Rules and Regulations

Federal Register
Vol. 68, No. 161
Wednesday, August 20, 2003

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 *Chyrsanthemum* 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 *Ajania, 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

or phytosanitary protection.'' If a country exporting to the United States requests that APHIS recognize its phytosanitary treatments as equivalent to those in the PPQ Treatment Manual, APHIS will evaluate the exporting country's phytosanitary treatments according to the above principle and amend the regulations to declare equivalence if the evidence warrants it. In the absence of such a request, APHIS will require that treatments performed outside the United States be performed in accordance with the PPQ Treatment Manual.

Treatment of Niger Seed

We proposed to amend the regulations to allow niger seed to be imported into the United States if it is heat treated prior to shipment to the United States in accordance with the PPQ Treatment Manual at a facility that has been approved by APHIS. The facility would be required to operate in compliance with a written agreement with the plant protection service of the exporting country, in which the treatment facility owner agrees to (1) comply with the applicable APHIS regulations and treatment requirements and (2) allow APHIS inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations.

Comment: Facilities outside the United States should not be allowed to treat niger seed for export to the United States because their lower labor costs and ability to sell directly to importing customers give them a competitive advantage over U.S. treatment facilities. This would result in a loss of jobs and business at niger seed treatment facilities in the United States.

Response: The objective of our regulatory restrictions on niger seed is to ensure that noxious weeds do not enter the United States via imports. APHIS has determined that allowing facilities outside the United States to treat niger seed before it is imported to the United States would provide the same degree of protection against noxious weed entry as allowing facilities inside the United States to treat niger seed after it has been imported.

Comment: Facilities that treat niger seed outside the United States lack adequate oversight to ensure safety. Sampling procedures used to verify the efficacy of treatment may not be properly implemented by these facilities. APHIS inspectors should enforce PPQ Treatment Manual standards at the facilities in question.

Response: The commenters did not provide any specific information to support their claims regarding inadequate oversight at foreign facilities that treat niger seed. However, if we find that oversight is inadequate at any facility that treats niger seed outside the United States, we have the option of rescinding the written agreement that allows that facility to treat niger seed for export to the United States. As noted previously, APHIS inspectors will have the option of visiting treatment facilities outside the United States to ensure that the treatment prescribed for niger seed is being performed properly. Niger seed treated outside the United States will be sampled and inspected when it enters the United States to ensure that it is free of seeds of noxious weeds at the same rate as niger seed treated within the United States is sampled and inspected to ensure that it is free of noxious weeds. We believe that the oversight provided by APHIS and the plant protection service of the exporting country, coupled with sampling and inspection at the port of entry, will be adequate to determine whether niger seed treatment facilities outside the United States are operating in accordance with the requirements of the regulations.

Comment: Importing niger seed treated at facilities outside the United States and allowing it to be sold directly to import customers will make tracking the movement of imported niger seed within the United States difficult. If noxious weeds were to enter the country along with niger seed treated outside the United States, it would be difficult to determine their origin.

Response: Once niger seed enters the country and has been released from the port of entry following inspection, it may move freely within the country. Restricting its movement when there is no evidence indicating a risk of noxious weed infestation would constitute an unwarranted restraint of trade.

Treatment of Lilac from the Netherlands

The regulations at § 319.37–5(i) prohibit the importation of plants of the genus *Syringa* (lilac) from the Netherlands unless, at the time of arrival in the United States, the phytosanitary certificate accompanying the plants contains a declaration stipulating that, among other requirements, the plants were grown in soil that was fumigated with methyl bromide according to certain conditions. The Government of the Netherlands has requested that APHIS provide an alternative to treating the soil with methyl bromide, since the use of methyl bromide is no longer permitted in the Netherlands. We proposed to allow the soil in which the lilacs are grown to be certified free of viruliferous nematodes and other plant pests by the plant protection service of the Netherlands. For this certification to be valid, we would require that the soil be sampled and microscopically inspected by the plant protection service of the Netherlands within 12 months preceding the issuance of the certification.

Comment: It is highly unlikely that requiring that the soil in which lilacs from the Netherlands are grown be sampled and microscopically inspected would be an adequate risk mitigation measure for nematode infestation. It is well documented that air-dried golden nematode cysts can remain viable for several years and that practical and technical limitations can drastically reduce the detection efficacy of soil sampling and processing when cyst populations are low. The proposal is also inconsistent with the golden nematode regulations in APHIS' domestic quarantine notices (7 CFR 301.85(b)), which restrict the interstate movement of specified regulated articles within the United States, including soil. APHIS should consider restricting the importation of plants grown in field soil from the Netherlands and all other countries infested with potato cyst nematodes (*Globodera rostochiensis* and *G. pallida*) unless plants are grown in greenhouses on raised benches in a growing medium approved under § 319.37–8(e)(1).

Response: Under § 319.37–5(a), APHIS currently requires a soil-sampling regimen similar to that which we describe for lilacs to be undertaken by the plant protection service of the Netherlands to ensure that other products, notably bulbs, from the Netherlands are not grown in soil infested with nematodes. This paragraph states: ''Any restricted article * * * from a country listed below [of which the Netherlands is one], at the time of arrival at the port of first arrival in the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown on land which had been sampled and microscopically inspected by the plant protection service of the country in which grown within 12 months preceding issuance of the certificate and found free from * * * *Globodera rostochiensis* (Woll.) Behrens and *G. pallida.*'' This requirement has successfully prevented the introduction of nematodes associated with

infestations on bulbs from the Netherlands into the United States.

Like bulbs, lilacs from the Netherlands are imported without soil, thus limiting possible sites for nematode cyst infestation to the roots of the plants themselves. Additionally, the lilacs will be screened for nematode cysts at plant inspection stations at ports of entry in the United States. If nematode cysts were found on lilacs from the Netherlands at a plant inspection station, the lilacs would be denied entry. Given the facts discussed above, we believe requiring that the soil be sampled and inspected annually will adequately mitigate the risk of a potential potato cyst nematode introduction.

Comment: The proposal gives no consideration for the potential for infestation by other endoparasitic plant pathogenic nematodes that were likely kept under control by fumigation.

Response: We are not aware of any other plant pathogenic nematodes from the Netherlands that are of concern to us. If such nematodes are brought to our attention, we will address the problem in a separate rule.

Comment: The proposed 12-month sampling period is dangerously long and might allow for re-infestation by plant parasitic nematodes. A 30-day sampling period would substantially decrease this risk.

Response: The 12-month sampling period is a general standard for soil sampling for golden nematodes, as expressed in § 319.37–5(a). The Netherlands is one of the countries whose restricted nursery stock articles are regulated under § 319.37–5(a), and the 12-month sampling period has been effective in preventing the introduction of nematodes due to infestations on products other than lilacs. We believe that the 12-month sampling period will be adequate to guard against the introduction of the golden nematode due to infestation on lilacs imported from the Netherlands as well.

Comment: The term ''viruliferous nematodes,'' as used in paragraph two of the proposed rule's ''Treatment of the Lilac'' section, could be misleading. The term as used here is likely intended to designate a virulent organism, one capable of infecting and reproducing on a plant. If this is the case, ''viruliferous nematodes'' could refer to all plant parasitic nematodes. However, among nematologists and plant virologists, the widely accepted, more restricted usage for the word ''viruliferous'' would refer to a nematode species capable of vectoring a plant virus. To avoid confusion, APHIS should substitute ''plant parasitic nematodes'' where this is the intended meaning.

Response: We agree that ''plant parasitic nematodes'' is a more accurate term than ''viruliferous nematodes'' and have changed the regulatory text in this document accordingly.

Peanut Stripe Virus

The regulations in § 319.37–2(a) prohibit the importation of seeds of the genus *Arachis* (peanut) from India, Indonesia, Japan, the People's Republic of China, the Philippines, Taiwan, and Thailand due to the existence of peanut stripe virus in those regions. We proposed removing the prohibition on the importation of peanuts from all of those regions except India because the peanut stripe virus is now reported to occur in seven of the nine peanut-producing States in the United States, and is widely prevalent in two of those States (Georgia and Virginia).

Comment: Allowing peanut seeds to be imported from Asia could allow insect pests that are not known to occur in the United States but cause serious damage to peanut seed and other oilseed crops in Asia and Africa, such as *Elasmolomus pallens,* to enter the United States. The proposed rule does not address this issue.

Response: In response to this comment, we are withdrawing this portion of the proposed rule. We plan to conduct a full risk assessment on importing peanut seed from Asia to determine the risk such imports might present to U.S. peanut and oilseed stock.

Postentry Quarantine Regulations

The regulations in § 319.37–7(d)(4) have required that restricted articles that are grown in postentry quarantine be kept at least 3 meters (approximately 10 feet) apart from: (1) Any domestic plant or plant product of the same genus and (2) any other imported plant or plant product.

We proposed to require that restricted articles that are grown in postentry quarantine be kept at least 3 meters apart from any other plant or plant product, whether domestic or imported, regardless of genus, unless the plants or plant products: (1) Are of the same genus, (2) enter postentry quarantine together, and (3) arrived together in a single shipment from a foreign region. This change would protect against the possibility that pests could spread from one shipment of plants under postentry quarantine to other plants or plant products, regardless of genera, that could host such pests.

Comment: The current requirement that restricted articles that are grown in postentry quarantine be kept 3 meters apart is adequate to prevent the spread of relatively immobile pests like nematodes, but does not protect adequately against the spread of insect-vectored pathogens and insect pests. The majority of plant genera should be required to be grown in a screenhouse or enclosed greenhouse during postentry quarantine.

Response: We believe that the requirements we proposed will protect domestic plants. While requiring many or most plants to be grown in a screenhouse or enclosed greenhouse may provide additional protection against disease transmission, such a change to the regulations would require careful evaluation and would also warrant the solicitation of comments from interested and affected parties. Therefore, we cannot address this comment in the present rule. We may consider such a proposal in the future.

Miscellaneous Comments

Comment: The description of the area of Canada regulated for potato cyst nematodes differs in § 319.37–5(a) and § 319.37–8(b). This discrepancy needs to be clarified.

Response: On September 18, 1992, we published in the **Federal Register** (57 FR 43134–43151) a final rule that, among other things, amended § 319.37–8(b) to update the description of the area on Vancouver Island in which potato cyst nematodes occur. This change was based on information supplied by the national plant protection organization of Canada. At the time, we should have updated the description of the same area that appears in § 319.37–5(a), but we failed to do so. Therefore, in this final rule, we are changing the description of the area in which potato cyst nematodes occur in § 319.37–5(a) to match the description found in § 319.37–8(b).

Comment: The regulations currently prohibit the importation in growing media of all plants produced in those regions of Canada that are regulated for potato cyst nematodes into the United States. APHIS should amend its regulations to provide for the importation from those regions of plants produced in growth chambers and in artificial growing media.

Response: We are currently preparing a proposed rule that addresses this issue.

Comment: The regulations in § 319.37–2 prohibit the importation of *Rosa* spp. from Australia, Bulgaria, Italy, and New Zealand because of rose wilt virus, and postentry quarantine is required by § 319.37–6 for *Rosa* spp. from all other countries for the same reason. Rose wilt is an undefined and

likely nonexistent agent, and should not be the subject of regulations.

Response: We are planning a risk assessment for roses to evaluate rose wilt and other diseases. We cannot address this issue in the present rule.

Comment: APHIS should consider regulating *Phytophthora ramorum* from Europe, *Pseudomonas avellana* from Europe and Asia, and *Anisogramma anomola* from Canada.

Response: APHIS is preparing regulations regarding the importation of *Phytophthora ramorum* hosts from Europe. We are also considering whether to take separate action on *Pseudomonas avellana* and *Anisogramma anomola.* We are unable to address these pests in this rule as they are beyond the scope of the proposed rule.

Comment: APHIS should consider a complete overhaul of its nursery stock regulations.

Response: We are considering whether to make major changes in our nursery stock regulations. If we decide to make such changes, we will publish a separate rule to give the public an opportunity to comment on those changes.

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 final 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 accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

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 amendments to update and clarify the regulations and improve their effectiveness. The potential effects of the changes proposed in this document are discussed below, by topic.

Treatment of Niger Seed

We are amending the regulations to allow niger seed to be imported into the United States if it is treated at a treatment facility that has been approved by APHIS. Under this amendment, niger seed can be treated: (1) At the time of arrival at the port of first arrival in the United States or (2) prior to shipment to the United States at a treatment facility that has been approved by APHIS. Previously, the regulations in § 319.37–6(d) stated that imported niger seed must be heat treated upon arrival in the United States.

This change could potentially affect U.S. firms that import and treat niger seed. The treatment firms could suffer a loss in revenue, but we believe that there are only two such firms in the United States, and at least one of those firms is not small in size according to Small Business Administration (SBA) criteria. It is likely that the other treatment firm, whose size is unknown, will not be significantly affected, because niger seed treatment likely accounts for only a small portion of the firm's overall revenues. However, since we are unable to estimate the amount of niger seed that would be treated prior to shipment to the United States, we cannot determine the effect this rule will have on domestic firms that treat niger seed.

As a group, importers in the United States will likely be unaffected by this change, since it is not likely to affect the overall volume of niger seed imported into the United States. However, this change could result in new marketing and distribution channels that could benefit some importers at the expense of others. We estimate that there are fewer than 20 importers of niger seed in the United States. However, data on the importers' size are not available, although we expect at least some of the importers are likely to be small according to SBA criteria.

We are also amending the heat treatment schedule for imported niger seed. However, since the amendment to the treatment schedule only involves a change in the required treatment temperature, and no change in the type or duration of the treatment, we anticipate that existing treatment facilities will not be affected by that change.

Lilac From the Netherlands

This rule allows the importation of lilac from the Netherlands under new conditions due to the Netherlands' request for an alternative to the use of methyl bromide as a fumigant of soil for lilac to be exported to the United States. This change should have no effect on the volume of lilac imported from the Netherlands, since it simply provides a new mechanism for Dutch exporters to ship lilac without fumigating the soil in which it is grown and, therefore, should have no effect on U.S. entities, whether small or large.

Mango Seeds From the British Virgin Islands, Grenada, Trinidad and Tobago, and St. Vincent and the Grenadines

This rule prohibits the importation of mango seeds from the British Virgin Islands, Grenada, Trinidad and Tobago, and St. Vincent and the Grenadines due to the risk of introducing the mango seed weevil, *Sternochetus mangiferae,* into the United States. This change should have little or no effect on U.S. consumers, importers, or producers, due to the fact that the United States has historically imported a very small volume of mangoes and mango seeds from those countries. Between September 1, 1997, and May 31, 1998, the value of U.S. imports of fresh mangoes (with seeds intact) from Trinidad and Tobago and Grenada was approximately $20,000, or approximately 1 percent of the value of U.S. fresh mango imports from all countries combined during that period. During the same period, the United States imported no mangoes or mango seeds from St. Vincent and the Grenadines. Data on imports of mango seeds or fruit from the British Virgin Islands are not available. Furthermore, the United States imported no seeds, fruit, or spores for propagation from Trinidad and Tobago in 1997.

Willow From Belgium and Japan

This rule prohibits the importation of willow plants and plant parts from Belgium and Japan due to the risk of introducing the watermark disease of willow into the United States.

The United States has historically imported a very small volume of willow plants and plant parts from Belgium and Japan. The value of live trees and plants, including willow plants, imported into the United States from Belgium and Japan in 1997 totaled only $3 million, or less than 1 percent of the value of U.S. live tree and plant imports from all countries combined that year. Since willow plants compose only a small fraction of the plants imported from Belgium and Japan, this change should have little or no effect on U.S. consumers, importers, or producers.

Citrus Seeds From Gabon and Iran

This rule requires that seeds of all species of the plant family *Rutaceae* (citrus) from Gabon and Iran be treated for citrus canker upon arrival in the United States. This change should have no effect on U.S. consumers, producers, or importers, since imports of *Rutaceae* (citrus) from the two affected countries are nonexistent. Trade data for 1995 to 1997 show no U.S. imports of citrus fruit (fresh or dried) or seeds, fruit, or spores for propagation from either of the two regions.

Growing Requirements for Hops

This rule requires that imported hops plants and plant parts be grown and observed in postentry quarantine in an isolated growth chamber for 6 months, and then transferred to a greenhouse to be grown for an additional year.

Researchers and universities comprise the overwhelming bulk of entities in the United States that grow imported hop plants and plant parts. This change should have little or no effect on researchers, since most already have the equipment and facilities to comply with the rule's requirements. Accordingly, for most of the affected entities, the cost to comply with the requirements will be minimal.

Commercial Shipments of Bulbs

This rule allows the importation of bulbs of the genera *Crocosmia, Gladiolus, and Watsonia* in commercial shipments from Brazil, France, Italy, Malta, Mauritius, and Portugal.

In 1998, the United States imported over $175 million worth of bulbs and tubers. Imports from Brazil, France, Italy, Malta, Mauritius, and Portugal together accounted for less than 1 percent of the total bulb and tuber imports. Data on potential imports of bulbs that would result from this change are not available. However, given the export history of the countries affected, it is unlikely that this change will have a significant impact on domestic bulb producers or bulb importers.

Additional Approved Growing Media and Packing Material

This rule adds stockosorb superabsorbent polymer, zeolite, coir, and coal cinder to the list of growing media approved for the importation of certain plants.

This change is not expected to result in increased U.S. imports of plants in growing media; the expected result is a redistribution of the existing volume of plant imports among a larger number of approved growing media. Accordingly, the addition of these types of growing media should have no economic effect on U.S. consumers, producers, or importers.

This rule also adds stockosorb superabsorbent polymer to the list of approved packing material. We cannot determine what entities could be affected by this change, but we believe that it will not likely have a significant economic effect on any U.S. entities.

List of Ports of Entry

This rule amends the regulations to reflect that the port of El Paso, TX, no longer operates as a Federal plant inspection station. This port no longer operates as a plant inspection station because it does not have the capacity to perform treatments and provide the other services that are needed at Federal plant inspection stations. We believe that this change will not have any significant impact on any U.S. entities, whether small or large.

Other Changes

We are also making several other amendments to the regulations, including changes in plant taxonomy, postentry quarantine protocol, labeling requirements, and risk assessment policy, as well as other editorial changes, which will not have any economic effects on U.S. entities, whether small or large.

This final rule contains information collection requirements, which have been approved by the Office of Management and Budget (*see* ''Paperwork Reduction Act'' below).

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0190.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

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

■ Accordingly, we are amending 7 CFR parts 300 and 319 as follows:

PART 300—INCORPORATION BY REFERENCE

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 300.1, paragraph (a) is amended as follows:

■ a. In paragraph (a)(6), by removing the word ''and''.

■ b. In paragraph (a)(7), by removing the period and adding a semicolon in its place.

■ c. By adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(8) Treatment T412–a, dated July 2003; and

(9) Dry Heat Treatment Facilities for Niger (*Guizotia abyssinica*), dated July 2003.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 is revised to read as follows:

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

■ 4. In § 319.37–2(a), the table is amended as follows:

■ a. By adding, in alphabetical order, entries for ''*Brugmansia* spp.'', ''*Crocosmia* spp. (montebredia), except bulbs in commercial shipments'', ''*Datura* spp. (woody species),'' ''*Gladiolus* spp. (gladiolus), except bulbs in commercial shipments'', ''*Leucanthemella serotina*'',

''*Nipponanthemum nipponicum*'', and ''*Watsonia* spp. (bugle lily), except bulbs in commercial shipments'' to read as set forth below.

■ b. By revising the entries for ''*Abelmoschus* spp. (okra)'', ''*Aesculus* spp. (horsechestnut)'', ''*Arachis* spp. (peanut) seed only (all other *Arachis* articles are included under Fabaceae)'', ''*Blighia sapida* (akee)'', ''*Crocosmia* spp. (montebretia)'', ''*Datura* spp.'', ''*Gladiolus* spp. (gladiolus)'', ''*Jasminum* spp. (jasmine)'', ''*Mangifera* spp. (mango) seed only'', ''*Salix* spp. (willow)'', ''*Sorbus* spp. (mountain ash)'', and ''*Watsonia* spp. (bugle lily)'' to read as set forth below.

■ c. In the entry for ''*Hydragea* spp.'', by correcting the word ''*Hydragea*'' to read ''*Hydrangea*''.

§ 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
Abelmoschus spp. (okra)	Africa	Cotton leaf curl agent.
	Brazil	Cotton Anthocyanosis agent.
	Bangladesh, India, Sri Lanka	Bhendi yellow vein mosaic agent.
	Cote d'Ivoire, Nigeria	Okra mosaic virus.
	Iraq	Okra yellow leaf curl agent.
	Papua New Guinea, Trinidad and Tobago	Okra mosaic agents.
*	* * * * * *	*
Aesculus spp. (horsechestnut)	Czech Republic, Germany, Romania, Slovakia, United Kingdom	Horsechestnut variegation or yellow mosaic diseases.
*	* * * * * *	*
Arachis spp. (peanut) seed only (all other *Arachis* articles are included under Fabaceae).	India, Indonesia, Japan, People's Republic of China, Philippines, Taiwan, Thailand.	Peanut stripe virus.
	Burkina Faso, Cote d'Ivoire, Senegal India	Peanut clump virus. Indian peanut clump virus.
*	* * * * * *	*
Blighia sapida (akee)	Cote d'Ivoire, Nigeria	Okra mosaic virus.
*	* * * * * *	*
Brugmansia spp.	Colombia	Datura Columbia virus.
*	* * * * * *	*
Crocosmia spp. (montebretia)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli P.* Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Crocosmia spp. (montebretia), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
*	* * * * * *	*
Datura spp.	India	Datura distortion or enation mosaic virus.
Datura spp. (woody species)	(*See Brugmansia* spp.).	
*	* * * * * *	*
Gladiolus spp. (gladiolus)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Gladiolus spp. (gladiolus), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
*	* * * * * *	*
Jasminum spp. (jasmine)	Belgium, Germany, Great Britain	Jasmine variegation diseases.
	India	Chlorotic ringspot, phyllody, yellow ring mosaic diseases.
	Philippines	Sampaguita yellow ringspot mosaic diseases.
*	* * * * * *	*
Leucanthemella serotina	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.	*Puccina horiana* P. Henn. (white rust of chrysanthemum).

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
*	* * * * * *	*
Mangifera spp. (mango) seed only. (Prohibition not applicable to seeds imported into Guam, Hawaii, and the Northern Mariana Islands).	All except Guimaras Island (Republic of the Philippines) and North and South America (excluding Barbados, the British Virgin Islands, Dominica, French Guiana, Grenada, Guadeloupe, Martinique, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago).	*Sternochetus mangiferae* F. (mango seed weevil).
*	* * * * * *	*
Nipponanthemum nipponicum	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.	*Puccina horiana* P. Henn. (white rust of chrysanthemum).
*	* * * * * *	*
Salix spp. (willow)	Belgium, Germany, Great Britain, Japan, and the Netherlands ...	*Erwinia salicis* (Day) Chester (Watermark disease).
*	* * * * * *	*
Sorbus spp. (mountain ash)	Czech Republic, Denmark, Germany, Slovakia	Mountain ash variegation or ringspot mosaic disease.
*	* * * * * *	*
Watsonia spp. (bugle lily)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Watsonia spp. (bugle lily), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
*	* * * * * *	*

* * * * *

■ 5. In § 319.37–4, paragraph (c) is amended as follows:

■ a. By revising the introductory text to read as set forth below.

■ b. By revising the introductory text of paragraph (c)(1) to read as set forth below.

■ c. By revising paragraph (c)(1)(iv) to read as set forth below.

■ d. By revising paragraph (c)(2) to read as set forth below.

§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.

* * * * *

(c) *Greenhouse-grown plants from Canada.* A greenhouse-grown restricted plant may be imported from Canada if the Plant Health and Production Division of the Canadian Food Inspection Agency (CFIA) signs a written agreement with the Animal and Plant Health Inspection Service allowing such importation, and provided that the following conditions are met:

(1) The Plant Health and Production Division of CFIA shall:

(i) * * *

(iv) Issue labels to each grower participating in the program. The labels issued to each grower shall bear a unique number identifying that grower, and shall bear the following statement: ''This shipment of greenhouse-grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Health and Production Division, Canadian Food Inspection Agency.'' The Plant Health and Production Division, CFIA, shall also ensure that the label is placed on the airway bill, bill of lading, or delivery ticket accompanying each shipment of articles; and

* * * * *

(2) Each greenhouse grower participating in the program shall enter into an agreement with the Plant Health and Production Division of CFIA in which the grower agrees to:

(i) Maintain records of the kinds and quantities of plants grown in their greenhouses, including the date of receipt and place of origin of the plants; keep the records for at least 1 year after the plants are shipped to the United States; and make the records available for review and copying upon request by either the Plant Health and Production Division of CFIA or an authorized representative of the Secretary of Agriculture;

(ii) Apply to an airway bill, bill of lading, or delivery ticket for plants to be shipped to the United States a label issued by CFIA that includes the identification number assigned to the grower by the Plant Health and Production Division, CFIA, and the following certification statement: ''This shipment of greenhouse grown plants meets the import requirements of the United States and is believed to be free from injurious plant pests. Issued by Plant Health and Production Division, Canadian Food inspection Agency.''; and

(iii) Use pest control practices approved by Plant Protection and Quarantine and the Plant Health and Production Division of CFIA to exclude pests from the greenhouses.

■ 6. Section 319.37–5 is amended as follows:

■ a. In paragraph (a), by removing the words '', and the Land District of South Saanich on Vancouver Island in British Columbia'' and adding the words ''and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road'' in their place.

■ b. By revising paragraphs (c) and (i) to read as set forth below.

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(c) Any restricted article (except seeds) of *Chrysanthemum* spp. (chrysanthemum), *Dendranthema* spp.

(chrysanthemum), *Leucanthemella serotina,* or *Nipponanthemum nipponicum,* from any foreign place except Europe, Argentina, Brazil, Canada, the Canary Islands, Chile, Colombia, the Republic of South Africa, Uruguay, Venezuela, and all countries and localities located in part or entirely between 90° and 180° east longitude shall, at the time of arrival at the port of first arrival in United States, be accompanied by a phytosanitary certificate of inspection. The phytosanitary certificate of inspection must contain a declaration that such article was grown in a greenhouse nursery and found by the plant protection service of the country in which grown to be free from white rust of chrysanthemum (caused by the rust fungus *Puccinia horiana* P. Henn.) based on visual examination of the parent stock, the articles for importation, and the greenhouse nursery in which the articles for importation and the parent stock were grown, once a month for 4 consecutive months immediately prior to importation.

* * * * *

(i) Any restricted article of *Syringa* spp. (lilac) from the Netherlands is prohibited as specified in § 319.37–2(a) unless, at the time of arrival at the port of first arrival in the United States, the phytosanitary certificate accompanying the article of *Syringa* spp. (lilac) contains a declaration that stipulates that the parent stock was found free of plant diseases by inspection and indexing and that the *Syringa* spp. (lilac) to be imported were propagated either by rooting cuttings from indexed parent plants or by grafting indexed parent plant material on seedling rootstocks, and were grown in:

(1) Fumigated soil (fumigated by applying 400 to 870 pounds of methyl bromide per acre and covering the soil with a tarpaulin for 7 days) in a field at least 3 meters from the nearest nonindexed *Syringa* spp. (lilac), or

(2) Soil that has been sampled and microscopically inspected by the plant protection service of the Netherlands within 12 months preceding issuance of the phytosanitary certificate and that has been found free of the plant parasitic nematodes capable of transmitting European nepoviruses, including, but not limited to, the Arabis mosaic nepovirus.

* * * * *

■ 7. Section 319.37–6 is amended as follows:

■ a. By revising paragraph (d) to read as set forth below.

■ b. In paragraph (e), by removing the words ''Burma,'' and ''Ivory Coast,'' and by adding, in alphabetical order, the words ''Cote d'Ivoire,'' ''Gabon,'' ''Iran,'' and ''Myanmar,''.

§ 319.37–6 Specific treatment and other requirements.

* * * * *

(d) Seeds of *Guizotia abyssinica* (niger seed) are allowed entry only if:

(1) They are treated in accordance with the PPQ Treatment Manual at the time of arrival at the port of first arrival in the United States; or

(2) They are treated prior to shipment to the United States at a facility that is approved by APHIS [9] and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of this section and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be certified in accordance with the conditions described in § 319.37–13(c).

* * * * *

■ 8. Section 319.37–7 is amended as follows:

■ a. In the table in paragraph (a)(3), by adding, in alphabetical order, entries for ''*Brugmansia* spp.'', ''*Datura* spp. (woody species)'', ''*Leucanthemella serotina*'', and ''*Nipponanthemum nipponicum*'' to read as set forth below.

■ b. In the table in paragraph (a)(3), by revising the entries for ''*Aesculus* spp.'', ''*Blighia sapida*'', ''*Datura* spp.'', ''*Ribes* spp.'', and ''*Salix* spp.'' to read as set forth below.

■ c. In paragraph (b), by removing the entry for ''*Phoenix*—date''.

■ d. By revising paragraph (c)(1)(i) to read as set forth below and by adding and reserving paragraph (c)(1)(ii).

■ e. In paragraph (c)(2)(iv), by removing the words ''now know'' and adding the words ''not known'' in their place.

■ f. In paragraph (d)(1), by removing the words ''of an inspector and only to the extent prescribed by the inspector;'' and adding the words ''of the coordinator, Postentry Quarantine Unit, USDA, APHIS, PPQ, Building 580, BARC-East, Beltsville, MD 20705;'' in their place.

■ g. By revising paragraph (d)(4) to read as set forth below.

■ h. By revising paragraph (d)(7) to read as set forth below.

■ i. By removing paragraphs (d)(8) and (d)(9).

■ j. In paragraph (e), by redesignating footnote 9 and its reference in the text as footnote 10.

§ 319.37–7 Postentry quarantine.

(a) * * *

(3) * * *

Restricted articles (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* * *	* * * *
Aesculus spp. (horsechestnut)	All except Canada, Czech Republic, Germany, Romania, Slovakia, United Kingdom.
* * *	* * * *
Blighia sapida (akee)	All except Canada, Cote d'Ivoire, and Nigeria.
* * *	* * * *
Brugmansia spp.	All except Canada and Colombia.
* * *	* * * *
Datura spp.	All except Canada and India.
Datura spp. (woody species)	(See *Brugmansia* spp.)

[9] Criteria for the approval of niger seed treatment facilities are contained in the PPQ Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

Restricted articles (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* * *	* * * * *
Leucanthemella serotina	All except Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.
* * *	* * * * *
Nipponanthemum nipponicum	All except Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.
* * *	* * * * *
Ribes spp.	All except Canada, Europe, and New Zealand.
* * *	* * * * *
Salix spp. (willow)	All of Europe (except Belgium, Germany, Great Britain, and the Netherlands).

* * * * *

(c) * * *

(1) * * *

(i) The following States have entered into a postentry quarantine agreement in accordance with this paragraph: All U.S. States and Territories, except the District of Columbia, Guam, Hawaii, Kansas, and the Northern Mariana Islands.

(ii) [Reserved]

* * * * *

(d) * * *

(4) To keep the article separated from any other plant or plant product by no less than 3 meters (approximately 10 feet) unless such other plant or plant product is of the same genus as the article, entered postentry quarantine with the article, and arrived together with the article in a single shipment from a foreign region;

* * * * *

(7) To grow the article or increase therefrom in postentry quarantine for a period of 2 years unless specified otherwise in the following:

(i) To grow the article or increase therefrom, if an article of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Europe, only in a screenhouse with screening of a minimum of 16 mesh per inch.

(ii) To grow the article or increase therefrom, if an article of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina, Nipponanthemum nipponicum,* or *Dianthus* spp. (carnation, sweet-william), only in a greenhouse or other enclosed building, and to comply with the above conditions for a period of 6 months after importation for an article of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina, Nipponanthemum nipponicum,* and for a period of 1 year after importation for an article of *Dianthus* spp. (carnation, sweet-william).

(iii) To grow the article or increase therefrom, if an article of *Humulus* spp. (hops), a meristem culture of the imported plant will be observed for 6 months, and the original plant will be destroyed after the meristem culture is established. After the 6-month observation, the meristem culture-generated plant must remain in postentry quarantine for an additional year.

* * * * *

■ 9. In § 319.37–8, the introductory text of paragraph (e) and paragraphs (e)(1) and (g) are revised to read as follows:

§ 319.37–8 Growing media.

* * * * *

(e) A restricted article of any of the following groups of plants may be imported established in an approved growing medium listed in this paragraph, if the article meets the conditions of this paragraph, and is accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the article was grown that declares that the article meets the conditions of this paragraph: *Alstroemeria, Ananas, Anthurium, Begonia, Gloxinia* (= *Sinningia*), *Nidularium, Peperomia,* Polypodiophyta (= Filicales) (ferns), Rhododendron from Europe, and *Saintpaulia.*[11]

(1) Approved growing media are baked expanded clay pellets, coal cinder, coir, cork, glass wool, organic and inorganic fibers, peat, perlite, phenol formaldehyde, plastic particles, polyethylene, polymer stabilized starch, polystyrene, polyurethane, rock wool, sphagnum moss, ureaformaldehyde, stockosorb superabsorbent polymer, vermiculite, volcanic rock, or zeolite, or any combination of these media. Growing media must not have been previously used.

* * * * *

(g) *Pest risk evaluation standards for plants established in growing media.* The Animal and Plant Health Inspection Service will conduct a pest risk assessment based on pest risk analysis guidelines established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization in response to each request to allow the importation of additional taxa of plants in growing media. These guidelines are available upon request by writing to USDA, APHIS, PPQ, Permits and Risk Assessment, Commodity Risk Analysis Branch, 4700 River Road Unit 133, Riverdale, MD 20737.

■ 10. In § 319.37–9, the list of approved packing material is amended by adding, in alphabetical order, a new entry to read as follows:

§ 319.37–9 Approved packing material.

* * * * *

Stockosorb superabsorbent polymer.

* * * * *

■ 11. Section § 319.37–13 is amended as follows:

■ a. The section heading is revised as set forth below.

■ b. In paragraph (a), footnote 11 and its reference in the text are redesignated as footnote 12.

■ c. A new paragraph (c) is added to read as follows:

[11] *Ananas* and *Nidularium* are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.37–7.

§ 319.37–13 Treatment and costs and charges for inspection and treatment; treatments applied outside the United States.

* * * * *

(c) Any treatment performed outside the United States must be monitored and certified by an APHIS inspector or an official from the plant protection service of the exporting country. If monitored and certified by an official of the plant protection service of the exporting country, then a phytosanitary certificate must be issued with the following declaration: ''The consignment of (*fill in botanical name*) has been treated in accordance with the Plant Protection and Quarantine Treatment Manual.'' During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by pests and Federal noxious weeds.

§ 319.37–14 [Amended]

■ 15. In § 319.37–14, paragraph (b), in the list of ports of entry, under the undesignated center heading ''TEXAS'', the asterisk immediately before the words ''El Paso'' is removed.

Done in Washington, DC, this 15th day of August 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–21304 Filed 8–19–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1580

RIN 0551–AA66

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service.

ACTION: Final rule.

SUMMARY: This final rule implements the Trade Act of 1974, as amended by the Trade Act of 2002 to establish a new program, Trade Adjustment Assistance (TAA) for Farmers. Under this program, the Department of Agriculture provides technical assistance and cash benefits to eligible producers of raw agricultural commodities when the Administrator, Foreign Agricultural Service (FAS), determines that increased imports have contributed importantly to a specific price decline over five preceding marketing years. The rule establishes the procedure by which producers of raw agricultural commodities can petition for certification of eligibility and apply for technical assistance and adjustment payments.

EFFECTIVE DATE: August 20, 2003.

ADDRESSES: U.S. Department of Agriculture, Foreign Agricultural Service, Import Policies and Programs Division, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Richard Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, by email at *trade.adjustment@fas.usda.gov,* telephone at 202–720–2916, or fax at 202–720–0876.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This rule will not have a significant economic impact on a substantial number of small farm operations. Participation in the program is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the program's benefits should improve cash flow and liquidity for farmers participating in the program.

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Executive Orders 12372, 13083 and 13084, and the Unfunded Mandates Reform Act (P. L. 104–4)

These Executive Orders and Public Law 104–4 require consultation with State and local officials and Indian tribal governments. This rule does not impose an unfunded mandate or any other requirement on State, local or tribal governments. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 13083, and Executive Order 13084, or the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Background

The Trade Act of 2002 (P.L. 107–210) amended the Trade Act of 1974 (19 U.S.C. 2551, *et seq.*) to add a new chapter 6, which establishes a program of trade adjustment assistance for farmers, providing both technical assistance and cash benefits to producers. The statute authorizes an appropriation of not more than $90 million for each fiscal year 2003 through 2007 to carry out the program.

Under this rule, a group of agricultural commodity producers may petition the Administrator of the Foreign Agricultural Service (FAS) for trade adjustment assistance from mid-August through the end of January. FAS will first review the petition for appropriateness, completeness, and timeliness, before publishing a notice in the **Federal Register** that it has been received. The Economic Research Service (ERS) will then conduct a market study to verify the decline in producer prices, and to assess possible causes, taking due account of any special factors which may have affected prices of the articles concerned, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS will report its findings to the FAS Administrator, who will then determine whether or not the group is eligible for trade adjustment assistance. If the national average price in the most recent marketing year for the commodity produced by the group is equal to or less than 80 percent of the average of the national average prices in the preceding 5 marketing years and