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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 98–062–2]

RIN 0579–AB23

Update of Nursery Stock Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for importing nursery stock to require additional certifications for imported niger seed and lilac, to reflect changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We are also making several other changes to update and clarify the regulations and improve their effectiveness. This action is necessary to update the existing regulations and make them easier to understand and implement.

DATES: This regulation is effective September 19, 2003. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5214.

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.

On December 28, 2001, we published in the **Federal Register** (66 FR 67123–67134, Docket No. 98–062–1) a proposal to amend the regulations to require additional certifications for imported niger seed and lilac, to reflect changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We also proposed several other amendments to update and clarify the regulations and improve their effectiveness.

We solicited comments concerning our proposal for 60 days ending February 26, 2002. We received 15 comments by that date. They were from import treatment firms and representatives of State and foreign governments. Their concerns are discussed below by topic.

Changes in Taxonomy

Comment: Although some years ago botanists proposed transferring certain species in *Chrysanthemum* to *Dendranthema*, the International Botanical Congress, which sets the standards for botanical nomenclature, has accepted the proposal that these species again be included in *Chrysanthemum*. Notice of this change was published in: Brummitt, D. (1997) “*Chrysanthemum* once again,” *Garden (London)* 122 (9), 662–663; Royal Botanic Gardens, Kew, Richmond, Surrey, UK. The Animal and Plant Health Inspection Service (APHIS) should withdraw its proposal to transfer species from *Chrysanthemum* to other genera to reflect this information.

Response: We agree that the changes in taxonomy in the proposed rule were based on outdated information, and data from the Germplasm Resources Information Network of the Agricultural Research Service supports this commenter’s assertion. Therefore, under this final rule, all but two of the plant species we had proposed to transfer to the genera *Ajanía*, *Dendranthema*, *Leucanthemella*, and *Nipponanthemum* will continue to be referred to as *Chrysanthemum* spp. However, the

Germplasm Resources Information Network indicates that the nippon daisy and the giant daisy are still assigned to *Nipponanthemum nipponicum* and *Leucanthemella serotina*, respectively. Therefore, in this final rule, we have added these two species to the list of prohibited articles in § 319.37–2, the list of articles eligible to be imported under the restrictions in § 319.37–5(c), and the list of articles subject to postentry quarantine in § 319.37–7.

We will continue to list *Dendranthema* spp. in the regulations because *Dendranthema* is widely used as a synonym for *Chrysanthemum* among importers.

Treatments Performed Outside the United States

We proposed to require that treatments performed outside the United States be monitored and certified by an APHIS inspector or an official of the plant protection service of the country exporting the regulated articles to the United States. We further proposed to require, in cases where an official of the exporting country monitors and certifies treatment, that the official issue a phytosanitary certificate that includes a declaration that the regulated articles have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual.

Comment: The requirement that treatments performed outside the United States be certified as having been performed “in accordance with the Plant Protection and Quarantine Treatment Manual” is prejudicial to the principle of equivalence, as enumerated in the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures and the International Plant Protection Convention’s Guidelines for Phytosanitary Certificates. Wording such as “Treatments must be conducted in accordance with the Plant Protection and Quarantine Treatment Manual or by using a method providing an equivalent level of phytosanitary protection” would be preferred.

Response: The WTO agreement referred to by the commenter states that differing phytosanitary measures shall be considered equivalent “if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member’s appropriate level of sanitary