 02–081–1) in which we advised the public of the availability of a draft pest risk assessment and an accompanying risk management document that evaluated the risks associated with importing citrus from Chile. We solicited comments concerning those documents for 60 days ending December 23, 2002, and received no comments by that date. We subsequently amended the pest risk assessment in March 2004 to include information related to a Mediterranean fruit fly (Medfly) trapping in Chile in April 2003.

On March 22, 2004, we published in the **Federal Register** (69 FR 13262–13269, Docket No. 02–081–2) a proposal to amend the regulations to allow the importation, under certain conditions, of clementines, mandarins, and tangerines from Chile into the United States.

We solicited comments concerning our proposal for 60 days ending May 21, 2004. We received five comments by that date. They were from exporters, researchers, and representatives of State, local, and foreign governments. One commenter supported the proposed rule as written. The remaining commenters raised specific issues regarding the proposed rule. Those issues are discussed below by topic.

We proposed to allow the importation of clementines, mandarins, and tangerines from Chile subject either to the systems approach described in proposed § 319.56–2ll(d) or to fumigation with methyl bromide in Chile in accordance with proposed § 319.56–2ll(e). We also proposed to allow the importation of clementines, mandarins, and tangerines originating from areas in Chile where Medfly is

known to occur provided they are subject to the cold treatment schedules prescribed in the Plant Protection and Quarantine (PPQ) Treatment Manual which is incorporated by reference at 7 CFR 300.1, “Plant Protection and Quarantine Treatment Manual.”

The national plant protection organization of Chile and the Chilean Exporters Association stated that the fumigation option should provide for the treatment to take place either in Chile or at the port of first arrival in the United States, noting that we allow this choice of treatment locations for other commodities being imported into the United States from Chile.

In response to this comment, § 319.56–2mm(e) of this final rule allows fruit requiring methyl bromide fumigation as a condition of entry to be fumigated in either Chile or the United States.

In our proposed rule, § 319.56–2ll(e) stated that fumigated fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the national plant protection organization of Chile. Two commenters stated that an inspection following methyl bromide fumigation is unnecessary because the treatment’s efficacy against target pests (*Brevipalpus chilensis*, *Proeulia auraria*, and *Proeulia chrysopteris*) has already been scientifically established.

We agree with the commenters that methyl bromide fumigation does address the risk of all three of the targeted pests and that post-fumigation inspection is not necessary to ensure phytosanitary security. Therefore, we have removed the proposed post-fumigation inspection requirement from paragraph (e) in this final rule. With respect to *Proeulia auraria* and *Proeulia chrysopteris*, we note that we incorrectly referred to these pests in the background information of the proposed rule as fruit leaf folders, whereas they are more correctly identified as tortricid leafrollers.

Two commenters stated that we referred to treatment schedule T104–a–1 in the proposed rule, but published T101–n–2–1. The commenters did not take issue with the prescribed treatment schedule itself, but simply questioned whether we published the right treatment schedule.

We did not publish T104–a–1 in its entirety in the proposed rule, which is

what led to the confusion surrounding the treatment schedules. Schedule T104-a-1 includes a note that all citrus must be fumigated at a minimum of 50 °F, which is why we omitted the lower temperature options in the treatment schedule that was published in the proposed rule. Without the lower temperature options, the treatment appears to be the same as T101-n-2-1.

One commenter stated that, in the supplementary information of the proposed rule, Chile's Metropolitan Region is incorrectly listed as an area where Medfly is known to exist. The commenter added that Medfly was completely eradicated from this area and verified by the United States Department of Agriculture (USDA) officials in December 2003.

The Arica Province is the only area in Chile where Medfly is known to occur; the commenter is correct that the Medfly outbreak in the Metropolitan Region has been eradicated.

One commenter stated that a production site's "low prevalence" status should only be changed as a result of an inspection of the site itself by USDA officials. The commenter objected to the provisions of proposed § 319.56-211(d)(4) under which a production site's low prevalence status would be suspended for the remainder of the shipping season if a single *Brevipalpus chilensis* mite is found during the required pre-export phytosanitary inspection and contended that the term "low prevalence" in itself allows for the existence of some pests. The commenter also stated that the established procedure with other commodities and countries allows for such a shipment to continue to its destination provided that it undergoes an approved quarantine treatment. Further, the commenter claimed that suspending a production site's certification is unnecessary as long as a treatment that is efficacious against the targeted pest can be applied to a specific shipment before it is released for entry into U.S. commerce.

The systems approach requires certain actions to be taken by fruit producers to control *Brevipalpus chilensis* in the field in addition to packinghouses. The commenter is correct that production sites can be certified as "low prevalence" with the understanding that some *Brevipalpus chilensis* may be present. However, no single *Brevipalpus chilensis* mite should be present on the fruit after the fruit has been through the post-harvest processing procedures, which include washing, rinsing in a chlorine bath with brushing using bristle rollers, and waxing. If, after undergoing these procedures, a

*Brevipalpus chilensis* mite is found, it would indicate a greater problem with the implementation of the systems approach and the production site and/or the packinghouse would need to be investigated. Suspending the site's certification allows for us to conduct such an investigation and for the site to correct any errors in its implementation of the systems approach. The commenter is correct that a site should be allowed to continue shipping to the United States because an efficacious treatment against *Brevipalpus chilensis* exists. That is why this rule provides that a site that has lost its eligibility to ship under the systems approach may continue shipping to the United States using methyl bromide fumigation for the remainder of the shipping season.

One commenter questioned the appropriateness of using a pest risk assessment developed for Medfly in Peru for Chile.

In the pest risk assessment and risk management document developed for the proposed rule, we stated that a recent assessment examining Medfly in Peru was applicable to Chile because the pest and hosts from the two countries are the same and the climatic conditions and environments are similar. The only portion of the pest risk assessment for Peru that was adapted for the pest risk assessment for Chile was the section pertaining to the risk ratings for Medfly, which are considered high for both Peru and Chile and would have been no different if the section was redone for Chile.

One commenter stated that our proposal failed to address the risk posed by fruit flies and that interceptions of Medfly in Chile in both 2003 and 2004 should be cause to stop shipments of citrus from Chile.

We do not agree with this commenter's statement that we failed to address fruit fly concerns in our proposed rule. While the proposed rule dealt largely with describing a systems approach for *Brevipalpus chilensis*, it also included provisions requiring that eligible citrus from regions in Chile where Medfly is known to occur be cold treated in accordance with the PPQ Treatment Manual. We acknowledge that Medfly was intercepted in Chile in both 2003 and 2004 and we will consider any region in Chile where Medfly is captured to be subject to these provisions until it has been eradicated. We believe that cold treatment will prevent the introduction of Medfly into the United States.

One commenter stated that his company had developed a new fumigation treatment using pure phosphine at low temperatures that

would not damage fruit as methyl bromide fumigation can. The commenter requested that we add this new treatment to the regulations as an alternative to methyl bromide fumigation.

APHIS would need to evaluate a treatment's effectiveness before listing it as an approved treatment. The commenter is welcome to send information pertaining to the treatment and its efficacy against targeted pests to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the treatment is found to be efficacious against a specific pest or pests, we may propose to add it to the regulations as an approved treatment and present the proposal for public comment.

#### Miscellaneous

In our March 2004 proposed rule, we proposed to add the conditions governing the importation of clementines, mandarins, and tangerines from Chile as § 319.56-211. In this final rule, those conditions are added as § 319.56-2mm.

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

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this rule on small entities, as required under the Regulatory Flexibility Act. The economic analysis is summarized below. See the full analysis for the complete list of references used in this document. Copies of the full analysis are available on the APHIS Web site at <http://www.aphis.usda.gov/ppd/rad/clementinesecon.pdf> or by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the economic analysis are also available for viewing in our reading room, located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you,

please call (202) 690-2817 before coming.

#### Summary of Economic Analysis

Our analysis estimates expected benefits and costs associated with allowing the importation of clementines, mandarins, and tangerines from Chile into the United States. The analysis assumes that this change in the regulations will not lead to an increased risk of pest outbreaks in the United States. Currently, no clementines, mandarins, or tangerines are being imported into the United States from Chile. According to the Chilean Exporters' Association, 1,300 hectares are planted with clementines, mandarins, and tangerines in Chile, and Chile would like to export approximately 1,600 metric tons of clementines, mandarins, and tangerines to the United States. This amount is a little more than 15 percent of Chile's total exports of these commodities in 2001 (table 1).

TABLE 1.—WORLD EXPORTS OF CLEMENTINES, MANDARINS, AND CITRUS HYBRIDS FROM CHILE

Year	Value (1,000 \$)	Quantity (1,000 kg)
1993 .....	\$4.29	3
1994 .....	61.78	81
1995 .....	636.64	780
1996 .....	1,408.64	1,951
1997 .....	1,675.17	1,579
1998 .....	4,177.41	4,918
1999 .....	4,063.65	4,819
2000 .....	4,743.93	6,896

TABLE 1.—WORLD EXPORTS OF CLEMENTINES, MANDARINS, AND CITRUS HYBRIDS FROM CHILE—Continued

Year	Value (1,000 \$)	Quantity (1,000 kg)
2001 .....	7,441.46	10,398

**Source:** The U.S. Department of Agriculture's (USDA's) Foreign Agricultural Service, as reported by U.N. Trade Statistics. Values are in 2002 dollars and were deflated using the Consumer Price Index (All Urban Consumers) for fresh fruits, not seasonally adjusted, as reported by the U.S. Department of Labor's Bureau of Labor Statistics.

Clementines and mandarins are not produced in the United States in commercially significant quantities. Tangerines are produced domestically. Most imports from Chile are expected to be clementines, not tangerines. An earlier economic analysis by APHIS examined the relationship between imports of Spanish clementines and domestically produced tangerines but did not find evidence of substitution. That analysis did not look at the relationship between Spanish clementines and other citrus. However, U.S. producers of other kinds of citrus—especially California navel oranges—have expressed concerns that imports of Spanish clementines have taken market share and depressed prices for navel oranges, reflecting that the imports are marketed in the United States during the same season as navels.

An increase in supply of clementines could potentially increase competition in the United States for domestically produced citrus, such as oranges and tangerines. If imports from Chile increase, U.S. producer prices could decline during the time when a larger

supply is on the market. However, Chilean clementines are expected to enter the United States primarily between April and September, which is the off-season for domestic tangerines. Most of the fresh early tangerines from Florida, which is the largest producer of tangerines, are shipped from October to January, while most of the fresh Honey tangerines are shipped from February to May (Brown 2000).<sup>1</sup> California navel oranges are marketed primarily from November to May, while California Valencia oranges are primarily marketed from April to October.

Table 2 shows the monthly orange shipments for fresh uses of three major citrus producing States. Oranges include Valencia, navel, and early/midseason varieties. Domestic orange shipments between April and September comprise about 25 percent of total shipments annually. Although the data represent only a proportion of the production dedicated for fresh utilization, they provide an indication of the domestic orange marketing seasons for comparative purposes. The April–September marketing period for Chilean clementines matches the California and Florida Valencia marketing seasons, so the clementines could displace some fresh market Valencia orange sales. However, the expected amount of 1,600 metric tons represents a small share (less than 2 percent) of the domestic shipments between April and September (99,712 metric tons). The competition with various summer fruits is likely to have a far greater impact. Given the small number of expected imports from Chile and the different marketing seasons, any potential impacts on U.S. citrus producers would be minimal.

TABLE 2.—MONTHLY ORANGE SHIPMENTS FOR FRESH UTILIZATION, AVERAGE 2000–2002

Month	Average shipments by State (metric tons)			Total
	California	Florida	Texas	
January .....	7,818	25,106	8,818	41,742
February .....	7,076	19,182	7,652	33,910
March .....	9,394	18,742	5,333	33,470
April .....	8,091	20,545	2,485	31,121
May .....	8,394	19,030	1,182	28,606
June .....	7,136	13,242	0	20,379
July .....	5,409	545	0	5,955
August .....	5,652	45	0	5,697
September .....	4,773	2,652	530	7,955
October .....	4,242	23,848	5,015	33,106
November .....	5,288	37,348	5,576	48,212

<sup>1</sup> Florida is the largest producer of tangerines, accounting for 68 percent of total domestic

production annually, followed by California (26 percent), and Arizona (6 percent).

TABLE 2.—MONTHLY ORANGE SHIPMENTS FOR FRESH UTILIZATION, AVERAGE 2000–2002—Continued

Month	Average shipments by State (metric tons)			Total
	California	Florida	Texas	
December .....	7,561	53,500	8,848	69,909

**Note:** Orange shipment data for California and Arizona include only rail and piggyback (trailer-on-flat-car and container-on-flat-car). Truck shipment data are not available. Average California orange shipments for 2000–2002 represent about 5 percent of California's production for fresh utilization over the same time period. Arizona data are excluded (available shipment data were small in 2000–2001 and zero in 2002). Average Florida and Texas shipments for 2000–2002 represent about 60 percent and 93 percent, respectively, of fresh production for those States. Source: USDA/AMS Fruits and Vegetable Market News.

Most U.S. imports of clementines, mandarins, and tangerines (table 3) currently come from Spain, which ships the commodities from mid-September to mid-March. Chile would export these commodities to the United States between April and September each year. These imports would increase the availability of these fruits during the Spanish off-season, which would lead to benefits for U.S. importers and consumers.

TABLE 3.—U.S. WORLD IMPORTS OF CLEMENTINES, MANDARINS, AND CITRUS HYBRIDS

Year	Value (1,000 \$)	Quantity (1,000 kg)
1991 .....	\$23,306	19,480
1992 .....	26,219	18,112
1993 .....	27,019	17,519
1994 .....	30,404	20,850
1995 .....	26,010	19,062
1996 .....	39,976	27,404
1997 .....	63,279	42,110
1998 .....	60,356	43,168
1999 .....	128,104	90,454
2000 .....	113,953	96,296
2001 .....	131,711	75,365

**Source:** Import data are from the USDA's Foreign Agricultural Service, as reported by U.N. Trade Statistics. Values are in 2002 dollars and were deflated using the Consumer Price Index (All Urban Consumers) for fresh fruits, not seasonally adjusted, as reported by the U.S. Department of Labor's Bureau of Labor Statistics.

To capture the impact on U.S. importers, an inverse demand curve characterizing the U.S. demand for imported clementines, tangerines, and mandarin oranges was estimated. The

demand for the imported commodities can be related to the export prices and quantities for Spanish fruits exported to all markets except the United States. Spanish export data were used because over 83 percent of U.S. imports of these fruits was from Spain during 1997–2001. Data on imports for 1991–2001 were used to analyze the expected impacts for the 10-year period (2004–2013) subsequent to the entry of the imports from Chile.

Imports from Chile were assumed to grow 13.55 percent each year, which was the average annual growth during 1999–2001 in Chile's exports to Japan, its best export market, and that imports for 2004 will be 1,595 metric tons (table 4). It was assumed that U.S. imports from sources other than Chile will grow 6.46 percent per year, which was the import growth during 1999–2000, starting from an estimate of 87,372 metric tons imported for 2002, which was the average import quantity during 1999–2001 (table 3).

TABLE 4.—ESTIMATED U.S. IMPORTS OF CLEMENTINE, MANDARIN, AND TANGERINE WITH AND WITHOUT CHILE

Year	Clementine, mandarin, and tangerine imports (1,000 kg)	
	Without Chile	With Chile
2004 .....	99,020	100,620
2005 .....	105,420	107,230
2006 .....	112,230	114,280
2007 .....	119,470	121,810
2008 .....	127,190	129,840
2009 .....	135,400	138,420

TABLE 4.—ESTIMATED U.S. IMPORTS OF CLEMENTINE, MANDARIN, AND TANGERINE WITH AND WITHOUT CHILE—Continued

Year	Clementine, mandarin, and tangerine imports (1,000 kg)	
	Without Chile	With Chile
2010 .....	144,150	147,570
2011 .....	153,460	157,340
2012 .....	163,370	167,780
2013 .....	173,920	178,930

Expected future gross revenues (table 5) were discounted by using real interest rates of 3 percent and 7 percent as recommended by the Office of Management and Budget. For further sensitivity analysis, a rate of 5.34 percent, which was estimated using annual income and rate of return data for U.S. farmers during 1966–1994, is also provided.<sup>2</sup> The annualized increase in gross revenues received by U.S. importers of clementines, mandarins, and tangerines under this rule was an estimated \$0.60 million per year during 2004–2013, depending on the interest rate chosen. This suggests that the rule will yield economic benefits to U.S. importers during the period in which it remains in force. Consumers also benefit from the greater availability of clementines during the off-season for domestic production and other imports. The rule will result in net benefits to society given that the new imports are not expected to significantly compete with domestic citrus production and will not lead to pest introductions.

TABLE 5.—IMPACT ON GROSS REVENUES OF U.S. IMPORTERS  
[\$ millions]

Year	With Chile	Without Chile	Gains
2004 .....	\$7.48	\$7.24	\$0.24
2005 .....	8.50	8.21	0.28
2006 .....	9.65	9.31	0.34
2007 .....	10.96	10.55	0.42

<sup>2</sup> Lence, S.H. "Using Consumption and Asset Return Data to Estimate Farmers' Time Preferences and Risk Attitudes."

TABLE 5.—IMPACT ON GROSS REVENUES OF U.S. IMPORTERS—Continued  
[\$ millions]

Year	With Chile	Without Chile	Gains
2008 .....	12.46	11.95	0.50
2009 .....	14.16	13.55	0.61
2010 .....	16.09	15.35	0.74
2011 .....	18.29	17.40	0.89
2012 .....	20.80	19.72	1.08
2013 .....	23.66	22.35	1.31
Annualized discounted sum of gross revenues:			
3% .....	\$13.78	\$13.16	\$0.61
5.34% .....	\$13.46	\$12.86	\$0.59
7% .....	\$13.24	\$12.66	\$0.58

### Impacts on Small Entities

According to the 1997 Census of Agriculture, there were 17,000 citrus producers (excluding grapefruit, lemon, and lime producers) in the United States. The U.S. Small Business Administration defines a small citrus producer as one with annual gross revenues no greater than \$0.75 million. The USDA's National Agricultural Statistics Service reported that 3.8 percent of U.S. fruit and tree nut producers accounted for 95.1 percent of sales in 1982, 4.2 percent of fruit and tree nut producers accounted for 96.2 percent of sales in 1987, and 4.6 percent of fruit and tree nut producers accounted for 96.7 percent of sales in 1992. These data indicate that the majority of U.S. citrus producers are small entities. Our economic analysis suggests that Chilean imports will not significantly compete with domestic citrus production such as tangerines and navel oranges because the imports will be shipped largely during the off-season for U.S. production of these fruits. Although the Chilean imports are expected to overlap with some domestic orange shipments such as Valencia oranges, the amount to be imported is expected to be a small percentage of the total U.S. orange shipments during the importing months. As a result, the importation of clementines, mandarins, and tangerines from Chile will likely have minimal adverse impact on domestic citrus producers, large or small.

Importers of clementines, mandarins, and tangerines will likely benefit under this rule. The number of importers that can be classified as small is not known. However, the rule will not lead to an adverse economic impact on small entities in these industries (fresh fruit and vegetable wholesalers with no more than 100 employees, NAICS 422480; wholesalers and other grocery stores with annual gross revenues no greater than \$23 million, NAICS 445110; warehouse clubs and superstores with

annual gross revenues no greater than \$23 million, NAICS 452910; and fruit and vegetable markets with gross revenues no greater than \$6 million, NAICS 445230).

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

### Executive Order 12988

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

### Use of Methyl Bromide

The United States is fully committed to the objectives of the Montreal Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and pre-shipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their "national plant, animal,

environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist."

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions. As noted above, we welcome data or other information regarding other treatments that may be efficacious and technically and economically feasible that we may consider as alternatives to methyl bromide.

### National Environmental Policy Act

An environmental assessment and finding of no significant impact (FONSI) have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of clementines, mandarins, and tangerines under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and FONSI were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended

(42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and FONSI may be viewed on the Internet at [http://www.aphis.usda.gov/ppq/enviro\\_docs/chil.html](http://www.aphis.usda.gov/ppq/enviro_docs/chil.html). Copies of the environmental assessment and FONSI are also available for public inspection in our reading room, located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0242.

#### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

#### List of Subjects in 7 CFR Part 319

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

■ Accordingly, 7 CFR part 319 is amended as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. A new § 319.56–2mm is added to read as follows:

#### § 319.56–2mm Conditions governing the importation of clementines, mandarins, and tangerines from Chile.

Clementines (*Citrus reticulata* Blanco var. Clementine), mandarins (*Citrus reticulata* Blanco), and tangerines (*Citrus reticulata* Blanco) may be imported into the United States from Chile only under the following conditions:

(a) The fruit must be accompanied by a specific written permit issued in accordance with § 319.56–3.

(b) If the fruit is produced in an area of Chile where Mediterranean fruit fly (*Ceratatis capitata*) is known to occur, the fruit must be cold treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. Fruit for which cold treatment is required must be accompanied by documentation indicating that the cold treatment was initiated in Chile (a PPQ Form 203 or its equivalent may be used for this purpose).

(c) The fruit must either be produced and shipped under the systems approach described in paragraph (d) of this section or fumigated in accordance with paragraph (e) of this section.

(d) *Systems approach.* The fruit may be imported without fumigation for *Brevipalpus chilensis* if it meets the following conditions:

(1) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. To register, the production site must provide Chile's NPPO with the following information: Production site name, grower, municipality, province, region, area planted to each species, number of plants/hectares/species, and approximate date of harvest. Registration must be renewed annually.

(2) *Low prevalence production site certification.* Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of Chile's NPPO. These samples must undergo a pest detection and evaluation method as follows: The fruit and pedicels must be washed using a flushing method, placed in a 20 mesh sieve on top of a 200 mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be

repeated. The contents of the sieves must then be placed on a petri dish and analyzed for the presence of live *B. chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low prevalence production site and will be eligible to export fruit to the United States only if the fruit is fumigated in accordance with paragraph (e) of this section. Each production site may have only one opportunity per harvest season to qualify as a low prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(3) *Post-harvest processing.* After harvest and before packing, the fruit must be washed, rinsed in a chlorine bath, washed with detergent with brushing using bristle rollers, rinsed with a hot water shower with brushing using bristle rollers, predried at room temperature, waxed, and dried with hot air.

(4) *Phytosanitary inspection.* The fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile after the post-harvest processing. A biometric sample will be drawn and examined from each consignment of fruit, which may represent multiple grower lots from different packing sheds. Clementines, mandarins, or tangerines in any consignment may be shipped to the United States only if the consignment passes inspection as follows:

(i) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit that identify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identity must be maintained until the fruit is released for entry into the United States.

(ii) A biometric sample of boxes from each consignment will be selected and the fruit from these boxes will be visually inspected for quarantine pests, and a portion of the fruit will be washed and the collected filtrate will be microscopically examined for *B. chilensis*.

(A) If a single live *B. chilensis* mite is found, the fruit will be eligible for importation into the United States only if it is fumigated in Chile in accordance with paragraph (e) of this section. The production site will be suspended from the low prevalence certification program and all subsequent lots of fruit from the production site of origin will be required to be fumigated as a condition

of entry to the United States for the remainder of the shipping season.

(B) If inspectors find evidence of any other quarantine pest, the fruit in the consignment will remain eligible for importation into the United States only if an authorized treatment for the pest is available in the PPQ Treatment Manual and the entire consignment is treated for the pest in Chile under APHIS supervision.

(iii) Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment meets the conditions of § 319.56–2mm(d).

(e) *Approved fumigation.*

Clementines, mandarins, or tangerines that do not meet the conditions of paragraph (d) of this section may be imported into the United States if the fruit is fumigated either in Chile or at the port of first arrival in the United States with methyl bromide for *B. chilensis* in accordance with the PPQ Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. An APHIS inspector will monitor the fumigation of the fruit and will prescribe such safeguards as may be necessary for unloading, handling, and transportation preparatory to fumigation. The final release of the fruit for entry into the United States will be conditioned upon compliance with prescribed safeguards and required treatment.

(f) *Trust fund agreement.*

Clementines, mandarins, and tangerines may be imported into the United States under this section only if the NPPO of Chile has entered into a trust fund agreement with APHIS. This agreement requires the NPPO of Chile to pay in advance of each shipping season all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services in Chile during that shipping season. These costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires the NPPO of Chile to deposit a certified or cashier's check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the NPPO of Chile to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before APHIS will provide any more services related to the inspection

and treatment of clementines, mandarins, and tangerines in Chile. After a final audit at the conclusions of each shipping season, any overpayment of funds would be returned to the NPPO of Chile, or held on account until needed, at their option.

(Approved by the Office of Management and Budget under control number 0579–0242.)

Done in Washington, DC, this 23rd day of November, 2004.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–27075 Filed 12–9–04; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1005, 1006, and 1007

[Docket No. AO–388–A16, AO–356–A38, and AO–366–A45; DA–04–07]

#### Milk in the Appalachian, Florida, and Southeast Marketing Areas; Order Amending the Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final Rule.

**SUMMARY:** This final rule amends the Appalachian, Florida, and Southeast Federal milk marketing orders (Orders 5, 6, and 7). Specifically, the final rule implements a temporary supplemental charge on Class I milk that will be disbursed to handlers who incurred extraordinary transportation costs for bulk milk movements in and to Orders 5, 6, and 7 as a result of hurricanes Charley, Frances, Ivan and Jeanne. The amendments are based on record evidence of a public hearing held on October 7, 2004. More than the required number of dairy farmers approved the issuance of the amended orders.

**DATES:** *Effective Date:* December 10, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Antoinette M. Carter, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: [antoinette.carter@usda.gov](mailto:antoinette.carter@usda.gov).

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees.

For the purposes of determining which dairy farms are “small businesses,” the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.