

Comments that specifically addressed only *Rhododendron* issues are not discussed in this document. They will be addressed in any future rulemaking on the proposed *Rhododendron* provisions.

The Acceptable Level of Risk for Importing Plants in Growing Media

Several commenters argued that APHIS is subject to strict statutory standards that would preclude regulations allowing importation of articles if there is any plant pest risk associated with the importation. One commenter stated that "[t]he Plant Quarantine Act on its face indicates that the Secretary of Agriculture and his delegate, APHIS, should err on the side of caution: 'whenever' importation of plants 'may result' in the introduction and spread of injurious plant pests, then importations 'shall' be restricted." This commenter cited § 159 of the Plant Quarantine Act (7 U.S.C. 151 *et seq.*), which states:

Whenever the Secretary of Agriculture shall determine that the unrestricted importation of any plants, fruits, vegetables, roots, bulbs, seeds, or other plant products not included by the term "nursery stock" as defined in section 152 of this title may result in the entry into the United States or any of its Territories or Districts of injurious plant diseases or insect pests, he shall promulgate his determination, specifying the class of plants and plant products the importation of which shall be restricted and the country and locality where they are grown, and thereafter, and until such promulgation is withdrawn, such plants and plant products imported or offered for import into the United States or any of its Territories or Districts shall be subject to all the provisions of sections 154 and 156 to 158 of this title.

Response: This section clearly states that it is the responsibility of the Secretary to determine when unrestricted importations "may result" in the introduction and spread of injurious plant pests. If such a determination is made, the Secretary is not required to prohibit the importation. He or she may restrict it; the appropriate restriction may involve a prohibition, or may involve importation under conditions to control pest risk.

Therefore, the Secretary is not obliged to prohibit the importation of the genera in the proposal 'whenever' importation of plants 'may result' in the introduction and spread of injurious plant pests. Instead, importation of the articles is subject to the standards of § 154, which give the Secretary a great deal of discretion in deciding when and what types of import restrictions are necessary. Section 154 generally requires that nursery stock imports must be authorized by a permit, accompanied

by a certificate, and imported "under such conditions and regulations as the said Secretary of Agriculture may prescribe." The Secretary is also authorized "to limit entry of nursery stock from foreign countries under such rules and regulations as he may deem necessary" (emphasis added).

The proposed rule supported the goal of preventing the introduction and establishment of dangerous plant pests by proposing methods the Secretary deems effective in supporting this goal. Therefore, we believe the proposed action is consistent with the Plant Quarantine Act standards.

Adequacy of Port-of-Arrival Inspection To Mitigate Pest Risk

Many commenters stated that inspection at the port of arrival is not an effective means for preventing the entry of pests. Some cited instances where shipments that passed such an inspection were later found to be infested with pests. Other commenters noted that many diseases and small pests cannot be effectively identified through visual inspection. Some questioned whether APHIS had sufficient resources to continuously implement effective inspection programs at all ports of entry.

Response: Current conditions for any imported article allow for inspection at the port of first arrival; however, because any pests that might be in the media cannot be readily observed, we have imposed conditions concerning origin, testing, growth, inspection and storage of the plants that should essentially eliminate the risk of exotic pests being present in the media. This scheme to ensure freedom of the media from pests has been proven over nearly 20 years of importations.

Reliance on Foreign Plant Protection Services

Several commenters stated that the proposal relies heavily on cooperation by the plant protection services of foreign countries to inspect growing facilities and ensure that articles to be exported to the United States are grown in compliance with regulatory standards. They maintained that these foreign plant protection services may not effectively fulfill their role in enforcing the regulations, and that APHIS does not have the authority or resources to ensure that they do so.

Response: Each foreign grower is required to sign an agreement with the plant protection organization of the foreign country, agreeing to abide by the conditions of our regulations. In addition, each exporting country must sign an agreement with APHIS agreeing

to implement the conditions of the regulations. The producing greenhouses and the growing plants must be made available for inspection by inspectors of APHIS and the foreign plant protection organization. No shipment will be allowed entry into the United States unless the accompanying phytosanitary certificate is endorsed by an APHIS inspector, either in the country of export or the port of entry, as required by the regulation. This endorsement is based on monitoring inspections that show that the plants were grown under the requirements of the regulations. Also, if pests are found or other violations noted, individual shippers or greenhouse growers can be suspended from preclearance. APHIS has a record of prohibiting the importation of, or requiring treatments for, various commodities that were repeatedly found infested or infected with exotic plant pests. However, no such action has been taken with plants in growing media shipped under § 319.37-8(e) or -8(f) because no exotic pests have ever been found with such shipments.

Comments in Favor of the Proposal

Several commenters stressed that the APHIS proposal does not relax the level of protection against pests associated with plants imported in growing media, and that the proposal essentially would allow the entry in media of genera that are already allowed entry if bare-rooted. These commenters also stated that the proposed media have proven to be of no or very low risk, and that compliance agreements between foreign growers and their governments and between foreign governments and APHIS provide all necessary guarantees and are enforceable.

Supportive commenters also believe that adequate inspection will be available since only a few growers will participate in the program, and further note that APHIS has long experience in inspecting plants abroad and at ports of arrival. They also believe the proposal would not result in a magnitude of imports that would overwhelm enforcement and inspection resources since observing APHIS requirements would be very expensive.

Choosing Which Genera To Import

Several commenters stated that the five genera in the proposal were not chosen because they represent genera which pose the least risk if imported, but because they are the most economically attractive genera for importation.

Response: Over the last 20 years, approximately 60 genera of plants in media have been requested for