# 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. 02–132–1]**

**RIN 0579–AB83**

## Requirements for Requests To Amend Import Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish regulations governing the submission of requests for changes in our regulations that restrict the importation of plants, plant parts, and plant products. We are proposing this action because, despite existing non-regulatory guidance on the submission of requests, few applicants provide the basic information we require to properly consider their requests. We expect that adoption of this proposal would help ensure that we are provided with the information we need to prepare a risk analysis and/or other analyses that evaluate the risks and other effects associated with the proposed change to the regulations. This information is needed for us to effectively consider the request, and submission of the information at the time the request is made allows us to proceed with our consideration of the request in a timely manner.

**DATES:** We will consider all comments that we receive on or before December 27, 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. 02–132–1, 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. 02–132–1.
- *E-mail:* Address your comment to *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. 02–132–1'' 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:** For information related to risk analyses, contact Mr. Robert L. Griffin, Director, Plant Epidemiology and Risk Analysis Laboratory, Center for Plant Health, Science, and Technology, PPQ, APHIS, 1730 Varsity Drive Suite 300, Raleigh, NC 27606; (919) 855–7400.

For information related to environmental analyses, contact Mr. Carl Bausch, Chief, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237; (301) 734–8963.

For information related to economic analyses, contact Mr. Christopher Klocek, Economist, Policy Analysis and Development, PPD, APHIS, 4700 River Road Unit 119, Riverdale, MD 20737–1238; (301) 734–8667.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations contained in 7 CFR part 319 (referred to below as the part 319 regulations) prohibit or restrict the importation of plants, plant parts, and plant products into the United States in accordance with the authority conferred on the Secretary of Agriculture by the Plant Protection Act (7 U.S.C. 7701–7772). The Animal and Plant Health Inspection Service (APHIS) is the United States Department of Agriculture (USDA) agency responsible for (1) enforcing the part 319 regulations and (2) considering requests to amend the part 319 regulations to allow the importation of plants, plant parts, or plant products that are not currently allowed importation under the regulations.

On June 19, 2001, APHIS published a notice in the **Federal Register** (66 FR 32923–32928, Docket No. 00–082–1) which described procedures and standards employed by APHIS in its consideration of such requests. As part of that document, we requested that persons seeking to import a new commodity [1] for which a risk analysis is required submit specific information in support of their request in order to expedite APHIS's consideration of the request. In the notice, we explained that if APHIS is provided with certain information regarding the commodity, its country of origin, and the pests associated with it, then we would be better able to consider the request and conduct the risk analysis in a timely fashion. We also explained that, after reviewing the submitted information, we may request any other associated information that may be needed to complete a risk analysis.

In this document, we are proposing to establish regulations governing the submission of requests to change the part 319 import regulations. We are proposing this action because, despite our publication of the June 2001 notice containing guidance on the submission of information in support of commodity import requests, and despite other existing guidance on this subject, few applicants provide the basic information we require to properly consider their requests. We expect that adoption of this proposal would help ensure that we are provided with the information we need to prepare a risk analysis and/or other analyses that evaluate the risks and other effects associated with the

[1] For the purposes of this document, the term ''commodity'' means a plant, plant product, or other agricultural product being moved for trade or other purpose.

proposed change to the regulations. This information is needed for us to effectively consider the request, and submission of the information at the time the request is made allows us to proceed with our consideration of the request in a timely manner. Without this information, we are unable to effectively consider such requests.

The information we are proposing to require is the same type of information that we are required to provide to other countries as they evaluate commodities that we wish to export. Furthermore, the provisions of this proposal are consistent with country obligations under the International Plant Protection Convention (IPPC), to which the United States is a signatory.

*Process for Considering Requests*

When APHIS is requested to allow the importation of a commodity, APHIS first reviews the regulations to determine whether the commodity is enterable under existing regulations. If the commodity is enterable, APHIS may issue a permit for the importation of the commodity, subject to applicable regulations in part 319. Such cases would not require the submission of information as proposed in this document.

However, if the commodity is not yet authorized for importation under existing regulations, APHIS would have to undertake rulemaking to change the commodity's regulatory status before the commodity could be imported. The first step in this process involves determining whether it is necessary to conduct a risk analysis to analyze the pest risk associated with the importation of the commodity. When APHIS determines whether a pest risk analysis is necessary, we formally advise the requestor of that finding.

Regardless of whether or not a pest risk analysis is necessary, APHIS needs certain basic information (described in detail under the heading *Required Information*) to begin considering the request, and, in some cases, may require additional information (described under the heading *Additional Information*) to complete our evaluation. If a risk analysis is required,[2] the information is needed to conduct the analysis in accordance with the International Standard for Phytosanitary Measures (ISPM) No. 11, ''Pest Risk Analysis for Quarantine Pests,'' and its supplements, set by the IPPC. The completion of a risk analysis may be necessary to inform the Secretary as she makes her determination to allow or prohibit the importation of a commodity in accordance with the authority conferred on her by the Plant Protection Act.

Even if a risk analysis is not required to analyze the pest risk associated with the importation of the commodity,[3] the majority of the information listed under the heading *Required Information* is still needed for the purposes of other analyses that are designed to satisfy the requirements of certain U.S. statutes.[4] The following is a list of the U.S. statutes that most often have effects on the process of consideration of requests. This list is not exhaustive, but the analyses they require are the ones that depend most on certain types of information that are described in this document.

- The *Regulatory Flexibility Act* (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effect of proposed rules on small businesses, nonprofit organizations, and government jurisdictions. In order to comply with the requirements of the Regulatory Flexibility Act, for each rulemaking action, APHIS conducts an analysis on the economic effects the rule may have on small entities.
- *Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994* (Pub. L. 103–354) requires rules classified as ''major'' (having an annual impact on the economy of the United States of $100 million in 1994 dollars and whose primary purpose is to regulate issues of human health, human safety, or the environment) to be based on a thorough analysis that makes clear the nature of the risk posed by the action, alternative ways of reducing the risk, the reasoning that justifies the rule, and a comparison of the likely costs and benefits of reducing the risk.
- *The National Environmental Policy Act* (NEPA), as amended (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA require Federal agencies to consider the effects of their actions on the natural environment and identify alternatives to proposed actions. APHIS typically prepares environmental assessments, and in some cases, environmental impact statements, to evaluate the environmental effects of new imports of plants, plant parts, and plant products.
- *The Endangered Species Act,* as amended (16 U.S.C. 1531 *et seq.*) requires that Federal agencies ensure that their actions do not jeopardize the continued existence of species that are listed as threatened or endangered or adversely modify critical habitat. In certain cases, APHIS is required to enter into consultations with the U.S. Fish and Wildlife Service to provide evidence that our actions would not adversely affect threatened or endangered species or their critical habitats.

Risk analyses and other analyses required under the statutes described above are integral parts of the body of documentation that are required by law to support changes in our regulations. The findings of these analyses form the foundation of the rational basis for rulemaking required under the Administrative Procedure Act. Problems (*e.g.*, a shortage of data) with any one of these analyses can have effects on the timely processing of a request. To facilitate the completion of these analyses, we have identified the basic information that is required in any case for us to begin conducting a risk analysis and other analyses required by law. We have also identified additional information that may become necessary at some stage of the processing of the request, but that may not be required in all, or even most, cases. In this document, we are proposing to establish regulations to clarify the process for evaluating requests and the information we require to consider such requests.

*The Proposed Regulations*

Under the proposed regulations, which would be located in a new ''Subpart—Requests To Amend the Regulations'' (7 CFR 319.5), persons interested in the importation into the United States of commodities that have not been evaluated for entry into the United States and that are not specifically approved for importation into the United States under part 319 would be required to file a request with APHIS. The initial request could be formal (*i.e.*, a letter from the government of the exporting country) or informal (*i.e.*, a phone call to an import specialist from a foreign producer or prospective importer), and could be made by any person. Upon APHIS's confirmation that granting the person's request would necessitate revisions to the regulations in part 319 (regardless of whether a risk analysis is determined to be necessary), APHIS would notify the person that, prior to consideration of the request, the national plant protection organization of the country from which the plants, plant parts, or plant products would be

[2] **Note:** The results of a risk analysis may or may not support the proposed action.

[3] There are few cases where completion of risk analysis of some kind would not be required. The most obvious case would be if a risk analysis already exists.

[4] The only *Required Information* that may be superfluous for these analyses is information about associated pests and current risk mitigation strategies.

exported would be required to provide APHIS with the information described in proposed § 319.5(d). Requests that do not contain this information will be considered incomplete, and APHIS may not take further action on such requests until all required information is submitted. Under § 319.5(c) of the proposed regulations, this information would be required to be submitted to a designated APHIS contact point.

*Required Information*

The regulations in § 319.5(d) would require the following information to be provided to APHIS:

*Information about the party submitting the request:*

- For requests that address imports from a single country, the address, telephone and fax numbers, and e-mail addresses of the national plant protection organization of the country from which the commodity would be exported, or
- For requests that address a multi-country region, the address, telephone and fax numbers, and e-mail addresses of the exporting countries' national and regional plant protection organizations.

*Information about the commodity proposed for importation into the United States:*

- A description and/or map of the specific location(s) of the areas in the exporting country where the commodity is produced,
- The scientific name (including genus, species, and author names), synonyms, and taxonomic classification of the commodity,
- Identification of the particular plant or plant part (*i.e.*, fruit, leaf, root, entire plant, etc.) and any associated plant part proposed for importation into the United States,
- The proposed end use of the imported commodity (*e.g.*, propagation, consumption, milling, decorative, processing, etc.), and
- The months of the year when the commodity would be produced, harvested, and exported.

*Shipping information:*

- Detailed information as to the projected quantity and weight/volume of the proposed importation, broken down according to varieties where applicable, and
- Method of shipping in international commerce and under what conditions, including type of conveyance, and type, size, and capacity of packing boxes and/or shipping containers.

*Description of all pests and diseases associated with the commodity proposed for exportation to the United States:*

- Scientific name (including genus, species, and author names) and taxonomic classification of arthropods, fungi, bacteria, nematodes, virus, viroids, mollusks, phytoplasmas, spiroplasmas, etc., attacking the crop,
- Plant part attacked by each pest, pest life stages associated with each plant part attacked, and location of pest (in, on, or with commodity), and
- References.

*Current strategies for risk mitigation or management:*

- Overview [5] of agronomic or horticultural management practices used in the production of the commodity, including methods of pest risk mitigation or control programs, and
- Identification of parties responsible for pest management and control.

*Additional Information*

In addition to the information described above, in some cases, APHIS may require additional information to effectively consider requests to amend the part 319 regulations. We are requesting public comment as to whether some or all of this additional information should be required to be submitted with the information described above, whether some or all of the information should be considered ''optional,'' or whether APHIS should require submission of some or all of the information only if we deem it necessary during the course of our consideration of a request. We wish to make it clear that it is very much in the interest of the exporting country's national plant protection organization to provide as much of the following information as possible in order to facilitate the timely consideration of a request. If APHIS needs this information but does not receive it from the national plant protection organization of the exporting country, we must seek the information from available sources or take other appropriate action on the request. Accordingly, the consideration of requests may be delayed substantially or even denied.

*Contact information:*

Address, phone and fax numbers, and/or e-mail for local experts (*e.g.*, academicians, researchers, extension agents) most familiar with crop production, entomology, plant pathology, and other relevant characteristics of the commodity proposed for importation.

*Additional information about the commodity:*

- Common name(s) in English and in the language(s) of the exporting country,
- Cultivar, variety, or group description of the commodity,
- Stage of maturity at which crop is harvested and method of harvest,
- Indication of whether crop is grown from certified seed or nursery stock, if applicable,
- If grown from certified seed or stock, indication of the origin of the stock or seed (country, State), and
- Color photographs of plant, plant part, or plant product itself.

*Information about the area where the commodity is grown:*

- Unique characteristics of the production area in terms of pests or diseases,
- Maps of the production regions, pest free areas, etc.,
- Length of time commodity has been grown in production area,
- Status of growth of production area (*i.e.*, acreage expanding or stable), and
- Physical and climatological description of the growing area.

*Information about post-harvest transit and processing:*

- Complete description of the post-harvest processing methods used, and
- Description of the movement of the commodity from field to processing to exporting port (*e.g.*, method of conveyance, shipping containers, transit routes, especially through different pest risk areas).

*Shipping methods and volume of exports:*

- Photographs of the boxes and containers used to transport the commodity, and
- Identification of port(s) of export and import and expected months (seasons) of shipment, including intermediate ports-of-call and time at intermediate ports-of-call, if applicable.

*Additional description of all pests and diseases associated with the commodity to be imported:*

- Common name(s) of the pest in English or local language(s),
- Geographic distribution of the pest in the country, if a quarantine pest and follows the pathway,
- Period of attack (*e.g.*, attacks young fruit beginning immediately after blooming) and records of pest incidence (*e.g.*, percentage of infested plants or infested fruit) over time (*e.g.*, during the different phenological stages of the crops and/or times of the year),
- Economic losses associated with pests of concern in the country,
- Pest biology or disease etiology or epidemiology, and
- Photocopies of literature cited in support of the information above.

*Current strategies for risk mitigation or manageament:*

- Description of pre-harvest pest management practices (including target pests, treatments [*e.g.,* pesticides], or

[5] We specifically welcome comments as to the exact type and amount of information that can or should be submitted in support of this requirement.

other control methods) as well as evidence of efficacy of pest management treatments and other control methods,

- Efficacy of post-harvest processing treatments in pest control,
- Culling percentage and efficacy of culling in removing pests from the commodity, and
- Description of quality assurance activities, efficacy and efficiency of monitoring implementation.

*Existing documentation:*

- Relevant pest risk analyses, environmental assessment(s), biological assessment(s), and economic information and analyses.

*Availability of Guidance on the Internet*

In conjunction with this rule, we would post information related to this subject on the APHIS Internet site. The site would include a document that clearly explains the information required to be submitted at the time of the import request and the additional desirable information described in this document, background information on the rulemaking process and the analytical requirements APHIS must meet as it proposes and adopts revisions to its import regulations, and documents intended to facilitate the preparation of the information described in this document prior to submission to APHIS. We would provide a link for that Web site in our final rule.

**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.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an analysis of the potential economic effects of this final rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is set out below.

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 of injurious plant pests.

This proposed rule would require that requests to amend the regulations regarding imported plants, plant parts, or plant products be accompanied by the basic information necessary for APHIS to properly consider such requests. Receipt of necessary information (previously described in this docket) at the time a request to import a currently prohibited commodity is made will streamline the process for considering the request by minimizing delays and backlogs in conducting risk assessments and other required analyses. Streamlining the process will help facilitate trade of both imported and exported plants and plant products covered by 7 CFR part 319, and help maintain good relations between the United States and its trading partners.

*Commodities in 7 CFR Part 319 Potentially Affected by the Proposed Regulations*

- Fruits and Vegetables
- Cotton
- Logs, lumber
- Nursery Stock (planted in media)
- Sugarcane
- Corn, Rice, Wheat, Coffee
- Packing Material
- Cut Flowers

Streamlining the process for requesting changes to the import regulations will benefit trading partners seeking to sell their products in U.S. markets by allowing them to bring products to market in the United States in a more timely fashion. This proposed rule, if adopted, would have a positive effect on U.S. consumers who benefit from increased variety of imported products available in domestic markets and from increased competition and lower prices in affected markets. Maintaining good trade relations ensures that U.S. exports of fruits, vegetables, and other commodities would continue to flow freely into markets around the world. This would benefit U.S. exporters. Uncertainty and delays can be costly for U.S. exporters of perishable commodities, whose window for shipping fresh produce and live plants is brief. Some U.S. brokers/shippers who handle imported plants and plant products may be affected, but costs to them should be negligible.

*Alternatives Considered*

Two alternatives to this rule were considered. The first alternative was to do nothing. This alternative was rejected because the increased volume of import requests and growing backlog of risk assessments necessitate a mechanism for facilitating the import request process. The second alternative considered was to limit the rule to fresh fruits and vegetables only. Excluding other plant and plant parts from this rule was not seen as the most effective regulatory approach, given the growing volume and value of reciprocal trade in commodities such as grains, cotton, nursery stock, and cut flowers (*see* table 1).

*Benefits of the Proposed Rule*

Trade Benefits

An important benefit of expediting the risk assessment process is the continued smooth functioning of trade, particularly with countries where there is significant reciprocal trade in plants and plant products. U.S. exports of plants, plant parts, and plant products are extensive. For example, the United States exported roughly $4.26 billion in plants, plant parts, and plant products to major trading partners Mexico, Taiwan, and China in 2003. As the table below suggests, given the volume of trade in plant and plant products, delays by trading partners in processing U.S. import requests could be costly for U.S. exporters.

TABLE 1.—2003 U.S. EXPORTS OF SELECTED COMMODITIES

| Commodity harmonized tariff codes (HS) | Commodity description | Value of exports (in millions of dollars) | | |
|---|---|---|---|---|
| | | Mexico | Taiwan | China |
| 5201, 5203 | Cotton | $427.658 | $117.153 | $733.168 |
| 4407, 4403, 4406 | Lumber and logs | 139.405 | 60.769 | 190.467 |
| 4415 | Pallets, packing material | 13.463 | 0.123 | 0.168 |
| 08 | Edible fruits and nuts | 256.559 | 134.824 | 50.579 |
| 07 | Vegetables | 110.330 | 27.444 | 9.553 |
| 1701 | Sugarcane | 0.785 | 0.034 | 0.001 |
| 0603 | Cut flowers | 1.132 | 0 | 0.021 |
| 0601, 0602 | Live plants, grasses, bulbs | 21.215 | 0.071 | 0.594 |
| 0604 | Tubers | | | |

TABLE 1.—2003 U.S. EXPORTS OF SELECTED COMMODITIES—Continued

| Commodity harmonized tariff codes (HS) | Commodity description | Value of exports (in millions of dollars) | | |
|---|---|---|---|---|
| | | Mexico | Taiwan | China |
| 1005 | Corn | 689.611 | 513.785 | 0.658 |
| 1006 | Rice | 140.263 | 34.078 | 0.079 |
| 1001 | Wheat | 402.083 | 136.371 | 35.262 |
| 0901 | Coffee | 1.966 | 0.727 | 0.391 |
| Total | | 2,204.470 | 1,025.379 | 1,020.941 |

Source: *http://www.fas.usda.gov/ustrdscripts/USReport.exe.* Trade data are reported by commodity tariff code, also known as harmonized tariff schedule (HS).

**Efficiency Gains**

A related benefit of this proposed rule for U.S. interests is internal APHIS efficiency and consistency gains related to processing import requests. Collecting data necessary for risk assessments requires time, which delays processing of import requests.

For the past several years, APHIS has conducted approximately 100 risk assessments associated with import requests per year. Of those risk assessments, 90 percent are routine and 10 percent are complex. Examples of recent complex assessments relate to the importation of citrus from Argentina, clementines from Spain, and citrus from Uruguay. Complex risk assessments typically require 2 to 3 months for data collection by APHIS, plus trips to the country of origin. Data collection for routine risk assessments usually requires 30 days or less.

Submission of basic information with the import request will substantially decrease the amount of time required for data collection for both routine and complex risk assessments and the need for international travel to collect information. Providing information at the time an import request is made will require some expenditure of time and effort by the applicant. However, assembling data is expected to require substantially less time for the applicant than for APHIS employees, especially if the applicant is in the country of origin. Applicants in the country of origin should have knowledge of the commodity they wish to export and access to the required data.

Even when the risk analysis is not complex, or in cases where a risk analysis may not be required, the information we are proposing to require can be used to complete other analyses or documentation required by certain U.S. statutes, such as the Regulatory Flexibility Act, the National Environmental Policy Act, and the Endangered Species Act, to support changes in our regulations. Delays or problems with any of these analyses can affect the timely processing of import requests.

*Costs of the Proposed Regulations*

The proposed regulations would require that the national plant protection organizations of foreign countries provide specific information in support of import requests. This would require an additional expenditure of time and effort on the part of potential exporters and the exporting country's national plant protection organization, but APHIS does not expect major adjustment problems for those persons. Required information about commodities should be known to applicants and readily available.

Many foreign firms use U.S. brokers in order to facilitate the movement of consignments into the United States. The broker's primary role is to make arrangements and obtain appropriate documentation for the import and export of goods. The task of assembling required data could fall to U.S. brokers in some cases, but any adjustment should be short-lived, as importers, brokers, and governments of exporting countries work toward the common goal of expanded commerce.

APHIS believes that the benefits of this rule (streamlining the process for evaluating import requests and reducing costs to APHIS) outweigh the costs to applicants associated with gathering the basic information required by this rule.

*Regulatory Flexibility Analysis*

As a part of the rulemaking process, APHIS evaluates whether proposed regulations are likely to have a significant economic impact on a substantial number of small entities.[6] It is unclear whether or to what extent the data requirements of the proposed regulations would be passed on to U.S. brokers/shippers of plants and plant products. More than 11,406 brokers/shippers of plants and plant products would be considered small entities under the Small Business Administration's (SBA) criteria, but we do not expect that the proposed data requirements would have a significant impact on them.

Under the SBA's criteria, an import/export merchant is classified as a small entity if it has 100 or fewer employees.[7] In all cases, the impact would only be as a result of an entity's involvement in assembling data required for the import request.

According to the most recent information available from the SBA's Office of Advocacy, a total of 5,403 firms comprised the ''Fresh Fruit and Vegetable Merchant Wholesalers'' category in 1999.[8] Seventy-eight percent of these firms (4,227) employed 20 or fewer individuals, and 99 percent of the firms had 500 or fewer employees. Clearly, the majority of fruit and vegetable wholesalers are small entities, having 100 or fewer employees. Other types of wholesalers potentially affected by the proposed regulations (wholesalers of cut flowers and nursery stock, grain and beans, and other farm product raw materials) demonstrate similar demographic profiles, with the majority of firms in the industry considered small under SBA's criteria. Even though the majority of potentially affected wholesalers have 100 or fewer employees, and would thus be classified as small entities, the proposed regulations are not expected to have a significant economic impact on them.

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 has been reviewed under Executive Order 12988, Civil

[6] ''Guide to the Regulatory Flexibility Act.'' Small Business Administration, Office of Advocacy, Washington, DC, May 1996.

[7] North American Industrial Classification System (NAICS) 424480, Fresh Fruit and Vegtable Merchant Wholesalers.

[8] See *http://www.sba.gov/advo/stats/us99_n6.pdf.*

Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required 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 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. 02–132–1. Please send a copy of your comments to: (1) Docket No. 02–132–1, 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.

Under this rule, persons who wish to import an agricultural commodity into the United States that is not currently approved for importation will be required to submit certain information to APHIS in support of their request.

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 2 hours per response.

*Respondents:* U.S. importers, foreign producers and regulatory officials.

*Estimated annual number of respondents:* 100.

*Estimated annual number of responses per respondent:* 6.

*Estimated annual number of responses:* 600.

*Estimated total annual burden on respondents:* 1,200 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, 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 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 ''Subpart—Requests To Amend the Regulations'' (§ 319.5) would be added to read as follows:

### Subpart—Requests To Amend the Regulations

**§ 319.5 Requirements for submitting requests to change the regulations in 7 CFR part 319.**

(a) Definitions.

*Commodity.* A plant, plant product, or other agricultural product being moved for trade or other purpose.

(b) *Procedures for submitting requests and supporting information.* Persons who request changes to the import regulations contained in this part and who wish to import plants, plant parts, or plant products that are not allowed importation under the conditions of this part must file a request with the Animal and Plant Health Inspection Service (APHIS) in order for APHIS to consider whether the new commodity can safely be imported into the United States. The initial request can be formal (*e.g.*, a letter) or informal (*e.g.*, made during a bilateral discussion between the United States and another country), and can be made by any person. Upon APHIS confirmation that granting a person's request would require amendments to the regulations in this part, the national plant protection organization of the country from which the commodity would be exported must provide APHIS with the information listed in paragraph (d) of this section before APHIS can proceed with its consideration of the request; requests that are not supported with this information in a timely manner will be considered incomplete, and APHIS may not take further action on such requests until all required information is submitted

(c) *Addresses.* The national plant protection organization of the country from which commodities would be exported must submit the information listed in paragraph (d) of this section to: [Address to be added in final rule].

(d) *Information.* The following information must be provided to APHIS in order for APHIS to consider a request to change the regulations in part 319:

(1) *Information about the party submitting the request.* The address, telephone and fax numbers, and e-mail addresses of the national plant protection organization of the country from which plants, plant parts, or plant products would be exported; or, for requests that address a multi-country region, the address, telephone and fax numbers, and e-mail addresses of the exporting countries' national and regional plant protection organizations.

(2) *Information about the commodity proposed for importation into the United States.*

(i) A description and/or map of the specific location(s) of the areas in the exporting country where the plants, plant parts, or plant products are produced;

(ii) The scientific name (including genus, species, and author names), synonyms, and taxonomic classification of the commodity;

(iii) Identification of the particular plant or plant part (*i.e.*, fruit, leaf, root, entire plant, etc.) and any associated plant part proposed for importation into the United States;

(iv) The proposed end use of the imported commodity (*e.g.*, propagation, consumption, milling, decorative, processing, etc.); and

(v) The months of the year when the commodity would be produced, harvested, and exported.

(3) *Shipping information.*

(i) Detailed information as to the projected quantity and weight/volume of the proposed importation, broken down according to varieties, where applicable; and

(ii) Method of shipping in international commerce and under what conditions, including type of conveyance, and type, size, and capacity of packing boxes and/or shipping containers.

(4) *Description of pests and diseases associated with the commodity.* For all pests associated with the commodity proposed for export to the United States:

(i) Scientific name (including genus, species, and author names) and taxonomic classification of arthropods, fungi, bacteria, nematodes, virus, viroids, mollusks, phytoplasmas, spiroplasmas, etc., attacking the crop;

(ii) Plant part attacked by each pest, pest life stages associated with each plant part attacked, and location of pest (in, on or with commodity); and

(iii) References.

(5) *Current strategies for risk mitigation or management.*

(i) Overview of agronomic or horticultural management practices used in production of commodity, including methods of pest risk mitigation or control programs; and

(ii) Identification of parties responsible for pest management and control.

(e) *Availability of additional guidance.* Information related to the processing of requests to change the import regulations contained in this part may be found on the APHIS Web site at [Address to be added in final rule].

Done in Washington, DC, this 22nd day of October 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04–24150 Filed 10–27–04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 932

**[Docket No. FV04–932–2 PR]**

## Olives Grown in California; Redistricting and Reapportionment of Producer Membership on the California Olive Committee

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the redefinition of the producer districts and reapportionment of each district's membership on the California Olive Committee (committee). The Federal marketing order for California olives (order) regulates the handling of canned ripe olives grown in California and is administered locally by the committee. This rule would reduce the number of producer districts in the production area from four to two and would reapportion the committee representation from each district to reflect the consolidation. These changes would reflect recent shifts in olive acreage and producer numbers within the production area and would provide equitable committee representation from each district.

**DATES:** Comments must be received by December 27, 2004.

**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 E-mail: *moab.docketclerk@usda.gov;* 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.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** Laurel L. May, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 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 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 rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, 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 rule 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would consolidate the four existing producer districts into two larger districts. Producer representation on the committee would be reapportioned accordingly. These changes would reflect recent shifts in olive acreage and producer numbers within the production area and would assure equitable committee