

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Parts 15 and 15d

RIN 0503-AA15

#### Nondiscrimination in USDA Conducted Programs and Activities

**AGENCY:** Office of the Secretary, Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture (USDA or the Department) is revising its regulations governing nondiscrimination in programs and activities conducted by the Department. On November 10, 1998, the Department published a proposal to do so in the **Federal Register** (63 FR 62962). The revision: Removes the current regulation on this subject found at 7 CFR part 15, subpart B, and places it in a new part 15d; clarifies that the regulation applies to all Department-conducted programs and activities, not just to direct assistance programs; adds familial status, marital status, sexual orientation, and public assistance status to the protected classes contained in the regulation; adds a provision on retaliation; adds a provision on Department agencies' compliance efforts; reflects that the Director of the Office of Civil Rights has been delegated the authority to make final determinations as to whether prohibited discrimination occurred and the corrective action required to resolve program complaints; removes the appendix to the regulation that lists the Department programs subject to these provisions; and makes other clarifications to the regulation.

**DATES:** *Effective:* November 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Delores H. Ruffin, Office of Civil Rights, (202) 720-5212; or Ron Walkow, Attorney-Advisor, Office of the General

Counsel, (202) 720-6056. If a copy of this final rule in an alternate format, e.g., braille, is necessary, contact (202) 720-0353 (voice or TDD).

**SUPPLEMENTARY INFORMATION:** Subpart B currently contains the Department's civil rights regulations for programs and activities conducted by the Department. As noted in the Department's proposed rule, the rule is in need of revision. The Department's proposal to revise the rule was published November 10, 1998, and a 30-day comment period followed. The Department now is prepared to amend the rule as provided with one modification discussed below.

The only comment the Department received was from a USDA employee group that applauded the Department's intention to add sexual orientation as a protected class in the Department's non-discrimination policy in its conduct programs and activities.

Apart from any comments received, the Department has decided on its own to make one minor modification to the rule. As discussed in the preliminary material to the proposed rule, the Department seeks to prohibit discrimination against individuals in any USDA credit program because all or part of their income is derived from any public assistance program since this prohibition is contained in the Equal Credit Opportunity Act, 15 U.S.C. 1691(a)(3), (63 FR 62963). However, the Department merely added the term "public assistance status" to the proposed rule rather than using the full phrase and referencing the applicability to credit programs. In retrospect, this shorthand phrase is somewhat confusing; therefore, the Department will use the full phrase in the final rule.

This final rule has been determined to be "non-significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget. USDA certifies that this final rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). USDA also certifies that this final rule would not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

#### List of Subjects in 7 CFR Parts 15 and 15d

Nondiscrimination.

Accordingly, the Department of Agriculture hereby amends Title 7 of the Code of Federal Regulations, Subtitle A, as follows:

#### PART 15—[AMENDED]

1. The authority citation for Part 15 continues to read as follows:

**Authority:** 5 U.S.C. 301; 29 U.S.C. 794.

#### §§ 15.50–15.52 (Subpart B) and the Appendix to Subpart B [Removed]

2. Part 15, subpart B (§§ 15.50–15.52) and the appendix to Subpart B is removed; and

3. A new part 15d is added as follows:

#### PART 15d—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.

15d.1 Purpose.

15d.2 Discrimination prohibited.

15d.3 Compliance.

15d.1 Complaints.

**Authority:** 5 U.S.C. 301.

#### § 15d.1 Purpose.

The purpose of this part is to set forth the nondiscrimination policy of the United States Department of Agriculture in programs or activities conducted by the Department, including such programs and activities in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

#### § 15d.2 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture shall, on the ground of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, or disability, or because all or part of an individual's income is derived from any public assistance program, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the United States Department of Agriculture.

(b) No person shall be subjected to reprisal for opposing any practice prohibited by this part or for filing a complaint or participating in any other manner in a proceeding under this part.

**§ 15d.3 Compliance.**

The Director of the Office of Civil Rights shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.

**§ 15d.4 Complaints.**

(a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file on his or her own, or through an authorized representative, a written complaint alleging such discrimination. No particular form of complaint is required. The written complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by the Director of the Office of Civil Rights or his or her designee. Any person who complains of discrimination under this part in any fashion shall be advised of his or her right to file a complaint as herein provided.

(b) All complaints under this part should be filed with the Director of the Office of Civil Rights, United States Department of Agriculture, Washington, D.C. 20250, who will investigate the complaints. The Director of the Office of Civil Rights will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve program complainants. The complaint will be notified of the final determination on his or her complaint.

(c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under 7 CFR part 15e.

Dated: November 16, 1999.

**Dan Glickman,**

*Secretary of Agriculture.*

[FR Doc. 99-30951 Filed 11-29-99; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 319**

[Docket No. 89-154-5]

RIN 0579-AB00

**Importation From Europe of Rhododendron Established in Growing Media**

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of plants established in growing media to allow the importation of rhododendron from Europe under conditions designed to prevent the introduction of dangerous plant pests. This action will relieve restrictions on the importation of rhododendron plants from Europe while continuing to protect against introduction of plant pests.

**EFFECTIVE DATE:** December 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne D. Burnett, 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 of plants, plant parts, and plant products into the United States 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), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Section 319.37-8, paragraph (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)).

On September 7, 1993, we published in the **Federal Register** (58 FR 47074-47084, Docket No. 89-154-1) a proposed rule to amend the regulations 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 the importation of *Alstroemeria*, *Ananas*, *Anthurium*, and *Nidularium* species. The final rule postponed action on *Rhododendron* species established in growing media to allow consultation regarding the action with the U.S. Fish and Wildlife Service, in accordance with the Endangered Species Act.

On April 30, 1998, we published in the **Federal Register** (63 FR 23683-23685, Docket No. 89-154-3) a notice reopening and extending the comment period on the proposal to allow the importation of *Rhododendron* species established in growing media. The notice also announced that, as a result of formal consultation with the Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act, APHIS intended to limit the proposed action to *Rhododendron* species imported from Europe only. The limitation to Europe was made because there is little importation of rhododendron from places outside Europe, and limited data on pests of rhododendron outside Europe. We believe the data available on rhododendron pest distribution outside Europe, and pest interceptions on rhododendron commodities from outside Europe, is insufficient to support a conclusion of negligible risk for importation of rhododendron from all countries at this time.

Comments were required to be received on or before June 1, 1998. We received two requests from trade organizations to extend the period during which comments would be accepted. In response, on June 1, 1998, we published in the **Federal Register** (63 FR 29675-29676, Docket No. 89-154-4) a notice extending the comment period until July 30, 1998.

During this reopened comment period of April 30 through July 30, 1998, we received 11 comments on the rhododendron proposal. Additionally, we received approximately 60 comments from domestic nurseries and nursery associations, importers, State governments, and environmental interest groups during the original 1993 comment period on the proposed rule that specifically addressed importation of rhododendron. The issues addressed by all of these comments are discussed below.

*Comment:* APHIS identified rhododendron pests of concern for this rule using reports from the scientific literature and reports of pest interceptions associated with rhododendron at ports under the