DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–102–3]

Importation of Fruit Trees From France

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. plants (except seeds) to be imported into the United States as restricted articles, if grown in private nurseries in France and certified by the French plant protection service to be free of various diseases. This action relieves restrictions on the importation of these articles from France without presenting a significant risk of introducing plant pests (including diseases) into the United States.

We are also removing Laredo, TX, from the list of ports equipped with plant inspection stations.

EFFECTIVE DATE: October 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange or Mr. Peter Grosser, Operations Officers, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD, 20737–1236, (301) 734–8645.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize the Animal and Plant Health Inspection Service (APHIS) to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction of plant pests (including diseases) into the United States.

Regulations promulgated under this authority, among others, include 7 CFR 319.37 through 319.37–14, ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (referred to below as the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. The regulations prohibit or restrict the importation of most plants, roots, bulbs, seeds, and other plant products. These articles are classified as either ''prohibited articles'' or ''restricted articles.''

A prohibited article is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ), APHIS, has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

A restricted article is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to essentially eliminate the risk of its spreading plant pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

On March 13, 1995, we published in the Federal Register (60 FR 13382–13384, Docket No. 94–102–1) a proposed rule to amend § 319.37–5(b) of the regulations to allow *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. grown in private nurseries in France to be imported into the United States as restricted articles under the same conditions specified in the regulations for those same articles when grown in government nurseries in France. All of these restricted articles must be accompanied by a phytosanitary certificate of inspection stating where the article was grown and certifying that the article was found by the plant protection service of the country in which it was grown to be free of various plant diseases. Also, all of the restricted articles listed above are subject to a 2-year postentry quarantine period, as specified in § 319.37–7. In postentry quarantine, restricted articles are grown in an approved area and observed in order to detect plant pests undetectable by inspection at the port of entry. In addition, we proposed to amend § 319.37–14(b) of the regulations by removing the port of Laredo, TX, from the list of ports with plant inspection stations.

We solicited comments concerning our proposal for 30 days ending April 12, 1995. On April 26, 1995, we published a notice (60 FR 20436, Docket No. 94–102–2) reopening and extending the comment period until May 26, 1995. We received a total of four comments on or before May 26. They were from producers, industry representatives, and representatives of State governments. These comments are discussed below.

One commenter expressed concerns about the risks associated with allowing the importation of fruit trees from private nurseries in France. The commenter cited Canada's decision to stop importing grapevines from France due to pest interceptions. The commenter suggested random sampling of imported fruit trees to assure compliance with disease-free certification requirements in § 319.37–5 of the regulations.

We are aware of the problems that Canada encountered with grapevines from France. We understand that those problems have been resolved. Canada now allows the importation of grapevines from France under certain restrictions. Canadian officials detected these problems through routine tests of the imported materials. As described below, APHIS performs routine tests of fruit trees imported into the United States in addition to the requirements for inspections at the port of entry and postentry quarantine.

All of the safeguards that are currently in the regulations for *Chaenomeles, Cydonia, Malus, Prunus,* and *Pyrus* spp. imported into the United States from government nurseries in France will also apply to fruit trees imported into the United States from private nurseries in France. Fruit trees must be imported through an APHIS plant inspection station where they will be inspected for plant pests. If the imported fruit trees are free from such plant pests, samples will be taken and sent to the National Plant Germplasm Quarantine Center (NPGQC) at Beltsville, MD. NPGQC tests the fruit trees for viruses and other submicroscopic pathogens. The balance of the fruit tree shipment is grown under postentry quarantine for two growing seasons at an approved postentry quarantine growing site. The plants are inspected during that period by State plant regulatory officials. These postentry quarantine processes are contained in § 319.37–7 and have successfully protected the United States against the introduction of plant pests while allowing the entry of valuable fruit varieties.

We believe that these safeguards are adequate to prevent the introduction of plant pests into the United States on fruit trees imported from private nurseries in France. Therefore, we are making no changes based on this comment.

One commenter was concerned about the manageability of the postentry quarantine inspections and suggested that we limit the volume of imported fruit trees to that which is needed for propagation purposes, not ''instant orchards.''

The import permits for plants to be grown in postentry quarantine do not limit the number of plants that may be imported into the United States. However, the regulations in § 319.37–7 require that each participating State review pending permit applications for articles to be grown under postentry quarantine conditions in the State and report to APHIS whether the site is of adequate size to contain the number of plants proposed for importation.

As specified in the regulations in § 319.37–7, APHIS issues permits only after determining that State services are available to monitor the postentry quarantine. Therefore, APHIS may withhold approval of a permit application if the applicant indicates the intent to import quantities of postentry plants that the State does not have the resources to inspect, or that exceed an amount that the State believes could be grown at the proposed site. Therefore, APHIS has the ability under § 319.37–7 of the regulations to prevent the importation of an ''instant orchard'' by denying approval of a permit if such actions are justifiable. Therefore, we are making no changes based on this comment.

One commenter expressed concern about the importation of certain of the *Prunus* species (cherry trees) due to a new strain of the plum pox virus that has been detected in cherry trees in Russia and eastern Europe. Prior to this detection, cherry trees had been considered resistant to the plum pox virus.

APHIS is aware of the reports that a new strain of the plum pox virus was detected in cherry trees in Bulgaria, Moldova, and Russia. APHIS is closely watching any developments of this strain of plum pox. At this time, there has been no report of this strain of plum pox being detected in France or the other European countries from which cherry trees currently may be imported into the United States.

Plum pox is also a disease of quarantine importance to France and the other European countries from which cherry trees may be imported into the United States. Fruit tree certification programs in France and other European countries include serological testing of cherry trees that would detect plum pox if it were present. Additionally, plants of the *Prunus* species imported into France and other European countries are held and tested at quarantine stations. These measures prevent disease from coming into France and other European countries from which cherry trees may be imported into the United States. Also, the tests that APHIS performs for all fruit trees imported into the United States from Europe would detect plum pox if any trees were infected. These precautions, and a 2-year postentry quarantine, provide adequate safeguards to prevent the introduction of plum pox into the United States. Therefore, we are making no changes based on this comment.

Plum pox is an important disease of fruit trees; should this strain expand beyond eastern Europe, APHIS would reassess our import regulations to ensure that fruit trees imported into the United States are not infected with plum pox.

One commenter questioned previous occurrences of nursery stock or propagative materials being imported into the United States from private nurseries in France.

While the intention of the regulations was to prohibit the importation into the United States of *Chaenomeles, Cydonia, Malus, Prunus,* and *Pyrus* spp. from private nurseries in France, the regulations were interpreted differently by plant regulatory officials in the United States and abroad. As a result, some fruit trees from private nurseries in France were imported into the United States.

To prevent a similar misunderstanding of the requirements for importing Prunus spp. not immune to plum pox, we are adding wording to § 319.37–5(b) to make it clear that these plants must be grown in a government operated nursery (research station).

Two commenters expressed concern that the importation of fruit trees from private nurseries in France could have a negative economic impact on domestic producers. One commenter suggested that we impose a tariff on fruit trees from France to make the prices more comparable to U.S. trees. The commenter felt that France grows and sells fruit trees much less expensively than U.S. growers can and that fruit trees from France have glutted the European and U.S. fruit tree markets. The other commenter was concerned that easing trade restrictions would be detrimental to domestic markets.

APHIS bases its decisions to allow fruit trees to be imported into the United States on whether these importations can be made without significant risk of plant pest introduction. We believe that certain fruit trees produced in private nurseries in France, certified as meeting the requirements in the regulations by the plant protection service of France, may be imported into the United States without posing a pest risk to the United States. Furthermore, we have no authority to impose tariffs or to limit importations based on their economic impact on domestic markets. Therefore, we are making no changes based on this comment.

Miscellaneous

In addition, we are making nonsubstantive editorial changes to the regulations to correct typographical errors.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations to allow species of the genera *Chaenomeles, Cydonia, Malus, Pyrus,* and certain species of *Prunus* (those immune to plum pox virus) grown in private nurseries in France to be imported into the United States as restricted articles under the same conditions already applied to those same articles when grown in government nurseries in France. All of these restricted articles must be accompanied by a phytosanitary certificate of inspection stating where the article was grown and certifying that the article was found by the plant protection service of the country in which grown to be free of various plant diseases. Also, all of the restricted articles listed above are subject to a 2-year postentry quarantine period, as specified in § 319.37–7.

Prior to this final rule, the regulations stated that species of the genera *Chaenomeles, Cydonia, Malus, Pyrus,* and certain species of *Prunus* (those immune to plum pox virus) could only be certified from a government operated nursery where the original parent stock is indexed for the appropriate national fruit tree program. The regulations did not specify that the trees also must be grown in the government nursery. Thus the regulatory language resulted in different interpretations of its intent by plant regulatory officials in the United States and abroad.

During the first nine months of fiscal year 1994, approximately 312,893 fruit trees valued at $1.64 million were imported into the United States from Belgium, France, and The Netherlands. Importations of *Malus* spp. from all three countries accounted for 99.9

percent (312,840) of imported fruit trees. Thirty-two trees of *Prunus* spp. and 21 of *Pyrus* spp. were also imported. There were no imports of *Chaenomeles* spp. or *Cydonia* spp. Prices of imported fruit trees averaged about $5.25 per tree.

Annually, domestic producers market about 20 million fruit trees of these five genera, valued at approximately $105 million. Domestic tree prices range from $5 to $6 per tree. Imported fruit trees, therefore, currently account for only about 1.5 percent of fruit trees available in the U.S. market.

Shipments from government research stations tend to be small, whereas shipments from private nurseries are generally large. Historically, we have received small shipments from France. In 1994 there was a single importation of 25,000 fruit trees from a private nursery in France. In 1995, there were 4 shipments of fruit trees from France (between 2 and 42 fruit trees per shipment) imported into the United States. Therefore, we expect that as a result of this rule, private nurseries in France could export 20,000 to 30,000 trees to the United States each year. This number of fruit trees would account for less than one-half of one percent of the fruit trees available in the U.S. market. Furthermore, these fruit trees from France probably will compete directly with imports from The Netherlands, thus lessening the impact on U.S. producers. We anticipate, therefore, that this rule will not have a significant economic impact on domestic fruit tree producers or other small entities.

Also, we have determined, using the Small Business Administration definition of a small business involved in the retail nursery business or the wholesale trade of flowers and nursery stock (100 or fewer employees), that there are currently about 9,097 small retail nurseries and 11,347 small wholesale shippers of flowers and nursery stock in the United States. We expect that these small businesses may benefit, if only slightly, from this rule. They will gain access to a greater variety of imported fruit trees, possibly at lower prices.

We are also removing the port of Laredo, TX, from the list of ports with plant inspection stations. About 400 million plants are imported through plant inspection stations into the United States annually. Only 24 shipments of 21,429 plants (less than 1 percent of 400 million) were imported through the plant inspection station at Laredo in 1993. In view of the low volume of plants imported into the United States through the Laredo plant inspection station, we do not believe that this rule will have a significant economic effect on businesses or other entities, large or small. Moreover, any plants requiring written permits and previously imported through Laredo could be diverted to the ports of Brownsville or El Paso, TX, which still retain plant inspection stations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, 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

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 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, 7 CFR part 319 is amended 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 319.37–5 is amended as follows:

a. In paragraph (b)(1), the first sentence is amended by adding the words "the article was" immediately before the words "grown to be" and by removing the reference to "(b)(2)" and adding a reference to "(b)(3)" in its place.

b. Footnote 7 and its reference are removed.

c. Paragraph (b)(2) is redesignated as paragraph (b)(3) and a new paragraph (b)(2) is added to read as set forth below.

d. Paragraph (d) is amended by adding a closed parenthesis immediately after the words "sweet-william".

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(b) * * *

(2) Species of Prunus not immune to plum pox virus (species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis, and P. virginiana*) and grown in Belgium, France, Germany, Great Britain, or The Netherlands shall be certified only from the government operated nurseries (research stations) where the certified plants were grown and the original parent stock is indexed for the appropriate national fruit tree certification program.

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§§ 319.37–5, 319.37–6, 319.37–7, 319.37–8, and 319.37–13 [Amended]

3. Footnotes 8 through 12 and their references are redesignated as footnotes 7 through 11, respectively.

§ 319.37–14 [Amended]

4. In § 319.37–14, paragraph (b), under the list of ports of entry in Texas, the asterisk immediately preceding the entry for Laredo is removed.

Done in Washington, DC, this 25th day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–25100 Filed 9–30–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Research Service

7 CFR Part 502

Conduct on Beltsville Agricultural Research Center Property, Beltsville, Maryland

AGENCY: Agricultural Research Service; Research, Education, and Economics; USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Research Service (ARS) is revising regulations governing conduct on Beltsville Agricultural Research Center (BARC) property. This action is being taken because a review of the regulations identified certain words in the current regulations that are out of date. Other minor changes, corrections and deletions will be made to clarify the regulations.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Area Administrative Officer, Beltsville Area, ARS, Building 003, Room 203, Beltsville, MD 20705; (301) 504–5392.