

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 89-154-3]

#### Importation of *Rhododendron* Established in Growing Media

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period on a proposal to allow the importation of *Rhododendron* established in growing media. Final action on that proposal had been deferred to allow consultation regarding the action with the United States Fish and Wildlife Service, in accordance with the Endangered Species Act. That consultation has been completed, and, as a result, the proposed action has been limited to *Rhododendron* imported only from Europe. This reopening of the comment period will allow interested parties an opportunity to comment on this change to the original proposal.

**DATES:** Consideration will be given only to comments received on or before June 1, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 89-154-3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 89-154-3. Comments received may be inspected 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 comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter M. Grosser, Senior Import Specialist, PIMT, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 7, 1993, we published in the **Federal Register** a proposed rule (58 FR 47074-47084, Docket No. 89-154-1) 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 importation of *Alstroemeria*, *Ananas*, *Anthurium*, and *Nidularium*. The final rule postponed action on *Rhododendron* established in growing media.

Based on comments submitted on the proposed rule, it was determined that before taking final action with regard to importing *Rhododendron*, APHIS should consult with the United States Fish and Wildlife Service regarding potential endangered species impacts associated with importation of *Rhododendron*. This consultation was necessary due to the presence in the United States of species of *Rhododendron* that are listed, and are proposed for listing, as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 *et seq.*). Several commenters noted that an endangered *Rhododendron* species in the United States might be damaged by alien pests introduced on imported *Rhododendron*.

We have now completed that consultation, in compliance with Section 7 of the Endangered Species Act (16 U.S.C. 1537). That consultation<sup>1</sup> revealed that if *Rhododendron* in growing media is imported from Europe in accordance with the requirements proposed by APHIS, such importation is not likely to adversely affect endangered or threatened species or their habitats.

<sup>1</sup> The letters documenting the consultation are available for viewing in the comment reading room (see ADDRESSES) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

However, the consultation also revealed that insufficient data has been assembled to conclusively demonstrate that importing *Rhododendron* in growing media from areas other than Europe would not adversely affect endangered or threatened species or their habitats.

Therefore, we are modifying the provisions of the proposed rule that apply to *Rhododendron*, to apply only to *Rhododendron* from Europe. We propose to add the phrase "*Rhododendron* from Europe" to the list in § 319.37-8(e) of plants that may be imported established in approved growing media. Compliance with Section 7 of the Endangered Species Act has been completed for the importation of *Rhododendron* in growing media from European countries. Should others propose to initiate importation of *Rhododendron* in growing media, that proposed action would be reviewed with the Fish and Wildlife Service under the provisions of the Endangered Species Act at the time of the review.

We are not modifying the provisions of the proposed rule pertaining to three mitigation measures specific to *Rhododendron*. These mitigation measures appeared in the original proposal on September 7, 1993 (58 FR at 47079-80), and, for easy reference, are repeated here. With regard to the first mitigation measure, we propose that the greenhouse screen openings, in facilities which grow and import *Rhododendron* in accordance with § 319.37-8(e), shall not be greater than 0.2 mm. This differs from the current requirement of no greater than 0.6 mm screen openings for all other genera. As indicated in the original proposal, we had identified 10 significant pests of *Rhododendron* that could enter greenhouses through openings greater than 0.2 mm. These *Rhododendron* pests are geometrid and tortricid moths of the genera *Acleris*, *Arichanna*, *Cacoecimorpha*, and *Olethreutes*, the mites *Tarsonemus* and *Phyllocoptes*, the whitefly *Dialeurodes chittendenu*, the leafhopper *Phiogotettis cyclops*, the lace bug *Stephanitis caucasia*, and the scale insect *Eulecanium*. This first mitigation measure specific to *Rhododendron* appears as a proposed amendment to § 319.37-8(e)(2)(ii).

Secondly, we propose to require that the mother stock of *Rhododendron* spp. grown in accordance with the

regulations be visually inspected for signs of specified diseases that could cause substantial damage if introduced into the United States. Visual inspection of *Rhododendron* would be required for evidence of diseases caused by *Chrysomya ledi* var. *rhododendri*, *Erysiphe cruciferarum*, *Erysiphe rhododendri*, *Exobasidium vaccinum* and *E. vaccinum* var. *japonicum*, and *Phomopsis theae*. This second mitigation measure specific to *Rhododendron* appears in proposed § 319.37-8(e)(2)(ix).

Lastly, we propose that *Rhododendron* species must be introduced into the greenhouse as tissue cultures or as rootless stem cuttings from mother plants that have received a pesticide dip prescribed by the plant protection service of the exporting country for mites, scale insects, and whitefly, and that have been grown for at least the previous 6 months in a greenhouse that meets the requirements of § 319.37-8(e)(2)(ii). Treating the mother plants for these pests and growing them in a controlled greenhouse for 6 months makes it very unlikely the mother plants will harbor pests. Allowing the mother plants to be propagated only through tissue culture or rootless stem cuttings makes it probable that, even if the mother plant somehow became infested with these pests, they would not be included in the tissue used to establish new plants for export to the United States. This third mitigation measure specific to *Rhododendron* appears in proposed § 319.37-8(e)(2)(x).

#### Reopening and Extension of Comment Period

We are reopening the comment period on that portion of Docket No. 89-154-1 that concerns the importation of *Rhododendron* established in growing media. We will accept comments for 30 days on the proposal to allow importation of *Rhododendron* in growing media from Europe only. This action will provide interested persons with additional time in which to prepare comments on the importation of *Rhododendron* in growing media from Europe.

Comments already received concerning the proposed importation of *Rhododendron* will remain under consideration and need not be resubmitted.

#### Executive Order 12866 and Regulatory Flexibility Act

The proposed rule (58 FR 47074-47084, Docket No. 89-154-1) has been determined to be economically significant, and was reviewed by OMB under Executive Order 12866.

The composite effect of this rulemaking and several anticipated related rulemakings over the next several years, which could result in allowing importation of over 60 genera of plants in growing media that are currently prohibited, could have effects on U.S.-foreign competition that are within the scope of the definition of economically significant in Executive Order 12866.

At the time we published the proposal to allow importation of *Rhododendron* in growing media on September 7, 1993 (58 FR 47074-47084, Docket No. 89-154-1), we prepared a preliminary Regulatory Impact Analysis (RIA) and a initial Regulatory Flexibility Analysis (RFA) concerning the proposal and future rules allowing the importation of additional plants in growing media. The RIA and RFA took a broad approach and made certain necessary assumptions in order to form an estimate of economic effects. The RIA and RFA assumed that APHIS will propose to allow entry of all plants in growing media for which we have received requests for entry, and made generic assumptions about safeguards and precautionary procedures that may be required for entry of some genera. As announced in the proposed rule, the RIA and RFA will be continually updated and refined as choices are made and rulemaking advances, to incorporate more precise information on the costs, benefits, and other economic effects associated with rulemaking decisions.

The preliminary RIA and RFA addressed the importation of all requested genera, including *Rhododendron*. The preliminary RIA and RFA were updated in a final RIA and RFA in the final rule, which allowed importation of four genera in growing media (but not *Rhododendron*). The final RIA and RFA did not address *Rhododendron*. A cost-benefit analysis and final RFA addressing *Rhododendron*, including any data obtained as a result of comments, will be available when a final rule is published for importing *Rhododendron* from Europe in growing media. Copies of the preliminary RIA and RFA may be obtained by sending a written request to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule would allow *Rhododendron* established in growing media to be imported into the United States from any country in Europe that meets the requirements of

Sec. 319.37-8(e). If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule. Some nursery stock is imported for immediate distribution and sale to the consuming public, and would 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. If this proposed rule is adopted, no retroactive effect will be given to the rule, and the rule will not require administrative proceedings before parties may file suit in court challenging the rule.

#### Paperwork Reduction Act

This proposed 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 would be amended as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue 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).

#### § 319.37-8 [Amended]

2. Section 319.37-8 would be amended as follows:

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

b. In the second sentence in paragraph (e)(2)(ii), 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 semi-colon 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) If *Rhododendron* species, 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 vaccinum* and *vaccinum* var. *japonicum*, and *Phomopsis theae*; and

(x) If *Rhododendron* species, 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 23rd day of April 1998.

**Charles P. Schwalbe,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Brazil. The actions specified by the proposed AD are intended to prevent inefficiency of the engine lubricating system because of ineffective flexible hoses, which could result in an in-flight engine shutdown with consequent loss of powered glider controllability.

**DATES:** Comments must be received on or before June 9, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-27-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industrias-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis Jackson, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6083; facsimile: (770) 703-6097.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-CE-27-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-27-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

The Centro Tecnico Aeroespacial (CTA), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain Aeromot Model AMT-200 powered gliders. The CTA reports that the steel piping in the engine oil system on the above-referenced powered gliders was replaced with flexible hoses that have a smaller internal diameter. These smaller diameter hoses lead to inefficiency of the engine lubricating system.

This condition, if not corrected in a timely manner, could result in an in-flight engine shutdown with consequent loss of powered glider controllability.

**Relevant Service Information**

Aeromot has issued Service Bulletin (SB) B.S. No. 200-79-036, Issue Date: January 30, 1997, which specifies procedures for replacing any engine oil system hose, part number 10702, 10703, or 10704; with a hose with a larger internal diameter, part number 10706, 10707, or 10708.

The CTA classified this service bulletin as mandatory and issued Brazilian AD 97-04-02, dated April 8, 1997, in order to assure the continued airworthiness of these gliders in Brazil.

**The FAA's Determination**

This powered glider model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CTA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CTA; reviewed all available information, including the service information referenced above; and

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 98-CE-27-AD]

RIN 2120-AA64

**Airworthiness Directives; Aeromot-Industria Mecanico Metalurgica Ltda. Model AMT-200 Powered Gliders**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Aeromot-Industria Mecanico Metalurgica Ltda. (Aeromot) Model AMT-200 powered gliders. The proposed AD would require replacing certain flexible hoses in the engine oil system with flexible hoses with a larger internal diameter. The proposed AD is