

# Rules and Regulations

Federal Register

Vol. 60, No. 15

Tuesday, January 24, 1995

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 93-147-2]

#### Importation of Strawberries, Currants, and Palms

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with changes, portions of an interim rule concerning the importation of strawberry, currant, and palm plants. This final rule will allow the importation of both of the *Howea* species of sentry palms into the United States from Australia (including Lord Howe and Norfolk Islands) and from New Zealand, subject to certain conditions. This action will allow the importation of the *Howea* species of sentry palms without significant risk of introducing exotic palm diseases into the United States.

We are still considering comments on the provisions of the interim rule concerning the importation of strawberry and currant plants and as yet have not decided whether to affirm or revise these provisions. We will do so in a separate **Federal Register** document.

**EFFECTIVE DATE:** January 24, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Grosser or Mr. Frank E. 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 contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. 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 the Animal and Plant Health Inspection Service (APHIS) 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 of plant pests into the United States.

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 7 CFR 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), 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. 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.

In an interim rule effective and published in the **Federal Register** on August 30, 1994 (59 FR 44608-44610, Docket No. 93-147-1), we amended the regulations to prohibit the importation of strawberry plants from all foreign

countries except Canada and Israel, prohibit the importation of currant plants from New Zealand, and prohibit the importation of both species of the genus *Howea* (sentry palms), except from Lord Howe Island, New South Wales, Australia.

Comments on the interim rule were required to be received on or before October 31, 1994. By that date, we received 44 comments on the interim rule. Twelve of the comments addressed the new restrictions on the importation of strawberry and currant plants. We are still considering these comments and as yet have not decided whether to affirm or revise the interim rule provisions regarding the importation of strawberry and currant plants. We will do so in a separate **Federal Register** document.

Thirty-five of the comments concern the new restrictions on the importation of sentry palms. These comments were submitted by members of Congress, palm growers, importers and exporters, trade associations, universities, State governments, and foreign governments. Thirteen of the comments support the interim rule provisions regarding the prohibition on the importation of both species of the genus *Howea* from everywhere except Lord Howe Island. The other 22 comments object to the prohibition. The objections and our responses are summarized below.

Prior to the publication of the interim rule, one species of sentry palm, *Howea forsteriana*, could be imported into the United States as a restricted article from anywhere in the world. The other species though, *Howea belmoreana*, was classified as a prohibited article, owing to its susceptibility to the cadang-cadang and lethal yellowing pathogens.

A representative of a palm company on Lord Howe Island requested that APHIS consider revising the regulations to allow the importation of *Howea belmoreana* from Lord Howe Island into the United States as a restricted article. Our review of the scientific literature did not reveal any indication of the presence of the lethal yellowing pathogen, the cadang-cadang pathogen, or any other damaging palm pests on Lord Howe Island. Furthermore, New South Wales prohibits the importation of all palms and palm products onto the Lord Howe Island from all sources. We thus revised the regulations accordingly to allow the importation of *Howea*

*belmoreana* from Lord Howe Island into the United States as a restricted article.

Also, during our review of this request, we found no evidence that the other species of sentry palm, *Howea forsteriana*, was immune to the cadang-cadang or lethal yellowing pathogens. Because pathogens attack most species within a genus, we decided to extend the import prohibition to both species of *Howea*. However, we decided to allow *Howea forsteriana* to be imported from Lord Howe Island as a restricted article, due to the disease status of the island and the phytosanitary restrictions in effect there.

All of the 22 comments objecting to the interim rule requested that we reconsider the prohibition with respect to *Howea* species grown in Australia, Norfolk Island (a self-governing territory of Australia), and New Zealand. The comments point out that Australia, Norfolk Island, and New Zealand are free of the cadang-cadang and lethal yellowing pathogens. Also, they maintained that the plant protection agencies of Australia, Norfolk Island, and New Zealand impose phytosanitary restrictions in regard to palm imports comparable to those imposed on Lord Howe Island by New South Wales.

We have confirmed this information and now believe that both species of *Howea* can be imported from Australia (including Norfolk Island) and New Zealand with a negligible degree of risk of introducing exotic palm pests into the United States. Therefore, this final rule will allow both species of *Howea* to be imported into the United States from Australia (including Lord Howe and Norfolk Islands) and New Zealand, as restricted articles. In the future, we will welcome for review information regarding the relevant disease status and phytosanitary programs of additional countries that wish to export *Howea* species into the United States.

#### Miscellaneous

We are correcting the misspelling of *Howea forsteriana* in the interim rule.

#### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Since August 30, 1994, growers in Australia (including Norfolk Island) have had to divert to other destinations shipments of *Howea forsteriana* palms originally destined for

the United States; U.S. entities counting on these shipments have had to find other sources for *Howea forsteriana* palms. Making this rule effective upon publication will grant immediate relief to these entities. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

#### Executive Order 12866 and Regulatory Flexibility Act

This 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. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

In an August 30, 1994, interim rule, we prohibited the importation of both species of *Howea* (sentry palm) from everywhere but Lord Howe Island, New South Wales, Australia. As a result of comments received on the rule and a subsequent reappraisal of phytosanitary risks, we have decided to finalize this rule with revisions prohibiting the importation of both species of *Howea* from everywhere except Australia (including Lord Howe and Norfolk Islands) and New Zealand.

Although USDA does not collect information on trade in *Howea*, domestic and foreign industry sources indicate the *Howea forsteriana* seeds and seedlings have growing import markets in the United States, particularly in Hawaii, California, and Florida. (Neither the interim rule nor this final rule affect trade in seeds of *Howea*.) Some sources estimate annual revenues generated by *Howea forsteriana* trade in the United States to be as high as \$15 million.

Growers in mainland Australia and on Lord Howe and Norfolk Islands have been the major suppliers of *Howea forsteriana* seed and seedlings. Since the publication of the interim rule prohibiting the importation of *Howea* plants from everywhere but Lord Howe Island, growers in mainland Australia and on Norfolk Island have had to divert shipments of *Howea forsteriana* seedlings originally destined for the United States. Also, U.S. entities trading with these growers have had to find other sources for the seedlings.

This final rule will grant relief to these foreign growers and to U.S. entities trading with them by again allowing the importation of *Howea*

*forsteriana* plants from all of Australia, including Norfolk Island. Furthermore, this rule will provide market opportunities for foreign growers and U.S. entities trading with them by allowing *Howea belmoreana* plants to be imported into the United States from Australia (including Norfolk Island) and New Zealand, subject to certain conditions.

#### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579-0049.

#### 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, 7 CFR part 319 is amended as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

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).

#### § 319.37-5 Special foreign inspection and certification requirements.

2. In § 319.37-5, paragraph (n), the phrase "Lord Howe Island, New South Wales, Australia," is removed and the phrase "Australia or New Zealand" is added in its place; and, the phrase "(must be Lord Howe Island)" is removed.

Done in Washington, DC, this 18th day of January 1995.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-1741 Filed 1-23-95; 8:45 am]

BILLING CODE 3410-34-P