

under this section, except as provided by paragraph (c)(3) of this section. The agency may set the employee's rate of basic pay at any step rate that does not exceed that maximum payable rate.

* * * * *

(d) * * * (1) For a Department of Defense or Coast Guard employee who is moved involuntarily (as defined in paragraph (d)(3) of this section), without a break in service of more than 3 days, from a NAFI position in the Department of Defense or the Coast Guard to a GS position with substantially the same duties in the Department of Defense or the Coast Guard, respectively, the employee is entitled to an initial payable rate of basic pay at the lowest step rate of the grade that is equal to or greater than the employee's rate of basic pay in the NAFI position immediately before the move. If the employee's former NAFI rate exceeds the range maximum, identify the maximum step rate (step 10).

(2) * * *

(i) The lowest step rate within the highest applicable rate range for the employee's GS position of record and official worksite that equals or exceeds the employee's NAFI highest previous rate, or any lower step rate (consistent with the method prescribed in paragraphs (c)(1) and (2) of this section);

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart K—Collection by Offset From Indebted Government Employees

3. The authority citation for subpart K of part 550 continues to read as follows:

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

4. In § 550.1103, the definition of *agency* is revised to read as follows:

§ 550.1103 Definitions.

* * * * *

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation. If an agency under this definition is a component of an agency, the broader definition of *agency* may be used in applying the provisions of 5 U.S.C.

5514(b) (concerning the authority to prescribe regulations).

* * * * *

[FR Doc. E8–19819 Filed 8–26–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0152]

RIN 0579–AC82

Importation of Grapes from Chile Under a Systems Approach

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow fresh table grapes from Chile to be imported into the continental United States under a systems approach. Currently, as a condition of entry, all table grapes from Chile must be fumigated with methyl bromide as a risk-mitigation measure for *Brevipalpus chilensis*. Under this proposal, we would allow a combination of risk-mitigation measures, or systems approach, to be employed in lieu of methyl bromide fumigation. The systems approach would provide an alternative to methyl bromide while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: We will consider all comments that we receive on or before October 27, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0152> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0152, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0152.

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: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Assistant Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5333.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–47, 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 that are new to or not widely distributed within the United States.

Currently, the importation of table grapes (*Vitis vinifera* L.) from Chile into the United States is authorized under § 319.56–4 of the regulations. Accordingly, Chilean table grapes are listed in the Plant Protection and Quarantine Fresh Fruits and Vegetables Import Manual, which may be viewed on the Internet at http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf, as a commodity approved for entry into the United States, subject to certain conditions.

The regulations in 7 CFR part 305, “Phytosanitary Treatments,” specify the treatment schedules that must be used on certain commodities prior to their importation or entry into the United States. Currently, in § 305.2 of these regulations, paragraph (i) identifies several different treatment schedules for use on table grapes from Chile as risk-mitigation measures for *Brevipalpus chilensis* mites and/or Mediterranean fruit fly (*Ceratitis capitata*, referred to below as Medfly), depending on the area of Chile from which the fruit originates. If the grapes originate from an area of Chile in which both pests are known to exist, the grapes must be treated with methyl bromide for *B. chilensis* followed by cold treatment for Medfly. If the table grapes originate from an area of Chile that the Animal and Plant Health Inspection Service (APHIS) has declared a pest-free area for Medfly in

accordance with the provisions of § 319.56–5 of the regulations, only the methyl bromide treatment is required.

Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. In 2002, the Servicio Agrícola y Ganadero, the national plant protection organization (NPPO) of Chile, proposed a systems approach to be used in lieu of the methyl bromide fumigation of table grapes for *B. chilensis* mites. The approach consisted of the registration of production sites with the NPPO, the certification of production sites by the NPPO as having a low prevalence of *B. chilensis* mites, joint inspection of samples from these production sites in Chile by the NPPO and APHIS, issuance of phytosanitary certificates, and inspection of a sample of the grapes at a port of entry. A similar approach is currently in use for clementines, mandarins, and tangerines from Chile, under our regulations in § 319.56–38.

During the 2002/2003 growing season, with the cooperation of APHIS, Chile's NPPO conducted a pilot program to determine whether the approach could be utilized as an effective mitigation measure against *B. chilensis* mites to prevent the introduction of that pest in grapes imported into the continental United States from Chile. The pilot program suggested that the approach proposed by Chile's NPPO could be used for this commodity.

Therefore, in October 2006, APHIS received a request from the NPPO of Chile to allow the importation of Chilean table grapes into the continental United States under a systems approach substantively similar to the one that had been used during the pilot program. In response to this request, we evaluated the approach to determine whether it was sufficient to mitigate its target pest. While our evaluation was still underway, the Chilean NPPO conducted a second pilot program, again with APHIS' cooperation, during the 2006/2007 growing season. This program again suggested that the approach proposed by the Chilean NPPO was efficacious.

As a result of our evaluation, and based upon the findings of these pilot programs, we prepared a commodity import evaluation document (CIED) for Chilean table grapes prepared for export under a systems approach. Copies of the CIED may be obtained from the person listed under **FOR FURTHER INFORMATION**

CONTACT or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The CIED, entitled "Systems Approach for Grapes *Vitis Vinifera* L. Imported from Chile into the Continental United States," examines a systems approach substantively similar to the approach employed by Chile during the pilot programs and concludes that those phytosanitary measures would effectively remove *B. chilensis* mites from the importation pathway for Chilean table grapes. Based on the information contained in the CIED, we are proposing to amend the regulations to allow the importation of table grapes from Chile into the continental United States under a systems approach. The systems approach, which would be set out in a new § 319.56–49, would comprise the following phytosanitary measures:

Commercial consignment. Only commercial consignments of grapes would be eligible for importation.

Production site registration. The production site where the fruit is grown would have to be registered with the NPPO of Chile. To register, the production site would have to provide Chile's NPPO with the following information: Grower, exporter, orchard, production site name (if this differs from the name of the orchard), region, township, province, locality, area planted to each variety, number of hectares/variety, and approximate date of harvest. Registration would have to be renewed annually.

Low prevalence production site certification. Between 1 and 30 days prior to harvest, random samples of fruit would have to be collected from each registered production site under the direction of Chile's NPPO. These samples would have to undergo a pest detection and evaluation method as follows: Each bunch of grapes, including fruit and rachis (spines), would have to 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 would then be repeated. The contents of the 200 mesh sieve would 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 would not qualify for certification as a low prevalence production site and would be eligible to export fruit to the United States only if the fruit is fumigated with methyl bromide. Each production site would have only one

opportunity per harvest season to qualify as a low prevalence production site, and certification of low prevalence would be valid for one harvest season only. The NPPO of Chile would present a list of certified production sites to APHIS.

We have determined that low prevalence production site certification will identify problem production sites and prevent shipment of fruit with *B. chilensis* mites from these sites. This certification process has been tested in Chile and been found successful in identifying areas with high and low populations of mites.

Post-harvest processing. After harvest, all damaged or diseased fruits would have to be culled at the packinghouse, and the remaining fruit would have to be packed into new, clean boxes, crates, or other packing containers approved by APHIS for fumigation with methyl bromide, should such fumigation become necessary.

Phytosanitary inspection. The fruit would have to 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 would have to be drawn and examined from each consignment. Fruit presented for inspection would have to be identified in the shipping documents accompanying each lot of fruit to specify the production site(s) in which the fruit was produced and the packing shed(s) in which the fruit was processed. This identification would have to be maintained until the fruit is released for entry into the United States. A biometric sample of boxes, crates, or other APHIS-approved packing containers from each consignment would have to be selected by the NPPO of Chile at a sampling rate that is sufficient to detect a 6 percent infestation rate with a 95 percent confidence level. Grapes and panicles from these boxes, crates, or other APHIS-approved packing containers would have to be visually inspected for quarantine pests, and a portion of the fruit would have to be washed with soapy water and the collected filtrate microscopically examined for *B. chilensis*. If a single live *B. chilensis* mite is found, the fruit would be eligible for importation into the United States only if it has been fumigated in Chile with methyl bromide under the supervision of APHIS personnel. When employed jointly, post-harvest processing, such as the culling of damaged fruit, and phytosanitary inspections, such as biometric sampling for *B. chilensis* mites, should remove

any remaining fruit that contains *B. chilensis* mites.

Phytosanitary certificate. Each consignment of grapes would have to be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the grapes in the consignment meet the conditions of § 319.56–49. Requiring a phytosanitary certificate ensures that the NPPO has inspected the fruit and certified that it meets the conditions for export to the continental United States. If, as a result of the inspections specified by the systems approach, a single live *B. chilensis* mite is discovered in a consignment of grapes, that consignment would be eligible for importation into the United States only if it was fumigated with methyl bromide in accordance with the treatment schedules already specified in the regulations. The production site from which the fruit originated would lose its certification as a low prevalence production site for the remainder of that shipping season, and all subsequent consignments from the site during that season would have to be fumigated with methyl bromide in order to be eligible for importation into the continental United States.

Because the systems approach is neither intended for nor effective in removing Medfly from the importation pathway for table grapes, grapes from an area of Chile not declared by APHIS to be free of Medfly would have to be cold treated according to schedule CT T107–a as a risk-mitigation measure for Medfly.

We also recognize that some producers would not be able to or would not wish to use the systems approach as a means for access to the U.S. market. Therefore, as an alternative mitigation measure, producers would be able to continue to use fumigation with methyl bromide in Chile or at the port of first arrival to the United States. An APHIS inspector would monitor the fumigation and prescribe such safeguards as might be necessary for unloading, handling, and transportation prior to fumigation. The final release of the fruit for entry into the United States would be conditioned upon compliance with prescribed safeguards and required treatment.

Finally, § 319.56–6 of the regulations states that, if APHIS personnel need to be physically present in an exporting country or region to facilitate the exportation of fruits or vegetables and APHIS services are to be funded by the NPPO of the exporting country or a private export group, then the NPPO or the export group must enter into a trust

fund agreement with APHIS. In accordance with this section, we are proposing to require a trust fund agreement for the importation of table grapes from Chile into the United States.

Under the trust fund agreement, the NPPO of Chile or the private export group would have to pay in advance for all estimated costs that APHIS expects to incur in providing inspection services in Chile. These costs would include administrative expenses incurred in conducting the services and all 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 services. The agreement would have to require the NPPO of Chile or the private export group to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. The agreement would have to further specify that, if the deposit is insufficient to meet all costs incurred by APHIS, the NPPO of Chile or the private export group would deposit with APHIS, before the services would be completed, a certified or cashier's check for the amount of the remaining costs, as determined by APHIS. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO of the exporting country or region or a private export group, or held on account.

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 not significant for the purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the potential effects of the proposed action on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining: (1) Whether allowing the importation of table grapes from Chile under a systems approach, instead of following fumigation with methyl bromide, will affect the cost to U.S. importers of Chilean table grapes; (2) the

relative costs of the two means of treatment; and (3) whether applying the systems approach may influence the price of Chilean table grapes within the United States.

Currently, table grapes may be imported from Chile subject to fumigation with methyl bromide, and, depending on the region in Chile from which the grapes originate, cold treatment.¹ We are proposing to amend the regulations to allow the importation into the continental United States of fresh table grapes from Chile under a systems approach in lieu of treatment with methyl bromide.

As part of this systems approach, we would require production site registration, low prevalence production site certification, post-harvest processing, phytosanitary inspection, and issuance of phytosanitary certificates. This action would allow Chilean exporters to ship fresh table grapes to the continental United States under a process other than fumigation with methyl bromide, while continuing to provide protection against the introduction of quarantine pests into the United States.

The Regulatory Flexibility Act requires agencies to specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm. The proposed rule may affect domestic producers of fresh grapes and wholesalers who import fresh table grapes. Businesses producing fresh grapes are classified in the North American Industry Classification System (NAICS) within the category of grape farming without making wine.

The small business size standard for grape farming without making wine, as identified by the SBA based upon NAICS code 11 1332, is \$750,000 or less in annual receipts.² While the available data do not provide the number of U.S. grape-producing entities according to size distribution as it relates to annual receipts, it is reasonable to assume that the majority of the operations are considered small businesses by SBA standards. According to the 2002 Census of Agriculture, there were at least 23,856 grape farms in the United

¹ Chile is divided into 15 administrative regions, of which 12 have been designated by APHIS as Medfly-free, in accordance with the provisions of § 319.56–5 of the regulations.

² Based upon 2002 Census of Agriculture-State Data and the "Small Business Size Standards by NAICS Industry," Code of Federal Regulations, Title 13, Chapter I.

States in 2002, and at least 937,200 acres of arable land on which grapes were grown (see table 1). It is estimated

that approximately 93 percent of these 23,856 grape farms had annual sales in 2002 of \$500,000 or less, and are

therefore considered to be small entities by SBA standards.

TABLE 1—2006/2007¹ STATE-LEVEL PRODUCTION OF GRAPES FOR THE FRESH MARKET IN THE UNITED STATES

State	Production (metric tons) ²	Number of acres
California	703,975 (99.3%)	800,000 (86%)
Michigan	91	14,200
Missouri	64	1,300
New York	2,722	31,000
North Carolina	163	1,300
Ohio	91	2,200
Pennsylvania	272	12,200
Texas	91	2,900
Sum of the eight States	707,469 (99.8%)	866,400 (92.5%)
Other States	1,561	70,800
United States	709,030	937,200

¹ Based upon 2002 Census of Agriculture-State Data and the "Small Business Size Standards by NAICS Industry," Code of Federal Regulations, Title 13, Chapter I.

² Quantities have been converted from short tons to metric tons using a conversion factor of 1 short ton = 0.9072 metric tons.

The United States currently ranks fifth in the world's production of grapes, behind China, Turkey, Italy, and Chile. However, U.S. production of grapes for fresh consumption increased by less than 1 percent on average over the last 17 years. Currently, only one-tenth of all grapes produced in the United States are consumed as table grapes, with the remainder utilized by the processing sector. U.S. fresh market grape production has averaged a little over 790,000 metric tons annually from the 2000/2001 growing season to the 2006/2007 season, generating an average of over \$600 million at the farm level annually.

With respect to the consumption of fresh grapes, the United States currently ranks third worldwide, following China and Turkey. U.S. domestic consumption of fresh grapes from 2000/2001 to 2006/2007 was approximately 907 metric tons per year, on average. During that period, per capita U.S. consumption of fresh grapes averaged 6.2 pounds per year. This level of consumption made fresh grapes the fourth-most consumed fruit within the United States during that time period.

The United States became a net importer of fresh table grapes in the mid-1980s and has remained so since that time. The disparity between imports and exports has widened in recent years. For example, in 2006, the United States exported 290,089 metric tons of fresh table grapes, and imported 603,218 metric tons. Accordingly, the United States has increasingly relied on imported table grapes to fulfill domestic demand. During the 1980s, imports accounted on average for 28 percent of fresh grapes available for domestic

consumption. Between the 2000/2001 and 2006/2007 growing seasons, this share rose to more than 50 percent.

Domestically produced fresh grapes are usually shipped to the U.S. market between the months of May and November. During the U.S. off-season (December through April), domestically produced supplies are supplemented by imports. Chile is the primary exporter of fresh table grapes to the United States, accounting for approximately 75 percent of total U.S. imports of this commodity. The presence of imported grapes within the domestic market during the U.S. off-season allows for year-round availability of the product and promotes domestic consumption.

Most grape production in Chile takes place during U.S. winter months, when there is little or no fresh grape production within the United States with which to compete. In addition, we do not expect that the proposed rule would affect the processing grape industry in the United States because of the separate markets for table grapes and processing grapes.

The alternative to this proposed rule was to make no changes to the regulations. After consideration, we rejected this alternative, insofar as we evaluated the proposed systems approach and determined it to be effective in removing *B. chilensis* mites from the importation pathway for Chilean table grapes.

This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

Executive Order 12988

This proposed rule would allow table grapes to be imported from Chile under a systems approach. If this proposed rule is adopted, State and local laws and regulations regarding table grapes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits 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 the 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.

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 from 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. APHIS-2007-0152. Please send a copy of your comments to: (1) Docket No. APHIS-2007-0152, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street

and Independence Ave 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.

The regulations in "Subpart-Fruit and Vegetables" (7 CFR 319.56 through 319.56-47, referred to 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 that are new to or not widely distributed within the United States. Currently, the importation of table grapes (*Vitis vinifera* L.) from Chile into the United States is authorized under § 319.56-4 of the regulations.

APHIS is proposing to amend the fruits and vegetables regulations to allow fresh table grapes from Chile to be imported into the continental United States under a systems approach. Currently, as a condition of entry, all table grapes from Chile must be fumigated with methyl bromide as a risk mitigation measure for *Brevipalpus chilensis*.

Under this proposal, APHIS would allow a combination of risk-mitigation measures, or systems approach, to be employed in lieu of methyl bromide fumigation. The systems approach would provide an alternative to methyl bromide while continuing to provide protection against the introduction of quarantine pests into the United States.

Allowing the importation of grapes into the United States from Chile will require information collection activities such as production site registration, phytosanitary certificates, and phytosanitary inspection.

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 submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5614754 hours per response.

Respondents: Growers of grapes, NPPOs.

Estimated annual number of respondents: 54.

Estimated annual number of responses per respondent: 81.3333.

Estimated annual number of responses: 4,392.

Estimated total annual burden on respondents: 2,466 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) 851-2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to the E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 450, 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56-49 is added to read as follows:

§ 319.56-49 Grapes from Chile.

Table grapes (*Vitis vinifera* L.) may be imported into United States from Chile only under the following conditions:

(a) The fruit must be imported in commercial consignments and accompanied by a permit issued in accordance with § 319.56-3(b).

(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 part 305 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* into the continental United States (Alaska and the lower 48 States) 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: Grower, exporter, orchard, production site name (if this differs from the name of the orchard), region, township, province, locality, area planted to each variety, number of hectares/variety, 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: Each bunch of grapes, including fruit and rachis (spines), 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 200 mesh sieve 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, all damaged or diseased fruits must be culled at the packinghouse, and the remaining fruit must be packed into new, clean boxes, crates, or other APHIS-approved packing containers for fumigation with methyl bromide in accordance with paragraph (e) of this section, should such fumigation become necessary.

(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 must be drawn and examined from each consignment. Grapes in any consignment may be shipped to the continental 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 to specify the production site(s) in which the fruit was produced and the packing shed(s) in which the fruit was processed. This identification must be maintained until the fruit is released for entry into the United States.

(ii) A biometric sample of boxes, crates, or other APHIS-approved packing containers from each consignment will be selected and the fruit from these boxes, crates, or other APHIS-approved packing containers will be visually inspected for quarantine pests, and a portion of the fruit will be washed with soapy water and the collected filtrate will be microscopically examined for *B. chilensis*. If a single live *B. chilensis* mite is found, the fruit will be eligible for importation into the United States only if it has been 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 in order to be eligible for entry into the United States for the remainder of the shipping season.

(5) *Phytosanitary certificates.* Each consignment of grapes must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the grapes in the consignment meet the conditions of § 319.56–49.

(e) *Approved fumigation.* Grapes 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 to the United States with methyl bromide for *B. chilensis* in accordance with part 305 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 prior to fumigation. The final release of the fruit for entry into the United States will be conditioned upon compliance with prescribed safeguards and required treatments.

(f) *Trust fund agreement.* Grapes may be imported into the United States under this section only if the NPPO of Chile or a private export group has entered into a trust fund agreement with APHIS in accordance with § 319.56–6.

Done in Washington, DC, this 22nd day of August 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–19875 Filed 8–26–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. AMS–FV–08–0016; FV08–905–2 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Temporary Suspension of Order Provisions Regarding Continuance Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a temporary suspension of the order provision requiring periodic continuance referenda under the Florida citrus marketing order (order). This rule would suspend for the current cycle the order requirement that a continuance referendum be held every sixth year. The suspension is intended to minimize the confusion that could result from the overlap of the continuance referendum and another referendum associated with the amendatory process. It would also allow producers time to evaluate the results of the amendatory process before voting on the continuance of the order.

DATES: Comments must be received by September 26, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. 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 Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or e-mail: Doris.Jamieson@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler