

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2011–0073]

RIN 0579–AD54

#### Importation of *Dracaena* Plants From Costa Rica

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing 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. These conditions would apply to plants less than 460 mm in length, which are currently allowed to be imported, and would 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 would have to be produced in accordance with integrated pest risk management measures that would include requirements for registration of places 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 would 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 would 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:** We will consider all comments that we receive on or before January 3, 2012.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0073-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0073> or in our reading room, which 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.

**FOR FURTHER INFORMATION CONTACT:** Mr. William D. Aley, Senior Import Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5057.

#### 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.

The Animal and Plant Health Inspection Service (APHIS) has received a request from the national plant protection organization (NPPO) of Costa Rica to increase the maximum allowable size of *Dracaena* plants imported from Costa Rica to 137.16 centimeters (approximately 54 inches). As part of our evaluation of Costa Rica’s request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and the risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The PRA, titled “Importation of Oversized *Dracaena* spp. As Ornamental Plants from Costa Rica into the Continental United States,” evaluates the risks associated with the importation of *Dracaena* plants into the continental United States (the lower 48 States, the District of Columbia, and Alaska) from Costa Rica, including plants under 460 mm in height. Because exports of *Dracaena* spp. plants from Costa Rica to Hawaii and U.S. territories have historically been low, the PRA does not consider the risks associated with importation of oversized *Dracaena* spp. plants into Hawaii or the territories. The risk management document lists the phytosanitary measures necessary to ensure the safe importation into the continental United States of *Dracaena* plants from Costa Rica.

The PRA identified 15 pests of quarantine significance that could be introduced into the United States in consignments of *Dracaena* plants from Costa Rica:

- *Ancistrocercus circumdatus*, a katydid;
- *Caldwellioli reserata*, a leafhopper;

- *Chaetanaphothrips signipennis*, banana rust thrips;
- *Coccus viridis*, the green scale;
- *Diplosolenodes occidentalis*, the spotted leatherleaf slug;
- *Erioloides consobrinus*, a katydid;
- *Neoconocephalus affinis*, the rattler conehead katydid;
- *Oncometopia clarior*, the blue sharpshooter;
- *Ovachlamys fulgens*, a helicaronid snail;
- *Palliferra costaricensis*, the Costa Rica mantle slug;
- *Planococcus minor*, the passionvine mealybug;
- *Pseudococcus landoi*, the lando mealybug;
- *Sarasinula plebeia*, the Caribbean leatherleaf slug;
- *Succinea costaricana*, an amber snail; and
- *Xylosandrus morigerus*, the brown coffee twig beetle.

In the PRA, the likelihood and consequences of introducing these pests into the continental United States are considered. Five of the pests: *Ancistrocercus circumdatus*, *Chaetanaphothrips signipennis*, *Erioloides consobrinus*, *Neoconocephalus affinis*, and *Pallifera costaricensis*, were assigned a medium pest risk potential. The remaining pests were assigned a high pest risk potential. The PRA states that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests, and provides a number of potential options for such measures. After consideration of these options, we have prepared a risk management document to recommend specific measures to mitigate these risks.

Based on the findings of our PRA and risk management document, we are proposing to allow the importation of *Dracaena* spp. plants into the continental United States, subject to integrated pest risk management measures, also known as a systems approach. Under integrated pest risk management measures, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby plants for planting may be imported into the United States from countries that are not free of certain plant pests. We are proposing to add integrated pest risk management measures governing the importation of *Dracaena* spp. plants from Costa Rica into the continental United States to the regulations in a new § 319.37–5(y). The proposed integrated pest risk management measures are discussed in greater detail below.

#### General Requirements

Paragraph (y) of § 319.37–5 would set out requirements for the NPPO of Costa Rica and for growers producing *Dracaena* plants for export to the continental United States. *Dracaena* spp. plants from Costa Rica would not be allowed to be imported into Hawaii, Puerto Rico, and U.S. territories. These requirements reflect the scope of the PRA, which did not specifically assess the risks associated with the importation of oversized *Dracaena* spp. plants to Hawaii, Puerto Rico, and U.S. territories, but also reflect the overall pest risk the PRA describes.

Paragraph (y)(1) would require that *Dracaena* plants from Costa Rica 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.

Paragraph (y)(2) would require the NPPO of Costa Rica to provide a bilateral workplan to APHIS that details the activities that the NPPO will, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.37–5(y). A bilateral workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Bilateral workplans establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of integrated pest risk management measures typically requires a bilateral workplan to be developed.

#### Phytosanitary Certificate

Paragraph (y)(3) would require the phytosanitary certificate required by § 319.37–4 that accompanies each consignment of *Dracaena* plants to contain additional declarations that the plants in the consignment have been produced, packed, stored, and exported in accordance with the requirements of proposed 7 CFR 319.37–5(y) and the bilateral workplan, and that the consignment has been inspected and found free of quarantine pests.

Requiring a phytosanitary certificate would ensure that the NPPO of Costa Rica has inspected the plants and certified that the plants meet the

conditions for export to the United States.

#### Participant and Facility Registration

Paragraph (y)(4) would require that producers, packers, and exporters of *Dracaena* plants be registered with the NPPO of Costa Rica. *Dracaena* plants would have to be grown, packed, stored, and exported in compliance with a written agreement between the participant and the NPPO of Costa Rica, and the participant would have to agree to comply with the provisions of the regulations and the bilateral workplan.

In addition, paragraph (y)(5) would require production, packing, and export facilities to be inspected, approved, and registered by the NPPO of Costa Rica for inclusion in the program. Registered packing and export facilities processing *Dracaena* plants for export to the United States would only be allowed to accept plants from registered production facilities where plants are grown in compliance with the proposed requirements and the bilateral workplan. The NPPO of Costa Rica would have to provide APHIS with access to the lists of registered participants and facilities annually and when changes occur.

Registration of participants and facilities would allow the NPPO of Costa Rica to conduct site visits and inspections. It would also allow traceback to the production site if pest problems were found on *Dracaena* plants shipped to the United States. Problem production sites could then be removed from the program until further mitigation measures were taken to reduce pest populations.

#### Training

Paragraph (y)(6) would require participants and personnel at approved production, packing, and export facilities to be trained in the requirements of proposed paragraph (y) and the bilateral workplan, and in recognizing the quarantine pests listed earlier. Training records would have to be maintained and made available to the NPPO of Costa Rica and APHIS upon request.

#### Pest Management Program

Paragraph (y)(7) would require that participants establish a pest management program for all approved production, packing, and export facilities. Pest management programs would be tailored to each individual site to address local concerns, but would have to include field or facility scouting, monitoring, and control of pests, and would have to be approved and monitored by the NPPO of Costa Rica.

APHIS may visit sites to inspect and monitor the pest management program. Each approved facility would be required to have a trained, dedicated person to supervise the pest management program. Records of pest management activities would have to be maintained and made available to the NPPO of Costa Rica and APHIS upon request.

#### Sanitation

Paragraph (y)(8) would require that sanitation measures be maintained at approved production, packing, and export facilities. Fallen or discarded plant material and debris, or plants with pests, would have to be removed and could not be included in field containers brought from production to packing facilities for export. Packing facilities would also have to be free of sand, soil, earth, and plants pests, and phytosanitary practices adequate to exclude pests would have to be employed. In addition, equipment, materials, and tools would have to be sanitized to avoid spreading pests or to prevent recontamination.

#### Inspections

Paragraph (y)(9) would require that dedicated, trained personnel at approved facilities conduct inspections at least once weekly, and that the NPPO of Costa Rica conduct inspections at least once monthly. Inspections would include, but would not be limited to, approved production, packing, and export facilities as well as packing materials and shipping containers. Inspection dates and results would have to be recorded and would have to be made available to APHIS upon request.

#### Traceability

Paragraph (y)(10) would require that participants establish a traceability system approved and audited by the NPPO of Costa Rica and APHIS. The identity and origin of *Dracaena* spp. plants would have to be maintained from the production unit through the packing and export facilities to the port of entry in the United States. A traceability system would allow for a traceback investigation in the event of a pest detection.

#### Recordkeeping

Paragraph (y)(11) would require that participants maintain records of program activities, including corrective measures, for a minimum of 3 years. The records would have to be made available to the NPPO of Costa Rica and APHIS on request.

#### Ineligibility for Participation

Paragraph (y)(12) would state that persons who produce, pack, or ship *Dracaena* spp. plants would be ineligible for participation in the export program for *Dracaena* spp. plants established by the NPPO of Costa Rica and their production sites or packing or export facilities would lose approved status if live specimens of the quarantine pests listed above are found in a production site or in shipments of plants, or if growers violate the requirements set out in the regulations or required under the export program established by the NPPO of Costa Rica. Paragraph (y)(12) would also provide for conditions under which a grower may be reinstated.

#### Trust Fund

Paragraph (y)(13) would require that the Government of Costa Rica enter into a trust fund agreement with APHIS before each growing season. The Government of Costa Rica or its designated representative would be required to pay in advance all estimated costs that APHIS would expect to incur through its involvement in overseeing the execution of the requirements of the certification programs described above. These costs would include the administrative expenses incurred in conducting the services enumerated and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by inspectors in performing these services.

#### Miscellaneous Changes

Because we are proposing to require that all *Dracaena* spp. plants from Costa Rica be imported into the United States subject to a systems approach, we also propose to amend the list of prohibited articles in § 319.37–2(a) to state that *Dracaena* spp. plants not meeting the conditions for import in § 319.37–5(y) would not be allowed to be imported into the United States. We are also proposing to amend § 319.37–2(b)(6)(1) to state that *Dracaena* spp. plants from Costa Rica may be imported into the continental United States under the provisions of § 319.37–5(y).

#### Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action

on small entities. The analysis is summarized below. Copies of the full analysis are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Under the current regulations, *Dracaena* spp. plants that are 18 inches or less in height may be imported into the United States. The proposed amendment allow *Dracaena* spp. plants up to 54 inches in height to be imported into the continental United States from Costa Rica. The proposal would require that all *Dracaena* spp. plants entering the continental United States from Costa Rica be subject to integrated pest risk management measures to reduce pest risks. *Dracaena* spp. plants of any size would not be allowed to enter Hawaii and U.S. territories from Costa Rica.

The United States imports approximately 25 million *Dracaena* spp. plants from Costa Rica annually. On average, APHIS intercepts and fumigates over 8 percent of the *Dracaena* shipments and destroys less than 1 percent. Producing *Dracaena* spp. plants under the proposed systems approach would reduce pest infestations and subsequently pest interceptions and costs of fumigation or destruction of shipments at ports of entry.

The oversized *Dracaena* spp. plants would be of greater value than the smaller plants currently allowed entry, and we expect U.S. nurseries would adjust to new marketing opportunities afforded by the larger plants. While most U.S. nurseries and other entities that may be affected by the proposed rule are small, effects of the proposed rule are undetermined as APHIS does not have information about nurseries that produce *Dracaena* spp. plants. APHIS invites public comment on the potential effects of the proposed rule.

#### 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.

#### National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of oversized *Dracaena* spp. plants from Costa Rica, we have prepared an

environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

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

#### Paperwork Reduction Act

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. APHIS–2011–0073. Please send a copy of your comments to: (1) Docket No. APHIS–2011–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 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.

Allowing the importation of *Dracaena* spp. plants into the United States from Costa Rica will require the completion

of the following documents: Bilateral workplan, phytosanitary certificate with declaration, registration agreement, facility registration agreement, participant and personnel training, pest management program, inspections, traceability system, recordkeeping, detailed report with corrective actions, and a trust fund.

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 0.60008 hours per response.

*Respondents:* Importers of *Dracaena* spp. plants and foreign officials.

*Estimated annual number of respondents:* 97.

*Estimated annual number of responses per respondent:* 25.5979.

*Estimated annual number of responses:* 2,483.

*Estimated total annual burden on respondents:* 1,490 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) 851–2908.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

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

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

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

#### PART 319—FOREIGN QUARANTINE NOTICES

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

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

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	Plant 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>Caldwelliella 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).

\* \* \* \* \*

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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 imported into the continental United States in accordance with the requirements of this paragraph (y), to prevent the plant pests *Ancistrocercus circumdatus*, *Caldwelliella reservata*, *Chaetanaphothrips signipennis*, *Coccus viridis*, *Diplosolenodes occidentalis*, *Erioloides consobrinus*, *Neoconocephalus affinis*, *Oncometopia clarior*, *Ovachlamys fulgens*, *Pallifera 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 7 CFR 319.37–5(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 26th day of October 2011.

**Kevin Shea,**

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

[FR Doc. 2011-28253 Filed 10-31-11; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 31 and 301

[REG-136565-09]

RIN 1545-BJ06

#### Extending Religious and Family Member FICA and FUTA Exceptions To Disregard Entities

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to extend the exceptions from taxes under the Federal Insurance Contributions Act ("FICA") and the Federal Unemployment Tax Act ("FUTA") under sections 3121(b)(3), 3127, and 3306(c)(5) to entities that are disregarded as separate from their owners for federal tax purposes. The temporary regulations also clarify the existing rule that the owners of disregarded entities, except for qualified subchapter S subsidiaries, are responsible for backup withholding and related information reporting requirements under section 3406. The text of those regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by January 30, 2012.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-136565-09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. to 4 p.m. to CC:PA:LPD:PR (REG-136565-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-136565-09).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Joseph Perera, at (202) 622-6040; concerning submissions of comments or requests for a hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to Employment Tax Regulations (26 CFR part 31) and the Procedure and Administration Regulations (26 CFR part 301). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. Generally, the regulations allow certain disregarded entities under § 301.7701-2 that are treated as corporations for employment tax purposes, to qualify for the FICA and FUTA exceptions of sections 3121(b)(3), 3127, and 3306(c)(5) by treating the owner of the disregarded entity as the employer for purposes of applying those sections. Additionally, the regulations clarify the existing rule that the owners of disregarded entities, other than qualified subchapter S subsidiaries are responsible for backup withholding and related information reporting requirements on reportable payments.

##### Proposed Effective/Applicability Date

The regulations, as proposed, apply to wages paid on or after November 1, 2011.

However, the rules in these proposed regulations may be relied on by taxpayers for wages paid after December 31, 2008.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying.

## Drafting Information

The principal author of these regulations is Joseph Perera, Office of Associate Chief Counsel (Tax Exempt & Government Entities).

## List of Subjects

### 26 CFR Part 31

Employment taxes, Income Taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recording requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

**Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*