

# GROWERTALKS

## SAF in the Lobby

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### **Waters of the United States Rule (WOTUS) to be Rescinded**

*The Society of American Florists*

In early July, the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) released a proposal to rescind the Obama Administration's controversial rule known as Waters of the United States, or WOTUS, which had expanded federal jurisdiction over pollution in streams and wetlands.

Earlier this year, President Trump signed an executive order (EO) on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule," which stated it is in the national interest to protect navigable waters from pollution while also promoting economic growth and minimizing regulatory uncertainty.

That order instructed the EPA and the Corps to "review and reconsider" the WOTUS rule and the July action was in response to that EO.

The Clean Water Act defines U.S. waters that are protected and how. Supreme Court decisions have subsequently added to or clarified interpretations, and have also caused confusion.

In 2014, the EPA and the Army Corps of Engineers proposed an extensive and very controversial new regulation that would greatly expand the definitions of which waters are actually included under regulatory jurisdiction. The rule gave EPA authority over a large percentage of the nation's waterways—including even minor streams, drainage and irrigation ditches—and could subject landowners and businesses to increased lawsuits.

Agriculture, along with other industries, protested the proposal, fearing it would bring many farms, nurseries and other agricultural operations under unnecessarily stringent regulation.

SAF and AmericanHort commented on the rule when it was released noting that the floriculture and nursery industries have dedicated significant resources through the Floriculture and Nursery Research Initiative (FNRI), the American Floral Endowment (AFE) and the Horticultural Research Institute toward water-related best practices research. The proposed rule, the two organizations said, could create confusion and require permits for activities such as removing debris and vegetation from a ditch or building a patio, fence or pond.

According to EPA and the Corps, this proposed rule issued this week is intended to provide certainty during an

interim period while the agencies work to craft a “substantive re-evaluation of the definition of ‘waters of the United States.’”

## Offshore-Grown Cutting Certification Pilot Set to Launch in October

SAF and AmericanHort are collaborating with the U.S. Department of Agriculture’s Animal & Plant Health Inspection Service (APHIS) to initiate an offshore certification program for unrooted plant cuttings. A six-month pilot program is expected to be launched on October 1 and will include growing operations in six Latin American countries.

Each year, the United States imports more than one billion unrooted cuttings of mostly annual and perennial plant varieties. This is an important supply chain for U.S. rooting stations and finished-plant growers. Nearly half of all plants sold in U.S. retail stores start from cuttings produced offshore. The high volume of these imports, most of which enter between December and March, presents staffing challenges for APHIS and Customs and Border Protection as they inspect for plant pests and diseases.

Both SAF and AmericanHort believe these unrooted cuttings generally present a low risk of harboring pests and pathogens of regulatory concern. Because the cuttings are highly perishable, expediting port clearance would help ensure vitality and benefit offshore production facilities, rooting stations and finished plant growers.

Beginning in October 2017, APHIS expects to launch a six-month greenhouse certification pilot program. The pilot will include greenhouse facilities in Mexico, Guatemala, Nicaragua, El Salvador, Costa Rica and Colombia that produce generally admissible, unrooted vegetative cuttings for import into the United States. The pilot is designed to determine whether greenhouse certification could effectively mitigate—at origin—regulated pest and disease risks associated with plant cuttings produced in approved facilities.

For the duration of the pilot, facilities must adhere to the requirements outlined in the pilot draft framework. The framework includes standard plant pest exclusion procedures, sanitation and traceability protocols, a summary of the greenhouse certification process, an explanation of how shipments will be handled at U.S. ports of entry and expected next steps after the pilot’s conclusion in March 2018.

Four companies—Ball Horticultural Co., Dümmen Orange, Proven Winners and Syngenta Flowers—will participate in the initial pilot. The four companies and the associations have participated in a working group process with APHIS for over a year to develop the pilot program framework. During the pilot, offshore-produced cuttings from these companies’ farms will be subject to the same inspection process as cuttings from other sources. The expectation is that a successful pilot will result in reduced inspections and expedited entry procedures thereafter. If successful, the program is expected to be opened to additional countries and producers.

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