

Proposed Rules

Federal Register

Vol. 60, No. 48

Monday, March 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94-102-1]

Importation of Fruit Trees From France

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. plants (except seeds) to be imported into the United States as restricted articles, if grown in private nurseries in France and certified by the French plant protection service to be free of various diseases. This action would relieve restrictions on the importation of these articles from France without presenting a significant risk of introducing plant pests into the United States.

We are also proposing to remove Laredo, TX, from the list of ports equipped with plant inspection stations.

DATES: Consideration will be given only to comments received on or before April 12, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94-102-1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 94-102-1.

Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange or Mr. Peter

Grosser, Operations Officers, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, MD, 20737-1238, (301) 734-8645.

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. The regulations prohibit or restrict the importation of most 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.

Under § 319.37-5(b) of the regulations, articles (except seeds) of the

genera *Chaenomeles* (flowering quince), *Cydonia* (quince), *Malus* (apple, crabapple), *Pyrus* (pear), and certain species of the genus *Prunus* (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) may be imported into the United States as restricted articles if grown in government or private nurseries in Belgium, Canada, Great Britain, the Federal Republic of Germany, or The Netherlands. They may be imported from France as restricted articles only if grown in government nurseries. All of these restricted articles must be accompanied by a phytosanitary certificate of inspection stating where the article was grown and certifying that the article was found by the plant protection service of the country in which grown to be free of various plant diseases. Also, all of the restricted articles listed above, except those grown in Canada, are subject to a 2-year postentry quarantine period, as specified in § 319.37-7. In postentry quarantine, restricted articles are grown in isolation and observed in order to detect plant pests undetectable by inspection at the port of entry.

The French Ministry of Agriculture has asked that species of the above mentioned genera grown in private nurseries in France be allowed to enter the United States as restricted articles. In response to this request, APHIS representatives visited France in June 1994, to review France's fruit tree certification program. Following that review, APHIS determined that the process by which the French plant protection service certifies these articles to be "disease-free" is sufficient to allow their entry into the United States without increasing the risk of plant pest introduction. Therefore, we are proposing to amend the regulations to allow *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. grown in private nurseries in France to be imported as restricted articles into the United States under the same conditions already applied to those same articles when grown in government nurseries in France.

Also, for the sake of clarity, we are proposing to incorporate the provision in § 319.37-5, footnote 7, concerning *Prunus* spp. not immune to plum pox virus, into a new paragraph (b)(2) in § 319.37-5, and to remove footnote 7.

Port of Laredo Plant Inspection Station

Some restricted articles may be imported into the United States only under a written permit issued by APHIS. Permits are required for these restricted articles because the articles appear to present a substantial risk of carrying plant pests at the time of importation. Section 319.37-3(a) of the regulations lists the categories of restricted articles that require a written permit for importation.

Section 319.37-14(b) of the regulations contains a list of the approved ports of entry through which restricted articles may be imported into the United States. Restricted articles that do not require a written permit may be imported through any of the approved ports of entry; restricted articles that do require a permit, because of their greater plant pest risk, may be imported only through ports equipped with special inspection and treatment facilities (plant inspection stations). Ports equipped with plant inspection stations are indicated on the list by an asterisk.

We are proposing to amend the regulations by removing the port of Laredo, TX, from the list of ports with plant inspection stations in § 319.37-14(b). The fumigation chamber at the Laredo plant inspection station was found to be in violation of State clean air regulations by the Texas Natural Resources and Conservation Commission on July 7, 1994, and has not been used since that date. Since the volume of plant material requiring written permits and entering through Laredo has been low and because fumigation without a fumigation chamber would be difficult, APHIS elected to close the plant inspection station on October 1, 1994. As a result, certain plants and plant products can no longer be imported through Laredo, but must go to another port instead.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to allow species of the genera *Chaenomeles*, *Cydonia*, *Malus*, *Pyrus*, and certain species of *Prunus* (those resistant to plum pox virus) grown in private nurseries in France to be imported into the United States. Currently, under 7 CFR 319.37-5, APHIS allows restricted articles of these five genera to be imported if

grown in government or private nurseries in Belgium, Canada, Great Britain, the Federal Republic of Germany, or The Netherlands, but from France only if grown in government nurseries.

During the first nine months of fiscal year 1994, approximately 312,893 fruit trees valued at \$1.64 million were imported into the United States. *Malus* spp. accounted for 99.9 percent (312,840) of imported fruit trees. Thirty-two trees of *Prunus* spp. and 21 of *Pyrus* spp. were also imported. There were no imports of *Chaenomeles* spp. or *Cydonia* spp. Prices of imported fruit trees averaged about \$5.25 per tree.

Annually, domestic producers market about 20 million fruit trees of these five genera, valued at approximately \$105 million. Domestic tree prices range from \$5 to \$6 per tree.

Imported fruit trees, therefore, currently account for only about 1.5 percent of fruit trees available in the U.S. market. We anticipate, as a result of this rule, that private French nurseries could export an additional 20,000 to 30,000 trees to the United States each year. This additional number of fruit trees would account for less than one-half of one percent of the U.S. supply. Furthermore, these additional fruit tree imports from France probably would compete directly with imports from The Netherlands, thus lessening the impact on the total domestic supply. We anticipate, therefore, that this proposed rule would not have a significant economic impact on total domestic fruit tree supply and thus would not have a significant economic impact on domestic fruit tree producers or other small entities.

Also, we have determined, using the Small Business Administration definition of small business (having 100 or fewer employees), that there are currently about 9,097 small retail nurseries and 11,347 wholesale shippers of flowers and nursery stock in the United States. We expect that these small businesses may benefit, if only slightly, from this rule. They would gain access to a greater variety of imported fruit trees, possibly at lower prices.

We are also proposing to remove the port of Laredo, TX, from the list of ports with plant inspection stations. About 400 million plants are imported through plant inspection stations into the United States annually. Only 24 shipments of 21,429 plants (less than one percent of 400 million) were imported through the plant inspection station at Laredo in 1993. In view of the low volume of plants imported into the United States through the Laredo plant inspection station, we do not believe that this rule

would have a significant economic effect on businesses or other entities, large or small. Moreover, any plants requiring written permits and previously imported through Laredo could be diverted to the ports of Brownsville or El Paso, TX, which still retain plant inspection stations.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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 proposed 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 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. Section 319.37-5 would be amended as follows:

a. In paragraph (b)(1), the first sentence would be amended by removing the reference to "(b)(2)" and adding a reference to "(b)(3)" in its place.

b. Footnote 7 and its reference would be removed.

c. Paragraph (b)(2) would be redesignated as paragraph (b)(3) and a new paragraph (b)(2) would be added to read as set forth below.

§ 319.37-5 Special foreign inspection and certification requirements.

* * * *

(b) * * *

(2) Species of *Prunus* not immune to plum pox virus (species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*) and grown in Belgium, France, Germany, Great Britain, or The Netherlands may be certified only from the government operated nurseries (research stations) where the original parent stock is indexed for the appropriate national fruit tree certification program.

* * * *

§§ 319.37-6, 319.37-7, 319.37-8, and 319.37-13 [Amended]

3. Footnotes 8 through 12 and their references would be redesignated as footnotes 7 through 11.

§ 319.37-14 [Amended]

4. In § 319.37-14, paragraph (b), under the list of ports of entry in Texas, the asterisk immediately preceding the entry for Laredo would be removed.

Done in Washington, DC, this 7th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-6098 Filed 3-10-95; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Marketing Service**7 CFR Part 1230****[No. LS-94-008]****Pork Promotion, Research, and Consumer Information Program—Change in Requirements for Annual Financial Audits**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and termination order.

SUMMARY: This proposed document would terminate the provision of the Pork Promotion, Research, and Consumer Information Order (Order) containing requirements for submission of annual financial reports to the National Pork Board (Board) by organizations that receive less than \$10,000 in annual distributed assessments; and issue new requirements in the regulations to implement the Order provisions. The new requirements would raise the minimum annual revenue requiring a

certified public accountant audit from \$10,000 to \$30,000. The proposed change would facilitate the cost-effective preparation and submission of annual financial reports.

DATES: Comments must be received by April 12, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2624-S, P.O. Box 96456, Washington, DC 20090-6456.

Comments will be available for public inspection during regular business hours at the above office in Room 2624, South USDA Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION:**Executive Order 12866 and Regulatory Flexibility Act**

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

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Pork Promotion, Research, and Consumer Information Act (Act) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an Order may file a petition with the Secretary stating that the Order, a provision of the Order, or an obligation imposed in connection with the Order is not in accordance with law, and requesting a modification of or an exemption from the Order. Petitioners have an opportunity for a hearing on the petition. After the hearing, the Secretary will rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Secretary's decision, if the petitioner files an appeal not later than 20 days after the date the

petitioner receives notice of that decision.

This action has also been reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

This proposed action would allow State Pork Producer Associations (SPPAs) that receive less than \$30,000 in assessments annually to submit unaudited annual financial statements to the Board.

Most SPPAs would be classified as small businesses under the RFA. Raising the minimum dollar amount of distributed annual assessments that would trigger the requirement that a SPPA must submit an audited annual financial statement from \$10,000 to \$30,000, would minimize the cost of preparing annual financial reports for smaller SPPAs. The cost savings would result in increased funds available for financing promotion and research programs.

For these reasons the Administrator of AMS has determined that this proposed action will not have a significant economic effect on a substantial number of small entities.

The Act (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessments on import porcine animals, pork, and pork products. That rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986. The Order is administered by the 15-member Board established pursuant to § 1230.50 of the Order.

Section 1230.74(b) of the Order requires that organizations that receive distributions of funds from the Board shall furnish the Board with an annual report audited by a certified public accountant (CPA) of all funds distributed to them.

There are 45 SPPAs as defined in § 1230.25 who receive a percentage of the annual net assessments collected in their State pursuant to § 1230.72 (a) and (b). However, § 1230.74(c) provides that SPPAs that receive less than \$10,000 in such annual distributions may submit to the Board annual, unaudited financial