for compensation begins. After 1 year, the individual is entitled to the rights accorded individuals who fully or partially recover, as applicable.

(d) *Partially recovered.* Agencies must make every effort to restore, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended. (See 29 U.S.C. 791(b) and 794.) If the individual fully recovers, he or she is entitled to be considered for the position held at the time of injury, or an equivalent one. A partially recovered employee is expected to seek reemployment as soon as he or she is able.

§ 353.302 Status upon reemployment.

An individual who is restored following a compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, leave rate accrual, and completion of probation. However, an injured employee enjoys no special protections in a reduction in force. Separation by reduction in force or for cause while on compensation terminates entitlement to credit for the subsequent period the individual continues to receive compensation, and also means the individual has no restoration rights.

Subpart D—Appeal Rights

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore, improper restoration, or failure to return an employee following a leave of absence. All appeals are to be submitted in accordance with MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATION (MISCELLANEOUS)

Subpart A—Motor Vehicle Operators

52. The authority citation for subpart A of part 930 continues to read as follows:

Authority: 5 U.S.C. 3301, 3320, 7301; 40 U.S.C. 491; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306. (Separate authority is listed under § 930.107).

52. In § 930.105, paragraph (a) is revised to read as follows:

§ 930.105 Minimum requirements for competitive and excepted service positions.

(a) An agency may fill motor vehicle operator positions in the competitive or excepted services by any of the methods normally authorized for filling positions. Applicants for motor vehicle operator positions and incidental operators must meet the following requirements for these positions:

(1) Possess a safe driving record;

(2) Possess a valid State license;

(3) Except as provided in § 930.107, pass a road test; and

(4) Demonstrate that they are medically qualified to operate the appropriate motor vehicle safely in accordance with the standards and procedures established in this part.

* * * * *

54. Section 930.106 is revised to read as follows:

§ 930.106 Details in the competitive service.

An agency may detail an employee to an operator position in the competitive service for 30 days or less when the employee possesses a State license. For details exceeding 30 days, the employee must meet all the requirements of § 930.105 and any applicable OPM and agency regulations governing such details.

55. Section 930.108 is revised to read as follows:

§ 930.108 Periodic medical evaluation.

At least once every 4 years, each agency will ensure that employees who operate Government-owned or leased vehicles are medically able to do so without undue risk to themselves or others. When there is a question about an employee's ability to operate a motor vehicle safely, the employee may be referred for a medical examination in accordance with the provisions of part 339 of this chapter.

56. In § 930.109 paragraph (b) is revised to read as follows:

§ 930.109 Periodic review and renewal of authorization.

* * * * *

(b) An agency may renew the employee's authorization only after the appropriate agency official has determined that the employee is medically qualified and continues to demonstrate competence to operate the type of motor vehicle to which assigned based on a continued safe driving record.

[FR Doc. 95–830 Filed 1–10–95; 3:46 pm]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89–154–2]

RIN 0579–AA21

Importation of Plants Established in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' to allow the importation of four additional genera of plants established in growing media. These genera are *Alstroemeria, Ananas, Anthurium,* and *Nidularium.* We are deferring final action on importation of *Rhododendron* pending consultation under the Endangered Species Act on the potential impacts of importing *Rhododendron* established in growing media. We are also adopting the pest risk evaluation standards we proposed for evaluating pest risks associated with importing plants established in growing media. This final rule will affect persons interested in importing *Alstroemeria, Ananas, Anthurium,* and *Nidularium,* and domestic growers of these genera.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Grosser or Frank Cooper, Senior Operations Officers, Port Operations,

Plant Protection and Quarantine, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contacts will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January. Telephone: (301) 436–8295 (Hyattsville); (301) 734–8295 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize us to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of plant pests.

Regulations promulgated under this authority, among others, include 7 CFR 319.37 through 319.37–14, ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. Other sections of part 319 deal with articles such as cut flowers, or fruits and vegetables intended for consumption.

The regulations restrict or prohibit the importation of most nursery stock, plants, roots, bulbs, seeds, and other plant products. These articles are classified as either ''prohibited articles'' or ''restricted articles.''

A prohibited article is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States, if imported into the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

A restricted article is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to essentially eliminate the risk of its spreading plant pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

Section 319.37–8, ''Growing Media,'' allows importation of certain restricted articles established in growing media (potted plants), if the plants were potted in an approved growing medium and were grown in a greenhouse in accordance with safeguard conditions specified in the regulations. Potted plants that currently may be imported under the regulations include Polypodiophyta (ferns), African violet, gloxinia, begonia, peperomia, and hyacinth.

Proposed Rule

On September 7, 1993, APHIS published in the **Federal Register** (58 FR 47074–47084, Docket No. 89–154–1) a proposal to amend § 319.37–8 to allow the importation of plants in growing media (potted plants) of the following additional genera: *Alstroemeria, Ananas, Anthurium, Nidularium*, and *Rhododendron*. We solicited comments concerning our proposal for 60 days ending December 6, 1993. During this comment period, we also received comments at a public hearing which was announced in the proposed rule and which was held in Washington, DC, on October 26, 1993.

We received 122 comments by the close of the comment period. They were from embassies of foreign governments, domestic grower and nursery associations, State plant protection agencies, environmental interest organizations, and foreign nurseries and greenhouses. The majority of these commenters opposed adoption of the proposal to allow the importation of five additional genera of plants in growing media. Several commenters suggested changes to pest risk assessment procedures, without specifically opposing adoption of the proposed pest risk evaluation standards for plants in growing media. No commenters opposed the proposal to approve several new growing media, although several commenters expressed the opinion that plant pests could grow in the already approved growing media. All of the comments are discussed below, under ''Comments and Responses.''

After carefully evaluating the comments on the proposed rule, APHIS has made the following decisions on the proposal:

1. We will adopt the proposed pest risk evaluation standards and the proposed requirements for specific inspection, handling, and growing conditions for all plants in growing media that are allowed to be imported under the regulations. We believe these standards and requirements clearly provide better pest protection than the requirements now contained in § 319.37–8. Therefore, we are revising the regulations to adopt the proposed standards and requirements, with several slight modifications made in response to comments. These modifications are discussed below, under ''Comments and Responses.''

2. In addition to the six kinds of plants in growing media previously allowed importation by the regulations (Polypodiophyta, African violets, gloxinia, begonia, peperomia, and hyacinth), we will allow the importation of the following genera of plants in growing media: *Alstroemeria, Ananas, Anthurium*, and *Nidularium*. We believe that these plants in growing media may be safely imported without significant risk of introducing into the United States any tree, plant or fruit disease, or any injurious insect, new to or not widely prevalent or distributed within and throughout the United States. Comments objecting to the importation of these genera in growing media did not provide sufficient evidence to convince us that importing these genera would present a significant risk of introducing and spreading dangerous plant pests.

3. We will defer action on the provisions of the proposed rule that apply to *Rhododendron*. Commenters identified specific issues under the Endangered Species Act regarding the proposed importation of *Rhododendron* in growing media. For instance, some commenters noted that an endangered *Rhododendron* species in the United States might be damaged by alien pests introduced or imported on *Rhododendron*. We have determined that in compliance with Section 7 of the Endangered Species Act (16 U.S.C. 1537), consultation is necessary between APHIS and the Fish and Wildlife Service before we take final action on our proposal to allow the importation of *Rhododendron* in growing media. This consultation is necessary due to the presence in the United States of species of *Rhododendron* that are listed, and are proposed for listing, as endangered or threatened under the Endangered Species Act.

After completion of the Endangered Species Act consultation, we will proceed with rulemaking to either finalize or withdraw the proposed changes concerning importation of *Rhododendron*.

Comments and Responses

The comments have been summarized and grouped below according to the comment topics. Our responses to each topic follow the summary.

Comments that specifically addressed only *Rhododendron* issues are not discussed in this document. They will be addressed in any future rulemaking on the proposed *Rhododendron* provisions.

The Acceptable Level of Risk for Importing Plants in Growing Media

Several commenters argued that APHIS is subject to strict statutory standards that would preclude regulations allowing importation of articles if there is any plant pest risk associated with the importation. One commenter stated that ''[the Plant Quarantine Act on its face indicates that the Secretary of Agriculture and his delegate, APHIS, should err on the side of caution: 'whenever' importation of plants 'may result' in the introduction and spread of injurious plant pests, then importations 'shall' be restricted.'' This commenter cited § 159 of the Plant Quarantine Act (7 U.S.C. 151 *et seq.*), which states:

> Whenever the Secretary of Agriculture shall determine that the unrestricted importation of any plants, fruits, vegetables, roots, bulbs, seeds, or other plant products not included by the term ''nursery stock'' as defined in section 152 of this title may result in the entry into the United States or any of its Territories or Districts of injurious plant diseases or insect pests, he shall promulgate his determination, specifying the class of plants and plant products the importation of which shall be restricted and the country and locality where they are grown, and thereafter, and until such promulgation is withdrawn, such plants and plant products imported or offered for import into the United States or any of its Territories or Districts shall be subject to all the provisions of sections 154 and 156 to 158 of this title.

Response: This section clearly states that it is the responsibility of the Secretary to determine when unrestricted importations ''may result'' in the introduction and spread of injurious plant pests. If such a determination is made, the Secretary is not required to prohibit the importation. He or she may restrict it; the appropriate restriction may involve a prohibition, or may involve importation under conditions to control pest risk.

Therefore, the Secretary is not obliged to prohibit the importation of the genera in the proposal 'whenever' importation of plants 'may result' in the introduction and spread of injurious plant pests. Instead, importation of the articles is subject to the standards of § 154, which give the Secretary a great deal of discretion in deciding when and what types of import restrictions are necessary. Section 154 generally requires that nursery stock imports must be authorized by a permit, accompanied by a certificate, and imported ''under such conditions and regulations as the said Secretary of Agriculture may prescribe.'' The Secretary is also authorized ''to limit entry of nursery stock from foreign countries under such rules and regulations *as he may deem necessary*'' (emphasis added).

The proposed rule supported the goal of preventing the introduction and establishment of dangerous plant pests by proposing methods the Secretary deems effective in supporting this goal. Therefore, we believe the proposed action is consistent with the Plant Quarantine Act standards.

Adequacy of Port-of-Arrival Inspection To Mitigate Pest Risk

Many commenters stated that inspection at the port of arrival is not an effective means for preventing the entry of pests. Some cited instances where shipments that passed such an inspection were later found to be infested with pests. Other commenters noted that many diseases and small pests cannot be effectively identified through visual inspection. Some questioned whether APHIS had sufficient resources to continuously implement effective inspection programs at all ports of entry.

Response: Current conditions for any imported article allow for inspection at the port of first arrival; however, because any pests that might be in the media cannot be readily observed, we have imposed conditions concerning origin, testing, growth, inspection and storage of the plants that should essentially eliminate the risk of exotic pests being present in the media. This scheme to ensure freedom of the media from pests has been proven over nearly 20 years of importations.

Reliance on Foreign Plant Protection Services

Several commenters stated that the proposal relies heavily on cooperation by the plant protection services of foreign countries to inspect growing facilities and ensure that articles to be exported to the United States are grown in compliance with regulatory standards. They maintained that these foreign plant protection services may not effectively fulfill their role in enforcing the regulations, and that APHIS does not have the authority or resources to ensure that they do so.

Response: Each foreign grower is required to sign an agreement with the plant protection organization of the foreign country, agreeing to abide by the conditions of our regulations. In addition, each exporting country must sign an agreement with APHIS agreeing to implement the conditions of the regulations. The producing greenhouses and the growing plants must be made available for inspection by inspectors of APHIS and the foreign plant protection organization. No shipment will be allowed entry into the United States unless the accompanying phytosanitary certificate is endorsed by an APHIS inspector, either in the country of export or the port of entry, as required by the regulation. This endorsement is based on monitoring inspections that show that the plants were grown under the requirements of the regulations. Also, if pests are found or other violations noted, individual shippers or greenhouse growers can be suspended from preclearance. APHIS has a record of prohibiting the importation of, or requiring treatments for, various commodities that were repeatedly found infested or infected with exotic plant pests. However, no such action has been taken with plants in growing media shipped under § 319.37–8(e) or –8(f) because no exotic pests have ever been found with such shipments.

Comments in Favor of the Proposal

Several commenters stressed that the APHIS proposal does not relax the level of protection against pests associated with plants imported in growing media, and that the proposal essentially would allow the entry in media of genera that are already allowed entry if bare-rooted. These commenters also stated that the proposed media have proven to be of no or very low risk, and that compliance agreements between foreign growers and their governments and between foreign governments and APHIS provide all necessary guarantees and are enforceable.

Supportive commenters also believe that adequate inspection will be available since only a few growers will participate in the program, and further note that APHIS has long experience in inspecting plants abroad and at ports of arrival. They also believe the proposal would not result in a magnitude of imports that would overwhelm enforcement and inspection resources since observing APHIS requirements would be very expensive.

Choosing Which Genera To Import

Several commenters stated that the five genera in the proposal were not chosen because they represent genera which pose the least risk if imported, but because they are the most economically attractive genera for importation.

Response: Over the last 20 years, approximately 60 genera of plants in media have been requested for

importation into the United States by foreign governments. These are, of course, the genera the exporting countries especially desire to ship to the United States. It is APHIS policy to respond to such requests, regardless of their origin. We intend to consider all of the requested genera. However, as explained in the advance notice of proposed rulemaking published October 7, 1991 (56 FR 50523–50524, Docket No. 91–036), and in the proposed rule published September 7, 1993 (58 FR 47074–47084, Docket No. 89–154–1), we selected the five genera in the proposal for study first because they represent a diversity of horticultural and botanical types, and because they are among the first plants requested by foreign governments to be imported in growing media. These five genera were proposed for addition to the list of approved plants for importation in growing media because we found that they could be safely imported under specified safeguards without introducing exotic plant pests harmful to U.S. agriculture.

In developing the list of pests to be studied for the five genera, we listed all pests reported on these hosts, whether or not we were familiar with their potential risk at that time. The list was developed without knowing the potential risk of each and every organism. All pests on the list were subjected to the pest risk analysis to determine which pests had a potential to be high risk based on the pest risk assessment standards. The high risk pests were subjected to detailed study, as described in the proposed rule.

Concern About Foreign Growers Observing Conditions

Several commenters stated that the proposed growing restrictions will not be feasible for the foreign growers to observe, and they will, therefore, not observe them. These commenters also said that European growers cannot grow azaleas in the method prescribed by APHIS; instead, based on current practices, they would build a small greenhouse that meets the requirements for export plants, and then run tremendous numbers of plants through it illegally.

Response: If restrictions are not feasible for any particular foreign growers, those foreign growers will not be approved to ship plants in media to the United States.

Other commenters said that not all European growers will be careful in observing requirements, so some degree of unwanted pest contamination is inevitable for plants in growing media imported into the United States.

Response: No human enterprise is without risk. However, we believe based on our research, and experience with similar potted plants, that the proposed four genera we are approving can be imported into the United States without significant risk, provided the required conditions are observed.

Regulations Should Include Consequences (Penalties) for Non-Compliance

Some commenters believed that the risk of crop devastation or imposed quarantine destruction is a burden placed on U.S. importers and ultimately on the American taxpayer. They suggested that the regulations should spell out consequences and penalties for all domestic and foreign parties who fail to comply with regulatory requirements.

Response: The consequences for non-compliance are elimination from the program for individual growers, shippers, or foreign countries. (See explanation under ''Concern about Foreign Growers Observing Conditions'' above.)

Several commenters stated that importers should be held financially responsible for the risks of importation.

Response: USDA has no authority to hold importers responsible for risks of importation; however, individual shipments will be refused entry unless the phytosanitary certificate required to accompany the shipment is endorsed by a Plant Protection and Quarantine inspector, as required by the regulation. This endorsement is based on monitoring inspections that show that the plants were grown under the requirements of the regulations. Also, if pests are found or other violations noted, individual shippers or greenhouse growers can be suspended from preclearance.

Two commenters suggested that the regulations should suspend a producer from preclearance if a violation is found until the situation is corrected, and suspend the producer for at least 1 year if subsequent violations are found.

Response: Because the required agreements allow cancellation by either party, APHIS has authority to suspend violators from preclearance. We intend to employ this cancellation authority in enforcement. We do not believe it is necessary to set specific time periods for the duration of a cancellation or suspension in order to use the tool effectively.

Limits on Methods To Control Pests Introduced Into the United States

Several commenters stated that the U.S. Environmental Protection Agency (EPA) limits on use of some pesticides in the United States would make it impossible to use the most effective chemical controls to combat pests that could be introduced with the regulated articles.

Response: If safeguards are observed, introductions of exotic pests with plants in media are extremely unlikely. No exotic pests have been detected in nearly 20 years of importations of plants in media from Europe and Israel. However, should new pests be introduced, their susceptibility to eradication or control will depend on the nature of the pest and the availability of control measures. It does not follow that because EPA action has resulted in loss of some chemical controls, that any new introduced pests could not be adequately controlled, chemically or otherwise.

Several commenters were concerned that pests introduced by the regulated articles will require more domestic usage of allowed pesticides, which could pose a health risk.

Response: We are concerned about possible health risks from the application of chemicals for quarantine purposes. However, we have no reason to believe that chemical controls applied in accordance with label requirements would present a health risk. The question of health risks from application of chemical pesticides is within the purview of the EPA and the Food and Drug Administration.

Several commenters stated that we are potentially defenseless against pests that may have begun to develop genetic resistance to the more powerful controls that may be legal in exporting countries.

Response: We would be glad to study evidence that pests in foreign countries have developed genetic resistance to pesticides not legal for use in the United States. However, if such resistance does occur, it does not mean that the pests would be resistant to pesticides that are legal for use in this country.

Growing Media Concerns

Several commenters stated that pests and diseases can grow in the growing media currently allowed for the regulated articles.

Response: We have no evidence that unused approved media is infested or infected with exotic plant pests. If prescribed safeguards are observed, such media used for approved plants will not become infested with exotic plant pests.

One commenter suggested that the definition of ''media'' should not be changed from ''sterile'' to ''approved.''

Response: There is no current definition of ''media'' as ''sterile'' in this regulation. We made no proposal to

change the definition of ''media''. Therefore this comment is not germane to the proposal.

One commenter suggested that Dutch and Israeli imports should be imported only in absolutely sterile media. This commenter stated that all kinds of weeds and diseases are imported into The Netherlands and handled there in ways that circumvent inspection or quarantine requirements theoretically designed to control the pests. The commenter also stated that sterile media is necessary for plants from Israel because desert weeds and diseases that occur there have not been identified or are not well known, but present risks.

Response: We cannot respond since we have no evidence to support these claims, and the commenter did not provide evidence to support his claim.

Several commenters stated that no plants in media should be allowed to be imported into the United States.

Response: Certain plants are already enterable in media; we did not propose to change the entry status of those plants. This commenter did not explain why no plants in media should be allowed entry.

Anthurium Concerns

Commenters opposed to allowing the importation of Anthurium species noted that the Anthurium industry in Hawaii has had to deal with introduction of *Xanthomonas campestris* pathovar *dieffenbachiae* with losses of $8.5 million. They stated that Hawaii is especially liable to new pest infestations, and that anthuriums are especially susceptible to new pests. They also stated that the scientific information on pests of anthuriums is probably not all inclusive because anthuriums have not been of great economic importance compared to other cut flowers.

Response: The special vulnerability of Hawaii to tropical pests that do not survive well in most of the United States was considered by the pest risk analysis for anthuriums. During the analysis, Hawaii, Puerto Rico, California, and Florida were specifically considered and recognized as areas that needed special consideration due to their climate. We understand that the scientific information on pests of anthuriums, like most plants, is not all inclusive. We must use the best information available in making our decisions. The safeguards in the rule are deliberately broad to provide protection against a diversity of plant pests including those that were not identified.

Several commenters stated that the proposed requirements were not fully adequate because the APHIS pest risk analysis states that for some plants, inspection at port of entry would not serve as an adequate safeguard since symptoms of significant diseases are not present during the incubation period.

Response: As with other plants in media, the primary safeguards are those applied before and during growth in the foreign country. These safeguards are very strict because inspection at port of entry will not serve as an adequate safeguard for certain pests, either because of their size, or because symptoms are not present during the incubation period, or because pests would be hidden by the growing medium.

Several commenters stated that the decision to import the five genera, especially *Rhododendron,* seems to go against the findings of the APHIS committee of researchers who prepared the worksheets and evaluations of pest risk (the Kahn report, made available through the proposed rule), which recommended against admitting *Rhododendron* due to pathogens in Europe, and raised concerns about other genera.

Response: The function of the Kahn report was not to recommend that the genera under study be admitted or prohibited, but to identify the risks that would be associated with their admission. The Kahn report did identify significant risks that would be associated with unregulated admission of *Rhododendron* in growing media, and less significant risks regarding the other genera. APHIS evaluated those risks and tailored specific regulatory controls and safeguards to mitigate the risks in preparing the proposed rule. Since this final rule does not include importation for *Rhododendron,* a discussion of the efficacy of controls and requirements to mitigate risks associated with importation of *Rhododendron* will be deferred until such time as we publish further rulemaking for that genus.

Some commenters stated that there is no reason to import the five genera, since production of the same genera or easily substitutable plants in the United States is more than adequate, and new varieties can be obtained by cuttings or tissue culture.

Response: We have no authority to base a prohibition on the availability of plants in the United States. Any prohibition or restriction must be based on pest risk.

Previous Introductions of Serious Pests Into the United States

Several commenters stated that a large number of pests have been introduced into the United States and have caused significant economic and environmental harm. They stated that many of these pests were introduced despite import controls believed to be as effective as the proposed regulations for plants in growing media. They believe that available and legal methods of control have proved inadequate to control most of these pests, and that the proposed regulations would only speed the introduction of more pests of this type. Examples of introduced pests cited by these commenters include Egyptian cotton moth, Asian gypsy moth, Geranium *Xanthomonas* bacterial blight, fire ants, Mexican fruit fly, Mediterranean fruit fly, honeybee tracheal mite, Narcissus bulb nematode, apple ermine moth, Varroa mite, azalea flower spot, chrysanthemum white rust, sweet potato white fly, *Thrips palmi,* lethal yellowing, *Ganaderma zonaturum* and Apopka weevil, *Melaleuca,* brown snails, zebra mussel, European gypsy moth, purple loosestrife, a Japanese weed (Phylanthese), TSWV virus (spread by thrips), serpentine leaf miner, Japanese beetles, golden nematode, black vine weevil, pine shoot beetle, Dutch elm disease, Chestnut blight, European pine shoot moth, apple maggot, oriental fruit moth, Caribbean fruit fly, citrus canker, citrus leafminer, black parlatoria scale, *Diaprepes* root weevil, stunt of *Chrysanthemum, Cylindrocladium* of azalea, *Liriomyza trifolii, L. huidobrensis, Spodotera exigua, Frankliniella occidentalis,* and *Bemisia tabaci.*

Response: The majority of the organisms listed by these commenters are usually not found associated with plants in growing media of the genera proposed for importation. In some cases, such as apple maggot, *Frankliniella occidentalis,* and others, the pests are indigenous to North America. Several of the pests named, such as the Egyptian cotton moth, have not, in fact, become established even temporarily in the United States. Chestnut blight, European Gypsy Moth, and other introduced pests that did become established, did so prior to the establishment of Federal plant quarantines, and their presence does not support a charge that quarantine regulations are not effective. *Melaleuca* is a horticultural introduction only recently considered as a noxious weed; for many years, our regulatory programs did not attempt to restrict its importation. The honeybee tracheal mite, azalea flower spot, and other remaining pests are not likely to be associated with plants in growing media grown under the conditions in the proposal.

We believe that the lack of quarantine significant introductions of any pests in association with the five taxa of plants currently allowed importation in growing media during the past 20 years is also evidence that pests are unlikely to be introduced in growing media imported under the proposed requirements.

If safeguards are observed, no exotic pests should be introduced with the plants. We expect that APHIS and the foreign plant protection organization will apply adequate controls to ensure consistent and correct application of the safeguards.

Examples of Infected or Infested Stock That Has Been Imported

One commenter reported he bought virus-infected geranium stock from the Canary Islands and Mexico. Another mentioned Fischer Geranium ISA voluntarily cancelling 80 million geranium cuttings from Mexico because of a possible virus disease that might infect other ornamentals. A commenter who imported plant cuttings from Israel said he had them inspected and released by APHIS but that a follow up inspection found Egyptian cotton moth, resulting in a $250,000 loss.

A commenter stated he imported nursery stock from The Netherlands that turned out to be infested with the noxious weed ''keek,'' which could not be eradicated. Another cited growers who have been shut down because of imported products infested with Egyptian cotton moth and white rust of chrysanthemums. Another cited an importation of *Alstroemeria* plants from The Netherlands that had tomato spot wilt virus and were being distributed by a Dutch-American propagator.

A commenter reports that mixed fern species arriving at Apopka were found with four different taxa of insects, and that undetermined species of both *Aphelenchoides* and *Helicotylenchus* were found in sterile peat imported from nurseries in The Netherlands.

Another commenter reports that rootstocks from The Netherlands have been found to be infested with *Meloidogyne* and *Pratylenchus* species. Another commenter notes that the State of Oregon has found serious plant pests or diseases in imported pre-inspected plant materials.

Response: While these comments document a general background risk that pests may be introduced into the United States, they do not provide evidence that the restrictions and safeguards discussed in the proposal for importing plants in media would fail to prevent introduction of pests. We continue to believe that the proposed restrictions and safeguards are effective, for the reasons discussed in the proposal.

Safeguard Concerns

Several commenters suggest that the frequency and timing of inspections should be critically examined because pests may build up in a short time. Plant auctions and resale transactions would have to be policed to ensure that the plants were grown under qualifying conditions. These commenters also believe that APHIS must take steps to assure effective pest exclusion programs at ports of entry, and guarantee development and maintenance of programs to exclude and/or control pests.

Several commenters suggested that APHIS should include provisions to limit numbers of plants imported. They felt limits on plant import numbers should relate to the known capacity of each exporting country to grow plants under approved conditions and should take account of the reasonably expected output for each growing facility.

Response: Allocating resources to enforce regulations is an important part of any regulatory program, and APHIS intends to devote the resources required to ensure that inspections, record-keeping, port of arrival activities and other actions required under the regulations are maintained at the level required for successful implementation of this program.

Regarding enforcement and verification of compliance with the regulations, all growers of plants in media to be shipped to the United States must keep records of kinds and numbers and time of shipment for all plants brought into, and shipped from, the greenhouse. These records must be made available to inspectors of APHIS and of the plant protection service of the foreign country. These records will also help ensure that the number of plants imported under the regulations does not exceed the number that could reasonably be grown in approved facilities. If more plants are imported than we believe could reasonably be grown in approved facilities, we will investigate possible violations.

Unscheduled visits will be made to the approved greenhouses by inspectors of both APHIS and the plant protection services of the growing countries. In addition to monitoring the number of plants that can be shipped, the inspectors will enforce the very strict controls placed on the greenhouses, including automatic closing doors, screening, raised benches, etc.

One commenter suggested that the lack of a protocol for detecting movement of plants from unapproved greenhouses through approved greenhouses and the lack of a quarantine period in the United States for imported material allow too great a risk of nondetection of pests.

Response: The record-keeping and inspection requirements for growers discussed above address the problem of movements from unapproved greenhouses through approved greenhouses. In response to the quarantine period comment, APHIS requires postentry quarantine only when other import requirements cannot ensure the material is free from dangerous plant pests. The pest risk associated with the genera in growing media in the proposal can usually be addressed by other means. APHIS will propose postentry quarantine as a requirement to admit any plant in growing media when such a requirement is necessary; for example, the proposal includes postentry quarantine for *Ananas* and *Nidularium* imported into Hawaii.

Adequacy of Requirements for Growing Conditions in the Country of Origin

Several commenters noted that pests may not be able to pass through the screens proposed for greenhouses, but other openings will let them in because greenhouses expand and contract and have small cracks and broken panes of glass.

Response: In addition to specifying a required screen mesh size, the proposed regulations also rely on a performance standard for pest exclusion, which inspectors will enforce. The regulations require that the articles must be grown in a greenhouse ''in which sanitary procedures adequate to exclude plant pests and diseases are always employed'' (§ 319.37–8(e)(2)(ii)).

One commenter questioned the proposed requirement that growing plants may be watered only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water. Water fit for human consumption (potable water) may still contain plant pests or pathogens.

Response: We believe that water that has been contaminated with organic material to the point that it harbors significant numbers of plant pests is also likely to harbor human disease pathogens that make it not potable. It therefore would not be allowed to be used by the regulations. Similarly, water that has been treated to render it potable has been exposed to chemicals or treatment conditions that will destroy human pathogens and plant pests alike.

One commenter asked: What is clean rainwater? Can it be collected as runoff

from buildings, which may be contaminated? This commenter suggested that all irrigation water should be treated with ultraviolet irradiation or filtered to eliminate spread of pathogens.

Response: Under the proposed requirement, if rainwater is used it must be boiled or pasteurized, which would destroy pathogens.

Several commenters suggested that the height requirement for the raised growing benches is not sufficient to prevent something on the ground being spread by insects or by water splashing.

Response: The benches are not raised over ''ground,'' but over concrete or gravel over plastic sheeting. The purpose of any elevation of the benches is to allow air circulation underneath, to separate the bench and its plants from the drainage off the bench, and to simplify cleaning and sanitation. The minimum height specified was necessary to accomplish these tasks. Some benches may use trickle irrigation for watering or contain approved growing media watered by a circulatory system. In either case there would be no splashing. If there were some splashing, there would be no soil that would serve as a source of contamination and spread. In addition, the height requirement for potted plants has been in effect for six different kinds of plants for about 20 years. No exotic pests have been found with shipments of these plants.

Several commenters stated that pesticides in the growing facilities will keep infestations at a low level making visual inspection useless; pesticide use should be prohibited to avoid this problem of masking.

Response: The use of pesticides and other safeguards, such as screens, are methods of reducing the risk of introducing exotic pests. We believe that the use of pesticides with other safeguards will result in a product that is essentially pest-free. Nineteen years of experience with six other genera of plants in growing media supports the concept of using multiple safeguards. This systems approach has long been used here and in foreign countries to reduce pest risk and to provide a horticultural product acceptable for domestic and international trade.

Other Safeguard Concerns

Several commenters stated that they have visited growing facilities that are likely candidates for growing articles under the regulations, and stated that the physical and procedural safeguards required by the regulations are not in place.

Response: Shipments from growing facilities may not begin until after the required growing agreements have been signed. APHIS will not sign an agreement until the required safeguards and procedures are in place.

Concerns About APHIS Resources

Commenters raised the following questions and concerns about the level of APHIS resources for enforcing the proposed regulations: APHIS does not have adequate resources and commitment to fulfill its monitoring responsibility in foreign countries. The proposal has no specifications for APHIS funding or staffing for inspection of greenhouses, mother stock, and export plants. APHIS is understaffed and politically powerless as evidenced by problems with geraniums, poinsettia mildew, white rust, and the withdrawal from the U.S. market of Fisher Geraniums. APHIS does not have sufficient staff at ports of entry, as evidenced by unwanted pests that continue to be shipped in, e.g., *Xanthomonas pelargonii* and the cotton moth on geraniums. Budget cuts in USDA should prohibit any new products being considered for importation under the regulations. APHIS cannot control likely problems because USDA has been a primary target for budget reductions. It is inappropriate to propose additional importation of plant genera when many inspection positions at ports of entry are vacant. Current PPQ staffs are not able to adequately inspect and monitor disposition of imported plant materials. The APHIS Vision 2000 document projects continuing decreases in PPQ staff.

Response: It is true that many variables in the annual budget process can affect the level of resources APHIS can apply to any given program at any given time. APHIS intends to manage its resources to allocate the necessary number of staff hours to this program to ensure the level of inspection and enforcement necessary for its safe operation. If at any time we are unable to provide the resources necessary for full implementation of the proposed requirements, we will discontinue or limit importations under the regulations. Our statutory authority allows us to take such action whenever it is necessary.

Several State governments indicated their desire for a system by which APHIS would notify them of all importations destined for their States, especially since they believe USDA has no plans to increase port of entry inspection staff and may have to decrease current staff.

Response: APHIS has a system to notify State Departments of Agriculture of the arrival in the United States of plants destined for their States. Any State may request and receive notification from APHIS of the arrival of plants imported in accordance with these regulations.

Pest Risk Analysis Methodology

Some commenters believed the database of pest/host information APHIS assembled in the course of pest risk assessment was too narrow and exclusive. Several felt that because the automated databases employed do not contain reports from before 1970, applicable historical information about possible pest risks was not included. Two commenters cited specific pests that were not identified by the database (pathogens from Israel and Egyptian cotton moth) and stated that these pests should have been considered in evaluating the proposed importations.

Some commenters felt that published reports of pests associated with particular plant articles are an insufficient source of data for pest risk decisionmaking. One stated that ignoring a pathogen until it does enough damage to be noticed in research articles does not ensure safety of our agriculture; we can't assume an organism is not of quarantine significance only because there is little or no economic damage or biological information or data published in scientific journals. Another stated that a lack of information in scientific papers on a particular pest does not constitute proof that there is no problem with that pest. Another cited the comparative paucity of reports in the scientific and regulatory literature of pests in Asia and parts of Europe as a sign that the database employed by the regulations is incomplete.

Response: The scientist obtained an excellent coverage of the worlds' scientific literature by using the data bases in their search for literature. In addition, PPQ furnished copies of important papers for use in the assessment. Furthermore, scientists had the option to consult the references to older papers that are found at the end of the scientific articles that appear after 1970. The outside scientists had their own references and their University libraries as well.

We agree that the pest and potential host data employed were not and cannot be comprehensive. However, we believe the database assembled the best feasible collection of data relevant to the decisionmaking process required for the proposal of regulations. To address the fact that unknown or underreported

pests no doubt exist, and could be associated with some of the articles proposed for importation, the growing requirements and safeguards are deliberately broad. The safeguards address fundamental modes of pest access to hosts and survivability of pests on hosts. The safeguards that control known pests should also be widely effective in controlling unknown pests, and pests that are not known to be associated with the particular articles covered by the regulations.

Several commenters stated that the plant industry has a right to expect that the United States government will obtain sufficient information on potential problems and establish adequate safeguards before allowing entry of foreign plant material. They stated that it is not acceptable to remove existing safeguards in order to facilitate trade simply because ''no information is available'' in the database searches employed by APHIS. These commenters felt that whenever there are risks associated with importing a plant article, importation should be prohibited in accordance with the Plant Quarantine Act, unless definitive scientific evidence exists that the article may be safely imported under safeguards.

Response: The Plant Quarantine Act does not prohibit the importation of any plants. However, it authorizes the Secretary of Agriculture to determine that it is necessary to forbid the importation of plants in order to prevent the introduction of plant diseases and injurious insects from infested countries.

Many years ago, a general prohibition was promulgated against the importation of plants in growing media, with certain exceptions. It appears this prohibition was based on the idea that growing media in general may contain many kinds of plant pests, and that elimination of those pests by inspection or treatment was not feasible.

The exceptions were made because APHIS found that certain plants in growing media could be safely imported into the United States. The exceptions that existed before 1980 included, for example, plants from most of Canada, and orchid plants on fern bark slabs. These exceptions were made using the best information available to APHIS, and we have no information that the plants present any significant risk of introducing exotic plant pests. In 1980, we added five kinds of plants in growing media that could be imported, provided that strict quarantine conditions were observed. The plants were requested by various European countries and some U.S. importers. The proposal to allow importation of these plants in growing media was based on the best information available to us at that time, which indicated the plants could be safely imported. The validity of allowing these plants in media to be imported is supported by the fact that many such plants have been imported without any evidence of introducing exotic plant pests.

Now we have proposed to add five new kinds of plants established in growing media. This final rule allows importation of four of the proposed genera. Again, we have used the best information available, which includes nearly 20 years of experience with potted plants from The Netherlands to determine that the genera of plants may be imported without significant pest risk, if the proposed conditions are observed.

Several commenters stated that since many fungi and other pests are not well known, it is impossible to determine when a new strain of a pest is being introduced with a newly allowed host. These commenters opposed increasing the variety of plants imported in growing media for this reason.

Response: The commenters should note that the plants we are allowing to be imported may already be imported bare-rooted, and therefore do not represent new types of host material. Certainly, allowing the host material to be imported associated with growing media presents some risks not presented by bare-rooted plants. However, the risk analyses acknowledged the existence of unknown fungi and other pests, and evaluated the likely scope of the risk they present by using risks of known fungi and other pests as benchmarks.

Several commenters suggested that the pest risk analysis was weak because the outside scientists who assisted in studying the risks were not in a position to review recommended safeguards and analyze their efficacy.

Response: We deliberately asked the researchers to evaluate the pest risks without regard to particular potential inspections, treatments, or other safeguards that might be imposed by APHIS. We did this to obtain an unbiased baseline of pest risk potential, and because we were employing the researchers to evaluate pest risks, not the efficacy of a variety of treatments and safeguards. The selection of particular treatment or safeguard requirements is a regulatory decision, not a scientific one.

Several commenters felt that the proposed rule shows that APHIS apparently ignored the findings of its own scientists and team of outside experts, who in the Kahn report identified major risks for importation of *Rhododendron* and significant risks for other genera.

Response: The Kahn report identified risks, but did not address whether some feasible combination of safeguards could control those risks. APHIS has extensive program operations experience and methods development data that document which safeguards can be used to control particular types of risks. APHIS evaluated the risks identified in the Kahn report and concluded that import requirements and safeguards of proven effectiveness could be employed to reduce those risks to a safe level.

The statement that APHIS ignored the results of its own scientists is misleading. There were two groups. One group was charged with pest risk analysis to determine the potential risk of each organisms assuming the only safeguard in place was inspection of a sample at a port of entry. The reason for this specification was to allow outside scientists to make biological assessments without being encumbered with quarantine procedures. The thrust was toward determining the potential risk based on life cycles-a biological assessment where the true or projected risk may be determined.

Under those circumstances, it is not surprising that based on the life cycles of the most important exotic pests, that the recommendation was to prohibit *Rhododendron*. The scientist believed that inspection at a port of entry, as a sole safeguard, is not an adequate safeguard to prevent the entry of *Rhododendron* pests.

However, the commenter did not consider the actions of the second group, which was charged with risk management. The second group considered all the hazardous and high risk plant pests listed by the scientists in the first group and set up a system of independent safeguards listed in the proposed rule. The whole proposed rule is equal to the sum of its parts—risk assessment and risk management.

Other Pest Risk Analysis Methodology Concerns

Commenters made the following suggestions: Pest risk analyses done by APHIS should consider fewer plants at a time. APHIS should expand the coverage of the analyses to ensure including the pests that pose the greatest risk. APHIS should add an additional criterion to its risk assessment standards to measure quality, depth, and coverage of available information on a given genus.

Response: We conducted a pest risk analysis for each of five genera of plants.

We believe that the various species within each genus have sufficient similarities in terms of pest host potential to make this a reasonable approach. We believe the analyses did address the pests posing the greatest risk, and we are not aware of a statistical model that demonstrates otherwise. We believe rating quality, depth, and coverage of available information on a given genus is best done by professional judgment of qualified plant scientists, not by a formula, and this is the approach we used.

Preemption and Other Concerns of States

One commenter expressed concern about the preemption clause that would prevent Hawaii from enforcing its statutes to protect Hawaiian agriculture. This commenter stated that Hawaii is unique in having a higher probability of pests becoming established, due to its climate. The commenter believes APHIS should clarify at what point foreign commerce ceases, especially as to whether affected States will be able to participate in the decisionmaking or whether States will simply be notified of the final decision.

Response: The extent to which this regulation would preempt State or local requirements is no more or less than with our other regulations. Federal regulations would preempt State or local requirements only when they are inconsistent with the Federal requirement. Federal requirements preempt State or local requirements while the articles are in foreign commerce, which generally lasts at least until the article is purchased by the ultimate user and taken to its final destination.

Several commenters stated that the proposed changes would increase pressure on the California Department of Food and Agriculture for subsequent detection of pests after release by APHIS.

Response: The rule was designed to prevent the introduction of pests, not to discover them after importation. We believe that articles imported in accordance with the requirements of the regulations will contain few or no significant plant pests, and should therefore require little increase in the workload for the plant protection services of California or other States.

Economic Concerns

A number of commenters raised concerns about the preliminary economic analysis and suggested ways to improve it. The analysis has been revised to address impacts on both wholesale and retail firms, to utilize up-to-date data, and to address other concerns of commenters. See the ''Executive Order 12866 and Regulatory Flexibility Act'' section of this document.

Some commenters thought that the economic analysis should take into account the potential cost should dangerous pests be introduced and cause major infestations.

Response: We think the economic analysis should focus on the expected effects of the proposed action, and should rely as far as possible on data that are known or can be reasonably extrapolated. Although it is possible to assume that a pest introduction will occur despite strict regulatory requirements, and to endow the introduced pest with the capability to cause any degree of harm to U.S. plants, this type of speculation does not seem to us to have much value in the absence of any real data. We based the economic analysis on what we believe to be the effects of the regulations, based on past experience and study of the proposed action. The expected effects include importation of a modest amount of plant material, without the introduction and establishment of serious plant pests.

Other Policy Issues

One commenter stated that the APHIS mandate is to protect our environment and not to foster foreign trade.

Response: Regulatory actions by APHIS may have positive or negative effects on foreign trade, and we are required to analyze those likely effects and make the analysis available to the public. However, we do not base our import regulations on their possible effect on trade, but on analysis of whether articles may be imported with an insignificant risk of the introduction of plant pests.

Several commenters stated that this proposal sets a precedent that will allow many other, more dangerous plants to be imported in media.

Response: The precedent for importing plants in growing media from other than Canada was set in 1980, when five kinds of plants were allowed importation in accordance with § 319.37–8(e). APHIS intends to propose allowing the importation of additional requested plants when it finds the plants can be imported without significant risk of introducing exotic plant pests. APHIS also intends to prohibit (or continue prohibiting) those plants it finds can not be imported without a significant risk of introducing exotic plant pests.

One commenter stated that APHIS must endeavor to ensure that no pest of any plant is introduced; only after doing this can APHIS make adjustments to promote free trade.

Response: APHIS has no authority to prohibit the importation of plants in order to ''ensure that no pest of any plant is introduced''. Rather, the Plant Quarantine Act gives us authority to prohibit the importation of plants into the United States ''in order to prevent the introduction into the United States of any tree, plant, or fruit disease or of any injurious insect, *new to or not theretofore widely prevalent or distributed within and throughout the United States*'' (emphasis added).

Endangered Species Concerns

Several commenters noted that an endangered *Rhododendron* species in the United States might be damaged by alien pests introduced on imported *Rhododendron.* Some commenters further argued that other plant and tree species that are currently listed, or that are candidates for listing, could be harmed by pests brought in with the five genera proposed for importation.

Response: We will consult with the Fish and Wildlife Service under the Endangered Species Act prior to taking final action on the proposal for *Rhododendron.* Regarding the other genera, no commenter provided information linking their importation to any specific risk to a domestic species that is listed or a formal candidate for listing under the Endangered Species Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be economically significant, and was reviewed by OMB under Executive Order 12866.

The composite effect of this rulemaking and several anticipated related rulemakings over the next several years, which could result in allowing importation of over 60 genera of plants in growing media that are currently prohibited, could have effects on U.S.-foreign competition that are within the scope of the definition of economically significant in Executive Order 12866.

We have prepared a final Regulatory Impact Analysis (RIA) and a final Regulatory Flexibility Analysis (RFA) concerning the current final rule and future rules allowing the importation of additional plants in growing media. The exact content of future rules to be proposed in this area, including the final list of plants to be allowed entry established in growing media, will not be known until APHIS completes pest risk analysis and decision-making processes necessary for the development

of these proposed rules. Therefore, the final RIA and RFA take a broad approach and make certain necessary assumptions in order to form an estimate of economic effects. The RIA and RFA assume that APHIS will propose to allow entry of all plants in growing media for which we have received requests for entry, and make generic assumptions about safeguards and precautionary procedures that may be required for entry of some genera. However, it is unlikely that APHIS, after conducting pest risk analyses, will propose to allow entry of all requested plants. In addition, the safeguards and precautionary procedures necessary for safe entry of some genera will be developed and refined later in the rule development process. Therefore, the RIA and RFA will be continually updated and refined as choices are made and rulemaking advances, to incorporate more precise information on the costs, benefits, and other economic effects associated with rulemaking decisions.

The current version of the RIA and RFA addresses potential impacts of possible future actions in general terms, and addresses the impacts of adding the genera and requirements discussed by this proposed rule more specifically. Copies of the RIA and RFA may be obtained by sending a written request to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738.

This final rule will allow importation of articles of the genera *Alstroemeria, Ananas, Anthurium,* and *Nidularium* that meet the requirements of the regulations. We anticipate that this change would have the following economic implications. Allowing entry of additional genera would enhance consumer purchasing power (consumer surplus). Foreign producers would be able to market their plants in the U.S. market. This will likely decrease domestic prices for the four genera, and will enable U.S. consumers to purchase a wider variety of potted plants at lower prices.

Given prevailing price discrepancies between domestic and foreign plant markets, revenue for domestic producers will likely decrease slightly as a result of freer trade in the four genera affected by this proposal. The exact amount of decrease will be determined by demand elasticities for potted plants. The net impact to society would be positive since consumer gains will more than offset losses incurred by domestic producers.

Based on florist and nursery sales, the estimated value of potted *Alstroemeria, Ananas, Anthurium,* and *Nidularium* production in the United States totals about $1.4 million annually. This represents less than one percent of the total annual value of the domestic nursery and floriculture industry, estimated at about $8.9 billion. Allowing imports of these potted plant genera could cause some domestic producers to switch to growing other plant genera.

Utilizing available production and price data, low and high impact scenarios we developed to estimate potential changes in net U.S. welfare from *Anthurium* imports. This study assumes that prices will drop by 10 and 30 percent in the low and high impact scenarios respectively. A unitary supply elasticity and three demand elasticities (-0.5, -1, and -1.5) were used to estimate a range of potential net impacts for both scenarios.

Consumers and domestic importers of *Alstroemeria, Ananas,* and *Nidularium* will also benefit from the rule's impact. The revisions will increase the availability of the three genera in the U.S. market. However, APHIS was not able to quantify the impact on the domestic market for *Alstroemeria, Ananas,* and *Nidularium*. These three genera are produced by a handful of small producers and data is not published to avoid disclosing proprietary information.

The low impact scenario indicates that the rule's revisions will increase net welfare for U.S. society by between $7,000 and $20,000. Domestic consumers of *Anthurium* will incur welfare gains of between $137,000 and $143,000. By contrast, U.S. *Anthurium* producers will incur welfare losses totaling between $123,000 and $130,000.

When prices are reduced by 30 percent net welfare is increased by between $183,000 and $283,000. Consumer welfare is increased by between $430,000 and $490,000, and producer welfare is decreased by between $207,000 and $246,000.

Information contained in the ''Census of Horticultural Specialties (1988)'' [1] can be used to segment domestic nurseries by value of annual sales. Value of annual sales was used as a guide in determining which nurseries would qualify as a ''small'' business. Additionally, the Small Business Administration (SBA) has established guidelines for determining which economic entities meet the definition of a ''small'' entity.

The four genera are produced by about 79 domestic producers. Nurseries with annual sales of $3.5 million or less are considered ''small'' for purposes of this analysis. Annual receipts of less than $3.5 million is the standard used for all industries not specifically listed by the SBA. All of the 79 commercial nurseries are small according to the above criteria.[2] These nurseries are diversified operations that produce many varieties of potted plants and other greenhouse products. The nature of their business requires nurseries to make frequent adjustments to the types of plants they grow and sell, as new types become popular and public taste changes. If producing the four genera becomes unprofitable, these nurseries should be able to defray losses by shifting to other, more profitable product lines. Therefore, the Agency anticipates that the revisions will not have a significant economic impact on a substantial number of small producers.

The SBA definition of a small business engaged in the import/export business is one that employs no more than 100 employees. The number of firms that may be qualified as a small business under this definition cannot be determined. Small importers will likely benefit from the rule change. The regulatory revisions will enable some small importers to enhance their income through imports of the four genera in growing media.

Small retailers will benefit from importation of *Alstroemeria, Ananas, Anthurium,* and *Nidularium* in growing media. The rule will enhance the availability and quality of potted plants in the U.S. market. Plant retailers will benefit from lower wholesale prices and will likely pass these savings on to their customers. This will increase annual sales volume and revenue.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will allow *Alstroemeria, Ananas, Anthurium,* and

[1] Limitations of data: The Census of Horticultural Specialties (1988) does not represent all producers of horticultural specialty products in 1988. Because the census was voluntary, it only represents those growers in 1987 who cooperated and provided information on their activities for 1988. In addition, it includes 2,829 additional growers enumerated in 28 States by the National Agricultural Statistics Service (NASS).

[2] U.S. Department of Commerce; ''Census of Horticultural Specialties (1988)''; Washington, DC. Information was not available for *Alstroemeria, Ananas,* and *Nidularium* due to proprietary concerns.

Nidularium established in growing media to be imported into the United States from any country that meets the requirements of § 319.37–8(e). Under this rule, State and local laws and regulations regarding articles imported will be preempted while the articles are in foreign commerce. Some nursery stock articles are imported for immediate distribution and sale to the public, and 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. This final rule has no retroactive effect, and will not require administrative proceedings before parties may file suit in court.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The assessment provides a basis for the conclusion that the importation in growing media of the four genera of plants covered by the rule, under the conditions specified in the rule, would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 is amended as follows:

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.37–1, the following definitions are added in alphabetical order:

§ 319.37–1 Definitions.

* * * * *

Clean well water. Well water that does not contain plant pathogens or other plant pests.

* * * * *

Potable water. Water which is approved for drinking purposes by the national or local health authority having jurisdiction.

* * * * *

3. In § 319.37–13, footnote 11 and the reference to it are redesignated as footnote 12.

4. In § 319.37–8, paragraph (e) is revised and paragraph (g) is added to read as follows:

§ 319.37–8 Growing media.

* * * * *

(e) A restricted article of any of the following groups of plants may be imported established in an approved growing medium listed in this paragraph, if the article meets the conditions of this paragraph, and is accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the article was grown that declares that the article meets the conditions of this paragraph: *Alstroemeria*, *Ananas*,[11] *Anthurium*, *Begonia*, *Gloxinia* (= *Sinningia*), *Nidularium*,[11] *Peperomia*, Polypodiophyta (=Filicales) (ferns), and *Saintpaulia*.

(1) Approved growing media are baked expanded clay pellets, cork, glass wool, organic and inorganic fibers, peat, perlite, polymer stabilized starch, plastic particles, phenol formaldehyde, polyethylene, polystyrene, polyurethane, rock wool, sphagnum moss, ureaformaldehyde, vermiculite, or volcanic rock, or any combination of these media. Growing media must not have been previously used.

(2) Articles imported under this paragraph must be grown in compliance with a written agreement for enforcement of this section signed by the plant protection service of the country where grown and Plant Protection and Quarantine, must be developed from mother stock that was inspected and found free from evidence of disease and pests by an APHIS inspector or foreign plant protection service inspector no more than 60 days prior to the time the article is established in the greenhouse (except for articles developed from seeds germinated in the greenhouse), and must be:

(i) Grown in compliance with a written agreement between the grower and the plant protection service of the country where the article is grown, in which the grower agrees to comply with the provisions of this section and to allow inspectors, and representatives of the plant protection service of the country where the article is grown, access to the growing facility as necessary to monitor compliance with the provisions of this section;

(ii) Grown solely in a greenhouse in which sanitary procedures adequate to exclude plant pests and diseases are always employed, including cleaning and disinfection of floors, benches and tools, and the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests. The greenhouse must be free from sand and soil and must have screening with openings of not more than 0.6 mm on all vents and openings except entryways. All entryways must be equipped with automatic closing doors;

(iii) Rooted and grown in an active state of foliar growth for at least four consecutive months immediately prior to importation into the United States, in a greenhouse unit that is used solely for articles grown in compliance with this paragraph;

(iv) Grown from seeds germinated in the greenhouse unit; or descended from a mother plant that was grown for at least 9 months in the exporting country prior to importation into the United States of the descendent plants, *provided* that if the mother plant was imported into the exporting country from another country, it must be:

(A) Grown for at least 12 months in the exporting country prior to importation of the descendent plants into the United States, or

(B) Treated at the time of importation into the exporting country with a

[11] These articles are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.37–7.

treatment prescribed for pests of that plant by the plant protection service of the exporting country and then grown for at least 9 months in the exporting country prior to importation of the descendent plants into the United States;

(v) Watered only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water;

(vi) Rooted and grown in approved growing media listed in § 319.37–8(e)(1) on benches supported by legs and raised at least 46 cm above the floor;

(vii) Stored and packaged only in areas free of sand, soil, earth, and plant pests; and,

(viii) Inspected in the greenhouse and found free from evidence of plant pests and diseases by an APHIS inspector or an inspector of the plant protection service of the exporting country, no more than 30 days prior to the date of export to the United States.

* * * * *

(g) *Pest risk evaluation standards for plants established in growing media.* When evaluating a request to allow importation of additional taxa of plants established in growing media, the Animal and Plant Health Inspection Service will conduct the following analysis in determining the pest risks associated with each requested plant article and in determining whether or not to propose allowing importation into the United States of the requested plant article.

(1) *Collect commodity information.*

(i) Determine the kind of growing medium, origin and taxon of the regulated article.

(ii) Collect information on the method of preparing the regulated article for importation.

(iii) Evaluate history of past plant pest interceptions or introductions (including data from plant protection services of foreign countries) associated with each regulated article.

(2) *Catalog quarantine pests.* For the regulated article specified in an application, determine what plant pests or potential plant pests are associated with the type of plant from which the regulated article was derived, in the country and locality of origin. A plant pest that meets one of the following criteria is a quarantine pest and will be further evaluated in accordance with paragraph (g)(3) of this section:

(i) Non-indigenous plant pest not present in the United States;

(ii) Non-indigenous plant pest, present in the United States and capable of further dissemination in the United States;

(iii) Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

(iv) Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States; or

(v) Non-indigenous or native plant pest that may be able to vector another plant pest that meets one of the criteria in (g)(2)(i) through (iv) of this section.

(3) *Conduct individual pest risk assessments.* Each of the quarantine pests identified by application of the criteria in paragraph (g)(2) of this section will be evaluated based on the following estimates:

(i) Estimate the probability the quarantine pest will be on, with, or in the regulated article at the time of importation;

(ii) Estimate the probability the quarantine pest will survive in transit on the regulated article and enter the United States undetected;

(iii) Estimate the probability of the quarantine pest colonizing once entered into the United States;

(iv) Estimate the probability of the quarantine pest spreading beyond the colonized area; and

(v) Estimate the actual and perceived economic, environmental and social damage that would occur if the quarantine pest is introduced, colonizes, and spreads.

(4) *Determine overall estimation of risk based on compilation of component estimates.* This step will evaluate whether the pest risk of importing a regulated article established in growing media, as developed through the estimates of paragraph (g)(3) of this section, is greater than the pest risk of importing the regulated article with bare roots as allowed by § 319.37–8(a).

(i) If the pest risk is determined to be the same or less, the regulated article established in growing media will be allowed importation under the same conditions as the same regulated article with bare roots.

(ii) If the pest risk is determined to be greater for the regulated article established in growing media, APHIS will evaluate available mitigation measures to determine whether they would allow safe importation of the regulated article. Mitigation measures currently in use as requirements of this subsection, and any other mitigation methods relevant to the regulated article and plant pests involved, will be compared with the individual pest risk assessments in order to determine whether requiring particular mitigation measures in connection with importation of the regulated article would reduce the pest risk to a level equal to or less than the risk associated with importing the regulated article with bare roots as allowed by § 319.37–8(a). If APHIS determines that use of particular mitigation measures could reduce the pest risk to this level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the appropriate mitigation measures, APHIS will propose to allow importation into the United States of the requested regulated article if the appropriate mitigation measures are employed.

§ 319.37–9 [Amended]

5. In § 319.37–9, the phrase ''is not intermixed with other approved packing material;'' is removed.

Done in Washington, DC, this 9th day of January 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–935 Filed 1–12–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release Nos. 34–35204]

RIN 3235–AG10

Rulemaking for EDGAR System; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rules.

SUMMARY: This document contains a correction to the final rules that were published Friday, December 30, 1994 (59 FR 67752). Those rules relate to the implementation of the Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') system.

EFFECTIVE DATE: The EDGAR rules and amendments are effective January 30, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Budge, Office of Disclosure Policy, Division of Corporation Finance at (202) 942–2910.

SUPPLEMENTARY INFORMATION:

Background

The disclosure form that is the subject of this correction was intended to be