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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 95-082-2]

Importation of Cut Flowers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the cut flower regulations by eliminating the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac. This action eliminates an unnecessary regulatory burden. The import permit and notice of arrival requirements were used to provide information about shipments. However, much of this information is available on cargo manifests. This action will not increase the risk of imported cut flowers introducing exotic plant pests into the United States, since all cut flowers, including cut flowers of camellia, gardenia, rhododendron, rose, and lilac, are routinely inspected upon arrival in the United States and, if necessary, fumigated.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road, Unit 139, Riverdale, MD 20737-1236, (301) 734-8891.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319.74 through 319.74-7 (referred to below as "the regulations") govern the importation of certain cut flowers into the United States. These regulations, among other things, require that all cut flowers imported into the United States

be inspected for injurious plant pests and, if necessary, fumigated. Sections 319.74-2a, 319.74-4, and 319.74-5 of the regulations also require that persons wishing to import cut flowers of camellia (*Camellia* spp.), gardenia (*Gardenia* spp.), rhododendron (*Rhododendron* spp. [including *Azalea*]), rose (*Rosa* spp.), and lilac (*Syringa* spp.) into the United States apply for and receive a permit for importation, and that a notice of arrival be submitted to the Collector of Customs immediately after a shipment of these cut flowers arrives in the United States. The regulations do not require an import permit or notice of arrival for any other types of cut flowers.

On August 2, 1996, we published in the **Federal Register** (61 FR 40362-40364, Docket No. 95-082-1) a proposal to amend the regulations by eliminating the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac. Because cut flowers of camellia, gardenia, rhododendron, rose, and lilac are the only types of cut flowers for which we have required an import permit or notice of arrival, we also proposed to remove all references to import permit and notice of arrival requirements from the regulations. In addition, we proposed to eliminate a provision allowing the Deputy Administrator of Plant Protection and Quarantine to deny certain importations of cut flowers into a State, Territory, or District of the United States by refusal of an import permit or by other means.

We solicited comments concerning our proposal for 30 days ending September 3, 1996. We received four comments by that date. They were from industry representatives. The comments are discussed below.

Pest Risk

All of the commenters expressed concern that the proposed removal of the import permit and notice of arrival requirements would result in an increased plant pest risk associated with imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac.

We do not believe that eliminating the import permit and notification requirements for cut flowers of camellia, gardenia, rhododendron, rose, and lilac will increase the risk of plant pest introduction into the United States. The import permit and notice of arrival requirements for cut flowers of camellia,

gardenia, rhododendron, rose, and lilac were only used to collect information, such as country of origin, names and addresses of the shipper and consignee, and expected arrival date, about a shipment of these types of imported cut flowers. However, much of this information is available on a conveyance's cargo manifest. We do not expect that the elimination of these requirements will increase the volume of imported cut flowers, or pests in cut flower imports, entering the United States. Our inspection, not the import permit or notice of arrival, helps prevent the introduction of plant pests into the United States by determining the condition of a shipment of imported cut flowers. If an inspector determines that a shipment of cut flowers is infested with pests of concern, that shipment is fumigated, destroyed, or re-exported to help prevent the introduction of exotic plant pests into the United States. This rule does not affect our inspection procedures. Therefore, we are making no changes in response to this comment.

Budget

One commenter expressed concern that if the import permit and notice of arrival requirements for camellia, gardenia, rhododendron, rose, and lilac are eliminated, cut flowers will enter the United States in such great numbers at so many different ports of entry that APHIS will not have the funds to keep ports staffed with experienced inspectors of cut flowers.

We do not anticipate that this action will increase the number of imported cut flowers entering the United States because the import permit and notice of arrival requirements are information collection requirements only; they do not affect the number of importations or the manner of inspection of imported cut flowers upon arrival in the United States. APHIS has adequate personnel at all ports that may receive imported cut flowers to ensure that thorough inspections of shipments are performed and regulatory requirements are met. Cut flowers already enter the United States in large numbers through more than 50 international ports of entry. Staffing levels at these international ports, and at domestic ports of entry, have increased to accommodate inspections of rising levels of plant product imports into the United States. In terms of budget issues related to

staffing levels, user fees cover all Agriculture Quarantine Inspection activities, including the inspections of cut flowers entering the United States.

Propagation of Roses

One commenter noted that cut flowers of roses are easily propagated. The commenter felt that if the import permit and notice of arrival requirements for roses were eliminated, a pathway to circumvent requirements for postentry quarantine of propagative material would be made more readily available. The commenter remarked that current import permit requirements at least make the importer accountable for the ultimate disposition of the shipment.

An import permit is not signed by the permittee; therefore, the permittee has not made any agreement with APHIS as to the ultimate disposition of a shipment. The elimination of the permit requirement does not lessen the importer's duty to comply with other regulatory requirements on disposition. If a shipment of cut flowers is imported into the United States, it must be imported in accordance with the regulations.

Cut flowers are imported into the United States as consumption products to be used or sold for decorative purposes. Cut flowers are not imported for propagation. A very limited number of consumers may try to propagate cut flowers, but we regulate the importation of cut flowers based on the product's intended use as a consumption product. Therefore, we are making no changes in response to this comment.

Rhododendron

One commenter noted that when the final rule for the importation of plants in growing media was published, action regarding *Rhododendron* spp. was deferred pending decisions on issues related to the Endangered Species Act. The commenter suggested that if these issues have not yet been resolved, it may be prudent to postpone inclusion of *Rhododendron* spp. in the final rule.

The rulemaking referred to by the commenter initially proposed to allow five new species of plants to be imported into the United States in growing media. Because we determined that additional analysis was necessary with respect to *Rhododendron* spp. and issues related to the Endangered Species Act, we did not include *Rhododendron* spp. in that final rule.

Our regulations already allow the importation of cut flowers of *Rhododendron* spp. and, under certain conditions, nursery stock in bare root of *Rhododendron* spp. (see 7 CFR 319.37-2(b)). This rule makes no changes to the

requirements for importing nursery stock, and is not expected to increase the volume of cut flowers of *Rhododendron* spp. imported into the United States. Less than a dozen shipments of cut flowers of *Rhododendron* spp. have been imported into the United States since the beginning of fiscal year 1994. Therefore, we are making no changes in response to this comment.

Accordingly, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. This action eliminates an unnecessary regulatory burden without increasing the risk of imported cut flowers introducing exotic plant pests, including plant diseases, into the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This 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 eliminating the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac.

The United States imported approximately \$408 million worth of fresh cut flowers in 1994. Roses constituted the largest category of fresh cut flowers imported into the United States in 1994, accounting for 36 percent of the total value.

Although the United States imports cut flowers from many countries, in 1994, 5 countries represented approximately 92 percent of the total value of cut flowers imported into the United States. Colombia supplied the greatest percentage with 66 percent, followed by the Netherlands with 13 percent, Ecuador with 6.4 percent, Costa Rica with 3.7 percent, and Mexico with 3.3 percent. Also in 1994, 4 countries

accounted for approximately 96.9 percent of the total value of rose imports into the United States; Colombia supplied the greatest percentage with 71.2 percent, followed by Ecuador with 13.6 percent, Mexico with 6.8 percent, and Guatemala with 5 percent.

Entities in the United States that could be affected by changes in cut flower import regulations are U.S. producers, importers, and wholesalers of cut flowers. Of the estimated 1,409 producers of cut flowers in the United States, approximately 85 percent are considered small entities. We do not expect that the volume of cut flowers imported into the United States will increase because of this rule, or that the pest risk presented by imported cut flowers will increase because of this rule. Therefore, we expect little, if any, change in the market price of cut flowers. As a result, we expect that the impact on producers of these varieties of cut flowers will be insignificant.

At this time, we cannot determine the number of importers of cut flowers. However, we do not expect this rule to affect the supply of cut flower importations, and, therefore, we expect any changes in costs or competition related to the importation of cut flowers of camellia, gardenia, rhododendron, rose, and lilac to be insignificant. As a result, we anticipate that the effect on importers of cut flowers of camellia, gardenia, rhododendron, rose, and lilac will be insignificant.

Of the estimated 3,043 wholesalers of cut flowers, approximately 96 percent are considered small entities. As stated earlier, we do not expect that the volume of cut flowers imported into the United States will increase, or that the pest risk presented by imported cut flowers will increase because of this rule. Therefore, we do not expect the price of cut flowers to be affected by this rule. As a result, we expect that the effect of this rule on wholesalers of imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac will be insignificant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Further, this rule eliminates the information collection or recordkeeping requirements in 7 CFR 319.74.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.74–1 [Amended]

2. In § 319.74–1, paragraph (c) is removed.

§ 319.74–2 [Amended]

3. Section 319.74–2 is amended as follows:

- a. By removing paragraph (b).
- b. By removing paragraph (c).
- c. By removing the designation “(a)” preceding the first paragraph.

§ 319.74–2a [Removed]

4. Section 319.74–2a is removed.

§ 319.74–3 [Amended]

5. Section 319.74–3 is amended as follows:

- a. By removing paragraph (b).
- b. By redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.
- c. In paragraph (a), the first sentence, by removing the words “imported from the named foreign countries and localities, whether or not subject to permit requirements.”
- d. In paragraph (a), the second sentence, by removing the reference “(d)” and adding in its place the reference “(c)”.

§ 319.74–4 [Removed]

6. Section 319.74–4 and footnote 1 are removed.

§ 319.74–5 [Removed]

7. Section 319.74–5 is removed.

§ 319.74–6 [Redesignated]

8. Section 319.74–6 is redesignated as § 319.74–4.

§ 319.74–7 [Removed]

9. Section 319.74–7 is removed.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25486 Filed 9–24–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 96–046–3]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, are subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables are required to meet other special conditions. The removal of these prohibitions provides the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

We are also amending the regulations to extend the production area in Arava, Israel, where peppers may be grown for importation into the United States; to eliminate the distribution restrictions for peppers from Arava, Israel; to eliminate the trust fund provisions for papayas from Costa Rica; to declare all Provinces in Chile free of the Mediterranean fruit fly; and to make several nonsubstantive editorial changes to the regulations. These actions relieve restrictions while continuing to prevent the introduction of plant pests into the United States.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as “the regulations”) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

On March 25, 1997, we published in the **Federal Register** (62 FR 14037–14044, Docket No. 96–046–1) a proposal to amend the regulations by allowing certain previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce fruit flies or other injurious plant pests into the United States. We proposed to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses that indicated that the fruits or vegetables could be imported under certain conditions without significant pest risk.

We solicited comments concerning our proposal for 60 days ending May 27, 1997. We received 11 comments by that date. They were from representatives of industry and State governments. Six of the commenters supported the proposed rule in its entirety. The remaining 5 commenters had reservations about specific provisions of the proposed rule. Of those 5 commenters, 3 commenters had concerns about the proposed importation of papayas from Brazil. Upon further review and consideration of this issue, we are taking final action at this time on all portions of our March 27, 1997, proposed rule except the portion concerning papayas from Brazil. APHIS Docket No. 96–046–2 in this edition of the **Federal Register** seeks comment on our proposal to require a hot water treatment and require that certain actions be taken if fruit fly captures reach certain levels in the papaya production areas for the importation of papayas from both Brazil and Costa Rica. The proposal also seeks comment on any other issues involving the importation of papayas from Brazil.