

Proposed Rules

Federal Register

Vol. 76, No. 50

Tuesday, March 15, 2011

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. APHIS–2010–0005]

RIN 0579–AD36

Importation of Bromeliad Plants in Growing Media From Belgium, Denmark, and the Netherlands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of plants and plant products to add Bromeliad plants of the genera *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* from Belgium, Denmark, and the Netherlands to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. We are taking this action in response to requests from those three countries and after determining that the plants could be imported, under certain conditions, without resulting in the introduction into, or the dissemination within, the United States of a plant pest or noxious weed.

DATES: We will consider all comments that we receive on or before May 16, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0005> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0005, Regulatory Analysis and Development,

PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0005.

Reading Room: 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.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT:

Mr. William Aley, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–5057.

SUPPLEMENTARY INFORMATION:

Background

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

Paragraph (a) of § 319.37–8 of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media,

inspections, and other requirements (paragraph (e)).

Paragraph (e) of § 319.37–8 provides conditions under which certain plants established in growing media may be imported into the United States. In addition to specifying the types of plants that may be imported, § 319.37–8(e) also:

- Specifies the types of growing media that may be used;
- Requires plants to be grown in accordance with written agreements between the Animal and Plant Health Inspection Service (APHIS) and the plant protection service of the country where the plants are grown and between the foreign plant protection service and the grower;
- Requires the plants to be rooted and grown in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);
- Restricts the source of the seeds or parent plants used to produce the plants, and requires grow-out or treatment of parent plants imported into the exporting country from another country;
- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and
- Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used successfully to mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in growing media.

Currently, Bromeliad plants of the genera *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* may only be imported into the United States as bare root plants, in accordance with § 319.37–2. The Governments of Belgium, Denmark, and the Netherlands have requested that importation into the

United States of those plants be allowed under the provisions of § 319.37–8.

The regulations in § 319.37–8(g) provide that requests such as those made by the Governments of Belgium, Denmark, and the Netherlands be evaluated by APHIS using specific pest risk evaluation standards that are based on pest risk analysis guidelines established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization. Such analyses are conducted to determine the plant pest risks associated with each requested plant article and to determine whether or not APHIS should propose to allow the requested plant article established in growing media to be imported into the United States.

In accordance with § 319.37–8(g), APHIS has conducted the required pest risk analysis. The pest risk analysis can be viewed on the Internet on the Regulations.gov Web site or in our reading room.¹

In the pest risk analysis, titled "Importation of *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* in Growing Media, into the United States from Belgium, Denmark, and the Netherlands," APHIS determined that there was only one quarantine pest that could potentially follow the import pathway: *Fusarium oxysporum* f. sp. *aechmeae*, which is present in Belgium. This organism was determined to have a low pest risk potential. The pest risk analysis therefore concluded that the safeguards in § 319.37–8(e) would allow the safe importation of *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* into the United States from Belgium, Denmark, and the Netherlands.

Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

The Secretary has determined that it is not necessary to prohibit the importation from Belgium, Denmark, and the Netherlands of *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea*,

provided that the plants are established in an approved growing medium and meet all other applicable conditions of § 319.37–8(e). This determination is based on the findings of the pest risk analysis and the Secretary's judgment that the application of the measures required under § 319.37–8(e) will prevent the introduction or dissemination of plant pests into the United States.

Accordingly, we are proposing to amend the regulations in § 319.37–8(e) by adding *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* from Belgium, Denmark, and the Netherlands to the list of plants established in an approved growing medium that may be imported into the United States. The plants would have to be produced, handled, and imported in accordance with the requirements of § 319.37–8(e) and be accompanied at the time of importation by a phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that those requirements have been met.

Miscellaneous

In "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," the footnotes are out of sequence. Currently, there is no footnote 7, and there are two footnotes 11. To correct these errors, we would redesignate some footnotes and revise one of them. Current footnotes 8 and 9 would be redesignated as 7 and 8, respectively. In § 319.37–8(e), current footnote 10, which indicates that Bromeliads imported into Hawaii are subject to postentry quarantine in accordance with § 319.37–7, would be redesignated as footnote 9. As Bromeliads, *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* imported into Hawaii from Belgium, Denmark, or the Netherlands would be subject to the same postentry quarantine requirement. Our proposed new entry to the list in § 319.37–8(e) would therefore include a new footnote 10 that would refer the reader back to newly redesignated footnote 9. Current footnote 11 in § 319.37–8(e) also refers the reader back to the footnote pertaining to postentry quarantine. We would revise footnote 11 to refer the reader to newly redesignated footnote 9, rather than to footnote 10, as it currently does. Finally, a footnote in § 319.37–13(a), now also designated, incorrectly, as footnote 11, would be redesignated as footnote 12.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

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

This proposed rule would amend the regulations governing the importation of plants and plant products by adding *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* from Belgium, Denmark, and the Netherlands to the list of plants established in an approved growing medium that may be imported into the United States, subject to certain conditions.

APHIS does not expect the proposed rule to have a significant economic impact on a substantial number of small entities, as there are believed to be relatively few U.S. producers of Bromeliad plants, the entities who stand to be affected most by the rule. The initial regulatory flexibility analysis describes the proposed rule's expected small-entity impact and specifically seeks public comment on that expected impact, as only limited data were available for analysis. Most U.S. growers of Bromeliad plants are likely to be small entities under the Small Business Administration's standards.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with

¹ Instructions on accessing Regulations.gov and information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES**. You may also request paper copies of the risk analysis by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**.

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.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of plants of the genera *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia* and *Vriesea*, of the family Bromeliaceae, from Belgium, Denmark, and the Netherlands, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (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' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.37–6 [Amended]

2. In § 319.37–6, footnote 8 is redesignated as footnote 7

§ 319.37–7 [Amended]

3. In § 319.37–7, footnote 9 is redesignated as footnote 8.

§ 319.37–13 [Amended]

4. In § 319.37–13, footnote 11 is redesignated as footnote 12.

5. In § 319.37–8, paragraph (e) introductory text, the list is amended as follows:

a. By redesignating footnote 10 as footnote 9.

b. By adding a new entry, in alphabetical order, to read as set forth below.

c. By revising footnote 11 to read as set forth below.

§ 319.37–8 Growing media.

* * * * *

(e) * * *

Bromeliad plants of the genera *Aechmea*, *Cryptanthus*, *Guzmania*, *Hohenbergia*, *Neoregelia*, *Tillandsia*, and *Vriesea* from Belgium, Denmark, and the Netherlands¹⁰

* * * * *

*Nidularium*¹¹

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Done in Washington, DC, this 9th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–5965 Filed 3–14–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0020]

RIN 0579–AD33

Importation of Tomatoes With Stems From the Republic of Korea Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow, under certain conditions, the importation into the United States of commercial consignments of tomatoes with stems from the Republic of Korea. The conditions for the importation of tomatoes with stems from the Republic of Korea include requirements for pest exclusion at the production site, fruit fly

¹⁰ See footnote 9.

¹¹ See footnote 9.

trapping inside and outside the production site, and pest-excluding packinghouse procedures. The tomatoes would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of Korea with an additional declaration confirming that the tomatoes had been produced in accordance with the proposed requirements. This action would allow for the importation of tomatoes with stems from the Republic of Korea while continuing to provide protection against the introduction of injurious plant pests into the United States.

DATES: We will consider all comments that we receive on or before May 16, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0020> to submit or view comments and to view supporting and related materials available electronically.

- **Postal Mail/Commercial Delivery:** Please send one copy of your comment to Docket No. APHIS–2010–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0020.

Reading Room: 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.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip B. Grove, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPD, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–6280.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into