

# Proposed Rules

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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 319

[Docket No. 02-081-2]

RIN 0579-AB77

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

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables 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 would provide 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.

**DATES:** We will consider all comments that we receive on or before May 21, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 02-081-2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-081-2.

- E-mail: Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-081-2" on the subject line.

- Agency Web site: Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

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

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Staff, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-5210.

#### 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.

To evaluate the risks associated with the importation of clementines, mandarins, and tangerines from Chile, a draft pest risk assessment entitled "Importation of Fresh Commercial Citrus Fruit: Clementine (*Citrus reticulata* Blanco var. 'Clementine'), Mandarin (*Citrus reticulata* Blanco), and Tangerine (*Citrus reticulata* Blanco)

from Chile into the United States: A Pathway Initiated Plant Pest Risk Assessment" (revised September 2002) was prepared. An addendum to this pest risk assessment was prepared in September of 2003. The Servicio Agrícola y Ganadero, the national plant protection organization (NPPQ) of Chile, prepared a risk management document entitled "Measures Suggested for Quarantine Pest Risk Management in Clementines, Mandarin Oranges and Tangerines Exported from Chile to the United States of America" (March 2002), which accompanied the draft pest risk assessment.

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 the draft pest risk assessment and its accompanying risk management document. We solicited comments concerning those documents for 60 days ending December 23, 2002, and received no comments by that date.

The pest risk assessment and the risk management document may be viewed on the Internet at <http://www.aphis.usda.gov/ppq/pral/>, or in our reading room (information on the location and hours of the reading room is provided under the heading

**ADDRESSES** at the beginning of this document). You may also request copies of those documents from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Based on the evidence in the pest risk assessment and its accompanying risk management document, we believe that clementines, mandarins, and tangerines can be safely imported from all provinces of Chile, provided certain conditions are met. Therefore, we are proposing to add a new § 319.56-2ll to the regulations to provide for the importation of clementines, mandarins, and tangerines from Chile.

##### Permit

Under paragraph (a) of the proposed regulations, a specific written permit issued in accordance with § 319.56-3 would be required to import clementines, mandarins, and tangerines from Chile. Importers would be required to apply to the Plant Protection and Quarantine (PPQ) program for a permit in advance of the proposed shipments, stating in the application the country or locality of origin of the fruits, the port of first arrival, and the name and

address of the importer in the United States to whom the permit should be sent. Upon receipt of the application and upon approval by an inspector, a permit would be issued specifying the conditions of entry, which will be discussed in the following paragraphs, and the port of entry. In accordance with § 319.56–4, a permit, once issued, could be amended or withdrawn by the Administrator at any time if it is determined that the importation of the fruit presents a risk.

#### Cold Treatment

One of the four pests of concern identified in the risk assessment document is *Ceratatis capitata*, a fruit fly more commonly known as the Mediterranean fruit fly (Medfly). To address the risk presented by this pest, paragraph (b) of the proposed regulations would require the cold treatment of fruit grown in areas of Chile where Medfly is known to occur, which include the province of Arica as well as regulated areas in Chile's Metropolitan Region. Shipments from these areas would require cold treatment in accordance with the PPQ Treatment Manual and would also be required to be accompanied by documentation indicating that the cold treatment was initiated in Chile. Fruit from these areas would also have to meet all other proposed requirements.

#### Importation Options

The second of the four pests of concern identified in the risk assessment document is *Brevipalpus chilensis*, a mite that is not easily detected through visual inspection. To address the risk presented by this pest, paragraph (c) of the proposed regulations would provide for the use of two options, a systems approach and fumigation. The systems approach would allow for the importation of the fruit without fumigation, which is a more expensive option. These options are discussed in detail in the following paragraphs.

The remaining two pests of concern are the fruit leaf folders *Proeulia auraria* and *Proeulia chrysoterpis*, which are external feeders that can be detected through visual inspection when either the pests themselves are seen externally or the fruit shows external signs of infestation. We believe that the risks presented by these pests can be addressed using the same two options we are proposing to address *B. chilensis* because the necessary visual inspection, which is the primary means of mitigation for these pests, will be a component of both options. In the proposed systems approach, one of the

proposed requirements is preclearance inspection. A similar preclearance program using inspection to prevent the introduction of *Proeulia* spp. is currently in use for apricots, nectarines, peaches, plumcot, and plums imported into the United States from Chile (see § 319.56–2s of the regulations). If the fumigation option were used, the fruit would be fumigated in accordance with the PPQ Treatment Manual, which is incorporated by reference in § 300.1 of the regulations, and then inspected by an APHIS inspector after completion of the treatment prior to export from Chile to ensure that the fruit was free of infestation of any pests of *Proeulia* spp.

#### Systems Approach

The first option being proposed by APHIS under which clementines, mandarins, and tangerines could be imported into the United States from Chile is preclearance of the commodities using a systems approach to phytosanitary security. Under a systems approach, APHIS defines a set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. The systems approach in this case would consist of a series of complementary phytosanitary measures that include: Low prevalence production site certification, post-harvest processing, and phytosanitary inspection. Each of these measures is explained in detail in the following paragraphs. Once the clementines, mandarins, or tangerines have passed through this series of pest mitigation measures, inspectors of the NPPO of Chile would issue a phytosanitary certificate stating that the fruit has been inspected and found free of any evidence of plant pests. A phytosanitary certificate would have to accompany each shipment of clementines, mandarins, or tangerines offered for importation into the United States from Chile.

#### Low Prevalence Production Site Certification

The pest risk management document prepared by Chile outlined a series of phytosanitary measures whose implementation would mitigate the potential risk of introducing quarantine pests into the United States through the importation of clementines, mandarins, and tangerines from Chile. In order to be eligible to participate in the systems approach, each production site would be required to implement the mitigation

measures discussed in the pest risk management document. The first of these measures, low prevalence production site certification, would require each production site to register annually with the NPPO of Chile with information including: (1) Production site name, (2) grower, (3) municipality, (4) province, (5) region, (6) area planted to each species, (7) number of plants/hectares/species, and (8) approximate date of harvest. This information would be used to monitor the phytosanitary health of the production site and to track the origin of shipments. These production sites would then participate in a program of certification of low prevalence, which would be carried out by the NPPO of Chile. A random sample of fruit would be collected from each registered production site 1 to 30 days prior to harvest. The fruit from each sample would undergo a washing process that allows for the detection of mites. This same process has proven to be effective in the detection of *B. chilensis* in other products and clementines.<sup>1</sup> The washing process involves placing the fruit and pedicels in sieves, sprinkling them with a liquid soap and water solution, washing them with water at high pressure, washing them with water at low pressure, and then repeating the process. Once the fruit has been washed thoroughly, all contents of the sieves, which collect everything that is washed off of the fruit, are put on a Petri dish and analyzed for the presence of mites.

Only production sites certified by the NPPO of Chile as low prevalence would be eligible to export under this systems approach. Under this systems approach, a random sample of fruit would be taken from each production site. In order to qualify as a low prevalence production site, a production site would be required to have no mites detected in the fruit sampled. Each production site would have only one opportunity per harvest season to qualify for the certification program since the verification process would occur before the beginning of each harvest season. Certification of low prevalence would be valid for one harvest season only. A similar certification of low prevalence program is currently in use for kiwifruit imported into the United States from Chile.

In order to achieve low prevalence, production sites could employ production site control, which is discussed in the pest risk management document. Production site control consists of treating the production site with detergent or oil to reduce the

<sup>1</sup> See Annex 7 of the risk management document.

populations of various pests. Studies cited in the risk management document indicate an efficacy rate of 92 percent for the detergent treatment and 97.3 percent for the oil treatment in the clementine production sites sampled in the control of *B. chilensis*.<sup>2</sup>

#### Post-Harvest Processing

Once the production site has been certified as a low prevalence production site, the fruit would be picked and would then undergo post-harvest commercial processing. In the normal fruit packing process already in place in Chile for other commodities, fruit undergoes the following steps: (1) Washing, (2) rinsing in a chlorine bath with brushing using bristle rollers, (3) rinsing with a hot water shower with brushing using bristle rollers, (4) pre-drying at room temperature, (5) waxing, and (6) drying with hot air. Three specific studies conducted by the Fundación para el Desarrollo Frutícola and the Universidad Católica de Valparaíso, Chile (Catholic University of Valparaíso, Chile) found these post-harvest processing procedures to be 79.9 percent to 89.7 percent effective in removing *B. chilensis* mites as a stand-alone mitigation measure.<sup>3</sup>

#### Phytosanitary Inspection

As the final stage in the systems approach, once the fruit has been processed, each consignment, which would consist of one or more lots, of fruit intended for export to the United States would be subject to a phytosanitary inspection to verify the absence of *B. chilensis* and any visibly detectable pests, including *Proeulia* spp. Phytosanitary inspection would be conducted at an APHIS-approved inspection site in Chile under the direction of APHIS in conjunction with the NPPO of Chile.

Clementines, mandarins, and tangerines presented for preclearance inspection in Chile would be required to be identified in shipping documents accompanying each lot of fruit that identify the packing shed where they were processed and the production sites where they were produced; we would require that this identity be maintained until the clementines, mandarins, and tangerines were released for entry into the United States.

A biometric sample of the boxes would be selected and the fruit from these boxes would be visually inspected for quarantine pests. A portion of the fruit would be washed and the collected

filtrate would be microscopically examined for *B. chilensis*.

If one live *B. chilensis* mite were found during phytosanitary inspection, the entire consignment would have to be fumigated with methyl bromide in order for the fruit to be eligible for export to the United States. In addition, the production site of origin would be suspended from the low prevalence certification program for the remainder of the harvest season. During the term of its suspension, the production site could export fruit to the United States only if the fruit were fumigated with methyl bromide, as outlined in the following section. A suspended production site would have the opportunity to reenter the low prevalence certification program prior to the next harvest season. As noted previously, all production sites would have to requalify for the program each year, regardless of their status at the end of the preceding season.

If, during preclearance inspection in Chile, inspectors were to find evidence of any other plant pest for which an authorized treatment in the PPQ Treatment Manual is available, fruit in the consignment would remain eligible for export to the United States if the entire consignment were treated for the pest in Chile under APHIS supervision. However, if a quarantine pest were found for which no treatment authorized in the PPQ Treatment Manual is available, the entire consignment would not be eligible for export to the United States.

Chilean inspectors would issue a phytosanitary certificate if no evidence of pests was found. The phytosanitary certificate would have to contain an additional declaration stating that the fruit in the consignment meets the conditions of § 319.56–21(d). Clementines, mandarins, or tangerines inspected in Chile would, like all imported fruits and vegetables, be subject to reinspection at the U.S. port of arrival as provided in § 319.56–6 of the regulations.

#### Fumigation

Not all exporters may be able to utilize the systems approach as a means for access to the U.S. market. As an alternative mitigation measure, we are proposing to provide for the use of an approved APHIS treatment for *B. chilensis* for clementines, mandarins, and tangerines from Chile.

The treatment would be fumigation with methyl bromide at normal atmospheric pressure in an APHIS-approved fumigation chamber or under a tarpaulin in accordance with the following schedule, which is listed in

the PPQ Treatment Manual as T–104–a–1. This treatment schedule is approved for spider mites, which is the group encompassing *B. chilensis*. The treatment schedule requires that tangerines (*Citrus reticulata*, which encompasses clementines, mandarins, and tangerines) must be warmed to a minimum of 50 °F before treatment. The required treatment period is 2 hours.

Temperature (°F)	Dosage-pounds of methyl bromide per 1,000 ft <sup>3</sup>
80 or above .....	1½
70–79 (inclusive) .....	2
60–69 (inclusive) .....	2½
50–59 (inclusive) .....	3

APHIS inspectors would monitor the fumigation and prescribe such safeguards as might be necessary for unloading, handling, and transportation preparatory to fumigation. The final release of the commodities for entry into the United States would be conditioned upon compliance with prescribed safeguards and required treatment. Shipments of clementines, mandarins, and tangerines from Chile that had been fumigated would be subject to random inspection in Chile, as well as at the port of arrival in accordance with § 319.56–6.

#### Trust Fund Agreement

Section 319.56–22(c) of the regulations sets forth the requirement for a trust fund agreement for the importation of cherimoyas from Chile into the United States. We are proposing to require a similar trust fund agreement for the importation of clementines, mandarins, and tangerines from Chile. This agreement would require the NPPO of Chile to pay in advance of each shipping season all costs that APHIS estimates it would incur in providing inspection services and treatment monitoring in Chile during that shipping season. These costs would include administrative expenses and all other salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The agreement would require 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 would require the NPPO of Chile to deposit a certified or cashier's check

<sup>2</sup> See Annex 3 of the risk management document.

<sup>3</sup> See Annexes 4, 5, and 6 of the risk management document.

with APHIS for the amount of the remaining costs, as determined by APHIS, before APHIS would provide any more services related to the inspection and treatment of clementines, mandarins, or tangerines in Chile. After a final audit at the conclusion 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.

Requiring the payment of costs in advance is necessary to help defray the costs to APHIS of providing inspection and treatment monitoring services in Chile.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed 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 proposed rule on small entities, as required under 5 U.S.C. 603. 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 contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the economic analysis are also available for viewing in our reading room. (Information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document).

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction into, or dissemination within, the United States of a plant pest or noxious weed.

#### 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 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
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 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>4</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 shipment 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.

<sup>4</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

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
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 was 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

Estimated regulatory benefits for U.S. importers were given by the area under the inverse import demand curve above estimated price with Chilean imports minus the area under the import demand curve above estimated price without Chilean imports. This method provided annual estimates of gross revenue increases received by U.S. importers. Expected future gross revenues (table 5) were discounted using a 5.34 percent annual interest rate, which was estimated using annual income and rate of return data for U.S. farmers during 1966–1994.<sup>5</sup> The annualized increase in gross revenues received by U.S. importers of clementines, mandarins, and tangerines under the regulations was an estimated \$0.59 million per year during 2004–2013. This suggests that the regulation 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.

<sup>5</sup> Lence, S.H. "Using Consumption and Asset Return Data to Estimate Farmers' Time Preferences

and Risk Attitudes." *American Journal of Agricultural Economics*. 82(2000): 934–947.

The proposed 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  
[In millions of dollars]

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
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 .....	13.46	12.86	0.59

#### *Regulatory 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 would likely have minimal adverse impact on domestic citrus producers, large or small.

Importers of clementines, mandarins, and tangerines would likely benefit under the proposed regulations. The number of importers that can be classified as small is not known. However, the proposed regulations would not lead to 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 would not have a significant economic impact on a substantial number of small entities.

#### *Executive Order 12988*

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

#### *National Environmental Policy Act*

An environmental assessment has been prepared for this proposed rule. The assessment provides a basis for the conclusion that the importation of clementines, mandarins, and tangerines under the conditions specified in this proposed rule would not present a risk

of introducing or disseminating plant pests or diseases and would not have a significant impact on the quality of the human environment.

The environmental assessment was 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 is available for viewing on the Internet at <http://www.aphis.usda.gov/ppd/es/ppqdocs.html>. Copies of the environmental assessment are also available for public inspection in our reading room. (Information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). 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 section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–081–2. Please send a copy of your comments to: (1) Docket No. 02–081–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road

Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations to allow the importation of clementines, mandarins, and tangerines into the United States from Chile, provided certain conditions were met. These proposed changes would require, among other things, that production sites participating in an export program from Chile to the United States would have to register with the NPPO of Chile and be certified as low prevalence production sites. Each consignment of clementines, mandarins, and tangerines would be inspected by APHIS and the NPPO of Chile, and a phytosanitary certificate would have to be issued before the consignment could leave Chile. In addition, Chile would have to enter into a trust fund agreement with the United States before beginning any export program.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submissions of responses).

**Estimate of burden:** Public reporting burden for this collection of information is estimated to average 0.0833 hours per response.

**Respondents:** Growers, shippers, and Chilean health officials.

**Estimated annual number of respondents:** 10.

**Estimated annual number of responses per respondent:** 12.

**Estimated annual number of response:** 120.

**Estimated total annual burden on respondents:** 10 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

### 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 proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

### List of Subjects in 7 CFR Part 319

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

Accordingly, 7 CFR part 319 would be amended as follows:

### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue 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 § 319.56–2ll would be added to read as follows:

#### § 319.56–2ll 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 (*Ceratitis 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 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 § 319.56–21(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 with methyl bromide for *B. chilensis* in Chile 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 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 completion of treatment. 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.

Done in Washington, DC, this 16th day of March 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04–6325 Filed 3–19–04; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 979

[Docket No. FV04–979–1 PR]

#### Melons Grown in South Texas; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the South Texas Melon Committee (Committee) for the 2003–04 and subsequent fiscal periods from \$0.06 to \$0.09 per carton of melons handled. The Committee locally administers the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by April 6, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov) or [www.regulations.gov](http://www.regulations.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this