

Proposed Rules

Federal Register

Vol. 70, No. 80

Wednesday, April 27, 2005

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. 04–082–1]

Importation of Christmas Cactus and Easter Cactus in Growing Media From the Netherlands and Denmark

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 Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., from the Netherlands and Denmark to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. We are taking this action in response to requests from the Netherlands and Denmark and after determining that Christmas cactus and Easter cactus established in growing media can be imported without resulting in the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. The proposed change would allow Christmas cactus and Easter cactus established in growing media to be imported into the United States from the Netherlands and Denmark under certain conditions.

DATES: We will consider all comments that we receive on or before June 27, 2005.

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

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have

entered EDOCKET, click on the “View Open APHIS Dockets” link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04–082–1, 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. 04–082–1.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

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: You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold T. Tschanz, Senior Staff Officer, Regulatory Coordination Staff, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–5306.

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 may be imported into the United States established in growing media. 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 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.

The regulations currently allow the importation of Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., from all countries of the world, provided that the plants are (1) free of sand, soil, earth, and other growing media, (2) accompanied by phytosanitary certificate of inspection, (3) imported under a permit issued by the Animal and Plant Health Inspection Service (APHIS), and (4) imported into a Federal plant inspection station listed in § 319.37–14(b), where they are subject to inspection by APHIS. Such plants are imported bare-rooted into the United States, and are rooted and potted for sale by U.S. nurseries.

In 1994, the governments of the Netherlands and Denmark requested that APHIS consider amending the regulations to allow Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., to be imported into the United States under the provisions of § 319.37–8(e). These countries currently export bare-root Cactaceae plants to the United States.

The regulations in § 319.37–8(g) provide that requests such as those made by the Netherlands and Denmark will 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 analyses. The pest risk analyses may be viewed on the EDOCKET Web site (see **ADDRESSES** above for instructions for accessing EDOCKET). Copies of the pest risk analyses may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

In the pest risk analysis titled, "Importation of Christmas Cactus, *Schlumbergera* spp., and Easter Cactus, *Rhipsalidopsis* spp., in APHIS Approved Growing Media into the United States From the Netherlands," APHIS identified one quarantine pest that could potentially follow the import pathway on Christmas cactus and Easter cactus from the Netherlands: *Fusarium oxysporum* Schlechtend. f.sp. *opuntiarum* (Pettinari) Gordon (Fungi Imperfecti: Hypomycetes). Because the

use of clean stock and phytosanitary greenhouse production programs provides effective control for *Fusarium* diseases, the pest risk analysis concluded that the safeguards in § 319.37–8(e) would effectively remove that and other pests from the import pathway and allow the safe importation of Christmas cactus and Easter cactus from the Netherlands.

In the pest risk analysis titled, "Importation of Christmas Cactus, *Schlumbergera* spp., and Easter Cactus, *Rhipsalidopsis* spp., in APHIS Approved Growing Media into the United States From Denmark," APHIS determined that there are no quarantine pests that follow the import pathway on Christmas cactus and Easter cactus from Denmark. The pest risk analysis concluded that the safeguards in § 319.37–8(e) will effectively remove any pests from the import pathway and allow the safe importation of Christmas cactus and Easter cactus from Denmark.

Under § 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 of Christmas cactus and Easter cactus from the Netherlands and Denmark that are established in an approved growing medium in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings of the pest risk analyses 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 Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., from the Netherlands and Denmark to the list of plants that may be imported established in approved growing media. This proposed change would allow Christmas cactus and Easter cactus from the Netherlands and Denmark to be imported into the United States in approved growing media provided the plants were produced, handled, and imported in accordance with § 319.37–8(e) and are 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.

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 the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations to allow the importation of Christmas cactus (*Schlumbergera* spp.) and Easter cactus (*Rhipsalidopsis* spp.) from the Netherlands and Denmark in approved growing media subject to the growing, inspection, and certification requirements specified in 7 CFR 319.37–8(e).

The United States is a net importer of live trees and plants, with imports of these products valued at \$843.8 million in 2003. The Netherlands accounted for \$147.1 million (17 percent) of U.S. imports of these commodities in 2003. In 2003, imports of live plants and trees from Denmark totaled \$1.1 million. The value of unrooted cuttings imported from the Netherlands and Denmark in 2003 totaled \$0.9 million and \$0.8 million, respectively. (Source: World Trade Atlas, 2004.)

The United States exported a total of \$196.4 million worth of live trees and plants in 2003. The Netherlands was the second largest importer of live trees and plants from the United States, importing \$33.9 million (17 percent), while Denmark imported \$0.3 million worth of these products. Ninety-five percent of the export value of live trees and plants from the United States consisted of products with no soil attached. Exports of unrooted cuttings and slips were valued at \$10.8 million in 2003 with \$0.2 million (1.7 percent) of the exports going to the Netherlands and no exports to Denmark. (Source: World Trade Atlas, 2004.)

In the U.S. market in 1998, the sales of potted Christmas and Easter cactus plants totaled \$5 million, while the sales value of hanging baskets of these plants was \$680,000. Christmas and Easter cactus accounted for only 0.9 percent of the total number and for only 0.6 percent of the sales value of potted plants sold in the United States. As for hanging baskets of potted flowering plants, these two species only accounted for 4.1 percent of the total number and for 3.4 percent of the sales value of hanging baskets sold in the United States. (Source: Census of Horticultural Specialties, 1998.)

The Regulatory Flexibility Act requires agencies to specifically consider the economic impact of their rules on small entities. As determined by the Small Business Administration, the small entity size standard for floriculture production (North American Industry Classification System [NAICS] code 111422) is \$750,000 or less in annual receipts. Flower, nursery stock, and florists' supplies merchant wholesalers (NAICS code 424930) are considered to be small if they employ 100 or fewer individuals. Although there is no information available describing the size or number of entities selling *Schlumbergera* spp. and *Rhipsalidopsis* spp. plants specifically, U.S. producers would not likely be affected by the changes we are proposing. Few local growers specialize in the production of the plants covered by this proposed rule and should be able to compete in the market due to the size and quality of their product. Also, U.S. producers are likely to stay competitive, as growers from the Netherlands and Denmark will have to pay additional shipping costs and phytosanitary compliance costs when shipping to the United States. Because of these increased costs, few growers in the Netherlands and Denmark are expected to participate in this program.

This change would likely benefit importers and consumers in the United States. Because the plants would be imported in approved growing media instead of arriving unpotted, U.S. importers of *Schlumbergera* spp. and *Rhipsalidopsis* spp. would be able to sell them immediately after arrival. Also, U.S. consumers would benefit from an increased availability of the plants.

Because Christmas cactus and Easter cactus comprise a small fraction of the domestic supply of potted flowering plants and relatively few producers in the Netherlands and Denmark are expected to be involved in the program, no significant change in supply or price of *Schlumbergera* spp. and *Rhipsalidopsis* spp. is expected.

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 12988

This proposed rule would allow *Schlumbergera* spp. and *Rhipsalidopsis* spp. plants to be imported in approved growing media into the United States from the Netherlands and Denmark. State and local laws and regulations regarding imported *Schlumbergera* spp.

and *Rhipsalidopsis* spp. plants would be preempted while the plants are in foreign commerce. Potted plants are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings 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 proposed importation of Christmas cactus and Easter cactus in growing media from the Netherlands and Denmark, 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 EDOCKET Web site (see **ADDRESSES** above for instructions for accessing EDOCKET). Copies of the environmental assessment are also available for public inspection in our reading room. (Information on the location and hours of the reading room is 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

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 04–082–1. Please send a copy of your comments to: (1) Docket No. 04–082–1, Regulatory Analysis and Development, PPD,

APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the regulations governing the importation of plants and plant products to add Christmas cactus, *Schlumbergera* spp., and Easter cactus, *Rhipsalidopsis* spp., from the Netherlands and Denmark to the list of plants that may be imported in an approved growing media subject to specified growing, inspection, and certification requirements. APHIS is taking this action in response to requests by the Netherlands and Denmark and after determining that *Schlumbergera* spp. and *Rhipsalidopsis* spp. established in growing media can be imported without resulting in the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. The proposed change would allow *Schlumbergera* spp. and *Rhipsalidopsis* spp. established in growing media to be imported into the United States from the Netherlands and Denmark under certain conditions.

Under this proposed rule, the plants would have to be grown in accordance with written agreements between APHIS and the plant protection service of the country where the plants are grown, and between the foreign plant protection service and the grower. In addition, the plants would have to be accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that the plants have been grown in accordance with the conditions set forth in the regulations.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the information collection on those who are to respond (such as through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5714 hours per response.

Respondents: Plant protection authorities (foreign) and growers.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 10.5.

Estimated annual number of responses: 210.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects in 7 CFR Part 319

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

§ 319.37-8 [Amended]

2. In § 319.37-8, in the introductory text of paragraph (e), the list of plants would be amended by removing the period after the word "*Saintpaulia*" and by adding, in alphabetical order, entries for "*Rhipsalidopsis* spp. from the

Netherlands and Denmark" and "*Schlumbergera* spp. from the Netherlands and Denmark".

Done in Washington, DC, this 21st day of April 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-8372 Filed 4-26-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV05-915-1 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2005-06 and subsequent fiscal years from \$0.20 to \$0.27 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 27, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail:

moab.docketclerk@usda.gov; or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs,

AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; Telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable avocados beginning on April 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any