

Rules and Regulations

Federal Register

Vol. 77, No. 123

Tuesday, June 26, 2012

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0073]

RIN 0579–AD54

Importation of *Dracaena* Plants From Costa Rica

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the plants for planting regulations to provide conditions for the importation into the continental United States of *Dracaena* spp. plants from Costa Rica. These conditions will apply to plants less than 460 mm in length, which are currently allowed to be imported, and will also allow for the importation of plants over 460 mm and up to 1,371.6 mm in length, which are currently prohibited. As a condition of entry, *Dracaena* spp. plants from Costa Rica will have to be produced in accordance with integrated pest risk management measures that will include requirements for registration of place of production and packinghouses, a pest management plan, inspection for quarantine pests, sanitation, and traceability from place of production through the packing and export facility and to the port of entry into the United States. All *Dracaena* spp. plants from Costa Rica will also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that all conditions for the importation of the plants have been met and that the consignment of plants has been inspected and found free of quarantine pests. This action will allow for the importation of oversized *Dracaena* spp. plants from Costa Rica into the United

States while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* July 26, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Aley, Senior Import Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road, Unit 136, Riverdale, MD 20737–1231; (301) 851–2130.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Plants for Planting” (7 CFR 319.37 through 319.37–14, referred to below as the regulations) restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Dracaena is a genus of about 40 species of tree- and shrub-like plants. Several species are grown as houseplants for their decorative strap-like foliage, low maintenance requirements, and tolerance of a wide range of growing conditions. Popular *Dracaena* spp. houseplants include *Dracaena fragrans*, commonly known as the corn plant, and *Dracaena sanderiana*, commonly known as lucky bamboo.

Currently, whole and intact *Dracaena* spp. plants (including roots, stems, and leaves) may be imported into the United States only if they meet the size requirements in § 319.37–2(b)(6)(i) and other general requirements in the regulations. The regulations currently allow only *Dracaena* spp. plants less than 460 mm (approximately 18 inches) in length. The size requirement was established because plants of that size are easily inspected and, if necessary, treated for pests; the size and density of growth of larger plants makes them more difficult to inspect and treat.

On November 1, 2011, we published in the **Federal Register** (76 FR 67379–67384, Docket No. APHIS–2011–0073) a proposal¹ to amend the plants for planting regulations to provide conditions for the importation into the

continental United States of *Dracaena* spp. plants from Costa Rica.

We solicited comments concerning our proposal for 60 days ending January 3, 2012. We received six comments by that date. They were from foreign and domestic industry associations, an importer, a State agriculture department, and a private citizen. The comments were generally supportive but raised two questions concerning the proposed rule.

One commenter asked if the Animal and Plant Health Inspection Service (APHIS) would be supplying copies of the bilateral workplan to domestic stakeholders for review.

Bilateral workplans are agreements between APHIS and the national plant protection organization (NPPO) of a foreign Government and are not typically circulated for stakeholder review. However, they are public documents and interested stakeholders may obtain copies of the workplan by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Two commenters stated that site visits should be conducted to ensure that the requirements of the bilateral workplan are met. One of these commenters expressed an interest in participating in site visits.

As we explained in the proposed rule, APHIS may conduct site visits to inspect and monitor the pest management program. In the past, representatives of U.S. domestic industries have accompanied APHIS personnel on site visits at the invitation of the host NPPO, so it is a possibility that domestic stakeholders could accompany an APHIS representative traveling to Costa Rica. We do expect, however, that the routine site visits will most often be carried out by APHIS field personnel in Costa Rica as part of their routine duties rather than by U.S.-based personnel who would have to travel to Costa Rica to visit production and packing sites.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore,

¹To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#:docketDetail;D=APHIS-2011-0073>.

has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have prepared a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

The United States imports approximately 25 million *Dracaena* spp. plants from Costa Rica annually. On average, APHIS intercepts pests in, and applies treatments to, over 8 percent of the *Dracaena* consignments and destroys less than 1 percent. Production, packing, storing and exportation of *Dracaena* spp. plants in accordance with the integrated pest risk management measures set forth in the rule will reduce pest infestations, subsequent pest interceptions, and the need to fumigate or destroy infested consignments at ports of entry.

The oversized *Dracaena* spp. plants will be of greater value than the smaller plants currently allowed entry, and we expect U.S. nurseries will adjust to new marketing opportunities afforded by the larger plants. Most U.S. nurseries and other entities that may be affected by this rule are small.

Executive Order 12988

This final 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of *Dracaena* spp. plants from Costa Rica under the conditions specified in this rule will 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), 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 and finding of no significant impact may be viewed on the Regulations.gov Web site.² Copies of the environmental assessment and finding of no significant impact are also 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. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to

facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

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

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

Accordingly, we 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.

■ 2. Section 319.37–2 is amended as follows:

■ a. In the table in paragraph (a), by adding a new entry for “*Dracaena* spp. plants not meeting the conditions for import in § 319.37–5 (y)”, in alphabetical order, to read as set forth below.

■ b. In paragraph (b)(6)(i), by adding the words “*Dracaena* spp. plants from Costa Rica meeting the conditions of § 319.37–5(y),” after the citation “§ 319.37–5(q),”.

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Quarantine pests existing in the places named and capable of being transported with the prohibited article
* <i>Dracaena</i> spp. plants not meeting the conditions for import in § 319.37–5(y).	* Costa Rica	* <i>Ancistrocercus circumdatus</i> ; <i>Caldwellioliola reservata</i> ; <i>Chaetanaphothrips signipennis</i> (banana rust thrips); <i>Coccus viridis</i> (green scale); <i>Diplosolenodes occidentalis</i> (spotted leatherleaf slug); <i>Erioloides consobrinus</i> ; <i>Neoconocephalus affinis</i> (rattler conehead katydid); <i>Oncometopia clarior</i> (blue sharpshooter); <i>Ovachlamys fulgens</i> ; <i>Palliferra costaricensis</i> (Costa Rica mantle slug); <i>Planococcus minor</i> (passionvine mealybug); <i>Pseudococcus landoi</i> (lando mealybug); <i>Sarasinula plebeia</i> (Caribbean leatherleaf slug); <i>Succinea costaricana</i> ; <i>Xylosandrus morigerus</i> (brown coffee twig beetle).
* * * * *	* * * * *	* * * * *

■ 3. In § 319.37–5, a new paragraph (y) is added to read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(y) *Special foreign inspection and certification requirements for Dracaena spp. plants from Costa Rica. Dracaena spp. plants from Costa Rica may only be*

² Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0073>. The environmental

assessment and finding of no significant impact will appear in the resulting list of documents.

imported into the continental United States in accordance with the requirements of this paragraph (y), to prevent the plant pests *Ancistrocerus circumdatus*, *Caldwelliella reservata*, *Chaetanaphothrips signipennis*, *Coccus viridis*, *Diplosolenodes occidentalis*, *Erioloides consobrinus*, *Neoconocephalus affinis*, *Oncometopia clarior*, *Ovachlamys fulgens*, *Palliferra costaricensis*, *Planococcus minor*, *Pseudococcus landoi*, *Sarasinula plebeia*, *Succinea costaricana*, and *Xylosandrus morigerus* from entering the United States.

(1) *Size requirements.* *Dracaena* spp. plants from Costa Rica imported into the continental United States may not exceed 1,371.6 mm (approximately 54 inches) in length from the soil line (or top of the rooting zone for plants produced by air layering) to the farthest terminal growing point.

(2) *Bilateral workplan.* The national plant protection organization (NPPO) of Costa Rica must provide a bilateral workplan to APHIS that details the activities that the NPPO of Costa Rica will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this paragraph (y).

(3) *Phytosanitary certificate.* The phytosanitary certificate of inspection required by § 319.37-4 that accompanies each consignment of *Dracaena* spp. plants from Costa Rica must contain additional declarations that the plants in the consignment have been produced, packed, stored, and exported in accordance with the requirements of this paragraph (y) and the bilateral workplan, and that the consignment has been inspected and found free of quarantine pests.

(4) *Participant registration and agreement.* Persons in Costa Rica who produce, pack, or ship *Dracaena* spp. plants for export to the United States must:

(i) Be registered and approved by the NPPO of Costa Rica; and

(ii) Enter into an agreement with the NPPO of Costa Rica whereby the persons agree to participate in and follow the export program for *Dracaena* spp. plants established by the NPPO of Costa Rica.

(5) *Facility registration and agreement.* Production, packing, and export facilities must be approved and registered by the NPPO of Costa Rica. Registered packing and export facilities may only accept plants from registered production facilities where plants are grown in compliance with the requirements of this paragraph (y) and the bilateral workplan. The NPPO of Costa Rica will provide APHIS with access to the list of registered facilities

at least annually and when changes occur.

(6) *Training.* Participants and personnel at approved production, packing, and export facilities must be trained in the requirements of this paragraph (y) and the bilateral workplan and in recognizing the quarantine listed in this paragraph (y). Training records must be maintained and made available to the NPPO of Costa Rica and APHIS on request.

(7) *Pest management program.* Participants must establish a pest management program for all approved production, packing, and export facilities. Pest management programs must include field or facility scouting, monitoring, and control of target pests, and must be monitored and approved by the NPPO of Costa Rica. APHIS may visit sites to inspect and monitor the pest management program. Each approved facility must have a trained, dedicated person to supervise the pest management program. Records of pest management activities must be maintained and made available to the NPPO of Costa Rica and APHIS upon request.

(8) *Sanitation.* Sanitation measures must be maintained at approved production, packing, and export facilities. Fallen or discarded plant material and debris, or plants with pests, must be removed and must not be included in field containers brought from production to packing facilities for export. Packing facilities must be free of sand, soil, earth, and plant pests, and phytosanitary practices adequate to exclude pests must be employed. Equipment, materials, and tools must be sanitized to avoid spreading pests or to prevent recontamination.

(9) *Inspections.* Inspections undertaken in the export program for *Dracaena* spp. plants established by the NPPO of Costa Rica will include, but may not be limited to, the following:

(i) Approved production, packing, and export facilities must be inspected by dedicated trained personnel at the approved facilities at least once weekly, and by the NPPO of Costa Rica at least once monthly.

(ii) Packing materials and shipping containers for the plants must be approved by APHIS and inspected by the NPPO of Costa Rica to ensure that they do not introduce pests of concern to the plants.

(iii) Inspection dates and results must be recorded and made available to APHIS upon request.

(10) *Traceability.* Participants must establish a traceability system approved and audited by the NPPO of Costa Rica and APHIS. The identity and origin of

the *Dracaena* spp. plants must be maintained from the production unit through the packing and export facilities and to the port of entry in the United States.

(11) *Recordkeeping.* Participants must maintain records of program activities, including corrective measures, for a minimum of 3 years. Records must be made available to the NPPO of Costa Rica and APHIS on request.

(12) *Ineligibility for participation.* (i) Persons who produce, pack, or ship *Dracaena* spp. plants will be ineligible for participation in the export program for *Dracaena* spp. plants and their production sites or packing or export facilities will lose approved status if:

(A) Live pests are found in a production site;

(B) Live pests are found in a shipment of plants; or

(C) Persons who produce, pack, or ship *Dracaena* spp. plants violate the requirements set out in this section or required under the export program established by the NPPO of Costa Rica.

(ii) A person who produces, packs, or ships *Dracaena* spp. plants may be reinstated, and that person's production sites or packing or export facilities may regain approved status, by requesting reapproval and submitting a detailed report describing the corrective actions taken by the person. Reapproval will only be granted upon concurrence from the NPPO of Costa Rica and APHIS.

(13) *Trust fund.* The Government of Costa Rica must enter into a trust fund agreement with APHIS before each growing season. The Government of Costa Rica or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (y) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (y) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The Government of Costa Rica or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the Government of Costa Rica or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before

the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Government of Costa Rica or its designated representative or held on account until needed.

Done in Washington, DC, this June 20, 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012-15542 Filed 6-25-12; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0102; Directorate Identifier 2012-NM-004-AD; Amendment 39-17072; AD 2012-11-09]

RIN 2120-AA64

Airworthiness Directives; Various Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain transport category airplanes. That AD currently requires either activating all chemical oxygen generators in the lavatories until the generator oxygen supply is expended, or removing the oxygen generator(s); and, for each chemical oxygen generator, after the generator is expended (or removed), removing or restowing the oxygen masks and closing the mask dispenser door. This new AD requires installing a supplemental oxygen system in affected lavatories, which terminates the requirements of the existing AD. This AD was prompted by reports that the current design of the oxygen generators presents a hazard that could jeopardize flight safety. We are issuing this AD to eliminate a hazard that could jeopardize flight safety, and to ensure that all lavatories have a supplemental oxygen supply.

DATES: This AD is effective August 10, 2012.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD

docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Aerospace Engineer, Airframe and Cabin Safety Branch, ANM-115, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: 425-227-2136; fax: 425-227-1149; email: jeff.gardlin@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011-04-09, Amendment 39-16630 (76 FR 12556, March 8, 2011). That AD applies to the specified products. The NPRM published in the *Federal Register* on February 27, 2012 (77 FR 11418). That NPRM proposed to continue to require either activating all chemical oxygen generators in the lavatories until the generator oxygen supply is expended, or removing the oxygen generator(s); and, for each chemical oxygen generator, after the generator is expended (or removed), removing or restowing the oxygen masks and closing the mask dispenser door. That NPRM also proposed to require installing a supplemental oxygen system in affected lavatories, which would terminate the requirements of the existing AD.

Change to NPRM (77 FR 11418, February 27, 2012)

We have redesignated Note 1 of the NPRM (77 FR 11418, February 27, 2012) as new paragraph (h) of this AD, reidentified Note 2 as Note 1, and reidentified subsequent paragraphs accordingly.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 11418, February 27, 2012) and the FAA's response to each comment.

Request To Extend Compliance Time

Airbus, Boeing, Bombardier, Embraer, American Airlines (AA), Delta Air Lines, Southwest Airlines (SWA), United Airlines (UA), and All Nippon Airways (ANA) requested that we revise the NPRM (77 FR 11418, February 27,

2012) to extend the 24-month compliance time. Airbus, Embraer, Air Line Pilots Association (ALPA) International, AA, and Boeing noted that the Lavatory Oxygen Aviation Rulemaking Committee (ARC) chartered on this subject established some notional life-cycle times from the initiation of a design through a fleet retrofit. The requested compliance time ranged from 36 to 60 months. The ARC considered even a 4-year compliance time aggressive. Commenters also noted that there are no actual designs at present; any schedule is at risk until the design is proven and validated.

We partially agree with the request. Because of the lack of a retrofit design and the magnitude of the retrofit, and new configuration(s), on such a large number of affected airplanes, we agree that the proposed compliance time of 24 months is insufficient. We also agree that the ARC's detailed assessment would not have supported a 24-month compliance time. We disagree, however, to extend the compliance time to 48 months, or longer. Some of the commenters' concerns, as identified by the ARC, have been alleviated in the AD (for example, streamlining the compliance process), and it is clear there are workable design approaches that can be implemented without taking airplanes out of service. Nonetheless, since no actual designs are yet approved, the retrofit process cannot begin until a design is approved. We have extended the compliance time in paragraph (l) of this final rule to 37 months after the effective date of the AD.

Request To Retain Proposed Compliance Times

The Association of Flight Attendants (AFA) and ALPA encouraged the issuance of the final rule with the compliance times as proposed. AFA requested that we also incorporate interim measures. The commenters noted that the total time that lavatories will have been without oxygen would be about 3.5 years, even with a 24-month compliance time. AFA pointed out that the FAA's assessment of the safety risk was based on a finite time, and that we originally estimated a two- to four-year period to restore oxygen. Thus, retaining the proposed 24-month compliance time is appropriate.

With respect to the compliance time, we disagree with the request. Based on the number of affected airplanes and the lack of a design solution yet approved for any of them, a 24-month compliance time is not feasible. On the other hand, we acknowledge that compliance will be due later than the original estimate