

Rules and Regulations

Federal Register

Vol. 62, No. 237

Wednesday, December 10, 1997

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 320, 330, and 352

[Docket No. 97-037-2]

Removal of Mexican Border Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the regulations at 7 CFR part 320, "Mexican Border Regulations," which serve to prevent the introduction into the United States of plant pests from Mexico by regulating the importation of vehicles, soil, and other materials from Mexico. The regulations at 7 CFR part 330, "Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage," serve to prevent the introduction into the United States of plant pests from all foreign countries, including Mexico, by regulating the importation of plant pests themselves, as well as vehicles, soil, and other materials. The provisions in the "Mexican Border Regulations" to prevent the entry of plant pests from Mexico are covered in part 330. Therefore, the regulations in part 320 are unnecessary and will be removed. This action meets the President's regulatory reform goal of removing redundant Federal regulations.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Petit de Mange, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236, (301) 734-6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 7 CFR part 320, "Mexican Border Regulations," serve to prevent the entry into the United States of plant pests from Mexico by regulating the importation of vehicles, soil, and other materials from Mexico. These regulations were established to carry out the Mexican Border Act (7 U.S.C. 149), which authorizes the Secretary of Agriculture to inspect, clean, and, when necessary, disinfect railway cars, other vehicles, and materials entering the United States from Mexico.

The regulations at 7 CFR part 330, "Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage," serve to prevent the dissemination of plant pests into or within the United States by regulating the movement of plant pests, means of conveyance, earth, stone and quarry products, garbage, and certain other products and articles into or through the United States. The regulations at part 330 are authorized by the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*).

On August 14, 1997, we published in the **Federal Register** (62 FR 43487-43489, Docket No. 97-037-1) a proposal to remove the Mexican Border Regulations and all references to these regulations in title 7 and to correct some erroneous references to a section in 7 CFR part 319 that no longer exists. We proposed this action in accordance with the President's Regulatory Reform Initiative. We do not believe that the Mexican Border Regulations are necessary for the U.S. Department of Agriculture (USDA) to prevent the introduction of plant pests from Mexico into the United States via imported vehicles, soil, and other materials. We believe that the Mexican Border Regulations are redundant because of the existence of part 330, which regulates the importation of plant pests themselves, as well as vehicles, soil, and other materials, from any foreign country, including Mexico.

We solicited comments concerning our proposal for 60 days ending October 14, 1997. We received two comments by that date. They were from organizations representing the interests of California avocado producers. The comments are discussed below.

The commenters contend that the Mexican Border Regulations are not unnecessary and question USDA's authority to remove these regulations. The commenters state that these regulations are mandated by law. One commenter stated that it is critical for our agency to adhere to the Congressional Review of Agency Rulemaking Act of 1996, which requires Federal agencies to submit copies of final rules to Congress prior to their effective dates.

According to the Mexican Border Act, the Secretary of Agriculture is "authorized and directed to promulgate such rules and regulations as he may deem necessary to regulate the entry into the United States of railway cars and other vehicles and freight, express, baggage, and other materials which may carry" plant pests and diseases (emphasis added). The Secretary is not legally bound by the law to promulgate any regulations, much less a specific part of the Code of Federal Regulations for the exclusive purpose of administering the Mexican Border Act. However, we believe that the regulations in 7 CFR part 330 carry out the Mexican Border Act. To make this point clear, we are adding through this final rule the citation for the Mexican Border Act (7 U.S.C. 149) to the list of authority citations in part 330. As with all final rules prepared by our agency, we will submit a copy of this final rule to Congress prior to the rule's effective date.

One commenter requested that USDA reaffirm in the final rule "that Part 330 stands as a comprehensive regulatory program directed at preventing the introduction and/or dissemination of plant pests and diseases into the United States." The commenter further requested that USDA reaffirm that the regulations in part 330 cover all the products (regulated vehicles, articles, and materials) currently covered by part 320.

The regulations in part 330 do not constitute a program per se. The purpose of the regulations in part 330, as stated in § 330.101, is "to prevent the dissemination of plant pests into the United States, or interstate, by regulating the movement of plant pests into or through the United States, or interstate, and the movement of means of conveyance, earth, stone and quarry products, garbage, and certain other

products and articles. * * * In carrying out our mission of protecting U.S. agriculture, our agency administers these regulations through several programs. We reiterate that all of the items covered in part 320 are also covered in part 330. According to § 330.105, “ * * * all plant pests; means of conveyance and their stores; baggage; mail; plants; plant products; soil; stone and quarry products under § 330.300; garbage; and any other product or article of any character whatsoever which an inspector considers may be infested or infected by or contain a plant pest, arriving in the United States from any place outside thereof for entry into or movement through the United States shall be subject to inspection * * * ” (emphasis added).

The commenters questioned the timing of our proposal. They expressed particular concern because, as of November 1, Mexican avocados have been allowed to be imported into 19 northeastern States of the United States. In addition, one commenter questioned the timing of this rulemaking action because of recent incidents of food safety problems related to imported produce and the recent Presidential initiative to increase food safety inspections of fruit and vegetables overseas. The commenter also stated that the timing was inappropriate in light of the current attempt by the Administration to obtain “fast-track” authority for the President to negotiate new trade agreements.

Our agency has no authority in regard to food that poses threats to human health. We inspect imported agricultural products and other articles to ensure that they do not introduce foreign agricultural pests and diseases that could harm U.S. crops. Ensuring food safety is the responsibility of other Federal agencies. However, this rulemaking will have no impact on either food safety or crop protection, because it does not change any inspection procedures or authorities. In addition, the Administration’s attempt to gain fast-track authority in regard to trade is a political issue outside our jurisdiction. Consequently, this rulemaking action is entirely unrelated to and has no bearing on this issue. In regard to the importation of Mexican avocados, the timing of this action is purely coincidental. However, this action will in no way change our ability to take regulatory action, should the need arise, in regard to imported Mexican avocados. We have ample authority under part 330 and other parts of title 7 to take any necessary action in the unlikely event imported Mexican

avocados are found to present a threat to U.S. agriculture.

The commenters were concerned that elimination of the Mexican Border Regulations could somehow weaken U.S. quarantine security and, therefore, present a risk of avocado pest introduction. One commenter was concerned that the purpose of the Mexican Border Regulations is “to prevent the introduction of insect pests and diseases,” while the purpose of the Federal plant pest regulations is “to prevent the dissemination of plant pests into the United States.” The commenter was particularly concerned that “dissemination in this context is something less than introduction.” The commenter believes that the standard for prevention of plant pests is higher in the Mexican Border Regulations than in the Federal plant pest regulations.

Elimination of the Mexican Border Regulations is merely an administrative action to remove redundant Federal regulations. This action will have no effect on any regulatory activities performed by our agency to protect U.S. agriculture. We take action on imported products based on the phytosanitary risk they present. Moreover, part 320 provides neither more nor less authority than part 330 in regard to regulating articles imported from Mexico. Our treatment of regulated articles from Mexico will be the same under part 330 as it has been under part 320.

In regard to the difference between the terms “introduction” and “dissemination” as they are used, respectively, in parts 320 and 330, we believe that the intent of both usages is the same: The prevention of threats to U.S. plant health from exotic pests. However, we believe the commenter’s interpretation of the level of quarantine security implied by the two words is actually reversed. Our agency considers preventing the dissemination of a pest into the United States to mean preventing *any entry* of the pest. Whereas the *NAPPO Compendium of Phytosanitary Terms* (a publication that defines terminology used by the North American Plant Protection Organization) defines introduction as “entry and establishment of a pest” and “entry of a pest, resulting in establishment.”

One commenter stated that ensuring quarantine security should be USDA’s overriding goal and that this goal should not be “sacrificed” to facilitate trade. The commenter further stated that the Mexican Border Regulations require “as a condition of entry into the United States from Mexico all articles and materials * * * shall be subject to examination by an inspector,” while the

Federal plant pest regulations require that USDA “employ procedures * * * which will *impose a minimum of impediment to foreign commerce*” (emphasis added by commenter).

In fulfilling our agency’s mission of protecting American agriculture, ensuring quarantine security is our primary objective. However, providing quarantine security by the least restrictive means has always been a philosophical tenet of our agency and is consistent with the sanitary and phytosanitary principles of the World Trade Organization. While few importations of agricultural products present absolutely no risk of pest or disease introduction, we would never allow the importation of any foreign product or article under circumstances that we thought would compromise phytosanitary security. In regard to the differing language used in parts 320 and 330 pertaining to inspection of imported articles, again, we believe the language in the two parts means the same thing. Moreover, the commenter did not cite relevant language from part 330. The complete sentence quoted by the commenter reads, “The Deputy Administrator shall employ procedures to carry out this purpose which will impose a minimum of impediment to foreign commerce and travel *whenever practicable, consistent with proper precaution against plant pest dissemination*” (emphasis added). We believe this language indicates that quarantine security is the ultimate priority and that facilitating trade and travel are secondary goals.

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 change 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 the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The purpose of this rule is to remove redundant regulations from title 7 of the CFR. No segment of U.S. society will be affected by this regulatory action.

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 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This 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

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

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects**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.

7 CFR Part 320

Imports, International boundaries, Mexico, Plant diseases and pests, Quarantine, Transportation.

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR, chapter III, 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).

§ 319.8–27 [Removed]

2. Section 319.8–27, “Applicability of Mexican Border Regulations,” is removed.

§ 319.69a [Amended]

3. In § 319.69a, paragraph (c), the reference to “§ 319.37–16a” is removed and a reference to “§ 319.37–9” is added in its place.

PART 320—[REMOVED]

4. Under the authority of 7 U.S.C. 149 and 150ee and 21 U.S.C. 136 and 136a, 7 CFR, chapter III, is amended by removing “PART 320—MEXICAN BORDER REGULATIONS”.

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

5. The authority citation for part 330 is revised to read as follows:

Authority: 7 U.S.C. 147a, 149, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(c).

§ 330.105 [Amended]

6. In § 330.105, paragraph (a), third sentence, the reference to “320,” is removed.

§ 330.300 [Amended]

7. Section § 330.300 is amended as follows:

a. In the introductory text, by removing the reference to “, § 319.37–16a,” in the first sentence, and by removing the entire last sentence.

b. In paragraph (a), by removing the reference to “, § 319.37–16a,” and the words “, or part 320”.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

8. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

§ 352.1 [Amended]

9. In § 352.1, paragraphs (b)(14), (b)(15), (b)(16), and (b)(24), the reference to “320,” is removed.

§ 352.2 [Amended]

10. In § 352.2, in paragraph (a), the first sentence, and in paragraph (b), the reference to “320,” is removed.

§ 352.5 [Amended]

11. In § 352.5, paragraph (d), the reference to “320,” is removed both times it appears.

§ 352.10 [Amended]

12. In § 352.10, the reference to “320,” is removed in the following places.

- a. Paragraph (a), third sentence.
- b. Paragraph (b)(1), sixth sentence.
- c. Paragraph (b)(2), second sentence.

§ 352.13 [Amended]

13. In § 352.13, the reference to “320,” is removed.

Done in Washington, DC, this 4th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32245 Filed 12–9–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97–NM–120–AD; Amendment 39–10238; AD 97–25–14]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes, that requires repetitive inspections of certain refuel/defuel tube assemblies in the engine nacelles for fuel leakage, and corrective action, if necessary. This amendment will also require eventual modification of all tube assemblies, which will terminate the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fuel leaks and consequent increased risk of engine fires.