§ 15d.3 Compliance.

The Director of the Office of Civil Rights shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.

§ 15d.4 Complaints.

(a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file on his or her own, or through an authorized representative, a written complaint alleging such discrimination. No particular form of complaint is required. The written complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by the Director of the Office of Civil Rights or his or her designee. Any person who complains of discrimination under this part in any fashion shall be advised of his or her right to file a complaint as herein provided.

(b) All complaints under this part should be filed with the Director of the Office of Civil Rights, United States Department of Agriculture, Washington, D.C. 20250, who will investigate the complaints. The Director of the Office of Civil Rights will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve program complainants. The complaint will be notified of the final determination on his or her complaint.

(c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under 7 CFR part 15e.

Dated: November 16, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–30951 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89–154–5]

RIN 0579–AB00

Importation From Europe of Rhododendron Established in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants established in growing media to allow the importation of rhododendron from Europe under conditions designed to prevent the introduction of dangerous plant pests. This action will relieve restrictions on the importation of rhododendron plants from Europe while continuing to protect against introduction of plant pests.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, 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 plants, plant parts, 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), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Section 319.37–8, paragraph (a) of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

On September 7, 1993, we published in the **Federal Register** (58 FR 47074–47084, Docket No. 89–154–1) a proposed rule to amend the regulations to allow the importation of five genera of plants established in growing media. That proposal is referred to below as ''the proposed rule.'' We accepted comments on the proposed rule for a period of 90 days, ending December 6, 1993.

In a final rule published in the **Federal Register** on January 13, 1995, and effective on February 13, 1995 (60 FR 3067–3078, Docket No. 89–154–2), the Animal and Plant Health Inspection Service (APHIS) finalized provisions for the importation of *Alstroemeria, Ananas, Anthurium,* and *Nidularium* species. The final rule postponed action on *Rhododendron* species established in growing media to allow consultation regarding the action with the U.S. Fish and Wildlife Service, in accordance with the Endangered Species Act.

On April 30, 1998, we published in the **Federal Register** (63 FR 23683–23685, Docket No. 89–154–3) a notice reopening and extending the comment period on the proposal to allow the importation of *Rhododendron* species established in growing media. The notice also announced that, as a result of formal consultation with the Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act, APHIS intended to limit the proposed action to *Rhododendron* species imported from Europe only. The limitation to Europe was made because there is little importation of rhododendron from places outside Europe, and limited data on pests of rhododendron outside Europe. We believe the data available on rhododendron pest distribution outside Europe, and pest interceptions on rhododendron commodities from outside Europe, is insufficient to support a conclusion of negligible risk for importation of rhododendron from all countries at this time.

Comments were required to be received on or before June 1, 1998. We received two requests from trade organizations to extend the period during which comments would be accepted. In response, on June 1, 1998, we published in the **Federal Register** (63 FR 29675–29676, Docket No. 89–154–4) a notice extending the comment period until July 30, 1998.

During this reopened comment period of April 30 through July 30, 1998, we received 11 comments on the rhododendron proposal. Additionally, we received approximately 60 comments from domestic nurseries and nursery associations, importers, State governments, and environmental interest groups during the original 1993 comment period on the proposed rule that specifically addressed importation of rhododendron. The issues addressed by all of these comments are discussed below.

Comment: APHIS identified rhododendron pests of concern for this rule using reports from the scientific literature and reports of pest interceptions associated with rhododendron at ports under the

premise that these sources would reveal all pests of concern. This premise is fallacious because the lack of citations in the scientific literature may merely reflect scientists not choosing to address pests that attack rhododendron, and a lack of interception reports may reflect the small amount of trade in rhododendron in growing media. This approach misses potential pest problems.

Response: The purpose of the literature search and review of interception reports was to identify all known pests of concern and to collate information about these pests that would also allow us to make informed assumptions concerning potential unknown pests of concern. Pest risk analysis is a combination of the processes of pest risk assessment (determining whether a pest is harmful and evaluating its introduction potential) and pest risk management (the decision-making process of reducing the risk of introduction of a quarantine pest). It is standard scientific procedure in conducting a pest risk assessment to review the available scientific literature and interception records, conduct surveys, and communicate with foreign and domestic scientists and government officials. The process of pest risk assessment is a well-established procedure within APHIS. Some of the earliest pest risk assessments were done over 75 years ago and have proved their utility over time, because program requirements based on them have successfully excluded or controlled the quarantine pests that were the targets of the assessments.

When conducting a pest risk assessment, the relative richness or paucity of information on particular pests is a factor in the analysis. If in-depth pest data is lacking and there is reason to believe pests of concern are not well characterized, the assessment employs conservative assumptions that maximize the potential hazard presented by the uncharacterized pests.

Scientists choose to study particular pests for a variety of reasons, but economic factors clearly direct much scientific research toward pests of economic importance. Pests of rhododendron and other major ornamental plants are clearly of economic importance, and a great deal of research has in fact been directed toward these pests.

Interception records vary with the commodity, source, volume, host susceptibility, and other factors. Rhododendron have been imported from Europe in varying amounts for over 50 years, both as cargo and in passenger baggage. Most of the pest interceptions have been made in passenger baggage, presumably in plants taken from the wild. It is true that there are few records of interception of pests associated with commercial importation of rhododendron because our regulations have previously prohibited importation of rhododendron in soil or growing media, and there is limited commercial incentive to import bare-rooted plants. We believe it is unproductive for commenters to support limiting rhododendron imports to bare-rooted plants only, and then to argue that to justify importing the plants in growing media we would need years of interception records for this (prohibited) trade in rhododendron in growing media. When considering changes to the regulations, we cannot collect data about activities we have prohibited (except for occasional data about shipments smuggled in violation of the regulations).

Overall, we believe there is sufficient pest information about which pests occur in Europe and in the United States to analyze the pest risk and reach a sound biological decision on how to handle the rhododendron in growing media.

Comment: APHIS wrongly evaluated pests based on their known damage potential. Many pests now causing harm in the United States were innocuous in their place of origin and only caused significant harm when introduced into an area free of their natural enemies.

Response: One of the elements of pest risk assessment is an evaluation of the potential damage that may be caused by a pest using a set of criteria. While some introduced pests have found a favorable niche in the United States, others have never become serious pests. The establishment of a pest is determined by many factors, such as climate, survival, finding a suitable host, etc., which are considered in a pest risk assessment. The absence of natural enemies may play an important role in the establishment of a pest, especially for insects. APHIS is well aware of this natural phenomenon and has considered it in conducting its pest risk assessments. The basis of a good quarantine system is to prevent the introduction of the pests before they reach our shores.

Comment: The short-spored rhododendron rust caused by *Chrysomyxa ledi* var. *rhododendri* should be considered a pest of quarantine significance, as it causes serious defoliation and its spores are spread by wind. Presence of this disease would not be revealed by the proposal's greenhouse growing requirements, and the Kahn report (a report of the APHIS committee of researchers who prepared worksheets on pests and evaluations of pest risk prior to this rulemaking) notes that ''if the host/rust interaction were in the incubation period at the time of inspection, the infection would not be detected.''

Response: APHIS considers *Chrysomyxa ledi* var. *rhododendri* a quarantine pest because it can cause economic losses to both *Rhododendron* and *Picea* species. When it is detected on intercepted plant material, the plant material is seized and destroyed. Concerning its epidemiology and other characteristics, the fungus may cause defoliation and the spores are indeed spread by wind, like most rusts. For infection to occur the disease pathway must lead to the vicinity of a target host. The conditions and safeguards in the proposed rule are sufficient to preclude establishment of the disease in the United States. While there are growth periods when signs of the pathogen are not obvious in the host plant, there are signs of infection visible to close scrutiny. That is the reason for the lengthy observed growing periods required by the proposed rule for both mother stock and progeny: to provide an opportunity to detect incipient infection that might not be obvious during a one-time inspection. Besides the regular surveillance of the plants during the long growing period, the detailed inspection at a U.S. quarantine inspection station at the first port of entry provides additional safety.

Comment: The proposal cites APHIS' experience in importing plants in media without introducing pests as one basis for the proposal and suggests there have been no problems with plants currently allowed to be imported in media in 20 years. This is not true. Pest movement on plant material used in greenhouse production was the likely cause for spread of a serpentine leafminer (*Liriomyza trifoili* (Burgess)), a pea leafminer (*L. huidobrensis* (Blanchard)), the beet armyworm (*Spodoptera exigua* (Hubner)), the western flower thrips (*Frankliniella occidentalis* (Pergrande)), and the sweetpotato whitefly (*Bemisia tabaci* (Gennadius)). Also, in comments on an earlier rule, Dr. Ken Horst identified several cases where U.S. growers had to destroy material imported in media due to disease. Also, simply pointing to the successes of the current program does not justify extending it.

Response: The experience of growing certain plants in growing media, as cited by APHIS, forms the basis of a model for a systems approach that uses modern and advanced horticultural practices to

prevent the introduction and spread of plant pests. The commenter correctly identifies pest movement on plant material used in greenhouse production as the likely cause for the spread of the enumerated pests, and we do not doubt that those and other pests have spread from unregulated greenhouse cultivation where infested plants were grown. The growing of plant material under controlled conditions such as those in the regulations will prevent or greatly reduce the spread and movement of plant pests. The pests cited by the commenter did not originate from greenhouse cultivation under the system described in the proposal. Greenhouse production in accordance with the proposed regulations would have prevented the dissemination of such pests.

APHIS is not aware of the details of the specific cases where U.S. growers had to destroy material imported in media due to disease as reported by Dr. Ken Horst, because the entry of these pests apparently was not reported to APHIS or State quarantine officials at the time of their discovery. When a quarantine pest is discovered, it should be reported immediately to APHIS or State quarantine officials so its eradication can be confirmed and the pathway of entry studied. Since APHIS did not have the opportunity to investigate these cases at the time, APHIS cannot comment on the incidents cited by the commenter.

Comment: The current state of the science of risk analysis still acknowledges major areas of uncertainty when it comes to assessing the actual impacts of new pest introductions; the full extent of the damage they may cause cannot be accurately estimated. This uncertainty makes it unwise to adopt the proposed action for rhododendron.

Response: Pest risk analysis is the best tool currently available to evaluate and manage pest risk. It is being standardized, refined, and promoted globally. Uncertainties are acknowledged in the risk analysis process, and for this reason APHIS uses great care in arriving at its decisions and involves the best and most competent risk analysts available to the agency among its staff and outside resources. While all the information about pest damage caused to rhododendron may not be fully known, there is sufficient and reliable information to evaluate importing rhododendron under the conditions we proposed. Should pest risk change at any time, APHIS is prepared to change any or all aspects of the program, including denying approval of greenhouses, shutting them down, or making any other changes necessary to the program to safeguard the United States against invading pests.

Comment: Increasingly, APHIS quarantine decisions appear to be driven by trade policy (attempting to expand and liberalize opportunities for international trade under the World Trade Organization agreement) rather than the primary APHIS mandate of pest prevention based on science. We believe, consistent with the Office of Technology Assessment report, ''Agriculture, Trade, and the Environment: Achieving Complimentary Policies,'' that APHIS should not try to achieve an unrealistic zero risk standard, but should seek to target controls to protect those agricultural systems that are at greatest risk from harmful nonindigenous species. We further believe that nursery crops represent an ''at greatest risk'' category with regard to pests associated with foreign rhododendron in media.

Response: APHIS' first and primary responsibility is to protect U.S. agriculture from foreign quarantine pests. The United States is a signatory to World Trade Organization (WTO) agreements and is bound to comply with certain WTO policies guiding national activities to protect plant health, and it expects that other countries do the same. The United States strongly supports and sponsors initiatives to achieve global standardization in plant quarantine activities. APHIS is applying these standards in complying with the agreements, which is in the interest of U.S. agriculture. Nursery stock has been, and continues to be, an area of great concern to APHIS. We attempt to employ the most effective, practical, and cost-effective strategies to prevent the introduction of plant pests, including exclusion of the host plant when necessary. We do not and cannot employ a ''zero risk standard.'' It is not possible to eliminate all risk. We reduce risk to a negligible level. Our regulations establish controls and prioritize agency resources to maximize protection to those agricultural systems that are at greatest risk.

Comment: The proposed visual inspection of stock in participating European greenhouses would be largely ineffective because many pests are not readily found by inspection at some life stages.

Response: In this rule APHIS requires a lengthy pre-importation detention period or holding period in the greenhouses in foreign countries. This should give plant inspectors time for inspection and evaluation of plants and facilities to determine whether the rhododendron plant material meets entry requirements. By the same token, this long detention period allows more time for the development of pests so that they may be visible to the inspector. If the inspector determines that methods other than a visual inspection are necessary to determine the presence of a pest, then suspect material may be investigated, detained, treated, tested, etc. Additionally, all shipments of rhododendron will be directed to an APHIS Plant Inspection Station at a port of entry for inspection and final release.

Comment: The proposed pesticide dip offers no detail on active ingredient, rate, or efficacy against pests. Also, in some cases, pesticide treatments may mask, but not eliminate, pest presence.

Response: APHIS does not normally include informational details of a pesticide such as active ingredients, dose rate, or efficacy against pests in a rule because, in many cases, to do so would be to repeat a large volume of scientific and testing data that was used in the process of approving the pesticide for use against targeted pests. The approval process for pesticides is a separate function of other Federal agencies and agencies of foreign governments. APHIS' discussion of a pesticide is usually limited to discussing that a pesticide is in fact approved for use against a target pest in a given commodity and that use of the pesticide meets operational needs of APHIS and the affected industry. The exporter is required to use only pesticides prescribed by the plant protection service of the exporting country and must inform the inspector prior to their use. The recommended dip with a pesticide is a precautionary treatment and just one more additional safeguard, so while the masking of pest presence by pesticide use may occasionally be a problem, other components of the systems approach of the regulations compensate for this possible effect. It is APHIS policy that, should the pesticide make inspection difficult or hinder inspection in any way, the shipment or consignment may be denied. Such pesticide dips are not unique to the rhododendron import rule; they are also recommended and are effectively used in the United States on other imported and domestic plant and plant products.

Comment: Inspection at the port of entry under the best conditions is still not adequate to detect many pests. Further, the reality is that APHIS inspects many cargoes at a rate of less than one-half of one percent, and allows unsound inspection practices such as ''tailgate'' inspections and allowing brokers to select the samples to be

inspected. Because the proposal partly relies on inspection to mitigate the risks, these inadequacies mean the proposal will not achieve its claimed level of risk reduction.

Response: Inspection at ports of entry is an internationally accepted strategy in plant quarantine. It is rarely ever used alone, and in addition to visual examination by an inspector, may include any number of techniques to arrive at a decision. In this rule, inspection at the port of entry is not the only, or even primary, protection. Additional safeguards include growing site inspection, monitoring, surveillance, certification, and specific growing conditions in the country of origin to reduce the risk of the introduction of pests to a negligible level. Port of entry inspection of bare-rooted rhododendron has been used successfully for many years. Now that the regulations allow importation of the plants in growing media, we are retaining port of entry inspection but are also requiring additional safeguards.

The rate or percentages employed by APHIS in the inspection of cargoes varies depending on the pest risk, origin of the commodity, and other factors connected with the type of shipment. An inspection of 100 percent of the commodity may be ordered when the conditions warrant. The many thousands of interceptions made by the United States and other countries are evidence that inspection has considerable merit for some pests, but the volume of interceptions is likewise a sign that inspection alone is not enough and that a systems approach that addresses growing conditions in the country of origin is needed to keep dangerous pests that are not visible to inspectors from arriving at U.S. ports. This rule establishes such a systems approach.

Comment: APHIS bases part of its argument on the lack of pest problems associated with imports of bare-rooted rhododendron in recent years. However, this trade amounts to only a few thousand dollars a year, compared to an expectation of importing many times that volume of plants in media under the proposed rule. The minuscule amount of bare-root imports provides no basis for assessing risk.

Response: APHIS makes a logical comparison between the importation of bare-rooted rhododendron and its importation in approved growing media. If pest problems are not associated with bare-rooted plants, which are grown in the open field and exposed to the environment, one might conclude that the risk is even less when the plants are grown under a system of controlled conditions in a greenhouse—barring the possibility that there are pests associated with the media but not the plant. The proposal included strict media standards to preclude the presence of pests associated with the media. Furthermore, the importation of plants in growing media as proposed should eliminate the occasional pest problems that were associated with importing bare-rooted plants, by providing an even safer and economically more attractive method to import rhododendron. Consider that at one time ferns were imported bare-rooted, and there were many pest problems both for the importers and for APHIS. Producing them in growing media under controlled conditions resolved the problems to the satisfaction of both the importers and APHIS. The system for importing ferns in growing media has worked for a large volume of plants imported over an extended period of time. In view of this and the more limited data from importing small volumes of bare-rooted rhododendron over many years, it is reasonable to believe the rule's requirements for importing rhododendron will work.

Comment: The Endangered Species Act consultation did not assess the risk to listed species other than *Rhododendron* in the family Ericaceae, such as five *Arctostaphylos* species that occur in California and may be vulnerable to pests introduced by rhododendron.

Response: Pest risk assessment for plants is generally done at the genera level, and for this rule it was done for the entire genus *Rhododendron*. Based on pest and host data collected in the early stages of assessment, projects may be expanded to include other plant genera. If data showed *Arctostaphylos* to be a host of any of the pests associated with *Rhododendron*, the genus would have been seriously considered in the analysis. We have not received any specific pest or host data in comments and are not aware of any that indicates it is necessary to perform an assessment for the entire family Ericaceae. The Fish and Wildlife Service was a great help in evaluating any effects pests of rhododendron would have on endangered species. Consultation with the Fish and Wildlife Service was a valid and legally mandated approach to reaching an understanding of these matters.

Comment: The pest risk potential associated with imported rhododendron will remain largely unknown and uncharacterized until APHIS performs additional pest risk analyses, particularly focused on horticultural and environmental impacts, to determine the possible impact on all hosts, both native and agricultural.

Response: Pest risk analysis follows specific guidelines in order that the assessments may be as uniform and consistent as possible. When circumstances warrant, there may be a reevaluation of the pest risk. It would appear from the investigation, reviews, and evaluations already conducted for rhododendron that an additional pest risk assessment at this time is not necessary, particularly in the absence of new data or pertinent information on pest risk. The importation of rhododendron in growing media under the prescribed conditions is limited to imports from Europe. The cultivation practices used for rhododendron in Europe, and the environmental effects of the horticulture and pest issues associated with it, are fairly well known and were considered in analyzing pest risk. No number of additional pest risk assessments could ever give us the precise effect of all possible introduction scenarios on all U.S. hosts, both native and agricultural.

Comment: The proposed 0.2 mm screen size for greenhouses will not adequately prevent the entry of airborne pests or pathogens without additional requirements for door openings, air filtration systems, etc. The Zandvoort paper, ''Wind Dispersal of *Puccinia horiana* of Chrysanthemum,'' clearly illustrates how rust spores can easily enter and exit greenhouses via ventilation windows, for example.

Response: The proposed 0.2 mm screen size for greenhouses is intended for those vents where outside air is necessary. The 0.2 mm screen size is considered very small. It is so small that many believe it to be a hindrance to adequate air circulation. It is a much smaller opening than has been approved for other genera now permitted to be grown in media. The very small screen size and the additional safeguards for greenhouses growing plants in media are believed to be more than satisfactory.

Regarding door openings, § 319.37–8(e)(2)(ii) of the regulations requires that greenhouses be equipped with automatic closing doors to reduce pest entry into the greenhouses. This requirement was intended to limit the entry of both insects and wind-borne spores through entryways. Based on this comment, we have reexamined options for greater quarantine security at entryways, and have concluded that it is advisable to require a double-door system for all greenhouses growing articles in accordance with § 319.37–8(e). We also have discovered that, for some years, the inspectors employed by

plant protection services in Europe who inspect and approve greenhouses and mother stock in accordance with the regulations have been enforcing a double-door requirement. Therefore, requiring double doors would improve greenhouse security without adding any expense for greenhouses already growing articles in accordance with the regulations. Since this final rule only addresses requirements for rhododendron, at this time we are amending the greenhouse door provision only for greenhouses growing rhododendron articles, but we intend to initiate rulemaking to require double doors for all greenhouses growing articles in accordance with § 319.37–8(e). This final rule requires that for *Rhododendron* species only, the plants must be grown solely in a greenhouse equipped with automatic closing double doors of an airlock type, so that whenever one of the doors in an entryway is open the other is closed. This automatic double door requirement will create an additional barrier in the entryway.

APHIS only requires air filtration systems and other extreme forms of containment for high risk quarantine facilities that are used to maintain high risk material and dangerous pests. These must be constructed in the manner described by the commenter to prevent the escape of dangerous pests. We do not believe such a high level of security is appropriate for greenhouses growing plants from healthy stock where the plants are under surveillance for pests and disease over a considerable period, as required for rhododendron. Should serious pests or diseases be discovered in a greenhouse operating under this rule, additional containment requirements will be imposed as needed. Should the pest risk for growing rhododendron at any location or site be elevated for any reason, the greenhouses for growing them will not be approved.

The Zandvoort paper, ''Wind Dispersal of *Puccinia horiana* of Chrysanthemum,'' is not contested. *Puccinia horiana* is a fast moving rust and has largely been distributed with planting material around the globe. This distribution, however, resulted from international trade in chrysanthemums under conditions far less stringent than those required for importing rhododendron into the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, and are adding the requirement of automatic closing double doors in greenhouses. We are also making minor, nonsubstantive word changes.

Executive Order 12866 and the Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. We have prepared a final regulatory flexibility analysis and cost-benefit analysis for the rule, which are summarized below.

This final rule allows *Rhododendron* spp. to be imported from Europe in growing media if the plants are grown in secure greenhouses and meet other conditions to exclude plant pests and diseases. This action was originally proposed on September 7, 1993 (58 FR 47074–47084, Docket No. 89–154–1) as part of a proposal to allow importation from all countries of five genera of plants in growing media. Based on comments, action on *Rhododendron* spp. was deferred while an Endangered Species Act consultation was performed between APHIS and the U.S. Fish and Wildlife Service (FWS). Importation of the other four genera (*Alstroemeria*, *Ananas*, *Anthurium*, and *Nidularium*) has been allowed since the effective date of the final rule published on January 13, 1995 (60 FR 3067–3078, Docket No. 89–154–2). APHIS recently concluded its consultation with the FWS and determined that there were no endangered species concerns that would preclude importing potted *Rhododendron* spp. from Europe.

Comments on the initial regulatory flexibility analysis indicated that there is little existing economic data on import trade in plants in growing media and that neither risks nor economic effects can be projected on the basis of the small amount of data available for this trade. This fact is acknowledged in the risk assessments prepared for this action and in the economic analysis below, which explain our analytical basis for projecting risks and economic effects. No changes to the proposed requirements were made based on these comments.

Alleviating unnecessary quarantine restrictions often can be equated to elimination of trade barriers. Removal of trade barriers has two broad economic objectives. First, freer trade between countries results in lower consumer prices and increases the variety and quality of goods and services available in the local economy. Second, freer trade encourages a nation's resources to be invested in areas of comparative advantage. This enhances the economic well-being of all countries.

U.S. consumers are direct beneficiaries of government policies that promote freer trade. Domestic consumers benefit by having access to higher quality goods and services at lower prices. Freer trade increases consumer purchasing power by lowering prices and eliminating the deadweight loss associated with quarantine restrictions and other trade barriers.

Relaxation of trade barriers also results in changes in producer revenue. The amount of total producer income can increase or decrease depending on the elasticity of demand. When U.S. trade restrictions are lifted, a portion of industry profit will be transferred from domestic to foreign producers. Additionally, any increase in the amount of total producer income will go to foreign producers.

The economic effects on producers and consumers of potted *Rhododendron* spp. can be analyzed by comparing potential changes in consumer and producer surpluses. Producer surplus is measured by estimating the changes in profit (economic rent) based on potential fluctuations in product prices and quantities. Consumer surplus is the change in aggregate purchasing power and consumer utility when the price and quantity of goods change. An increase (decrease) in supply will decrease (increase) prices and translate into an increase (decrease) in consumer purchasing power (consumer surplus). The net effect on society of regulatory changes is the sum of the estimated changes in consumer and producer surpluses.

This analysis focuses on the U.S. wholesale plant market. Therefore, domestic consumers of potted *Rhododendron* spp. include retail firms, landscape brokers, contractors, dealers, and other retail or garden centers.

Initially, APHIS does not expect this rule to have an economic effect on the domestic potted plant market because phytosanitary restrictions will preclude any increased availability of imported *Rhododendron* spp. in the domestic market. European producers will be required to meet stringent phytosanitary standards before plants can be shipped to the United States. To date, no European facilities have received APHIS approval to export *Rhododendron* spp. in growing media to the United States. European producers would likely be required to upgrade existing greenhouses or construct new production units before receiving permission to ship products to the United States. Time will be required for European producers to upgrade and adjust their production practices to meet

the new requirements. Therefore, APHIS anticipates an 8- to 10-month delay between publication of the final rule and the appearance of potted European-origin *Rhododendron* spp. in the domestic marketplace.

The total value of the domestic nursery and floriculture crop (nursery stock, plants, roots, bulbs, seeds, and other plant products) industry is estimated to be about $6.1 billion. This represents about 3.7 percent of the value of domestic agriculture.[1] Annual U.S. floriculture crop sales total about $3.5 billion. Therefore, floriculture crop sales account for about 57.4 percent of total cash receipts for the U.S. nursery and floriculture industry.[2] The estimated value of annual potted *Rhododendron* spp. production in the United States totals about $48.3 million annually (Table 1). This accounts for about 1.4 percent of the annual sales volume for domestic floriculture producers.

TABLE 1.—ESTIMATED U.S. PRODUCTION OF RHODODENDRON SPP.

Genera	No. of wholesale nurseries	No. of plants sold	Estimated value of annual sales
Rhododendron spp.[3]	493	14,225,000	$48,334,000

Source: Floriculture Crops Summary (1998).

Imports of *Rhododendron* spp. in media would increase the supply and establish a new market equilibrium. A larger quantity of plants would be available at a lower price. Consumer and producer surpluses would be affected by the supply shift. The consumer surplus would be expanded and the producer surplus would increase.

In summary, this rule will allow U.S. consumers to purchase more potted *Rhododendron* spp. at lower prices. This increases U.S. consumer welfare and decreases U.S. producer surplus. Therefore, this rule will result in a net welfare gain to U.S. society.

We developed low- and high-impact scenarios to estimate the potential change in net U.S. welfare. This study assumes that prices will drop by 10 and 30 percent in the low- and high-impact scenarios, respectively (see page 7 of the full economic impact analysis).

Analysis indicates that this rule will increase net welfare for U.S. society by between $0.339 and $0.484 million when prices are assumed to drop by 10 percent (Table 2). A 10 percent price reduction increases domestic consumer welfare by between $4.933 and $5.078 million. However, U.S. producers of *Rhododendron* spp. will incur welfare losses totaling about $4.595 million (Table 2).

When prices are reduced by 30 percent, net welfare is increased by between $3.047 and $4.353 million (Table 2). Consumer welfare would be increased by between $15.380 and $16.686 million, and producer welfare would be decreased by about $12.333 million (Table 2).

TABLE 2.—ESTIMATED WELFARE EFFECTS ASSUMING UNITARY SUPPLY ELASTICITIES AND PRICE DECREASES OF 10 AND 30 PERCENT

Estimated percentage price decrease	$E_d = -0.4$			$E_d = -0.6$			$E_d = -1.0$		
	U.S. producer loss	U.S. consumer gain	Net welfare impact	U.S. producer loss	U.S. consumer gain	Net welfare impact	U.S. producer loss	U.S. consumer gain	Net welfare impact
E_s=1.0	Million Dollars			Million Dollars			Million Dollars		
Scenario 1: 10 Percent	−4.595	4.933	0.339	−4.595	4.982	0.387	−4.595	5.078	0.484
Scenario 2: 30 Percent	−12.333	15.380	3.047	−12.333	15.815	3.482	−12.333	16.686	4.353

The Regulatory Flexibility Act requires that APHIS specifically consider the economic effect of rules on ''small'' business entities. The Small Business Administration (SBA) has set forth size criteria by Standard Industrial Classification (SIC), which was used as a guide in determining which economic entities meet the definition of a ''small'' business. This final rule will have a minor economic effect on small business entities.

The SBA does not maintain specific size standards for domestic entities that produce potted *Rhododendron* spp. Therefore, this analysis uses the size standards established for Retail Nurseries, Lawn and Garden Supply Stores (SIC code 5261). The SBA's definition of a ''small'' entity included in the Retail Nurseries, Lawn and Garden Supply Stores classification is one that collects less than $3.5 million in annual receipts.

Rhododendron spp. are grown by about 493 domestic producers (Table 1). Nurseries that collect less than $3.5 million in annual receipts are considered ''small'' for the purposes of this analysis. APHIS estimates that all of these nurseries are ''small'' according to the above criteria.[4] These nurseries are diversified operations that produce many varieties of potted plants and other greenhouse products. Therefore, we anticipate that the rule will not have a significant economic effect on small producers.

The SBA definition of a ''small'' business engaged in the import/export business is one that employs no more than 100 employees. The number of

[1] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Agriculture*; October 1994.

[2] USDA, National Agricultural Statistics Service, *1997 Floriculture Crops Summary*; April 1988.

[3] We used 1997 production data for finished florist azaleas as a proxy measure for total *Rhododendron* spp. production in this analysis. We did not include nursery azaleas and rhododendron production in this analysis due to data limitations associated with the 1987 Census of Horticultural Specialties.

[4] Note that the definition of a ''small'' nursery has changed since publication of the final rule for importation of *Alstroemeria*, *Ananas*, *Anthurium*, and *Nidularium*. At that time a ''small'' nursery was defined as having annual sales of $1 million or less.

firms that may qualify as a ''small'' business under this definition cannot be determined. Small importers will likely benefit from the rule. The rule will enable some ''small'' importers to enhance their income through imports of *Rhododendron* spp. in growing media.

Small retailers will benefit from importation of *Rhododendron* spp. in growing media. The rule will enhance the availability and quality of potted plants in the U.S. market. Plant retailers will benefit from lower wholesale prices and will likely pass any savings on to their customers. This would increase annual sales volume and revenue.

Summary

This rule will allow importation from Europe of *Rhododendron* spp. in growing media. The regulations will require that imported *Rhododendron* spp. originate from secure greenhouses and meet other conditions to exclude plant pests and diseases.

During 1997, about 14.2 million potted *Rhododendron* spp. valued at $48.3 million were produced in the United States.[5] We developed low- and high-impact scenarios to estimate potential changes in net U.S. welfare. This study assumes that prices will drop by 10 and 30 percent in the low- and high-impact scenarios, respectively.

This rule will increase net welfare for U.S. society by between $0.339 and $0.484 million if prices drop by 10 percent. The rule will increase the welfare of domestic consumers of *Rhododendron* spp. by between $4.933 and $5.078 million if prices drop by 10 percent. However, U.S. producers of *Rhododendron* spp. will incur welfare losses totaling about $4.595 million.

If prices are reduced by 30 percent, net welfare will increase by between $3.047 and $4.353 million, consumer welfare will increase by between $15.380 and $16.686 million, and producer welfare will decrease by about 12.333 million.

Rhododendron spp. are grown by about 493 domestic producers. Nurseries that collect less than $3.5 million in annual receipts are considered ''small'' for the purposes of this analysis. APHIS estimates that all of these nurseries are ''small'' according to the above criteria. These nurseries are diversified operations that produce many varieties of potted plants and other greenhouse products. Therefore, we anticipate that the rule will not have a significant economic effect on small producers.

Executive Order 12988

This final rule has been reviewed under under Executive Order 12988, Civil Justice Reform. This rule allows the importation from Europe of *Rhododendron* established in growing media. State and local laws and regulations regarding articles imported under this rule will be preempted while the articles are in foreign commerce. Some nursery stock is imported for immediate distribution and sale to the consuming public and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of *Rhododendron* from Europe will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) the National Environmental Policy Act of 1969, as amended (NEPA)(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).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

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.*). All information collection requirements associated with this rulemaking have been previously approved by OMB and assigned control number 0579–0049.

List of Subjects in 7 CFR Part 319

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

Accordingly, we are amending 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. 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).

2. Section 319.37–8 is amended as follows:

a. In paragraph (e) introductory text, by adding the phrase ''Rhododendron from Europe,'' immediately before the phrase ''and *Saintpaulia.*''

b. In paragraph (e)(2)(ii), the second sentence, by adding the phrase ''(0.2 mm for greenhouses growing *Rhododendron* spp.)'' immediately after the phrase ''0.6 mm''.

c. In paragraph (e)(2)(vii), by removing the word ''and,'' immediately after the word ''pests;''.

d. In paragraph (e)(2)(viii), by removing the period at the end of the paragraph and adding a semicolon in its place.

e. By adding new paragraphs (e)(2)(ix) and (e)(2)(x) to read as follows:

§ 319.37–8 Growing media.

* * * * *

(e) * * *

(2) * * *

(ix) For *Rhododendron* species only, the plants must be propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the plant protection service of the exporting country and found free of evidence of diseases caused by the following pathogens: *Chrysomyxa ledi* var. *rhododendri, Erysiphe cruciferarum, Erysiphe rhododendri, Exobasidium vaccinnum* and *vaccinum* var. *japonicum,* and *Phomopsis theae;* and

[5] Production data for finished florist azaleas was used as a proxy measure for all domestic *Rhododendron* spp. production. Nursery azaleas and rhododendron production were not included in this analysis due to data limitations associated with the 1987 Census of Horticultural Specialties.

(x) For *Rhododendron* species only, the plants must be grown solely in a greenhouse equipped with automatic closing double doors of an airlock type, so that whenever one of the doors in an entryway is open the other is closed, and the plants must be introduced into the greenhouse as tissue cultures or as rootless stem cuttings from mother plants that:

(A) Have received a pesticide dip prescribed by the plant protection service of the exporting country for mites, scale insects, and whitefly; and

(B) Have been grown for at least the previous 6 months in a greenhouse that meets the requirements of § 319.37–8(e)(2)(ii).

Done in Washington, DC, this 19th day of November 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–30994 Filed 11–29–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AF49

1999 Marketing Quota and Price Support for Flue-Cured Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (the Secretary) with respect to the 1999 crop of flue-cured tobacco (types 11–14). In accordance with the Agricultural Adjustment Act of 1938, as amended, (the 1938 Act), the Secretary determined the 1999 marketing quota for flue-cured tobacco to be 666.2 million pounds. In accordance with the Agricultural Act of 1949, as amended, (the 1949 Act), the Secretary determined the 1999 price support level to be 163.2 cents per pound.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, telephone 202–720–5346. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Commodity Credit Corporation (CCC) nor Farm Service Agency (FSA) are required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any information collection requirements that require clearance through the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Pub. L. 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rulemaking contained in 5 U.S.C. 553 or in any directive of the Secretary. Further, this rule affirms existing determinations which are time-sensitive. For these reasons, it was determined that to delay the implementation of the rule would be impracticable, unnecessary, and counter to the public interest and that the rule would be made effective as of the date the underlying determinations were made.

Proclamation

On December 15, 1998, the Secretary announced the national marketing quota and the price support level for the 1999 crop of flue-cured tobacco. A number of related determinations were made at the same time, which this final rule affirms.

Marketing Quota

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1999 crop of flue-cured tobacco by December 1, 1998. Five such manufacturers were required to submit such a statement for the 1999 crop and the total of their intended purchases for the 1999 crop is 327.0 million pounds. The 3-year average of exports is 355.2 million pounds.

The national marketing quota for the 1998 crop year was 807.6 million pounds published at (63 FR 55937) October 20, 1998. Thus, in accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level for use in determining the 1999 marketing quota for flue-cured tobacco is 121.1 million pounds.

Due to short crops in 1995 and 1996, all pre-1997 loan stocks held by the Flue-Cured Tobacco Cooperative Stabilization Corporation have been sold. In addition, cigarette