

129440601  
129440602  
129440701  
129440708  
129441701

*Sierra County.* The following individual fields in Sierra County are regulated areas:

151013401  
151441201  
151441202  
151441306  
151442201  
151442601  
151442602  
151442603  
151442604  
151442605  
151442606  
151442607  
151442608  
151442609  
151442610  
151442611  
151442612  
151442613  
151442614  
151442701  
151443501  
151443502  
151443503  
151443601  
151443602  
151443603  
151443604  
151453001  
151453101  
151453102  
151453103  
151453104  
151453106

#### Texas

*El Paso County.* The following individual fields in El Paso County are regulated areas:

441141301  
441142301  
441142302  
441142303  
441142304  
441142305  
441142306  
441142307  
441142401  
441142402  
441142403  
441142404  
441241301  
441241302  
441252801  
441252803  
441252804  
441252901  
441253201  
441253302  
441253401

*Hudspeth County.* The following individual fields in Hudspeth County are regulated areas:

429050701  
429050702  
429070101

429070102

*McCulloch County.* Beginning at the McCulloch/San Saba County line and the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the line of longitude -99.13473 W.; then north along the line of longitude -99.13473 W. to the line of latitude 31.31004 N.; then east along the line of latitude 31.31004 N. to the line of longitude -99.11427 W.; then north along the line of longitude -99.11427 W. to the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the McCulloch/San Saba County line; then south to the point of beginning.

*San Saba County.* (1) Beginning at the San Saba/Mills County line and the line of longitude -98.5851 W.; then south along the line of longitude -98.5851 W. to the line of latitude 31.167959 N.; then west along the line of latitude 31.167959 N. to the line of longitude -98.903233 W.; then north along the line of longitude -98.903233 W. to the line of latitude 31.310819 N.; then east along the line of latitude 31.310819 N. to the San Saba/Mills County line; then south along the San Saba/Mills County line to the point of beginning.

(2) Beginning at the San Saba/McCulloch County line and the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the line of longitude -99.063487 W.; then south along the line of longitude -99.063487 W. to the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the San Saba/McCulloch County line; then north along the San Saba/McCulloch County line to the point of beginning.

Done in Washington, DC, this 16th day of April 2001.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 01-9794 Filed 4-19-01; 8:45 am]

BILLING CODE 3410-34-U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 00-042-1]

#### Importation of Artificially Dwarfed Plants

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations for importing plants and

plant products by requiring artificially dwarfed plants that are imported into the United States to have been grown under certain conditions in nurseries registered with the government of the country where the plants were grown. We are proposing this action to protect against the introduction of longhorned beetles and other dangerous plant pests into the United States.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by June 19, 2001.

**ADDRESSES:** Please send four copies of your comment (an original and three copies) to: Docket No. 00-042-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 00-042-1.

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:** Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799.

#### 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.

Under § 319.37-2(b)(2) of the regulations, the importation from all foreign places except Canada of any naturally dwarf or miniature form of

tree or shrub exceeding 305 millimeters (approximately 12 inches) in length from the soil line is prohibited, unless the plants are imported by the U.S. Department of Agriculture for experimental or scientific purposes in accordance with § 319.37–2(c). Because the regulations do not explicitly prohibit the importation of naturally dwarf plants under 305 millimeters in length or artificially dwarfed plants, and because the regulations do not contain restrictions particular to their importation, such plants may be imported into the United States if they are accompanied by a phytosanitary certificate of inspection. Such plants are also subject to inspection and, if necessary, treatment for plant pests, at the port of first arrival in the United States.

The volume of artificially dwarfed and other dwarf plants imported into the United States has increased dramatically in recent years, from fewer than 600 plants in 1993 to 54,749 plants in 1998. Because of the increasing numbers of harmful pests found in artificially dwarfed plants imported into the United States, we believe that many of these plants may be field-collected plants that are produced quickly in their country of origin for mass export. These plants include species that, historically, have not been imported as artificially dwarfed plants and that may not be given the same meticulous care and safeguards as traditional artificially dwarfed plants such as bonsai and penjing.

In April 1999, adults and larvae of citrus longhorned beetle (CLB), *Anoplophora chinensis* (Forester), were found on several occasions in a greenhouse housing artificially dwarfed plants imported from the People's Republic of China. The beetles were observed emerging from infested artificially dwarfed plants and moving throughout the greenhouse. Two months later, another beetle, the white spotted longhorned beetle (WSLB), *Anoplophora malasiaca* (Thomson), was discovered in a nursery and was traced to an artificially dwarfed plant imported from the Republic of Korea. Both CLB and WSLB are considered dangerous orchard pests in their native countries and can infest and kill a wide variety of hardwood trees, including apple, pear, and citrus.

In June 1999, APHIS inspectors intercepted an unidentified longhorned beetle in Miami, FL, during an intensive inspection of artificially dwarfed wisteria plants from the People's Republic of China. Another longhorned beetle, *Chlorophorus diademus* (Motschulsky), was intercepted in

August 1999 in an artificially dwarfed plant seized by APHIS inspectors in San Francisco, CA. The plant, identified as *Styrax* spp., was imported from the People's Republic of China, where the beetle is considered a harmful pest of cherry trees.

In this document, we are proposing to add new requirements for importing artificially dwarfed plants into the United States to guard against the introduction of plant pests, including those mentioned above, into the United States. We are not proposing to restrict the importation of naturally dwarf plants under 305 millimeters in length in this document because we do not believe those plants present a significant pest risk. Further, naturally dwarf plants under 305 millimeters in length are subject to inspection upon arrival and, if pests are detected, treatment.

If this proposed rule is adopted, any growing media would be required to be removed from the artificially dwarfed plants prior to shipment to the United States, unless the plants are to be imported in accordance with the regulations in § 319.37–8. Under current regulations, all imported nursery stock is subject to this requirement except plants that are imported under the regulations in § 319.37–8. The proposed requirement would help to further ensure that soil-borne pests do not accompany the plants to the United States.

Under this proposed rule, plants would also need to meet the following requirements in order to be eligible for importation into the United States:

(1) The artificially dwarfed plants must be grown for at least 2 years in a nursery that is registered with the government of the country where the plants were grown.

This proposed requirement, which mirrors requirements maintained by the European Union, would help to ensure that artificially dwarfed plants have been grown in nurseries that have adequate phytosanitary measures in place to guard against the infestation of plants by longhorned beetles and other dangerous plant pests. We believe that nurseries provide a higher degree of pest protection for such plants than do open fields and other areas because nurseries are routinely cleaned and kept free of debris, and the plants contained in nurseries are regularly observed for signs of pest infestation. This requirement would prevent the importation of plants that are harvested from open fields and that present a higher risk of pest infestation.

(2) The artificially dwarfed plants must be grown in pots containing only sterile growing media during the 2-year

period when they were grown in the registered nursery.

This proposed requirement would help to ensure against infestation of artificially dwarfed plants by harmful soil-borne plant pests such as nematodes. Plants that are potted and grown in sterile growing media have been shown to present less of a risk of pest infestation because the use of sterile growing media helps to preclude the possibility that growing media could be a source of pest infestation.

(3) The artificially dwarfed plants must be grown on benches at least 50 cm above the ground.

Research conducted by the United Kingdom has shown that plants that are grown in pots placed on benches at least 50 cm above the ground are less likely to be attacked by plant pests than plants grown on the ground because they are less accessible to pests. The European Union, based on this research, also maintains this same requirement for imported artificially dwarfed plants.

(4) The plants and the nursery where they were grown must be inspected for any evidence of pests and found free of pests of quarantine significance to the United States at least once every 12 months by the plant protection service of the country where the plants were grown.

This proposed requirement would provide added assurance that nurseries growing artificially dwarfed plants have adequate phytosanitary measures in place to protect against the infestation of plants by longhorned beetles and other plant pests.

In order to verify that these conditions are met in the country where the plants were grown, all artificially dwarfed plants imported into the United States would be required to be accompanied by a phytosanitary certificate of inspection issued by the government of the country where the plants were grown. The phytosanitary certificate would have to contain declarations that each of the above four conditions have been met.

We believe that the above conditions would provide adequate protection against imported artificially dwarfed plants introducing pests into the United States.

In conjunction with the above changes, we are also proposing to amend § 319.37–2 to make it clear that artificially dwarfed plants must be imported in accordance with the proposed regulations in § 319.37–5(q).

#### **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.

This proposed rule would require imported artificially dwarfed plants to be free of growing media and accompanied by a phytosanitary certificate of inspection issued by the government of the country where the plants were grown, verifying that the following conditions have been met:

- The plants were grown for 2 years prior to shipment to the United States in nurseries registered with the government of the country where the plants were grown;
- The plants were grown in pots containing sterile growing media and grown on benches at least 50 cm above the ground; and
- The plants and the nurseries were inspected at least once every 12 months by the plant protection service of the country of export and found free of pests of quarantine significance to the United States.

The proposal is intended to prevent the introduction of longhorned beetles and other dangerous plant pests into the United States. Recent studies have shown that the production losses that could result from a widespread Asian longhorned beetle infestation in the United States could total in excess of \$27.4 billion.

The art of miniature (or artificially dwarfed) plant gardening is a recent phenomenon in the United States. Because it is a highly time consuming and very labor intensive activity, it is practiced by a relatively small number of U.S. nurserymen and households. The size of these artificially dwarfed plants range from 4 inches to 60 inches in height, with prices ranging from \$10 to more than \$10,000. The median price of an artificially dwarfed plant is close to \$100, and its value increases with age, regardless of size.

According to a market expert, 80 percent of the value of this market corresponds to the plants that have been imported from Asia. Such imports come predominantly from Japan, the People's Republic of China, and Korea. The remaining 20 percent corresponds to plants that have been domestically produced. With respect to volume, 20 percent of the artificially dwarfed plants available in the U.S. market are imported from Asia, and the rest are domestically produced. Domestically produced artificially dwarfed plants are the smallest, simplest, and most inexpensive ones. Plants produced in and imported from Asian countries are

the largest, most elaborate, and most expensive.

In 1997, the U.S. National Arboretum in Washington, DC, surveyed U.S. nurseries that sell artificially dwarfed plants, as well as other businesses related to the growing of artificially dwarfed plants. A summary of this survey's findings was published in the American Nurseryman Magazine in April 1999. According to that survey, in 1997, there were at least 366 artificially dwarfed plant-related businesses in the United States. Based on that survey, artificially dwarfed plant businesses can be divided into two categories: Full-service nurseries and specialty companies focusing on one product.

Full-service nurseries may carry a wide range of artificially dwarfed plants in varying sizes, including some that they have developed themselves and others they have purchased or have imported from Asia. Many of these businesses also sell pots for these plants, as well as related tools and books. On the other hand, specialty companies may produce one product, such as plants, pots, or tools, or may be limited to teaching or publishing.

The survey identified 97 full service artificially dwarfed plant nurseries (see table below). These entities range from relatively small family-owned and family-operated enterprises to a few large companies.

Type of company	No. of companies
Full service artificially dwarfed plant nurseries ....	97
Specialty artificially dwarfed plant related companies:	
Plants (including seeds) ....	82
Tools, supplies, stands .....	81
Containers and pots .....	46
Magazines, books, and newsletters .....	32
Consultants and teachers	28
Total .....	366

The 1997 survey found that artificially dwarfed plant-related businesses are fairly well-distributed throughout the United States. However, the largest concentrations are in the Southeast (107) and the Southwest (102), including California. The Northeast has 84 artificially dwarfed plant related businesses. The Midwest has 37 related businesses, and the Northwest has 26.

#### Effect on Small Entities

According to Small Business Administration (SBA) guidelines, a small business involved in the sale or importation of artificially dwarfed plants or related products is one having

either less than \$500,000 of annual receipts from sales or less than 100 employees.

According to two industry experts on artificially dwarfed plants, there are between 20 to 50 importers of these plants in the United States, with the number varying each year. However, on average, this number is closer to 20. All of them can be considered small entities according to the SBA definition. We do not expect that this proposed rule, if adopted, would significantly affect the price of imported artificially dwarfed plants or that the proposed rule would have a significant effect on importers of artificially dwarfed plants.

Most of the businesses engaged in the production and distribution of artificially dwarfed plants and related materials are family owned and operated. Approximately 99 percent of these firms are considered small according to SBA criteria. There is no reason to believe that these entities would be significantly affected by implementation of this rule because the price of imported artificially dwarfed plants is not expected to change significantly.

The proposed requirement that imported artificially dwarfed plants be grown in registered nurseries—and not collected from open fields—could be expected to affect the number of artificially dwarfed plants imported during the short term. Plants imported from Asia are predominantly higher valued and nursery-grown, and comprise only 20 percent of U.S. sales by quantity, but 80 percent of sales by value. This proposed rule, if adopted, would likely not have a significant effect on the number of higher valued plants imported from Asia. However, since artificially dwarfed plants that are not grown in accordance with the conditions in this rule would be prohibited importation into the United States, it is possible that some U.S. producers could benefit from decreased competition. Nevertheless, the effect of this proposed rule on those nurseries is expected to be insignificant, given the small number of affected imports.

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 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 this rule will be preempted; (2) no

retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with 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. 00-042-1. Please send a copy of your comments to: (1) Docket No. 00-042-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 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.

This proposed rule would require all artificially dwarfed plants imported into the United States to be accompanied by a phytosanitary certificate issued by the government of the country of origin. This certificate must contain declarations that certain conditions were met in the country of origin to protect against the infestation of the plants by plant pests.

We are soliciting comments from the public (as well as affected agencies) 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 .25 hours per response.

*Respondents:* Plant health officials of exporting countries.

*Estimated number of respondents:* 20.

*Estimated number of responses per respondent:* 5.

*Estimated annual number of responses:* 100.

*Estimated total annual burden on respondents:* 25 hours.

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

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

Bees, Coffee, Cotton, Fruits, Honey, Imports, 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 would be revised to read as follows:

**Authority:** Title IV, Pub. L. 106-224, 114 Stat. 438, 7 U.S.C. 7701-7772; 7 U.S.C. 166 and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

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

##### § 319.37-2 [Amended]

a. In paragraph (b)(1), by removing the words "trees or shrubs" and adding in their place the words "plants meeting the conditions in § 319.37-5(q)".

b. In paragraph (b)(6)(i), by removing the words "such as bonsai" and adding in their place the words "meeting the conditions in § 319.37-5(q)".

c. In paragraph (b)(7), by removing the words "tree or shrub" the second time it appears and adding in their place the words "plant meeting the conditions in § 319.37-5(q)".

2. In § 319.37-5, a new paragraph (q) would be added to read as follows:

##### § 319.37-5 Special foreign inspection and certification requirements.

\* \* \* \* \*

(q) Any artificially dwarfed plant imported into the United States must have been grown and handled in accordance with the requirements of this paragraph and must be accompanied by a phytosanitary certificate of inspection that was issued by the government of the country where the plants were grown.

(1) Any growing media, including soil, must be removed from the

artificially dwarfed plants prior to shipment to the United States unless the plants are to be imported in accordance with § 319.37-8.

(2) The phytosanitary certificate accompanying artificially dwarfed plants must contain declarations that the following requirements have been met in the country where the plants were grown:

(i) The artificially dwarfed plants were grown for at least 2 years in a nursery registered with the government of the country where the plants were grown;

(ii) The artificially dwarfed plants were grown in pots containing only sterile growing media during the 2-year period when they were grown in a registered nursery;

(iii) The artificially dwarfed plants were grown on benches at least 50 cm above the ground; and

(iv) The plants and the nursery where they were grown were inspected for any evidence of pests and found free of pests of quarantine significance to the United States at least once every 12 months by the plant protection service of the country where the plants were grown.

\* \* \* \* \*

Done in Washington, DC, this 16th day of April 2001.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 01-9792 Filed 4-19-01; 8:45 am]

BILLING CODE 3410-34-U

#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 9 CFR Part 93

[Docket No. 99-071-1]

##### Cattle from Australia and New Zealand; Testing Exemption

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding the importation of cattle to exempt cattle imported from Australia from testing for brucellosis and tuberculosis prior to their export to the United States. We are also proposing to amend those regulations to exempt cattle imported from New Zealand from testing for brucellosis prior to their export to the United States. We have determined that cattle imported from Australia and New Zealand present a negligible risk of