

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 03-067-1]

#### Ports of Entry for Certain Plants and Plant Products

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

**ACTION:** Direct final rule.

**SUMMARY:** We are amending the regulations governing the importation of nursery stock and other articles by designating the ports of Atlanta, Georgia, and Agana, Guam, as plant inspection stations. The addition of the two plant inspection stations will help reduce transportation time and costs to importers who must currently import plants through inspection stations that are considerably distant from the importers' facilities.

**DATES:** This rule will be effective on February 17, 2004, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 20, 2004. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

**ADDRESSES:** You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 03-067-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 03-067-1. If you use e-mail, address your comment to

*regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03-067-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Petit de Mange, Senior Staff Officer, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1232; (301) 734-8295.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37-14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

In § 319.37-14 of the regulations, paragraph (b) contains a list of approved ports of entry through which restricted articles may be imported into the United States. Restricted articles that do not require a 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 and disease risk, may be imported only through ports equipped with special inspection and treatment facilities. These ports, known as plant inspection stations, are indicated on the list by an asterisk.

Currently, 14 plant inspection stations operate at or near many major U.S. ports and airports. These facilities are designed for inspection and, in some cases, treatment of imported plants and seeds. Plant Protection and Quarantine (PPQ) staffs plant inspection stations with officers who specialize in, among other things, entomology, plant pathology, and botany.

At plant inspection stations, PPQ officers inspect imported plants and seeds to ensure that they are free from plant pests and diseases that are known not to occur in the United States and that they otherwise comply with U.S. import regulations. When pests or diseases are detected, PPQ may require that the planting material be treated, exported, or destroyed.

In order to be designated as a plant inspection station, a building must have adequate space for inspection areas to be set up, laboratory facilities for pest and disease identification, provide easy access by shipments for inspection, and, in most cases, contain various treatment facilities. We have determined that the facilities in Atlanta, GA, and Agana, GU, satisfy the criteria for designation as plant inspection stations.

Therefore, in accordance with the procedures explained below under "Dates," this rule amends the list of ports of entry in § 319.37-14(b) by replacing the current entries for Atlanta, GA, and Agana, GU, on the list and designating those ports as plant inspection stations.

#### Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on February 17, 2004, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 20, 2004.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This proposed rule would add Atlanta, GA, and Agana, GU, as ports of entry through which individuals and companies would be able to import nursery stock. This action would save business costs to concerned individuals and companies, making the routing of nursery stock materials to other authorized entry ports unnecessary.

We are amending the regulations governing the importation of nursery stock and other articles by designating the ports of Atlanta, Georgia, and Agana, Guam, as plant inspection stations. The addition of the two plant inspection stations will help reduce transportation time and costs to importers who must currently import plants through inspection stations that are considerably distant from the importers' facilities.

The United States imported about 700 million plant units in 2002, about 4.6 percent over the previous year and 21 percent above 2000 level.<sup>1</sup> Nursery stock imports were valued at \$591 million in 2002, an increase of about 135 percent over a decade ago. The major sources are Canada (50.4 percent), Netherlands (25.5 percent), Costa Rica (3.9 percent), Mexico (2.7 percent), and Taiwan (2.2 percent). Nursery stock exports were valued at \$250 million in 2002, about 13 percent over 1992 total.<sup>2</sup>

Planting seeds are imported from many countries, with a few countries accounting for the major proportion of U.S. total planting seed imports. The leading suppliers are Chile (\$105.8 million), Canada (\$105 million), the Netherlands (\$36.5 million), Argentina (\$21.2 million), China (\$17.9 million), Japan (\$14 million), Finland (\$11.1 million), Australia (\$8.3 million), Denmark (\$7.5 million), and India (\$7.1

million) in 2001.<sup>3</sup> These 10 countries accounted for \$334.4 million, or about 84 percent, of total U.S. planting seed imports.

#### **Nursery Stock Industry**

The availability of good quality nursery stock and seeds contributes to domestic production of food grains, field crops, cotton, oil crops, vegetables, herbs, flowers, trees, and shrubs. Presently, imported nursery stock and seeds can enter the United States with a phytosanitary certificate through 14 approved plant inspection stations. Atlanta, GA, and Agana, GU, though not listed as approved Federal plant inspection stations, currently serve as ports of entry for other restricted articles that do not require a permit. The new facilities in Georgia and Guam have the capacity and resources to handle the importation of nursery stock and seeds, which will allow them to be listed as plant inspection stations.

This action may result in reduced costs for importers by making the routing of nursery stock materials through another plant inspection station unnecessary when the materials are destined for the regions of Atlanta, GA, or Agana, GU. Importers and distributors both in Atlanta, GA, and Agana, GU, should benefit from transportation cost savings and reduced plant injury that can result during transport.

The Agana International Airport serves Guam and surrounding islands, which are growing tourist centers. Currently, most of the nursery stock imported into Guam is routed through Hawaii. Very little is imported from Asian sources because of the time and cost involved in shipping to Federal plant inspection stations in Hawaii and then to Guam. Additionally, plant mortality is high due to the additional time involved routing through Honolulu, HI, which is a major factor apart from the shipping cost. The direct air cargo cost from Narita, Japan, to Honolulu, HI, is \$11.96 per kilogram and from Hawaii to Guam is \$6.65 per kilogram for a total routing cost from Narita to Guam of \$18.61 per kilogram. The direct air cargo cost from Narita to Guam is \$7.04 per kilogram. Thus, as Agana becomes an approved Federal plant inspection station, importers will benefit from direct importation of nursery stock materials from Japan, Taiwan, China, the Philippines, and other Asian countries through reduced transportation costs. Presently there are

20 establishments engaged in nursery stock trade in Guam. The number of establishments that import nursery stock may increase because of the reduced transportation costs, reduced time, and lower probability of damaged plants.

The Hartsfield Atlanta International Airport is becoming a major air cargo hub. It is an entry port for other restricted articles that do not require a permit and is much closer to most nursery stock importers from the surrounding areas and States (northern Alabama, North Carolina, South Carolina, southern Virginia, Kentucky, and Tennessee) than any of the other closest Federal plant inspection stations in Miami, FL, New Orleans, LA, and Orlando, FL. There are about 470 retail nursery companies in Georgia alone, of which 141 are in metropolitan areas. Nursery retailers from the surrounding areas that import products would benefit from reduced routing costs and reduced mortality of plants that usually occurs from multiple box openings for inspection and from the longer time elapsed between the place of origin and the final destination.

#### **Impact on Small Entities**

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. The Small Business Administration (SBA) has established the size standards for determining which economic entities meet the definition of a small firm. A retail nursery or lawn and garden store (NAICS code 444220)<sup>4</sup> is defined as a small business if it employs 100 or fewer workers. Resort hotels, golf courses, and local governments that use nursery stock for parks and landscaping could be affected. Additionally, specialized groups such as horticultural societies, arboreta, and individual plant hobbyists who import and exchange nursery stock and small lots of seed could also be affected.

Nationally, there are 6,845 establishments that are engaged in selling trees, shrubs, other plants, seeds, bulbs, mulch, and related products (NAICS 444220). About 470 of these are in Georgia, including the Atlanta metropolitan area. There are 20 companies currently engaged in nursery stock trade in Guam. Over 99 percent are small entities. However, specialized groups such as horticultural societies, arboreta, several resort hotels, golf courses, and local governments that use imported plants for landscaping

<sup>1</sup> USDA/APHIS/PPQ, WADS Database, June 2003.

<sup>2</sup> USDA/ERS, *Foreign Agricultural Trade of the United States*, June 30, 2003.

<sup>3</sup> USDA/FAS, FAS Online: U.S. Planting Seed Trade Archives ([http://www.fas.usda.gov/seed\\_arc.html](http://www.fas.usda.gov/seed_arc.html))

<sup>4</sup> U.S. Census Bureau, 1997 Economic Census, Wholesale Trade-Subject Series, August 2000.

projects, and individual hobbyists who collect, grow, exhibit, preserve, exchange, and donate special nursery stocks and seeds could also be affected. The exact present size and number of these entities are difficult to determine.

Since Atlanta, GA, and Agana, GU, already serve as ports of entry for other restricted articles and have the capacity and resources to handle the importation of nursery stock and seeds, no effect on Federal Government processing of permits and inspection of imported materials is expected. Also, no effects on other Federal agencies and State and local governments are expected. Since imports of these materials are a small fraction of the total domestic supply of nursery stock and seeds, no substantial change in supply and price is expected.

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 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, 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**

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

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

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, 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. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.37–14, paragraph (b), the list of ports of entry is amended by revising the entries for Atlanta, Georgia, and Agana, Guam, to read as follows:

**§ 319.37–14 Ports of entry.**

\* \* \* \* \*  
(b) \* \* \*

**List of Ports of Entry**

\* \* \* \* \*

**Georgia**

*Atlanta*

Hartsfield Atlanta International Airport,  
Atlanta, GA 30320. \* \* \*

**Guam**

*Agana*

Guam International Airport, Tamuning,  
GU 96931.

\* \* \* \* \*

Done in Washington, DC, this 11th day of December, 2003.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–31203 Filed 12–17–03; 8:45 am]

**BILLING CODE 3410–34–P**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

**RIN 3150–AH28**

**List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, and –24PHB Revision**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the “List of approved spent fuel storage casks” to include Amendment No. 7 in Certificate of Compliance (CoC) Number 1004. Amendment No. 7 will incorporate changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. Specifically, the amendment will add damaged Boiling Water Reactor spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS®–61BT Dry

Shielded Canister under a general license. In addition, the amendment includes three minor changes to the Technical Specifications to correct inconsistencies and remove irrelevant references.

**DATES:** The final rule is effective March 2, 2004, unless significant adverse comments are received by January 20, 2004. A significant adverse comment is one which explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH28) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC’s rulemaking website at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on public computers located at the NRC’s Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/>