

whenever he or she is of the opinion that proof may be fairly and adequately presented by use of the documentary procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Parties are free to consent to such procedure if they choose, and declination of consent will not affect or prejudice the rights or interests of any party. A party, if he or she has not waived oral hearing, may consent to the use of the documentary procedure on the condition that depositions rather than affidavits be used. In such case, if the other party agrees, depositions shall be required to be filed in lieu of verified statements. If any party who has not waived oral hearing does not consent to the use of the documentary procedure, the proceeding will be set for oral hearing. The suggestion that the documentary procedure be used need not originate with the examiner. Any party may address a request to the examiner asking that the documentary procedure be used.

\* \* \* \* \*

(h) *Verification.* Verification shall be made under oath of any facts set forth in the pleading or statement, by the person who signs the pleading or statement. Certification by a notary public is insufficient. The form of verification may be as follows:

\* \* \* \* \*

18. Section 47.21 is revised to read as follows:

**§ 47.21 Transmittal of record.**

The hearing clerk, immediately after the filing of the examiners' report, shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; motions and requests filed, and rulings thereon; the report of investigation conducted by the Fruit and Vegetable Programs; the transcript or record of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the documentary procedure; any documents or papers filed in connection with conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with the hearing as provided in § 47.19(b) and (c); such statements of objections, and briefs in support thereof, as may have been filed in the proceeding; and the examiner's report.

\* \* \* \* \*

19. In § 47.24, the section heading and paragraph (a) are revised and a new paragraph (d) is added to read as follows:

**§ 47.24 Rehearing, reargument, reconsideration of orders, reopening of hearings, reopening after default.**

(a) *Petitions to rehear, reargue, and reconsider.* A petition for rehearing or reargument of the proceeding, or for reconsideration of the order, shall be made by petition to the Secretary filed with the Hearing Clerk within 20 days after the date of service of the order. Every such petition shall state specifically the matters claimed to have been erroneously decided and the alleged errors. If the Secretary concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, the Secretary shall dismiss the petition without service on the other party. Otherwise, the Secretary shall direct that a copy of the petition be served upon such party by the Hearing Clerk. The filing of a petition to rehear or reargue a proceeding, or to reconsider an order, shall automatically operate to set aside the order pending final action on the petition. Only one petition to rehear, reargue, or reconsider will be accepted from each party, except when a mathematical or typographical error appears in either the original decision and order or in the decision on reconsideration.

\* \* \* \* \*

(d) *Reopening after default.* The party in default in the filing of an answer or reply required or authorized under this part may petition to reopen the proceeding at any time prior to the expiration of 30 days from the date of service of the default order. If, in the judgment of the examiner, after notice to and consideration of the views of the other party(ies), there is good reason for granting such relief, the party in default will be allowed 20 days from the date of the order reopening the proceeding to file an answer.

20. In § 47.25, the section heading and paragraph (d) are revised, paragraph (e) is removed and paragraph (f) is redesignated as paragraph (e) to read as follows:

**§ 47.25 Filing; extensions of time; effective date of filing; computations of time; official notice.**

\* \* \* \* \*

(d) *Computations of time.* Saturdays, Sundays and holidays shall be included in computing the time allowed for the filing of any document or paper: Provided, That, when such time expires on a Saturday, Sunday or Federal holiday, such period shall be extended to include the next following business day.

\* \* \* \* \*

21. Part 47 is amended by removing the words "hearing clerk" and adding in

their place the words "Hearing Clerk", everywhere they appear.

22. Part 47 is amended by removing the word "Division" and adding in its place the words "Fruit and Vegetable Programs", everywhere they appear.

23. Part 47 is amended by removing the words "Director" and "Director's", and adding in their place the words "Deputy Administrator" and "Deputy Administrator's" respectively, everywhere they appear.

Dated: January 21, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-1968 Filed 1-27-99; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 319**

[Docket No. 98-021-1]

**Cut Flowers**

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the cut flowers regulations to provide that APHIS inspectors issue a written notice when pests are detected and action on the part of the importer is required. We are also proposing to amend the regulations to make it clear that the importer of cut flowers is responsible for all costs of destroying or otherwise disposing of pest-infested cut flowers should the importer choose not to treat or re-export them. These proposed changes would help reduce the risk of cut flowers introducing plant pests into the United States by ensuring that any necessary treatment or other required actions are completed.

**DATES:** Consideration will be given only to comments received on or before March 29, 1999.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 98-021-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-021-1. Comments may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to

inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231, (301) 734-6799; or e-mail: Peter.M.Grosser@usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and related materials to prevent the introduction of foreign plant pests into the United States.

The importation of cut flowers into the United States is regulated under "Subpart—Cut Flowers," contained in §§ 319.74 through 319.74-4 (referred to below as the regulations).

The regulations require that all cut flowers be inspected for injurious insects and plant diseases at the port of entry. If cut flowers are found to be infested, an inspector may require the cut flowers to be cleaned or treated before allowing them entry into the United States. If treatment is required, the importer or his agent is given the option of: (1) Cleaning or treating the cut flowers as prescribed by the inspector until free of plant pests; (2) shipping the cut flowers to a point outside the United States; or (3) abandoning the cut flowers at the port of entry for destruction. If the inspector finds that the pests cannot be eliminated by cleaning or treatment, the cut flowers may be refused entry into the United States and must be shipped to a point outside the United States or abandoned for destruction.

Under the regulations, all costs of treatment are to be borne by the importer or his agent, as are the costs of shipping cut flowers to a point outside the United States. However, if the importer or his agent elects to abandon imported cut flowers at the port of entry, the regulations do not explicitly require the importer or his agent to bear the costs of destroying the flowers.

APHIS' policy regarding the costs associated with inspections, which is stated in the "costs and charges" sections or paragraphs throughout our regulations in title 7, chapter III, is that the services of an inspector during regularly assigned hours of duty and at the usual places of duty will be furnished without cost, but that all additional costs associated with the inspection, treatment, movement, storage, or destruction of articles subject to our regulations are the responsibility of the importer or owner.

Due to increasing volumes of abandoned cut flowers that have been destroyed at government expense, especially at Miami International Airport, which handles over 90 percent of all cut flower importations into the United States, we are proposing to amend the regulations to require that importers be responsible for the cost of destroying infested or infested cut flowers, just as they are responsible for the cost of any other treatment under the regulations. This proposed change, which would be set out in a new § 319.74-4, "Costs and Charges," is consistent with the policy described in the previous paragraph. This proposed change to the cut flowers regulations would make "Subpart—Cut Flowers" more consistent with our regulations elsewhere in title 7, chapter III.

We are also proposing to amend the regulations to provide that an inspector would issue the importer of cut flowers or his agent a written notification in the event that an inspector found imported cut flowers to be infested with injurious insects or infected with plant diseases. Specifically, an inspector would issue an emergency action notification (EAN) (PPQ Form 523), which would outline in detail the options available to the importer. The EAN would also recommend specific treatments, if available; notify the importer that reexportation and destruction of cut flowers are permissible alternatives to treatment; and clearly state that any actions ordered on the emergency action notification and the cost of performing those actions would be the responsibility of the importer. Further, we would also amend the regulations to state that the importer of infested or infested cut flowers must respond to the orders on the EAN within the period of time specified on the EAN by the inspector. In the event that the importer does not respond by the specified time, APHIS would arrange for the destruction, disposal, treatment, or reexportation of the cut flowers and would hold the importer responsible for all costs associated with such actions.

Further, as part of our effort to make it clear who would be responsible for cut flowers being imported into the United States, we are also proposing to revise the terminology we use to refer to the importer of cut flowers. The current regulations use the term "importer or his agent." We are proposing to replace that term with "importer, owner, or agent or representative of the importer or owner" in order to encompass the range of individuals who may be held responsible for cleaning, treating, transporting, or destroying cut flowers and for the costs of doing so.

We are also proposing to make several nonsubstantive editorial and organizational changes to the regulations, including removing an outdated reference to "special quarantine or other restrictive orders," updating definitions, and revising and reorganizing the subpart to make the regulations easier to understand and more consistent with the rest of the regulations in part 319. These proposed changes would not alter any current requirements. The following table shows where the current provisions in "Subpart—Cut Flowers" can be found in the proposed regulations:

Current section	Proposed section
319.74(a) .....	Removed.
319.74(b) .....	Removed.
319.74(c) .....	319.74-1.
319.74-1(a) .....	319.74-1.
319.74-1(b) .....	319.74-1.
319.74-2 .....	319.74-2(a).
319.74-3(a) .....	319.74-2(a), (b), and (c)(1).
319.74-3(b) .....	319.74-2(b), 319.74-4.
319.74-3(c) .....	319.74-2(c)(2).
319.74-4 .....	319.74-3.

**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 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 impact of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the economic impacts of this proposed rule on small entities. Therefore, we are inviting comments on potential economic impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Federal Plant Pest Act (7 U.S.C. 150aa-150jj) and the Plant Quarantine Act (7 U.S.C. 151-165, and 167), the Secretary of Agriculture is authorized to regulate the importation of plants and plant products to prevent the introduction of injurious plant pests.

We are proposing to amend the cut flowers regulations to make it clear that

the person importing cut flowers, and not APHIS, is responsible for the costs of destroying cut flowers when pests are detected and the cut flowers will not be treated or reexported. We are also proposing to provide for inspectors to issue a written notice when pests are detected and action on the part of the importer is required. These proposed changes would help reduce the risk of cut flowers introducing plant pests into the United States by ensuring that any necessary treatment or other required actions are completed.

This proposed rule would also help reduce costs for the government because it would explicitly require that the costs of destroying infested or infected cut flowers be the responsibility of the importer, owner, or agent or representative of the importer or owner. It is estimated that approximately 200 to 400 boxes of cut flowers are abandoned each month at Miami International Airport, the port of entry for more than 90 percent of foreign cut flowers. Estimates of the annual cost to APHIS for the disposal or destruction of cut flowers range from \$100,000 to \$240,000.

The entities potentially affected by this proposed rule are importers and others in the United States who are involved in the importation of cut flowers. This proposed rule would increase costs for importers, who would be required to absorb the cost of destroying infested or infected flowers at U.S. ports of entry. The number and size of those entities potentially affected by this proposed rule is unknown.

It is reasonable to assume that most of the entities potentially affected by this proposed rule are small by U.S. Small Business Administration (SBA) standards. In 1992, 99 percent of 4,322 wholesalers of flowers, nursery stock, and florists' supplies were considered small entities. The magnitude of the potential economic impact on small entities is not available.

There is reason to believe that the overall economic impact of this proposed rule on small entities would be insignificant, given that the volume of cut flowers abandoned at U.S. ports of entry is very small compared to the total volume of imported cut flowers allowed entry into the United States. In 1996, the United States imported approximately 2.5 billion fresh cut flower stems through Miami International Airport. No more than 72,000 cut flowers are abandoned yearly at Miami International Airport. Abandoned cut flowers, therefore, represent only a small percentage of the overall volume of cut flower importations into the United States.

Two alternatives to this proposed rule were considered: (1) To make no changes in the regulations and (2) to begin charging importers for destruction by APHIS of abandoned cut flowers without making changes to the regulations. We rejected the first alternative—making no change in the regulations—after determining that the costs to APHIS are too high to continue destroying or disposing of abandoned cut flowers at APHIS' expense. We also rejected the second alternative—charging importers for destruction by APHIS of abandoned cut flowers without making changes to the regulations—because we believe it is necessary to clarify our regulations regarding this issue since they do not currently state that importers are responsible for abandoned cut flowers. Because we have elected to exercise our authority to recover all costs that we incur when disposing of abandoned cut flowers, we believe it is necessary to amend the cut flowers regulations to make them more consistent with our regulations elsewhere in title 7, chapter III, by requiring that the importer, owner, or agent or representative of the importer or owner of cut flowers pay all additional costs associated with the importation of cut flowers. APHIS would continue to provide the services of an inspector during regular hours of duty at the usual place of duty at no cost to the importer.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil 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

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, 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. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Subpart—Cut Flowers would be revised to read as follows:

##### Subpart—Cut Flowers

319.74–1 Definitions.

319.74–2 Conditions governing the entry of cut flowers.

319.74–3 Importations by the Department.

319.74–4 Costs and charges.

##### Subpart—Cut Flowers

###### § 319.74–1 Definitions.

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

*Cut flower.* The highly perishable commodity known in the commercial flower-producing industry as a cut flower, which is the severed portion of a plant, including the inflorescence, and any parts of the plant attached to it, in a fresh state. This definition does not include dried, bleached, dyed, or chemically treated decorative plant materials; filler or greenery, such as fern fronds and asparagus plumes, frequently packed with fresh cut flowers; or Christmas greenery, such as holly, mistletoe, and Christmas trees.

*Inspector.* Any individual authorized by the Administrator to enforce this subpart.

*United States.* All of the States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories or possessions of the United States.

###### § 319.74–2 Conditions governing the entry of cut flowers.

(a) *Inspection.* All cut flowers imported into the United States must be made available to an inspector for examination and must remain at the port of entry until released, or authorized further movement, by an inspector.

(b) *Actions to prevent the introduction of plant pests; notice by an inspector.* If an inspector orders any disinfection, cleaning, treatment, reexportation, or other action with regard to imported cut flowers that are found to be infested with injurious plant pests or infected with diseases, the inspector will provide an emergency action notification (PPQ Form 523) to the importer, owner, or

agent or representative of the importer or owner of the cut flowers. The importer, owner, or agent or representative of the importer or owner must, within the time specified in the PPQ Form 523 and at his or her own expense, destroy the cut flowers, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments, clean, or apply other safeguards to the cut flowers as prescribed by the inspector on the PPQ Form 523. Further, if the importer, owner, or agent or representative of the importer or owner fails to follow the conditions on PPQ form 523 by the time specified on the form, APHIS will arrange for destruction of the cut flowers, and the importer, owner, or agent or representative of the importer or owner will be responsible for all costs incurred. Cut flowers that have been cleaned or treated must be made available for further inspection, cleaning, and treatment at the option of the inspector at any time and place indicated by the inspector before the requirements of this subpart will have been met. Neither the Department of Agriculture nor the inspector may be held responsible for any adverse effects of treatment on imported cut flowers.

(c) *Fumigation for agromyzids.* (1) Cut flowers imported from any country or locality and found upon inspection to be infested with agromyzids (insects of the family Agromyzidae) must be fumigated at the time of importation with methyl bromide in accordance with paragraph (c)(2) of this section, with the following exceptions:

(i) Fumigation will not be required for cut flowers imported from Canada (including Labrador and Newfoundland) or Mexico because of the finding of agromyzids.

(ii) Fumigation will not be required for cut flowers of *Chrysanthemum* spp. imported from Colombia or the Dominican Republic because of the finding of agromyzids, when such agromyzids are identified by an inspector to be only agromyzids of the species *Liriomyza trifolii* (Burgess).

(2) *Fumigation schedules.* Fumigation of cut flowers for agromyzids (insects of the family Agromyzidae) must consist of fumigation with methyl bromide at normal atmospheric pressure in a chamber or under a tarpaulin in accordance with one of the following schedules:

1½ lbs. per 1,000 cu. ft. for 2 hours at 80–90 °F.

(19 oz. concentration at first ½ hour)  
(12 oz. concentration at 2 hours); or

2 lbs. per 1,000 cu. ft. for 2 hours at 70–79 °F.

(24 oz. concentration at first ½ hour)

(16 oz. concentration at 2 hours); or

2½ lbs. per 1,000 cu. ft. for 2 hours at 60–69 °F.

(30 oz. concentration at first ½ hour)

(20 oz. concentration at 2 hours); or

3 lbs. per 1,000 cu. ft. for 2 hours at 50–59 °F.

(36 oz. concentration at first ½ hour)

(24 oz. concentration at 2 hours); or

3½ lbs. per 1,000 cu. ft. for 2 hours at 40–49 °F.

(41 oz. concentration at first ½ hour)

(27 oz. concentration at 2 hours)

**Note:** There is a possibility that some cut flowers could be damaged by such fumigation.

(d) *Refusal of entry.* If an inspector finds that imported cut flowers are so infested with a plant pest or infected with disease that, in the judgment of the inspector, they cannot be cleaned or treated, or if they contain soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

#### § 319.74–3 Importations by the Department.

The U.S. Department of Agriculture may import cut flowers for experimental or scientific purposes under such conditions and restrictions as the Administrator may prescribe to prevent the dissemination of plant pests.

#### § 319.74–4 Costs and charges.

The Animal and Plant Health Inspection Service, U.S. Department of Agriculture, will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty (provisions relating to costs for other services of an inspector are contained in 7 CFR part 354). The importer, owner, or agent or representative of the importer or owner of cut flowers is responsible for all additional costs of inspection, treatment, movement, storage, or destruction ordered by an inspector under this subpart, including the costs of any labor or chemicals, packing materials, or other supplies required.

Done in Washington, DC, this 21st day of January 1999.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–1918 Filed 1–27–99; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV99–932–1 PR]

#### Olives Grown in California; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate from \$17.10 to \$26.18 per ton of olives established for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1999 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by March 1, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket\_clerk@usda.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.

#### FOR FURTHER INFORMATION CONTACT:

Diane Purvis, Marketing Assistant, and Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber,