

Hawaii while continuing to prevent the spread of plant pests within the United States.

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SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Hawaiian Fruits and Vegetables” (7 CFR 318.13 through 318.13–17, referred to below as the regulations) govern, among other things, the interstate movement of fruits, vegetables, and other products, including cut flowers, from Hawaii. Regulation is necessary to prevent the spread of plant pests that exist in Hawaii.

The regulations in § 318.13–3(b)(1) provide that cut flowers (except cut blooms of gardenia, mauna loa, and jade vine, and leis thereof) may be moved interstate under certain conditions and if accompanied by a limited permit. The movement of cut blooms of gardenia has been prohibited due to gardenia’s status as a host of green scale (*Coccus viridis*), also known as green coffee scale.

On May 15, 2002, we published in the **Federal Register** (67 FR 34626–34630, Docket No. 01–042–1) a proposal to amend the regulations to provide for the interstate movement of gardenia from Hawaii. As described in the proposed rule, cut blooms of gardenia from Hawaii would be eligible for movement to other parts of the United States if they were treated with irradiation in Hawaii or grown in accordance with certain prescribed conditions.

We solicited comments concerning our proposal for 60 days ending July 15, 2002. We received a total of four comments by that date. They were from growers, researchers, and private citizens. Three commenters strongly supported the proposal, agreeing that specific growing and inspection protocols or irradiation treatment will effectively mitigate the plant pest risks associated with green scale and facilitate interstate movement of gardenia blooms from Hawaii.

The remaining commenter stated that existing data concerning irradiation dosage rates for the treatment of gardenias for green scale are insufficient to support the effectiveness of the treatment described in the proposed rule. As a result of that comment, we reevaluated the proposed irradiation treatment option and found that the recommended 250 gray dosage likely is

insufficient, since the data indicate that complete mortality of all green scales on gardenia treated at the proposed 250 gray dosage only occurs after 20 weeks. A higher dosage would be preferable, but testing has demonstrated that gardenias do not tolerate such a dose without unacceptable decline in quality. Consequently, we have concluded that the irradiation treatment described in the proposed rule would be an unacceptable treatment for quarantine purposes. Based on that conclusion, we have omitted treatment with irradiation from this final rule as an option for qualifying cut blooms of gardenia for interstate movement from Hawaii. We will continue to examine the irradiation treatment option and, if appropriate, amend the provisions for interstate movement of gardenias in the future.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

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.

In this document, we are amending the regulations to provide for the movement of cut blooms of gardenia from Hawaii. We have determined that specific growing and inspection protocols can effectively mitigate the plant pest risks associated with gardenia grown in Hawaii. This action provides for the interstate movement of gardenias from Hawaii while continuing to prevent the spread of plant pests within the United States.

Under this rule, gardenia growers in Hawaii who wish to move cut blooms of gardenia interstate from Hawaii would be able to do so if the gardenias were produced in a growing area determined by an inspector to be free of green scale and to meet other requirements and if the cut blooms were inspected and found free of green scale prior to interstate movement.

According to the USDA’s Pacific Basin Agricultural Research Center in Hawaii, the total planted area of gardenias in Hawaii is 26.6 acres. Of the 26.6 acres of gardenias, only 3.6 acres belong to commercial farms: 2 acres in Kona, on the island of Hawaii; 1.1 acres in the Manoa Valley (Oahu); and 0.5 acres in Waipahu (Oahu). The remaining 23 acres of planted gardenias in Hawaii are owned by approximately 100 growers, each having an average of

20 to 25 bushes or about 10,000 square feet of production area. These gardenias are grown in “backyard” type production conditions.

The largest commercial gardenia production area in Hawaii consists of 2 acres of planted gardenia bushes that produce about 69,200 flowers per year, with annual gross receipts from sales of just under \$13,000. While sales figures are not available for the two smaller commercial producers, we presume that their annual sales are less than those of the largest producer.

According to Small Business Administration size standards, an entity involved in floriculture production (NAICS code 111422) is considered a small entity if it has annual sales of less than \$750,000. Under this definition, all commercial gardenia growers in Hawaii would be considered small entities.

Impact on Small Entities

Under the Regulatory Flexibility Act, agencies are required to specifically consider the economic effects of their rules on small entities. The entities most likely to be affected by this rule are the commercial producers of gardenias discussed previously in this analysis; the producers are all considered to be small entities.

We expect that commercial gardenia producers will benefit from the ability to move their products interstate to markets in the continental United States while incurring the costs associated with establishing and maintaining a green-scale-free growing area. While we cannot estimate the amount of additional sales that might be enjoyed by commercial gardenia producers as a result of this rule, we do not expect that amount will be substantial, given the limited scale of commercial gardenia production in Hawaii. The costs associated with the production area requirements are likely to be negligible and limited to the maintenance of a 20-foot-host-plant-free buffer zone around the production area, as the required inspections will be provided free of charge.

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 12372

This program/activity is listed in the Catalogue of Federal Domestic Assistance under No. 10.025 and is subject to Executive order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)