

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. 98–103–1]

Importation of Artificially Dwarfed Plants in Growing Media From the People's Republic of China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations governing the importation of plants and plant products to allow artificially dwarfed (penjing) plants of the genera *Buxus*, *Ehretia* (*Carmona*), *Podocarpus*, *Sageretia*, and *Serissa* to be imported into the United States from the People's Republic of China in an approved growing medium subject to specified growing, inspection, and certification requirements. We have assessed the pest risks associated with the importation of these artificially dwarfed plants established in growing media and have determined that they may be imported from the People's Republic of China under the conditions proposed without presenting a significant risk of introducing or disseminating dangerous plant pests. This proposed rule would relieve restrictions that currently allow these genera to be imported only as bare-rooted plants.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by November 20, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–103–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–103–1.

You may read any comments that we receive on this docket in our reading

room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepur.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products 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.

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

That combination approach found in § 319.37–8(e) provides conditions under

which plants from 10 listed taxa may be imported into the United States established in an approved growing medium. In addition to other requirements, § 319.37–8(e):

- Specifies the types of growing media that may be used;
- Requires plants to be grown in accordance with written agreements between the Animal and Plant Health Inspection Service (APHIS) and the plant protection service of the country where the plants are grown and between the foreign plant protection service and the grower;

- Requires the plants to be rooted and grown in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);

- Restricts the source of the seeds or parent plants used to produce the plants, and requires grow-out or treatment of parent plants imported into the exporting country from another country;

- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and

- Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the plant protection service of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used successfully to mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in growing media.

In 1994, the Animal and Plant Quarantine Service of the People's Republic of China (CAPQ) requested that APHIS consider amending the regulations to allow *Buxus* (Buxaceae) spp., *Ehretia* (*Carmona*) (Boraginaceae) spp., *Podocarpus* (Podocarpaceae) spp., *Sageretia* (*theazans*) (Rhamnaceae) spp., and *Serissa* (Rubiaceae) spp. to be imported into the United States under the conditions set forth in § 319–37–8(e). These species are commonly traded as artificially dwarfed plants (often

referred to as “penjing” in China and “bonsai” in Japan) and are currently allowed to be imported into the United States only as bare-rooted plants.

The regulations in § 319.37–8(g) provide that we will evaluate a request such as that made by China to allow the importation of additional taxa of plants established in growing media using specific pest risk evaluation standards. We conduct that assessment to determine the plant pest risks associated with each requested plant article and to determine whether or not we will propose to allow the requested plant article established in growing media to be imported into the United States. The pest risk evaluation, the standards for which are set forth in § 319.37–8(g)(1) through (g)(4), involves collecting commodity information, cataloging quarantine pests, conducting individual pest risk assessments, and determining an overall estimation of risk based on a compilation of the component estimates.

After receiving China’s request to allow the importation of *Buxus* spp., *Ehretia* (*Carmona*) spp., *Podocarpus* spp., *Sageretia* spp., and *Serissa* spp. artificially dwarfed (penjing) plants established in growing media, we conducted a pest risk assessment. The assessment is described in a qualitative, pathway-initiated pest risk assessment titled “Pest Risk Assessments Penjing Plants from China,” copies of which are available through the person listed under **FOR FURTHER INFORMATION**.

CONTACT. The pest risk assessment identified arthropod pests, mollusks, nematodes, and fungi as the plant pests most likely to travel with the plant and having the greatest potential for economic damage. Several of the pests were identified in the pest risk assessment for each genus. It is important to note, however, that our pest risk assessment did not include a risk management component, *i.e.*, it did not take into account the mitigative effects of the requirements of § 319.37–8(e), which are designed to establish and maintain a pest-free production environment and ensure the use of pest-free seeds or parent plants.

We have determined that the existing regulations in § 319.37–8(e) that pertain to the importation of plants in growing media would not, by themselves, provide adequate protection against certain pests that may be present in shipments of artificially dwarfed plants from China that are established in growing media. In order to address the pest risks posed by these plants, we have identified additional risk management measures related to propagative cuttings, inspections,

treatment, and greenhouse growing to protect against pest introduction. These measures would apply only to the five genera of artificially dwarfed (penjing) plants identified in this proposed rule and would supplement the general requirements that apply to all plants that are imported in growing media under § 319.37–8(e). Descriptions of each of these risk management measures follow. We propose to add these risk management measures to the regulations in § 319.37–8(e).

1. We propose to require that the propagative materials used to produce the artificially dwarfed (penjing) plants enter an approved greenhouse as either seeds, tissue cultures, unrooted cuttings, or rooted cuttings. If the rooted cuttings were grown in soil, the soil would be required to be sampled and found free from, or fumigated for, the nematodes *Paratrophorus* spp., *Tylenchorhynchus crassicaudatus*, and *Tylenchorhynchus leviterinalis* within the 12 months prior to the introduction of the plants into the greenhouse. Before rooted or unrooted cuttings are introduced into the greenhouse, they would be required to be inspected and found free of pests and then treated with a pesticide dip, approved by CAPQ, that would control mites, scale insects, whiteflies, thrips, and fungi. Rooted cuttings would also be required to be treated with a nematicide dip in addition to or in conjunction with the pesticide dip.

This requirement is necessary because the propagative materials used to produce artificially dwarfed plants are derived from mother plants that are not grown within the controlled environment of a greenhouse. Mother plants that are grown outdoors necessarily present a high risk of infestation with nematodes, mites, scale insects, whiteflies, thrips, and fungi that, left untreated, could be spread to plants intended for export. These measures help to ensure that seeds, tissue cultures, unrooted cuttings, or rooted cuttings enter the greenhouse free from such pests. If the rooted cuttings were grown in soil, the soil would have to be sampled and/or fumigated for the nematodes *Paratrophorus* spp., *Tylenchorhynchus crassicaudatus*, and *Tylenchorhynchus leviterinalis* because these nematodes were identified in the “Pest Risk Assessments Penjing Plants from China” as presenting, in the absence of mitigation measures, both a high likelihood of introduction and severe economic consequences in the event of an introduction. By sampling and/or fumigating soil for nematodes, and by applying pesticide dips to cuttings, and an additional nematicide dip to rooted

cuttings, the risk that plants intended for export could be exposed to the pests identified above is decreased to a negligible level.

2. We propose to require the mother plants from which the artificially dwarfed (penjing) plants are produced to be visually inspected by an APHIS inspector or an inspector of CAPQ and found free of evidence of *Paratrophorus* spp., *Tylenchorhynchus crassicaudatus*, and *Tylenchorhynchus leviterinalis* nematodes and the following species-specific diseases and organisms:

- For *Buxus* spp.: *Guignardia miribelii*, *Macrophoma ehretiae*, *Meliola buxicola*, and *Puccinia buxi*.
- For *Ehretia* spp.: *Macrophoma ehretiae*, *Phakopsora ehretiae*, *Pseudocercospora ehretiae*, *Pseudocercospora ehretiae-thyrsoflora*, *Uncinula ehretiae*, *Uredo ehretiae*, and *Uredo garanbiensis*.
- For *Podocarpus* spp.: *Pestalospaeria jinggangensis*, *Pestalotia diospyri*, *Phellinus noxius*, and *Sphaerella podocarpi*.
- For *Sageretia* spp.: *Aecidium sageretiae*.
- For *Serissa* spp.: *Melampsora serissicola*.

The above species-specific diseases and organisms were identified in “Pest Risk Assessments Penjing Plants from China” as presenting, in the absence of mitigation measures, both a high likelihood of introduction and severe economic consequences in the event of an introduction. Inspectors can visually identify evidence of the presence of any of the above pests in *Buxus* spp., *Ehretia* spp., *Podocarpus* spp., *Sageretia* spp., and *Serissa* spp. This requirement will help to ensure that propagative materials used to produce artificially dwarfed plants enter the greenhouse free from the pests identified above.

3. We propose to require the artificially dwarfed (penjing) plants to have been grown in an approved greenhouse for at least 6 months immediately prior to export. In addition to other phytosanitary procedures required under § 319.37–8(e), the greenhouses would have to have mesh screens with openings no larger than 0.6 mm if the plants had been treated with broad spectrum pesticides at least once a month for the 3 months before shipping. Otherwise, the vents and openings of the greenhouse would have to be covered with mesh screens with openings no larger than 0.2 mm.

We are proposing this requirement because plants that have been grown in an approved greenhouse for 6 months are easier to observe for signs of pest infestations and generally pose less of a

risk of pest infestation due to their controlled environment. Further, we have determined that treatment of the plants with broad spectrum pesticides would decrease the possibility that plants could be infested with pests such as thrips and whiteflies that could otherwise enter the greenhouse through 0.6 mm mesh screens. In order to preclude infestations of those pests without the use of broad spectrum pesticides, vents in the greenhouses would be required to be screened with 0.2 mm mesh.

Based on the pest risk assessment, we have determined that *Buxus* spp., *Ehretia* (*Carmona*) spp., *Podocarpus* spp., *Sageretia* spp., and *Serissa* spp. artificially dwarfed (*penjing*) plants established in growing media could be imported from the People's Republic of China under § 319.37–8(e) and the additional conditions described in this proposed rule without posing any greater plant pest risk than is posed by the importation of these species as bare-rooted plants under § 319.37–8(a). We have also determined that sufficient APHIS resources are available to implement or ensure implementation of the proposed mitigation measures described above, as required under § 319.37–8(g)(4)(ii) of the regulations. Therefore, we propose to amend the regulations to allow *Buxus* spp., *Ehretia* (*Carmona*) spp., *Podocarpus* spp., *Sageretia* spp., and *Serissa* spp. to be imported in approved growing media subject to those conditions.

In this document, we are also correcting the number of a footnote in § 319.37–8(e).

Fish and Wildlife Service Consultation About Potential Impacts to Endangered Species

APHIS has begun the process of informal consultation with the U.S. Fish and Wildlife Service¹ to assess the potential effects of this proposed rule on endangered or threatened species. We believe that the phytosanitary measures that we have proposed would effectively mitigate the risk of introducing quarantine pests. Therefore, we currently have no reason to believe that there would be effects on any endangered or threatened species associated with this rulemaking. If, during our consultation with the U.S. Fish and Wildlife Service, we determine that this proposal would have effects on endangered or threatened species, we will take appropriate action. Executive

Order 12866 and Regulatory Flexibility Act.

This proposed 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.

This proposal would allow five genera of artificially dwarfed (*penjing*) plants established in approved growing media to be imported into the United States from the People's Republic of China. The five genera are: *Buxus*, *Ehretia* (*carmona*), *Podocarpus*, *Sageretia*, and *Serissa*. Plants imported or offered for importation under this program would be required to be presented for inspection at ports of entry with special inspection and treatment facilities, and they would be allowed to enter the United States only under specific conditions designed to prevent the introduction of plant pests.

In China, trained miniature or artificially dwarfed artistic potted plants are called *penjing* (most Americans are more familiar with the related Japanese term, *bonsai*). *Penjing* plants may range from 4 to 60 inches in height. Various styles of potted *penjing* plants are developed and shaped using specific preferred varieties of trees and other plants most fitted to each particular distinctive style. In China, there are over 160 species of trees, as well as a number of other plants, considered suitable for *penjing* development. Among the most commonly used are apricot, box, camellia, carmonas, cypress, elm, flowering quince, Fujian tea bush, ginkgo, hedge, jasmine orange, juniper, maple, ornamental apple, pine, pomegranate, *sageretia*, *serissa*, stone yew, and yew *podocarpus*. Each school of styles uses various combinations of these trees to painstakingly develop the preferred miniature of the parent tree. The objective is to make the *penjing* plants look as natural, ancient, and picturesque as their large relatives. Growing *penjing* plants is highly labor intensive and requires much time. Some of these plants have been actively cultivated for hundreds of years by succeeding generations. *Penjing* plants may be cultivated either from natural trees by cutting, pruning, and shaping, or propagated artificially through seeding, cutting, grafting, and a process known as layering.

The art of miniature tree gardening is a relatively recent phenomenon in the United States. Because it is highly time consuming and very labor intensive, it is practiced by a relatively small number of households. Acquiring the already developed trees can be an

expensive investment, with prices ranging between \$40 and \$10,000 per plant. Value increases with age, regardless of size. Information on the number of households that own *penjing* plants is not available. However, if the size of the industry is an indicator, then the number of households may be very small. Currently, there are about 400 companies in the United States engaged in the production and distribution of artificially dwarfed plants and related materials, with gross revenue of less than \$10 million. Most of these establishments are family owned and operated. Some are plant and seed producers. Other companies are engaged in supplying tools and stands for artificially dwarfed plants. Still others specialize in the production of pots and containers. Certain companies also produce business newsletters and magazines or are otherwise engaged in consulting. Approximately 99 percent of these firms are considered to be small entities.

Artificially dwarfed plants imported into the United States come from the People's Republic of China, Japan, and the Republic of Korea. None of the artificially dwarfed plants are currently imported in growing media. Between 5 and 10 companies import about 20,000 bare-rooted artificially dwarfed plants (about 5,000 from China, 10,000 from Japan, and 5,000 from Korea) annually. To minimize the time between unpotting and repotting these plants so the bare-rooted plants are not damaged, they are shipped by air. Since the cost of air shipment of these plants is based not only on weight but also on space occupied, the cost per unit is quite high. The cost of transporting the plants in a growing media, by ship, would be lower than the current air freight cost.

We expect that adoption of this proposed rule would cause a slight decrease in the costs of business for importers of artificially dwarfed plants. The cost reduction would be mainly from reduced transportation expenses. The ability to import *penjing* plants in growing media would allow importers to use sea transport without risking the loss of valuable plants. The average savings per importer would depend on the number of *penjing* plants moved by air versus by sea. Those entities that opt to ship their products by sea could save as much as 50 percent per unit. If these savings were passed on to *penjing* buyers, consumers could benefit from lower prices.

¹ The U.S. Fish and Wildlife Service has recommended that APHIS enter into formal section 7 consultation, as required by the Endangered Species Act (ESA) for all Federal actions that may affect species listed under the ESA.

Since the price of other ornamental trees and plants is relatively much lower than penjing plants, their competitive advantage over penjing plants would continue to be great even with reduced prices for penjing plants. It is also unlikely that more people would be drawn to purchase these plants as a result of the proposed rule, as unique individual preferences are not changed by such minor cost reductions. Therefore, we expect that overall effects of this proposed rule upon price and competitiveness would be relatively insignificant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Executive Order 12988.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. 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.

National Environmental Policy Act

APHIS has begun the process of preparing an environmental assessment for this action. When the environmental assessment has been completed, we will publish a notice in the **Federal Register** that announces the availability of the environmental assessment and requests public comment on it. We will also make the environmental assessment available to the public for inspection on the APHIS web site at <http://www.aphis.usda.gov/ppd/ead/ppqdocs.html>.

The environmental assessment will be prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

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, Logs, Nursery stock, Plant diseases and pests, Quarantine,

Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would be revised to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166 and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.37–8, paragraph (e) would be amended as follows:

a. By revising the introductory text.

b. In paragraph (e)(2)(ix), by removing the word “and” at the end of the paragraph.

c. In paragraph (e)(2)(x)(B), by removing the period at the end of the paragraph and adding in its place a semicolon followed by the word “and”.

d. By adding new paragraph (e)(2)(xi).

§ 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*¹⁰, *Anthurium* Artificially dwarfed (penjing) plants from the People's Republic of China as follows:

Buxus spp., *Ehretia* (*Carmona*) spp., *Podocarpus* spp., *Sageretia* spp., and *Serissa* spp., *Begonia*, *Gloxinia* (= *Sinningia*), *Nidularium*¹⁰, *Peperomia*, Polypodiophyta (=Filicales) (ferns), Rhododendron from Europe, *Saintpaulia*.

* * * * *

(2) * * *

(xi) Artificially dwarfed (penjing) plants of the genera *Buxus*, *Ehretia* (*Carmona*), *Podocarpus*, *Sageretia*, and *Serissa* from the People's Republic of China must also meet the following conditions:

(A) *Propagative cuttings*. The propagative materials used to produce the artificially dwarfed (penjing) plants may enter an approved greenhouse only as seeds, tissue cultures, unrooted cuttings, or rooted cuttings. If the rooted cuttings were grown in soil, the soil must have been sampled and found free from, or fumigated for, the nematodes

Paratrophorus spp., *Tylenchorhynchus crassicaudatus*, and *Tylenchorhynchus leviterinalis* within the 12 months prior to introduction of the plants into the greenhouse.

(B) *Inspection and treatment*. When any cuttings are introduced into the greenhouse, they must be inspected and found free of plant pests and then treated with a pesticide dip, approved by the Animal and Plant Quarantine Service of the People's Republic of China, that will control mites, scale insects, whiteflies, thrips, and fungi. Rooted cuttings must also be treated with a nematicide dip in addition to or in conjunction with the pesticide dip. The artificially dwarfed (penjing) plants must be propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the Animal and Plant Quarantine Service of the People's Republic of China, found free of evidence of *Paratrophorus* spp., *Tylenchorhynchus crassicaudatus*, and *Tylenchorhynchus leviterinalis* nematodes and found free of evidence of the following species-specific diseases and organisms:

(1) For *Buxus* spp.: *Guignardia miribelii*, *Macrophoma ehretiae*, *Meliola buxicola*, and *Puccinia buxi*.

(2) For *Ehretia* spp.: *Macrophoma ehretiae*, *Phakopsora ehretiae*, *Pseudocercospora ehretiae*, *Pseudocercospora ehretiae-thyrsoflora*, *Uncinula ehretiae*, *Uredo ehretiae*, and *Uredo garanbiensis*.

(3) For *Podocarpus* spp.: *Pestalotia jinggangensis*, *Pestalotia diospyri*, *Phellinus noxius*, and *Sphaerella podocarpi*.

(4) For *Sageretia* spp.: *Aecidium sageretiae*.

(5) For *Serissa* spp.: *Melampsora serissicola*.

(C) *Growing*. The artificially dwarfed (penjing) plants must be grown in an approved greenhouse for at least 6 months immediately prior to export.

(D) *Greenhouse screens*. Greenhouses in which the artificially dwarfed (penjing) plants are grown must have mesh screens with openings no larger than 0.6 mm if the plants have been treated, at least once a month for the 3 months before shipping, with broad spectrum pesticides. Otherwise, the vents and openings of an approved greenhouse must be covered with mesh screens with openings no larger than 0.2 mm.

* * * * *

Done in Washington, DC, this 14th day of September 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–24133 Filed 9–19–00; 8:45 am]

BILLING CODE 3410–34–P

¹⁰ These articles are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.7–7.