

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Parts 319 and 340**

[Docket No. APHIS-2008-0011]

RIN 0579-AD75

**Restructuring of Regulations on the Importation of Plants for Planting****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to restructure our regulations governing the importation of plants for planting. In the proposed structure, restrictions on the importation of specific types of plants for planting would no longer be found in the regulations, but instead would be found in the Plants for Planting Manual. We would change those restrictions after taking public comment through notices published in the **Federal Register**. As part of this restructuring, we would group together restrictions in the plants for planting regulations that apply to the importation of most or all plants for planting, and we would add general requirements for the development of integrated pest risk management measures that we would use to mitigate the risk associated with the importation of a specific type of plants for planting. We would also amend our foreign quarantine regulations to remove various provisions regarding the importation of specific types of plants for planting that are not currently subject to the general plants for planting regulations; these provisions would also be found in the Plants for Planting Manual. This action would not make any major changes to the restrictions that currently apply to the importation of plants for planting. These changes would make restrictions on the importation of specific types of plants for planting easier for readers to find and less cumbersome for us to change.

**DATES:** We will consider all comments that we receive on or before June 24, 2013.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2008-0011-0001>.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2008-0011, Regulatory Analysis and Development, PPD, APHIS, Station

3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0011> or in our reading room, which 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) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Heather Coady, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2076.

**SUPPLEMENTARY INFORMATION:****Background**

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this responsibility to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

The regulations in 7 CFR part 319 prohibit or restrict the importation of plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control to eradicate or contain them within the United States.

The regulations in “Subpart—Plants for Planting,” §§ 319.37 through 319.37-14 (referred to below as the regulations), restrict the importation of plants for planting. *Plants for planting* is defined in § 319.37-1 as plants intended to remain planted, to be planted or replanted. *Plant* is defined in that section as any plant (including any plant part) capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

**Current Regulations**

The current regulations can be briefly summarized as follows: Plants for planting that cannot be feasibly inspected, treated, or handled to prevent quarantine pests that may accompany them from being introduced into the United States are listed in § 319.37-2(a) or (b) of the regulations as prohibited

articles. Plants for planting whose importation poses a risk of introducing a quarantine pest into the United States, and which need to be further analyzed to determine appropriate mitigations for that risk, are listed as not authorized pending pest risk analysis (NAPPRA) in accordance with the process in § 319.37-2a of the regulations. Prohibited articles and NAPPRA articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under safeguards specified in the permit issued for the importation of the articles.

Other plants for planting are referred to in the regulations as restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that may include permit and phytosanitary certificate requirements, inspection, treatment, postentry quarantine, special inspection and certification requirements, or combinations of these safeguards.

Some restrictions apply to the importation of most or all plants for planting. Under § 319.37-3(a)(5), lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada may be imported into the United States only after issuance of a written permit. This means that most plants for planting are imported with a permit.

All plants for planting imported into the United States must be presented for inspection. Plants for planting that are required to be imported under a written permit under § 319.37-3(a)(1) through (a)(6) and that are not from Canada must be imported or offered for importation at a USDA plant inspection station.<sup>1</sup> Such stations are listed in § 319.37-14. Plants for planting that are offered for inspection at a USDA plant inspection station are inspected by Plant Protection and Quarantine (PPQ) inspectors. Plants for planting that are not required to be inspected at a USDA plant inspection station may be presented for inspection either at one of the ports listed in § 319.37-14 or at a Customs designated port of entry indicated in 19 CFR 101.3(b)(1). Such plants are inspected by the Department of Homeland Security’s Bureau of Customs and Border Protection.

After inspection, the plants may be allowed entry into the United States (with treatment, if necessary), destroyed, or reexported, depending on

<sup>1</sup> Small lots of seed imported in accordance with § 319.37-4(d) are exempt from this requirement.

the results of the inspection. As noted earlier, most shipments of plants for planting are required to be imported under a written permit under § 319.37–3(a)(5) and are thus inspected at USDA plant inspection stations.

In addition, except for bulbs from the Netherlands, Canadian greenhouse-grown plants, small lots of seed, and certain seeds from Canada (as described in § 319.37–4(a)(4), (c), (d), and (e), respectively), the regulations require that a phytosanitary certificate issued by the exporting country's national plant protection organization (NPPO) accompany all restricted articles imported into the United States.

Some types of plants for planting may only be imported in accordance with requirements specific to those plants. These requirements are found in §§ 319.37–5 through 319.37–7 of the regulations. Section 319.37–8 prohibits the importation of plants for planting in growing media, except for specified growing media. In addition, § 319.37–8 provides for the importation of certain combinations of growing media and taxa if the plants for planting are produced and inspected according to specific requirements in that section.

In addition to setting out the requirements for the importation of plants for planting in the regulations, APHIS also makes them available in the Plants for Planting Manual, which is commonly used as a reference by importers and port inspectors, among others. The Plants for Planting Manual is available on the Web at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/plants\\_for\\_planting.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf) or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 133, Riverdale, MD 20737–1236. Local PPQ offices also typically have copies available for review.

#### Summary of Proposed Changes

In this document, we are proposing to restructure the plants for planting regulations to make them simpler and easier to read and to allow for more timely changes to the restrictions on the importation of specific types of plants for planting. To accomplish these goals, we would make the following changes:

- We would remove provisions from other subparts in 7 CFR part 319 that regulate the importation of plants for planting and thus consolidate the requirements for importation of all plants for planting under the plants for planting regulations.
- We would add most of the plants for planting that are listed as prohibited in § 319.37–2(a) to the list of plants for

planting whose importation is NAPPRA in accordance with current § 319.37–2a. Other prohibitions would be reflected in the Plants for Planting Manual. This document is currently used by importers and inspectors as a reference regarding restrictions on the importation of plants for planting.

- Within the plants for planting regulations, we would group together the requirements that apply to the importation of all or most plants for planting.

- We are proposing that restrictions on the importation of specific types of plants for planting would no longer be found in the regulations, but instead would be found in the Plants for Planting Manual. We are proposing to change these restrictions after taking public comment on notices published in the **Federal Register**, rather than publishing proposed rules and final rules as we currently do. Specifically, we would publish a notice announcing our determination that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting and make available a document describing those restrictions and why they are necessary. We would allow for public comment on the notice and the document it makes available. We would then respond to any comments we receive in a second notice, and implement the restrictions if our determination remains unchanged. (This process is described in more detail later in this document.)

- We would remove several lists of approved items (for example, the lists of approved growing media, packing materials, and ports of entry) from the regulations and instead provide these lists to the public in the Plants for Planting Manual. We would update these lists, when necessary, using a process similar to the one we are proposing to use to update restrictions on the importation of specific types of plants for planting.

- We are proposing to establish a framework for the use of integrated pest management measures in the production of specific types of plants for planting for importation into the United States, when the pest risk associated with the importation of a type of plants for planting can only be addressed through the use of integrated measures.
- We are also proposing several minor changes to the regulations to improve their clarity and reflect current program operations.

We are not proposing to make major changes to the restrictions that currently apply to the importation of plants for planting. This proposal is directed towards making the regulations easier to

use and to implement. Our proposed changes are discussed in detail below.

#### *Removal of Restrictions on the Importation of Specific Types of Plants for Planting in Other Subparts*

In addition to the plants for planting regulations, part 319 contains several subparts that regulate the importation of all plants and plant parts of a specific type, both plants for planting and plants for consumption, decoration, or other uses. Specifically, plants for planting and plants for other uses are regulated in subparts pertaining to the importation of cotton; sugarcane; corn; Indian corn or maize, broomcorn, and related plants; rice; wheat; coffee; Khapra beetle host articles; and gypsy moth host articles from Canada. In addition, § 319.19 separately prohibits the importation of citrus plants for planting (specifically, the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the family Rutaceae).

To reflect this, the plants for planting regulations limit their scope to restricted articles of plants for planting. In § 319.37–1, *restricted article* is defined as any regulated plant, root, bulb, seed, or other plant product capable of propagation, excluding the following:

- Prohibited articles;
- Articles whose importation is NAPPRA under § 319.37–2a;
- Any articles regulated in §§ 319.8 through 319.24 or 319.41 through 319.74–4; and
- Any articles regulated in 7 CFR part 360, which regulates the importation and interstate movement of plant taxa designated as noxious weeds.

(*Regulated plant* is separately defined to indicate exactly what organisms are considered plants for the purposes of the regulations.) The definition of *restricted article* excludes the plants for planting whose importation is regulated under the subparts mentioned earlier, except the Khapra beetle and gypsy moth subparts.

The restrictions on the importation of plants for planting under some of these subparts differ from the restrictions that would be placed on their importation under the general plants for planting regulations. For example, while the plants for planting regulations require all imported articles to be accompanied by a phytosanitary certificate, many of the other subparts do not. We consider a phytosanitary certificate (as defined in § 319.37–1) to be an essential means of determining the risk associated with plants for planting.

In general, we have determined that the restrictions in the plants for planting regulations are necessary to mitigate the

risks associated with the importation of all plants for planting, not just those that are currently defined as restricted articles. In addition, the current structure of the regulations is confusing for the reader, who may have to consult several subparts to determine which restrictions apply to the importation of a specific type of plants for planting. Therefore, we are proposing to amend the other subparts in part 319 to indicate that they do not regulate the importation of plants for planting and to remove provisions in those subparts that regulate the importation of plants for planting. Restrictions on the importation of articles other than plants for planting would not be affected in any way by these proposed changes.

These amendments would make it unnecessary to have a definition of *restricted article* in the regulations; the term “plants for planting” would include all articles subject to the restrictions in the plants for planting regulations. Therefore, we are proposing to remove the definition of *restricted article* from § 319.37–1 and to remove references to that term from the regulations. Instead, the regulations would simply refer to restrictions on the importation of plants for planting.

We are proposing to make several changes to the current definition of *plants for planting*:

- To make it clear that the scope of the regulations includes only regulated plants, we are proposing to amend the definition of *plants for planting* to refer specifically to regulated plants.

- The definition of *restricted article* refers to articles for or capable of propagation. This allows us to regulate the importation of commodities like birdseed, which is not intended for propagation but is distributed by consumers in a manner that could lead to its propagation. We are proposing to amend the definition of *plants for planting* to include plants capable of propagation, so that we would retain the discretion to regulate such plants.

- We do not believe it is necessary to state that plants for planting are intended to remain planted, to be planted or replanted when the definition refers to plants for or capable of propagation. Referring simply to plants that are for planting or capable of being planted would cover the relevant possibilities.

- The definition of *plant* indicates that the term includes any plant part. The definition of *plants for planting* incorporates the term *plant* and thus includes plant parts as well. However, since the regulations will now refer primarily to “plants for planting,” we believe it would be useful to clarify in

the definition of *plants for planting* that this term also includes any parts of a plant.

The revised definition of *plants for planting* would read: “Regulated plants (including any plant parts) that are for planting or capable of being planted.”

We would amend the other subparts that currently regulate the importation of specific taxa of plants for planting as follows:

- Subpart—Foreign Cotton and Covers, which consists of §§ 319.8 through 319.8–26, regulates the importation of cottonseed, which can either be used for planting or for processing. We would add a new paragraph to § 319.8 indicating that the importation of cotton plants (including any plant parts) that are for planting or capable of being planted is restricted in “Subpart—Plants for Planting.” In addition, to make the scope of the subpart clear, we would amend the definition of *cottonseed* in § 319.8–1 to indicate that it only includes cottonseed intended for processing or consumption.

- Subpart—Sugarcane, which consists of §§ 319.15 and 319.15a, restricts the importation of all parts of the sugarcane plant, including sugarcane for planting. We would add a new paragraph to § 319.15 indicating that the importation of sugarcane plants and plant parts capable of remaining planted, being planted or replanted is restricted in “Subpart—Plants for Planting.”

- We would remove Subpart—Citrus Canker and Other Citrus Diseases, which consists of § 319.19. As noted earlier, this subpart prohibits the importation of plants for planting from subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the family Rutaceae to prevent the introduction of citrus canker and other citrus diseases. As the scope of this subpart is limited to plants for planting, there is no need to retain any of its provisions as part of this consolidation. In addition, as part of this change, we would prohibit the importation of the other subfamily of Rutaceae, Flindersioideae. Although it is not specified in § 319.19 as being prohibited for importation, the importation of plants for planting from this subfamily would also be a pathway for the introduction of citrus canker and other citrus diseases, and we have prohibited the importation of Flindersioideae plants for planting in the past.

- Subpart—Corn Diseases, which consists of §§ 319.24 through 319.24–5, restricts the importation of Indian corn and maize and related plants from certain countries. We would add a new paragraph to § 319.24 indicating that the

importation of corn plants (including any plant parts) that are for planting or capable of being planted is restricted in “Subpart—Plants for Planting.”

- Subpart—Indian Corn or Maize, Broomcorn, and Related Plants, which consists of §§ 319.41 through 319.41–6, also restricts the importation of Indian corn and maize and related plants from various countries. We would add a new paragraph to § 319.41 indicating that the importation of plants (including any plant parts) of any of the taxa listed as hosts of quarantine pests in paragraph (b) of that section that are for planting or capable of being planted is restricted in “Subpart—Plants for Planting.” In addition, we would make a change to reflect historical prohibitions that are not set out in this subpart. Historically, PPQ has prohibited the importation of corn seed of the genera *Echinochloa*, *Eleusine*, *Miscanthus*, *Panicum*, *Pennisetum*, *Setaria*, and *Tripsacum* from areas including Africa, Australia, Brazil, Bulgaria, Japan and adjacent islands, Korea, New Zealand, Oceania, the People’s Republic of China, Southeast Asia, Taiwan, and the former Soviet Union, but this prohibition has not been reflected in the regulations. We would add seed of these taxa to the NAPPRA category as part of this action. We have prepared a pest risk analysis (PRA) in support of this action that details the quarantine pests associated with seed of these genera. The PRA can be viewed on Regulations.gov (see **ADDRESSES** above for instructions on accessing Regulations.gov). A copy of the PRA can also be requested from the person listed under **FOR FURTHER INFORMATION CONTACT**. We welcome public comment on this proposed action.

- Subpart—Rice, which consists of §§ 319.55 through 319.55–7, restricts the importation of seed or paddy rice, rice straw, and rice hulls. We would add a new paragraph to § 319.55 indicating that the importation of seed and paddy rice, which is always used for planting, is restricted in “Subpart—Plants for Planting.” In addition, we would remove references to prohibitions or restrictions on the importation of seed and paddy rice. Specifically, we would remove the general prohibition on the importation of seed and paddy rice in § 319.55(a) and (b), the permit application requirement for seed and paddy rice in § 319.55–2(a), the port of entry requirements in § 319.55–3(a) and (c), the inspection and disinfection requirements in § 319.55–6(a), and the requirements for importation by mail in § 319.55–7.

- Subpart—Wheat Diseases, which consists of §§ 319.59–1 through 319.59–

4, restricts the importation of wheat articles from various countries. Articles regulated under the subpart are defined as “host crops” in § 319.59–1. In addition, the term *seed* is defined as wheat and triticale used for propagation. We would add a new paragraph to § 319.59–2 indicating that the importation of host crops, including seed, and any other plant parts that are for planting or capable of being planted is restricted in “Subpart—Plants for Planting.” We would also amend the definition of *grain* in § 319.59–1 to indicate that it includes only articles not for planting. We would also remove provisions related to the importation of seed in § 319.59–3(a) and § 319.59–4(a).

Subpart—Wheat Diseases also contains specific provisions regarding the importation of *Triticum* spp. plants, which are used for planting. We would remove the general prohibition on the importation of *Triticum* spp. plants in § 319.59–2(a) and the exception in § 319.59–2(b).

- Subpart—Coffee, which consists of §§ 319.73–1 through 319.73–4, regulates the importation of unroasted coffee, which can be used either for planting or processing. To make the scope of the subpart clear, we would amend the definition of *unroasted coffee* in § 319.73–1 to indicate that it only includes unroasted coffee intended for processing. Paragraph (a)(2) of § 319.73–2 lists coffee plants and leaves as articles whose importation is prohibited under Subpart—Coffee; we would revise paragraph (a)(2) so that it includes coffee leaves only. In addition, paragraph (b) of § 319.73–2 states that, due to the risk of Mediterranean fruit fly and other injurious insects, seeds of all kinds when in pulp, including coffee berries or fruits, are prohibited importation into all parts of the United States by § 319.37–2(a), except as provided in § 319.37–2(c). We are proposing to replace this paragraph with a general statement indicating that the importation of any coffee plants (including bare seeds, seeds in pulp, and any other plant parts) that are for planting or capable of being planted is restricted in “Subpart—Plants for Planting.”

Although the plants for planting regulated under the Khapra beetle and gypsy moth subparts are not excluded from the current definition of *restricted article*, we believe it is necessary to amend these subparts as well to clarify that the importation of plants for planting is governed by the plants for planting regulations.

- Subpart—Khapra Beetle, which consists of §§ 319.75 through 319.75–9, regulates the importation of articles of

several different types to prevent the introduction of Khapra beetle into the United States. Currently, this subpart includes a definition of *nursery stock* (a synonym for “plants for planting” formerly used in the plants for planting regulations) and several provisions regulating the importation of nursery stock and plants. We are proposing to remove the definition of *nursery stock* in § 319.75–1 and the requirements for inspection and certification of nursery stock, plants, roots, and bulbs in § 319.75–9. (These requirements also refer to seed, but only seed not for propagation is restricted under this subpart.) In § 319.75–2, which lists restricted articles, footnote 1 states that the importation of certain restricted articles is subject to prohibitions or restrictions found elsewhere in 7 CFR part 319. We would add to this footnote a statement that the importation of any restricted articles that are for planting or capable of being planted is restricted under the plants for planting regulations.

- Subpart—Gypsy Moth Host Material from Canada, which consists of §§ 319.77–1 through 319.77–5, regulates the importation of several different types of articles to prevent the introduction of gypsy moth. Section 319.77–2 lists trees with roots and shrubs with roots as regulated articles; we would remove those articles from the list, as they are plants for planting. We would retain trees without roots in the list of regulated articles, as such trees are typically not used for planting. (A common example is Christmas trees.) Section 319.77–4 sets out conditions for the importation of restricted articles, including trees with roots and shrubs with roots. We would remove the references to those plants. In addition, footnote 1 to § 319.77–4 states that trees and shrubs from Canada may be subject to additional restrictions under the plants for planting regulations; we would remove this statement, as the importation of trees with roots and shrubs with roots from Canada would only be subject to the plants for planting regulations. We would retain the statement that trees may be subject to additional restrictions under Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles, as the importation of trees without roots would still potentially be regulated under that subpart.

None of the other subparts in 7 CFR part 319 regulates the importation of plants for planting. Of the subparts that regulate the importation of articles, Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles and Subpart—Fruits and Vegetables clearly

indicate that they only regulate articles not for propagation. (We are proposing to update the reference to the plants for planting regulations in § 319.40–2(c) to refer to their newer name, “Subpart—Plants for Planting.” We are proposing the same change in § 340.0.) However, Subpart—Cut Flowers, which consists of §§ 319.74–1 through 319.74–4, does not clearly indicate that it does not regulate the importation of plants for planting. Cuttings of flowers may also be intended for planting, in which case they should be and are regulated under the plants for planting regulations. Therefore, we are proposing to amend the definition of *cut flower* in § 319.74–1 to specify that cut flowers regulated under that subpart are not for planting.

As mentioned earlier, plants for planting that have been allowed to be imported under these subparts would now be subject to the general requirements of the plants for planting regulations, which is appropriate given the generally high risk associated with the importation of plants for planting. Any specific requirements for plants for planting whose importation is regulated under these subparts would remain unchanged.

These changes would harmonize our approach to mitigating the risk associated with imported plants for planting and make the regulations easier to use.

#### *Adding Prohibited Plants for Planting to the NAPPRA List*

The regulations in § 319.37–2(a) list types of plants for planting whose importation from specific areas is prohibited because they are hosts of quarantine pests. The prohibited plants are listed in a table that indicates the plants subject to the prohibition, the foreign places from which their importation is prohibited, and the plant pest(s) that are the cause of the prohibition. The types of plants for planting in this list have been added to the list based on a risk evaluation. Some of the types of plants for planting listed are simply listed as prohibited; others are prohibited unless imported in accordance with special inspection and certification requirements in § 319.37–5.

Paragraph (b) of § 319.37–2(b) prohibits the importation of certain additional types of plants for planting from all foreign countries except Canada based on size and age criteria. The importation of plants that do not meet these size and age criteria is prohibited because larger and older plants pose a higher pest risk than younger and smaller ones, and because it is impractical to inspect the listed plants

for quarantine pests when they are large and old.

The regulations in § 319.37–2a provide a process for listing the importation of taxa of plants for planting as not authorized pending pest risk analysis (NAPPRA), based on the risk of introducing a quarantine pest into the United States through the importation of the taxa. Such taxa are commonly referred to as “NAPPRA taxa,” and the lists of such taxa as the “NAPPRA lists.” The regulations do not set out the NAPPRA lists, but rather provide criteria and a process for adding taxa to the NAPPRA lists; the lists themselves are maintained on the PPQ Web site.<sup>2</sup>

We are proposing to remove the prohibited types of plants for planting in paragraphs (a) and (b) of § 319.37–2 from the regulations. We would add most of the types of plants for planting listed in paragraph (a) to the NAPPRA list of plants for planting that are hosts of quarantine pests.

We believe the existence of two categories of plants for planting whose importation into the United States is not allowed could confuse readers. For example, the importation of *Cedrus* spp. from Europe is prohibited in § 319.37–2(a) because Douglas fir canker and seedling disease, both quarantine pest pathogens, are present in Europe, and *Cedrus* spp. are hosts of those pathogens. If we receive evidence that one of those pathogens has spread to Asia, we would add *Cedrus* spp. to the NAPPRA list for Asia and for other countries not exporting *Cedrus* spp. to the United States, because there is a risk that the pathogen could spread to those countries before they decide in the future to export *Cedrus* spp. However, if someone reading the NAPPRA list on the plants for planting Web site saw that the importation of *Cedrus* spp. from Asia was NAPPRA, that person might not think to check the list of prohibited articles in § 319.37–2(a) in order to determine whether the importation of *Cedrus* spp. is prohibited from Europe, and thus might import or apply for an import permit for *Cedrus* spp. grown in (for example) Denmark. This change would eliminate the potential for such confusion.

In addition, adding the types of plants for planting whose importation is prohibited from § 319.37–2(a) to the NAPPRA list of hosts of quarantine pests would reflect the fact that, although these taxa may not be imported, anyone may still request that we conduct a PRA to determine what

quarantine pests are currently associated with the importation of a prohibited taxon of plants for planting and the potential consequences of the introduction of those pests into the United States, as well as whether there are measures available to mitigate the risks those quarantine pests pose. Although our evaluation of these factors led us to prohibit the importation of all the taxa in § 319.37–2(a), this information may change. For example, new measures may become available to mitigate the risk associated with a particular pest, meaning that a previously infeasible importation can now be allowed subject to certain conditions. As another example, the pest that prompted the prohibition of the taxon may no longer be considered a quarantine pest, but new pests may be associated with a currently prohibited taxon that would require mitigation.

Some of the other subparts in 7 CFR part 319 that were discussed under the previous heading also prohibit the importation of specific plants for planting. As part of this proposal, we would move those plants for planting to the NAPPRA list as well.

The functions of paragraph (a) of § 319.37–2 and the list of NAPPRA taxa that are hosts of quarantine pests are similar—preventing the importation of taxa that have been determined to pose a risk for which mitigations have not been identified. However, some types of plants for planting in § 319.37–2(a) are listed as prohibited if they are not imported in accordance with special inspection and certification conditions. For example, *Malus* spp. are listed as prohibited from all countries if not meeting the conditions for importation in § 319.37–5(b), due to a diversity of diseases. This paragraph allows *Malus* spp. to be imported from six countries under specified conditions. The effect of this listed paragraph is to indicate that *Malus* spp. can be imported from six countries, subject to specific conditions, and is prohibited from the remainder of the world. We would add *Malus* spp. to the NAPPRA list from all countries but the six listed in § 319.37–5(b), and we would indicate elsewhere that importation of *Malus* spp. from those six countries is only allowed in accordance with the conditions listed in § 319.37–5(b). We would handle other such entries in the list of prohibited articles in § 319.37–2(a) in a similar manner.

Similarly, the types of plants for planting listed in paragraph (b) of § 319.37–2 can be safely imported subject to requirements specified in that paragraph. In addition, one prohibited type of plants for planting in § 319.37–2(a), seeds in pulp, does not correspond

to a plant taxon and thus cannot be listed in NAPPRA, as the NAPPRA lists set out taxa of plants for planting that have been determined to be quarantine pests or hosts of quarantine pests. In both cases, these provisions are better thought of not as prohibitions but as requirements for the importation of these types of plants for planting. Accordingly, we would not add these types of plants for planting to the NAPPRA list. We will discuss the distribution of these restrictions under the next heading in this document.

Adding the prohibited types of plants for planting from § 319.37–2(a) to the NAPPRA list would necessitate additional changes to current § 319.37–2a.<sup>3</sup> This section has indicated that taxa on the NAPPRA lists can be imported under a Departmental permit in accordance with § 319.37–2(c); as we would remove paragraph (a) from that section and put the taxa listed there into the NAPPRA category, it is appropriate to move the Departmental permit provisions to the end of the NAPPRA section, as a new paragraph (f), with appropriate changes.

Paragraph (e) of § 319.37–2a discusses the removal of taxa from the NAPPRA list. Paragraph (e)(2) indicates that, if a PRA conducted for removal of a taxon from the NAPPRA list supports a determination that importation of the taxon be prohibited, or allowed subject to special restrictions, APHIS will publish a proposed rule making the PRA available to the public and proposing to take the action recommended by the PRA. As we are proposing to remove the lists of prohibited taxa from the regulations, it would no longer be necessary to publish a proposed rule if a PRA indicated that it was infeasible to mitigate the risk associated with the importation of a taxon and thus that the taxon should not be imported.

Accordingly, we are proposing to amend paragraph (e)(2) to indicate that, if the PRA indicates that the taxon is a quarantine pest or a host of a quarantine pest and the Administrator determines that there are no measures available that adequately mitigate the risk of introducing a quarantine pest into the United States through the taxon's importation, we would continue to list the taxon as NAPPRA. We would take comment on that determination by publishing a notice in the **Federal Register** making the PRA available for comment. If comments cause us to

<sup>3</sup> In this document, we are proposing to redesignate § 319.37–2a as § 319.37–4. This change is discussed further under the heading “Restructuring of the Plants for Planting Regulations.” The paragraph designations discussed in this section would remain the same.

<sup>2</sup> At [http://www.aphis.usda.gov/import\\_export/plants/plant\\_imports/Q37\\_nappra.shtm](http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37_nappra.shtm).

change our determination, we would take comment on our new determination before removing the taxon from the NAPPRA list. If comments do not cause us to change our determination, we would publish a second notice responding to the comments and affirming our determination that the taxon should continue to be listed as NAPPRA.

We are also proposing to add text to clarify the provisions in paragraph (e). Paragraph (e)(1) describes how we will conduct a PRA in order to remove a taxon from the NAPPRA list. However, a taxon on the NAPPRA list of hosts of a quarantine pest will likely be listed as not authorized for importation from specific areas or countries where that pest is present. The PRA may not analyze the risks associated with the importation of the taxon from every country from which the taxon's importation is not authorized; it is most likely that it would analyze one country at a time, since we must work with the NPPO of each country in order to prepare a PRA. Therefore, we are proposing to add the following explanation to the end of the introductory text of paragraph (e): "The pest risk analysis may analyze importation of the taxon from a specific area, country, or countries, or from all areas of the world. The conclusions of the pest risk analysis will apply accordingly."

Paragraph (e)(1) also currently states that the PRA conducted for a taxon on the NAPPRA list will examine the risk associated with the importation of that taxon. We are proposing to indicate that the PRA will examine measures available to mitigate that risk as well. With this change, the regulations would more completely describe the goals of the PRA.

In addition, we are proposing one incidental change to current § 319.37–2a. As discussed under the next heading, we are proposing to move most of the information regarding the importation of specific types of plants for planting from the regulations to the Plants for Planting Manual. Paragraph (a) of § 319.37–2a currently indicates that the lists of NAPPRA taxa can be found on the PPQ Web site. To ensure that the Plants for Planting Manual is a comprehensive resource for information on the importation of specific types of plants for planting, we are proposing to indicate that the NAPPRA taxa will be listed in the Plants for Planting Manual as well.

#### *Removing Restrictions on Specific Types of Plants for Planting From the Regulations; Establishing a Notice-Based Process for Updating Those Restrictions*

Broadly, the regulations on the importation of plants for planting can be divided into two sets of requirements. As described earlier, some requirements apply to the importation of all or most plants for planting. Under § 319.37–3, most consignments of plants for planting must be imported with a permit. A phytosanitary certificate is also required for most plants for planting under § 319.37–4. Most plants for planting may not be imported in growing media under § 319.37–8, although they may be imported in specified packing materials under § 319.37–9. All imported plants for planting must be marked and identified in accordance with § 319.37–10, and almost all must be presented at a port of entry approved for such importation under § 319.37–14. This is not an exhaustive list, but it gives an idea of the conditions that apply to the importation of all or most plants for planting. Where exceptions exist for these requirements, they are typically based on a risk analysis (for example, the taxa of plants for planting that are allowed to be imported in growing media, subject to certain conditions, under § 319.37–8) or on a determination by the Administrator that there are other equivalent means of satisfying the requirement (for example, documentation that can be substituted for a phytosanitary certificate under § 319.37–4).

Some requirements in the plants for planting regulations, in turn, apply to the importation of specific types of plants for planting.

As previously discussed, in § 319.37–2, paragraph (b) sets out size and age criteria for the importation of specific types of plants for planting that are necessary in order to allow for inspection of those plants.

Section 319.37–5 sets out special inspection and certification requirements for the importation of specific plant taxa. These include simple requirements like inspection and certification of freedom from a quarantine pest by an NPPO, as in the requirements in paragraph (a) of that section for microscopic inspection of soil in which articles are grown in certain countries and certification of freedom from potato cyst nematodes (*Globodera rostochiensis* and *G. pallida*). There are numerous requirements for certification that specific taxa are free from a plant

pathogen or pathogens based on examination or testing of mother stock. The section also includes relatively complex sets of requirements to ensure that specific taxa are free from quarantine pests, such as the program for *Pelargonium* spp. and *Solanum* spp. grown in areas where *Ralstonia solanacearum* race 3 biovar 2 exists in paragraph (r) and the program for greenhouse-grown plants from Israel in paragraph (v).

Section 319.37–6 lists taxa of seeds and bulbs for planting that may only be imported if treated in accordance with 7 CFR part 305. Section 319.37–7 lists taxa of plants for planting that may be imported only into postentry quarantine, for the purposes of observation to determine whether they are infected with quarantine pests. As noted earlier, § 319.37–8 makes exceptions from its general prohibition on the importation of plants for planting in growing media; those exceptions, and the requirements that must be fulfilled in order to import the excepted taxa in growing media, are listed in that section.

Importers and inspectors rarely need to, for example, find a list of plants that are subject to treatment; they want to know what restrictions apply to the specific plants that they wish to import or that have been presented for inspection. For port inspectors, we created the Plants for Planting Manual as a reference. This manual lists all types of plants for planting to which specific importation restrictions apply and either the specific restrictions themselves or the place in the regulations where the restrictions can be found, allowing inspectors to quickly look up any individual plant to determine what conditions apply to its importation. Importers and the public frequently use the Plants for Planting Manual for this purpose as well.

We are proposing to remove all the restrictions on the importation of specific types of plants for planting from the regulations and instead list them in the Plants for Planting Manual. The Plants for Planting Manual would contain the specific restrictions currently in the regulations.

As the Plants for Planting Manual and the regulations would indicate that the specific restrictions in the manual must be complied with in order to import the specified types of plants for planting into the United States, there would be no need to reproduce the prohibitions in § 319.37–2(a) on plants for planting not imported in accordance with the regulations. However, the size and age restrictions in § 319.37–2(b) would be treated as restrictions on the

importation of specific types of plants for planting and moved to the Plants for Planting Manual, and we would include the prohibition against the importation of seeds in pulp in § 319.37–2(a) by adding a specific restriction to the Plants for Planting Manual that seeds may not be imported in pulp. In addition, the restrictions on the importation of specific types of plants for planting that are currently found in other subparts in 7 CFR part 319 would be moved to the Plants for Planting Manual. We are not proposing to change any of the specific restrictions currently in the plants for planting regulations as part of this action; this change would be purely administrative.

Moving the specific restrictions to the Plants for Planting Manual would provide organizational advantages, allowing users of the regulations to more quickly and easily determine what specific restrictions apply to the importation of a plant. It also would allow for the creation of a process in which we publish notices in the **Federal Register** to take public comment on additions to, updates to, or removals of restrictions on the importation of specific types of plants for planting and make the consequent changes in the Plants for Planting Manual (commonly referred to as a notice-based process), rather than our current process of publishing rules in the **Federal Register** and updating the regulations themselves.

APHIS uses notice-based processes to accomplish several different kinds of changes, including allowing the importation of fruits and vegetables subject to certain conditions (a process described in § 319.56–4), allowing the interstate movement of fruits and vegetables from Hawaii and U.S. territories subject to certain conditions (§ 318.13–4), adding, revising, or removing treatment schedules in the PPQ Treatment Manual (§ 305.3), and, as discussed earlier, adding taxa of plants for planting to the NAPPRA lists. In a typical notice-based process, an initial notice is published in the **Federal Register** that describes a change we are considering and makes a document providing the scientific basis for that change available for public comment. For example, when we determine it necessary to add a taxon to one of the NAPPRA lists, we publish a notice advising the public of our determination and provide a data sheet that details the scientific evidence APHIS evaluated in making the determination that the taxon is a quarantine pest or a host of a quarantine pest. We solicit public comments on the notice. After the public comment period, we publish a

second notice that either announces the addition of the taxon to the NAPPRA list, if the comments we receive do not cause us to change our determination that the taxon is a quarantine pest or a host of a quarantine pest, or announcing that the taxon will not be added to the NAPPRA list.

We added the NAPPRA provisions to the regulations in a final rule published in the **Federal Register** on May 27, 2011 (76 FR 31172–31210, Docket No. APHIS–2006–0011) and effective on June 27, 2011. We expect that our use of these provisions will eventually result in a large number of taxa being added to the NAPPRA lists and thus not authorized for importation. To remove a NAPPRA taxon from its list, as noted earlier, we will complete a PRA. Currently, if the PRA recommended specific mitigations as a condition for the importation of the taxon, we would need to undertake rulemaking to amend the regulations to provide for such conditions, based on that PRA. Rulemaking entails many procedural requirements, meaning a typical rulemaking takes from 18 months to 3 years to successfully complete. We anticipate that using a notice-based process to specify restrictions under which NAPPRA taxa could be imported would result in measurable time savings over the rulemaking process while continuing to allow for public input on the PRA, including the pest risk management measures it recommends.

In addition, quarantine pest conditions in the world are constantly changing. A set of provisions currently approved to mitigate all quarantine pest risks associated with the importation of a specific taxon may not be suitable if a new quarantine pest is introduced into an area. If well-known measures to mitigate the risk associated with this quarantine pest exist, often the emergency action we take in response to the spread of the quarantine pest will be to allow the continued importation of host taxa from the newly infested area subject to those measures. However, due to the time-consuming nature of rulemaking, the regulations often do not reflect in a timely manner the imposition of those measures, although the Plants for Planting Manual does. Having a notice-based process in place to revise current taxon-specific requirement would allow us to give notice of our determination that revised restrictions are necessary and take public comment on our determination and our new requirements for the

importation of a taxon in a timely manner.<sup>4</sup>

Before implementing any final rule with respect to this proposal, we would of course revise the Plants for Planting Manual, not only to incorporate all the information about restrictions on specific types of plants for planting that is currently in the regulations but also to make it easier to read and use as a reference.

The details of the specific requirements we would remove from the regulations are discussed later in this document under the heading “Restructuring of the Plants for Planting Regulations.” Here we will describe our proposed § 319.37–20, which would set out a notice-based process for adding, changing, or removing restrictions on the importation of specific types of plants for planting.

Paragraph (a) of proposed § 319.37–20 would provide that, in addition to the general restrictions in the plants for planting regulations, the Administrator may impose additional restrictions on the importation of specific types of plants for planting necessary to effectively mitigate the risk of introducing quarantine pests into the United States through the importation of those plants for planting. Additional restrictions may be placed on the importation of the entire plant or of certain plant parts, as a quarantine pest may not be associated with all parts of a plant. (Seed is the most common exception.) A list of the types of plants for planting whose importation is subject to additional restrictions, and the specific restrictions that apply to the importation of each type, would be found in the Plants for Planting Manual. In § 319.37–1, we would define the *Plants for Planting Manual* as the document that contains restrictions on the importation of specific types of plants for planting, as provided in § 319.37–20, and other information about the importation of plants for planting as provided in the plants for planting regulations. The definition would indicate where the Plants for Planting Manual is available as well.

Paragraph (b) of proposed § 319.37–20 would provide that the Administrator may determine that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting, based on the risk of introducing a quarantine pest through

<sup>4</sup> If the introduction of a quarantine pest into a new area caused us to determine that the importation of host taxa from that area should not be authorized, due to the lack of available measures to mitigate the quarantine pest risk, we would add those taxa to the NAPPRA category, possibly after issuing a Federal order.



the importation of that type of plants for planting. This text would explicitly indicate that the reason we would impose specific restrictions is a determination by the Administrator that the restrictions are necessary to effectively mitigate the risk of introducing quarantine pests into the United States.

Paragraph (b) would also state that the Administrator will make such a determination based on the findings of a PRA or on other scientific evidence. Although we would normally use a PRA to determine what restrictions are appropriate for a plant's importation, one example of other scientific evidence we might use is results from experiments or research conducted on a plant when it is imported under a Departmental permit.

Paragraph (c) would describe the process for adding, changing, or removing specific restrictions. Under this process, we would initially publish in the **Federal Register** a notice that announces our determination that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting. This notice would make available a document describing the restrictions that the Administrator has determined are necessary and how these restrictions will mitigate the risk of introducing quarantine pests into the United States. (In a PRA, this document would typically be the risk management section of the PRA.) We would typically make this document available for comment for 60 days. This would allow the public to comment both on the quarantine pest risks we have identified and on the means we have chosen to mitigate them.

After the close of the comment period, we would issue a second notice. This notice would inform the public of the specific restrictions, if any, that the Administrator has determined to be necessary in order to mitigate the risk of introducing quarantine pests into the United States through the importation of the type of plants for planting. In response to the information submitted in public comments, the Administrator might implement the restrictions described in the document made available by the initial notice, amend the restrictions in response to public comment, or determine that changes to existing restrictions are unnecessary.

It is important to note that the Plants for Planting Manual does not just contain restrictions on the importation of plants for planting; it also contains explanation of and guidance on how to fulfill those restrictions, as well as

instructions for how to inspect imported plants for planting, lists of facilities approved to export plants for planting under certain programs, and other information. We would not publish a notice in the **Federal Register** every time we determine that it is necessary to change something in the Plants for Planting Manual; we would only do so to add, change, or remove phytosanitary measures imposed on the importation of specific types of plants for planting to mitigate the risk of introducing quarantine pests. For example, we would publish a notice in the **Federal Register** to add a requirement that a taxon be produced in a pest-free place of production, but we would not publish a notice to update the list of approved pest-free places of production that produce the taxon for export to the United States.

Paragraph (d) would address types of plants for planting whose importation is currently subject to specific restrictions. As noted, we would move these restrictions to the Plants for Planting Manual without changing them. However, we may need to change them in the future. Paragraph (d) would indicate that plants for planting whose importation is currently subject to plant type-specific restrictions in the regulations would continue to be subject to those restrictions, except as changed in accordance with the process specified in proposed paragraph (c).

These changes would necessitate an update to the NAPPRA provisions in current § 319.37–2a. As discussed earlier, paragraph (e)(2) of that section currently indicates that, if a PRA conducted for removal of a taxon from the NAPPRA list supports a determination that importation of the taxon be prohibited or allowed subject to special restrictions, such as a systems approach, treatment, or postentry quarantine, APHIS will publish a proposed rule making the PRA available to the public and proposing to take the action recommended by the PRA. We discussed earlier our proposed changes to paragraph (e)(2) to accommodate moving some of the prohibited types of plants for planting into the NAPPRA category. Since we would no longer publish proposed rules in order to add restrictions on specific types of plants for planting, we would add a new paragraph (e)(3) indicating that, if the PRA supports a determination that importation of the taxon be allowed subject to plant type-specific restrictions, APHIS would publish a notice making the PRA available to the public in accordance with the process in proposed § 319.37–20(c).

We are also proposing to remove specific exceptions to general restrictions from the regulations and update them through this notice-based process. For example, paragraph (e) of § 319.37–8 specifies taxa that may be imported in specified growing media if they meet certain requirements. We are proposing to remove such lists of types of plants for planting from the regulations and instead list these plants, and the conditions that apply to their importation, in the Plants for Planting Manual. The specific changes we would make are discussed directly below.

#### Restructuring of the Plants for Planting Regulations

Consolidating the regulations in 7 CFR part 319 that govern the importation of plants for planting, removing the term *restricted article*, removing the lists of prohibited taxa, and removing all restrictions on the importation of specific types of plants for planting would necessitate a restructuring of the plants for planting regulations. Below we present an outline of the revised plants for planting regulations and a distribution table, showing where the provisions of the regulations that we are retaining would be located in the restructured subpart and where the provisions we are moving would be found.

#### General Requirements

- § 319.37–1 Notice of quarantine.
- § 319.37–2 Definitions.
- § 319.37–3 General restrictions on the importation of plants for planting.
- § 319.37–4 Taxa of plants for planting whose importation is not authorized pending pest risk analysis.
- § 319.37–5 Permits.
- § 319.37–6 Phytosanitary certificates.
- § 319.37–7 Marking and identity.
- § 319.37–8 Ports of entry: Approved ports, notification of arrival, inspection, and refusal of entry.
- § 319.37–9 Treatment of plants for planting; costs and charges for inspection and treatment; treatments applied outside the United States.
- § 319.37–10 Growing media.
- § 319.37–11 Packing and approved packing material.

#### Provisions for Restrictions on Specific Types of Plants for Planting

- § 319.37–20 Restrictions on the importation of specific types of plants for planting.
- § 319.37–21 Integrated pest risk management measures.
- § 319.37–22 Trust fund agreements.
- § 319.37–23 Postentry quarantine.



TABLE 1—PROPOSED DISTRIBUTION OF CURRENT PLANTS FOR PLANTING REGULATIONS

Current section	Current paragraph(s)	Proposed location	Notes
§ 319.37 (notice of quarantine).	(a) .....	Removed .....	Replaced with § 319.37–1(a) and (b).
	(b) .....	§ 319.37–8(d)	
	(c) .....	§ 319.37–8(e)	
§ 319.37–1 (definitions) .....	Footnotes 1 and 2 .....	§ 319.37–1(e) and (f)	Definitions of terms no longer used would be moved to the Plants for Planting Manual; definitions of terms used in new provisions would be added.
	.....	§ 319.37–2 .....	
§ 319.37–2 (prohibited articles).	(a) and (b) .....	Removed .....	Prohibited taxa would be moved to NAPPRA category and Plants for Planting Manual (as discussed earlier).
	(c) .....	§ 319.37–4(f) .....	
§ 319.37–2a (NAPPRA) .....	.....	§ 319.37–4 .....	Would be changed to reflect NAPPRA category. Changes to this section were discussed in detail earlier.
	.....	.....	
§ 319.37–3 (permits) .....	(a) .....	§ 319.37–5(a) .....	Would be converted from a list of types of plants for planting that require a permit to a general requirement for a permit, with exceptions in the Plants for Planting Manual.
	(b) through (f) .....	§ 319.37–5(b) through (f) ...	
§ 319.37–4 (phytosanitary certificates).	(a) .....	§ 319.37–6(a) .....	Minor updates.
	(b) .....	§ 319.37–8(c)	Amended to reflect changes elsewhere in section.
	(c) .....	Removed .....	
	(d) .....	§ 319.37–6(b) .....	Would be moved to Plants for Planting Manual.
	(e) .....	Removed .....	Would be moved to Plants for Planting Manual.
§ 319.37–5 (inspection and certification).	.....	Removed .....	Would be moved to the Plants for Planting Manual.
§ 319.37–6 (treatment) .....	.....	Removed.	
§ 319.37–7 (postentry quarantine).	(a) .....	§ 319.37–23(a) .....	Table of restricted taxa in (a) and list of taxa in (b) would be moved to the Plants for Planting Manual.
	(b) .....	Removed.	
	(c) and (d) .....	§ 319.37–23(b) and (c) .....	
§ 319.37–8 (growing media)	(e) and (f) .....	§ 319.37–23(d) and (e)	Paragraphs would be greatly simplified.
	(a) .....	§ 319.37–10(a)	
	(b) .....	(b) .....	
	(c) and (d) .....	(c) .....	
§ 319.37–9 (packing materials).	.....	§ 319.37–11(b) .....	List of articles from Canada that cannot be imported in growing media would be moved to Plants for Planting Manual.
	.....	.....	
§ 319.37–10 (marking and identity).	.....	(c) .....	Approved growing media would be moved to Plants for Planting Manual.
	.....	(d) .....	
§ 319.37–11 (arrival notification).	.....	(e) .....	Lists of approved growing media and taxa that may be imported in growing media would be moved to Plants for Planting Manual.
	.....	.....	
§ 319.37–12 (prohibited and restricted articles).	.....	§ 319.37–11(b) .....	List of approved packing materials would be moved to the Plants for Planting Manual.
	.....	.....	
§ 319.37–13 (treatment outside the United States).	.....	§ 319.37–5 .....	Minor changes proposed.
	.....	.....	
§ 319.37–14 (ports of entry)	.....	§ 319.37–8(b)	Minor changes proposed
	.....	§ 319.37–11(a)	
.....	.....	§ 319.37–9 .....	List of USDA plant inspection stations would be moved to the Plants for Planting Manual.
.....	.....	§ 319.37–8(a) .....	

We now describe each section in our proposed revision of the plants for planting regulations, including the sections of the current regulations from which they were derived.

*Notice of Quarantine*

Proposed § 319.37–1 would provide official notice of the quarantine we have established on the importation of plants for planting. It would fulfill a function similar to that of current § 319.37(a), but with different wording, since the

current language refers to prohibited and restricted articles. Proposed paragraph (a) of § 319.37–1 would indicate that, under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

Paragraph (b) would state that the Secretary has determined that it is necessary to designate the importation of specific taxa of plants for planting as NAPPRA, as provided in proposed § 319.37–4. It would further state that the Secretary has determined that it is necessary to restrict the importation into the United States of all other plants for planting and to impose additional restrictions on the importation of specific types of plants for planting, in accordance with the plants for planting

regulations and as described in the Plants for Planting Manual.

We would add a new paragraph (c) to clarify that the importation of plants that are intended for processing is not regulated under the plants for planting regulations. As discussed earlier, some plants can be used either for planting or for processing. Importation of plants for processing typically poses a much lower risk than importation for planting, as most processing greatly reduces or eliminates the potential for pest introduction. Plants imported for processing may thus be subject to less stringent importation requirements than plants for planting. It has been our practice to determine whether plants are being imported for processing based on documentation accompanying the plants. For example, the Harmonized Tariff Schedule has different codes for plants imported as live plants and plants imported for processing. Therefore, proposed paragraph (c) would indicate that the importation of plants that are imported for processing, as determined by an inspector based on documentation accompanying the articles, is not subject to the plants for planting regulations.

Paragraph (d) would indicate that the importation of taxa of plants for planting that are listed in 7 CFR part 360, which imposes restrictions on the importation of plant taxa designated as noxious weeds, and part 361, which imposes restrictions on the importation of certain types of seed, is subject to the restrictions in those parts. This text would help inform readers about the other parts in 7 CFR chapter III that contain regulations that apply to the importation of plants for planting. The taxa listed in 7 CFR parts 360 and 361, and the restrictions that apply to their importation, are also listed in the Plants for Planting Manual, making it a comprehensive reference.

Paragraphs (e) and (f) would incorporate into the main body of the regulations the information contained in current footnotes 1 and 2 to the subpart heading. Paragraph (e) would indicate that PPQ also enforces regulations promulgated under the Endangered Species Act of 1973 (Pub. L. 93–205, as amended) which contain additional prohibitions and restrictions on importation into the United States of plants for planting subject to the plants for planting regulations (see 50 CFR parts 17 and 23).

Paragraph (f) would state that one or more common names of plants for planting are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the plants for

planting represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all plants for planting within the taxon represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name. (The current footnote 2 refers to “category” rather than “taxon”; the latter term is more precise and is defined in the regulations.)

We are also proposing to add in paragraph (f) an advisory that when restrictions apply to the importation of a taxon of plants for planting for which there are taxonomic synonyms, those restrictions apply to the importation of all the synonyms of that taxon as well. Synonyms are commonly listed in the Germplasm Research Information Network, which is maintained by the USDA’s Agricultural Research Service. Treating synonyms the same is our current practice for plants for planting, as calling a taxon by a synonym rather than the name listed in the regulations does not change the risk it poses, but the regulations do not currently reflect this practice.

#### Definitions

Proposed § 319.37–2 would contain definitions of terms used in the plants for planting regulations. We would retain as they currently appear in the regulations the definitions of *bulb*, *earth*, *inspector*, *noxious weed*, *official control*, *person*, *plant*, *plant pest*, *Plant Protection and Quarantine Programs*, *planting*, *port of first arrival*, *preclearance*, *production site*, *quarantine pest*, *regulated plant*, *Secretary*, *soil*, *State*, *State Plant Regulatory Official*, *taxon*, and *United States*.

We are proposing to remove these definitions from the regulations: *Clean well water*, *disease*, *Europe*, *indexing*, *Oceania*, *potable water*, and *Solanum spp. true seed*. These terms relate to plant type-specific restrictions and, with the removal of those restrictions, would no longer be used in the regulations. However, we would add these definitions to the Plants for Planting Manual.

We are also proposing to remove the definitions of *prohibited article* and *restricted article* for reasons discussed earlier.

We are proposing to remove the definition of *Deputy Administrator* and all references to the Deputy Administrator in the regulations. In their places, we would add references to the Administrator. In § 319.37–2, we would add a definition of *Administrator* to read: “The Administrator of the

Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the United States Department of Agriculture authorized to act in his or her stead.” This would make the plants for planting regulations consistent with other subparts in part 319, which refer to the Administrator as the decisionmaking authority within APHIS.

Besides the new definition of *Plants for Planting Manual* discussed earlier, we are proposing to add definitions of *consignment*, *lot*, *mother stock*, *national plant protection organization (NPPO)*, *place of production*, and *type of plants for planting*. The proposed definition of *consignment* is based on the definition of that term in the International Plant Protection Convention’s (IPPC) Glossary of Phytosanitary Terms.<sup>5</sup> The proposed definition reads: “A quantity of plants for planting being moved from one country to another and covered, when required, by a single phytosanitary certificate (a consignment may be composed of one or more lots or taxa).” We are proposing to define “lot” as a number of units of a single commodity, identifiable by its homogeneity of composition and origin, forming all or part of a consignment. We are also proposing to replace the term “shipment” (as a noun) with “consignment” where the former term appears in the regulations.

The definition we are proposing to add for *national plant protection organization (NPPO)* would read: “The official service established by a government to discharge the functions specified by the International Plant Protection Convention.” This definition is also based on a definition in the IPPC Glossary. We would replace references in the regulations to “plant protection service” and similar terms with references to “NPPO.”

These changes would make our regulations consistent with international standards.

In this document, we have referred broadly to the categories of plants regulated in the plants for planting regulations as “types of plants for planting.” Many of the restrictions in the regulations are specific to taxa of plants, but others address other categories of plants on the basis of shared risk factors. For example, the regulations in § 319.37–4(c) allow for the importation of greenhouse-grown plants from Canada without a

<sup>5</sup> International Standard for Phytosanitary Measures (ISPM) No. 5. To view this and other ISPMs on the Internet, go to <http://www.ippc.int/> and click on the “Adopted Standards” link under the “Core activities” heading.

phytosanitary certificate, provided that certain conditions are met. This program applies to any taxon of plants that is grown in a certified greenhouse in Canada; both of these factors (growing conditions and origin) contribute to the plants' eligibility for the program. Similarly, many of the size and age restrictions in § 319.37-2(b) apply to broad categories of plants, such as naturally dwarfed trees and shrubs.

To facilitate applying restrictions to specific types of plants for planting in accordance with the proposed regulations and in the Plants for Planting Manual, we are proposing to add a definition of *type of plants for planting* to the regulations. The definition would read: "A grouping of plants for planting based on shared characteristics such as biological traits, morphology, botanical nomenclature, or risk factors." Thus, "type of plants for planting" includes shared botanical nomenclature but also includes any other shared risk factors that can serve as a basis for imposing restrictions on the importation of plants for planting. We welcome comment on this approach.

The definitions of the other new terms will be discussed where they appear in the proposed regulations.

Besides amending the definition of *plants for planting* as discussed earlier in this document, we are proposing to amend a few other existing definitions to reflect changes in this proposal. The definition of *from* states that an article is considered to be "from" any country or locality in which it was grown, except that it can be considered to be from Canada if certain conditions are fulfilled. One of the conditions is that the article is not prohibited nor subject to restrictions under certain paragraphs of § 319.37-5, subject to a required treatment under § 319.37-6, or subject to postentry quarantine under § 319.37-7. We would replace the reference to prohibited articles with a reference to plants for planting whose importation is NAPPRA in accordance with proposed § 319.37-4. In addition, as all restrictions on specific types of plants for planting would now be found in the Plants for Planting Manual, we would update the definition to require that the plants for planting may not have been subject to certain import restrictions under § 319.37-20. These restrictions would be the same as those listed in the current definition of *from*. We would list those restrictions in the Plants for Planting Manual. We would also replace references to "articles" in this definition with references to "plants for planting."

We would shorten the defined term *phytosanitary certificate of inspection* to

*phytosanitary certificate*, as completing such certificates can require much more than a simple inspection. The definition indicates that a phytosanitary certificate is a document related to a restricted article; we would amend the definition to indicate that it is a document related to a consignment of plants for planting.

Finally, we would amend the defined term *Spp. (species)* by switching the order of the words, i.e., making the defined term *Species (spp.)*. This would put the word "species" before its abbreviation, the more common way of presenting such information.

#### *General Restrictions on the Importation of Plants for Planting*

To help readers navigate the new plants for planting regulations, we would provide an overall guide to their structure in proposed § 319.37-3. This section would indicate that the importation of certain taxa of plants for planting is NAPPRA in accordance with proposed § 319.37-4. General restrictions that apply to the importation of all plants for planting other than those whose importation is NAPPRA in accordance with proposed § 319.37-4 would be found in proposed §§ 319.37-5 through 319.37-11.

Just as restrictions on the importation of specific taxa of plants for planting are found throughout the current regulations, so are restrictions on the importation of all or most types of plants for planting found throughout the current regulations. The goal of this restructuring is to group all the general requirements together in the regulations, to make it easier for readers to determine what requirements apply to all or most imported plants for planting.

Proposed § 319.37-3 would also state that, in accordance with proposed § 319.37-20, the Administrator may impose restrictions on the importation of specific types of plants for planting. These restrictions would be listed in the Plants for Planting Manual. (The break between proposed §§ 319.37-11 and 319.37-20 is intended to emphasize the fact that the former would be the end of the general restrictions in the regulations, after which provisions for imposing restrictions on the importation of specific types of plants for planting would be found.)

In addition, proposed § 319.37-3 would note that additional information on certain restrictions on the importation of specific types of plants for planting could be found in proposed §§ 319.37-21 through 319.37-23. Although we are proposing to remove specific restrictions from the regulations, we are also proposing to provide general requirements for certain

specific restrictions. Specifically, proposed § 319.37-21 would discuss integrated pest risk management measures; § 319.37-22 would discuss trust funds that may be required if APHIS is involved in mitigations in a foreign country; and § 319.37-23 would include the remaining postentry quarantine requirements. We will discuss these proposed sections in order later in this document.

#### *Taxa of Plants for Planting Whose Importation Is Not Authorized Pending Pest Risk Analysis*

Proposed § 319.37-4 would contain the NAPPRA regulations currently found in § 319.37-2a, with the changes discussed earlier in this document.

#### *Permits*

Proposed § 319.37-5 would include most of the current permit requirements in § 319.37-3, with changes as discussed below.

Paragraph (a) of current § 319.37-3 lists articles for which a written permit is required for importation. As noted earlier, paragraph (a)(5) of § 319.37-3 requires lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada to be imported into the United States with a written permit. This means that most consignments of plants for planting are imported with a permit; the exceptions for which a permit is not required are lots of 12 or fewer articles other than seeds, bulbs, or sterile cultures of orchid plants, and all lots of seeds, bulbs, or sterile cultures of orchid plants, that do not include types of plants for planting addressed by the other subparagraphs in paragraph (a).

We are proposing to revise current § 319.37-3(a) to indicate that a permit is generally required for all plants for planting, with exceptions listed in the Plants for Planting Manual. Exceptions would be added, changed, or removed in accordance with proposed § 319.37-20. This would allow us to update the list of exceptions through a notice when necessary and take public comment on any changes we make.

In addition, we would make some changes to the list of types of plants for planting that require a permit as part of moving this information into the plants for planting manual. The current list indicates that permits are required for articles subject to treatment requirements; articles subject to postentry quarantine requirements; and articles subject to other specific conditions elsewhere in the regulations (specifically, *Solanum tuberosum* true seed imported from Chile, *Fraxinus* spp.

imported from Canada, and small lots of seed imported without a phytosanitary certificate). As we are proposing to remove all these specific requirements from the regulations, we would indicate in the Plants for Planting Manual that a permit is required for any consignment of 12 or fewer plants for planting whose importation is subject to specific restrictions in accordance with proposed § 319.37–20.

This change would mean that a permit would be required for any type of plants for planting whose importation is subject to specific restrictions, not just those currently named in the regulations. We believe that a permit is necessary as an additional safeguard for the importation of these plants; that importation has already been determined to pose a risk, which is why we have imposed specific restrictions on it, and the permit provides an additional means of communicating those specific restrictions to the importer. We expect that this change will have a very small impact on the importation of plants for planting, since most lots of plants for planting to which specific restrictions apply are composed of 13 or more articles and are thus required to be accompanied by a permit under paragraph (a)(5) of § 319.37–3. However, we invite public comment on the impacts of this proposed change.

We would also add a statement in proposed paragraph (a)(2) that plants for planting whose importation is subject to postentry quarantine must also be imported under an importer postentry quarantine growing agreement. This requirement is found in § 319.37–7(a)(2) of the current regulations, and we would retain it in this proposal; we would add the reference here to help readers be aware of all the documentation requirements that apply to plants imported into postentry quarantine.

The requirements currently found in paragraphs (a)(3), (a)(4), (a)(6), (a)(7), and (a)(17) through (a)(19) of § 319.37–3 would be moved to the Plants for Planting Manual, with minor changes to reflect the change from “restricted articles” to “plants for planting” discussed earlier.

Paragraphs (a)(8) through (a)(16) of § 319.37–3 contain requirements for permits for articles that are destined to specific States. We are not proposing to include these paragraphs in the Plants for Planting Manual because we no longer use permits to notify States of these potential importations; that is accomplished through an electronic notification system.

Paragraph (b) of § 319.37–3 contains instructions on applying for a permit.

We would include these instructions in paragraph (b) of § 319.37–5, but would update the address to which to write to apply for a permit. We would also include a Web address at which one can apply for a permit. With these changes, paragraph (b) of proposed § 319.37–5 would require an application for a written permit to be submitted to PPQ (Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permits, Permit Unit, 4700 River Road Unit 133, Riverdale, MD 20737–1236) at least 30 days prior to arrival of the plants for planting at the port of entry. It would indicate that application forms are available without charge from that address or on the Web at [http://www.aphis.usda.gov/permits/ppq\\_epermits.shtml](http://www.aphis.usda.gov/permits/ppq_epermits.shtml). The completed application would have to include the following information:

- Name, address, and telephone number of the importer;
- The taxon or taxa and the approximate quantity of plants for planting intended to be imported. Current paragraph (b)(2) refers to the “kinds (botanical designations) of articles intended to be imported.” We would instead refer to “taxon or taxa” to be consistent with the rest of the regulations;
- Country(ies) or locality(ies) where grown;
- Intended United States port of entry;
- Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and
- Expected date of arrival.

Paragraphs (c) through (f) of § 319.37–3 contain provisions for issuing permits, withdrawing permits, and oral permits. We would retain those paragraphs without substantive changes in proposed § 319.37–5, although we would change references to “articles” to “plants for planting” and references to the Deputy Administrator to refer to the Administrator. Paragraph (e) currently refers to articles not designated as required to be imported with a permit in § 319.37–3(a); we would amend this paragraph to refer to plants for planting not required to be imported with a permit in accordance with proposed § 319.37–5(a), to reflect the other changes we have proposed.

#### *Phytosanitary Certificates*

Proposed § 319.37–6 would contain the general requirements for phytosanitary certificates that are currently found in § 319.37–4.

Section 319.37–4 is headed “Phytosanitary certificates of inspection,” and the introductory text of paragraph (a) in § 319.37–4 states that

any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate of inspection. We would amend the section heading and this requirement by removing the words “of inspection,” for reasons discussed earlier. We would also amend paragraph (a) to refer to plants for planting offered for importation, rather than restricted articles.

The introductory text of paragraph (a) also includes requirements for identification of the taxon of plants for planting that it accompanies, which we would retain. The text currently requires the phytosanitary certificate that accompanies a restricted article must identify the genus and species or cultivar of that article when the regulations place restrictions on individual species or cultivars within a genus. We would amend this requirement to indicate that such identification is required when the importation of individual species or cultivars within a genus is restricted in accordance with proposed § 319.37–20. The remaining identification requirements, for designation of intergeneric and interspecific hybrids, would remain unchanged.

Within § 319.37–4(a), subparagraphs (a)(1) through (a)(4) list exceptions to the requirement for a phytosanitary certificate. Paragraphs (c), (d), and (e) of § 319.37–4 set out specific requirements under which certain types of plants for planting may be imported without a phytosanitary certificate; these paragraphs cover greenhouse-grown plants from Canada, small lots of seed, and certain seeds from Canada, respectively.

With the exception of the requirements for small lots of seed, we are proposing to remove these specific requirements from the regulations and instead include them in the Plants for Planting Manual. We would retain the requirements for small lots of seed because they do not apply to a specific type of plants for planting; rather, they limit importations of seed to quantities that make an extremely thorough inspection of the seed practical. These requirements would be included in paragraph (b) of proposed § 319.37–6, with minor changes to reflect new section designations and other changes proposed in this document.

To cover the other current exceptions to the requirement for a phytosanitary certificate, paragraph (c)(1) of proposed § 319.37–6 would state that the Administrator may authorize the importation of types of plants for planting without a phytosanitary certificate if the plants for planting are

accompanied by equivalent documentation agreed upon by the Administrator and the NPPO of the exporting country as sufficient to establish the origin, identity, and quarantine pest status of the plants. The documentation would have to be provided by the NPPO or refer to documentation of the origin, identity, and quarantine pest status of the plants for planting provided by the NPPO. The documentation would have to be agreed upon before the plants for planting are exported from the exporting country to the United States. These general conditions are fulfilled by each of the sets of provisions in the current regulations under which types of plants for planting may be imported without a phytosanitary certificate. In fact, these general conditions are necessary to provide the same information as would be provided by a phytosanitary certificate.

Paragraph (c)(2) of proposed § 319.37–6 would indicate that the Administrator may impose additional restrictions on the importation of plants for planting that are not accompanied by a phytosanitary certificate to ensure that the plants are appropriately identified and free of quarantine pests. Paragraph (c)(3) would indicate that the Plants for Planting Manual lists plants for planting that are not required to be accompanied by a phytosanitary certificate; the countries from which their importation without a phytosanitary certificate is authorized; the approved documentation of their origin, identity, and quarantine pest status; and any additional conditions on their importation.

Paragraph (c)(4) of proposed § 319.37–6 would indicate that types of plants for planting may be added to or removed from the list of plants for planting that are not required to be accompanied by a phytosanitary certificate in accordance with proposed § 319.37–20. The requirements for importing specific types of plants for planting without a phytosanitary certificate could also be changed in accordance with § 319.37–20. The notice published for comment would describe the documentation agreed upon by the Administrator and the NPPO of the exporting country and any additional restrictions to be imposed on the importation of the type of plants for planting. This provision would allow for the importation of plants for planting without a phytosanitary certificate provided the conditions of proposed paragraph (c)(1) are met, with any additional conditions the Administrator determines to be necessary under proposed paragraph (c)(2). Requiring plants for planting to

be authorized for importation without a phytosanitary certificate in accordance with proposed § 319.37–20 would allow for public input on the change.

#### *Marking and Identity*

Proposed § 319.37–7 would contain requirements for marking and identity of imported plants for planting that are substantially identical to the requirements currently found in § 319.37–10. As in other sections, we would change all references to “restricted articles” to “plants for planting.” We would change a reference in paragraph (c) of § 319.37–10 to a “shipment” of plants for planting to a “consignment,” to be consistent with changes discussed earlier.

Paragraphs (a) and (b) of § 319.37–10 address importation by any means other than mail and by mail, respectively. Each requires that imported plants be accompanied by, among other information, the number of the written permit authorizing the importation, if one was issued. We are proposing to require instead that the number of the written permit authorizing the importation be included if a written permit was required under proposed § 319.37–5. This change would clarify that all articles required to be accompanied by a permit must be marked with that permit number.

#### *Ports of Entry: Approved Ports, Notification of Arrival, Inspection, and Refusal of Entry*

Information about approved ports of entry, notification of arrival at the port of entry, inspection, and refusal of entry is currently spread among multiple sections in the regulations. We are proposing to consolidate this information into a new § 319.37–8 to make the regulations easier to use.

Paragraph (a) of proposed § 319.37–8 would describe approved ports of entry for imported plants for planting. This information would be taken from the introductory text of § 319.37–14. The proposed text would state that any plants for planting required to be imported under a written permit pursuant to proposed § 319.37–5(a), if not precleared, may be imported or offered for importation only at a USDA plant inspection station.

Current § 319.37–14 also contains a list of USDA plant inspection stations. We are proposing to remove this list from the regulations and add it to the Plants for Planting Manual. Our decision to establish a USDA plant inspection station at a port of entry is based on the demand for inspection and the available facilities; public input on adding or removing USDA plant

inspection stations would not be constructive, and in fact past additions to the list of USDA plant inspection stations have not received any public comment. Accordingly, as part of moving the introductory text of § 319.37–14 into proposed § 319.37–8(a), we would amend that text to indicate the USDA plant inspection stations are listed in the Plants for Planting Manual. The other provisions would remain unchanged, except to change from “restricted articles” to “plants for planting.”

Plants for planting that are not required to be imported under a written permit pursuant to § 319.37–5(a) would be allowed to be imported or offered for importation at any Customs designated port of entry. Exceptions, if any, would be listed in § 330.104. Plants for planting that are required to be imported under a written permit that are also precleared in the country of export would not be required to enter at an inspection station and may enter through any Customs port of entry. Exceptions, if any, would be listed in § 330.104. These provisions are unchanged from current § 319.37–14.

Paragraph (b) of proposed § 319.37–8 would include the information in current § 319.37–11 regarding notice of arrival. It would state that, promptly upon arrival of any plants for planting at a port of entry, the importer shall notify PPQ of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker’s document, or a notice form provided for that purpose.

Paragraph (c) of proposed § 319.37–8 would include the provisions currently in § 319.37–4(b) regarding inspection and treatment. It would state that any plants for planting may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country in which the plants for planting were grown, and must undergo treatment in accordance with 7 CFR part 305 if treatment is ordered by the inspector. (The regulations currently state that plants for planting must undergo any treatment contained in the phytosanitary treatment regulations in 7 CFR part 305 that is ordered by the inspector, but part 305 no longer contains treatments; instead, it contains general requirements for performing treatments, while specific treatments are found in the PPQ Treatment Manual.) Any plants for planting found upon inspection to contain or be contaminated with quarantine pests that cannot be eliminated by treatment would be denied entry at the first United States port of arrival and would

have to be destroyed or shipped to a point outside the United States.

Paragraphs (d) and (e) of proposed § 319.37–8 would include the provisions currently in § 319.37(b) and (c). Under paragraph (d), the importer of any plants for planting denied entry for noncompliance with the regulations would have to, at the importer's expense and within the time specified in an emergency action notification (PPQ Form 523), destroy, ship to a point outside the United States, treat in accordance with 7 CFR part 305, or apply other safeguards to the plants for planting, as prescribed by an inspector, to prevent the introduction into the United States of quarantine pests. In choosing which action to order and in setting the time limit for the action, the inspector would consider the degree of pest risk presented by the plant pest associated with the plants for planting, whether the plants for planting are a host of the pest, the types of other host materials for the pest in or near the port, the climate and season at the port in relation to the pest's survival range, and the availability of treatment facilities for the plants for planting.

As described, the regulations governing the handling of articles that are inspected and found to require treatment are slightly different from the regulations governing the handling of articles that are denied entry for noncompliance with the regulations. We are proposing to retain the two sets of provisions, but we are considering harmonizing them in the future.

Under paragraph (e) of proposed § 319.37–8, which is drawn from current § 319.37(c), no person would be allowed to remove any plants for planting from the port of first arrival unless and until notice is given to the collector of customs by the inspector that the plants for planting has satisfied all requirements of the regulations.

#### *Treatment of Plants for Planting; Costs and Charges for Inspection and Treatment; Treatments Applied Outside the United States*

Proposed § 319.37–9 would include various provisions of the current regulations that deal with treatments. These provisions are mostly taken from current § 319.37–13.

Paragraph (a) of proposed § 319.37–9 is drawn from current paragraph (a) of § 319.37–13. It would state that the services of a Plant Protection and Quarantine inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer. No charge would be made to the importer for Government-owned or -controlled

special inspection facilities and equipment used in treatment, but the inspector may require the importer to furnish any special labor, chemicals, packing materials, or other supplies required in handling an importation. PPQ would not be responsible for any costs or charges, other than those indicated in proposed § 319.37–9.

Most of paragraph (b) of proposed § 319.37–9 is drawn from current paragraph (b) of § 319.37–9, but the first sentence of proposed paragraph (b) incorporates a requirement currently found in § 319.37–6(b). That paragraph requires seeds and bulbs treated within the United States to be treated at the time of importation into the United States. Among the various types of plants for planting, only seeds and bulbs are routinely subjected to phytosanitary treatment, as treatments typically cause significant mortality in other types of plants for planting. However, our policy has been to require treatment at the time of importation for any plants for planting that require treatment, not just seeds and bulbs, since the movement of potentially infested plants for planting within the United States could be a pathway for the introduction of quarantine pests. To promote clarity, we would amend proposed paragraph (b) to indicate that any treatment performed in the United States on plants for planting must be performed at the time of importation into the United States, not just treatments on seeds and bulbs.

Paragraph (b) would also indicate that treatment would be performed by an inspector or under an inspector's supervision at a government-operated special inspection facility, except that an importer may have such treatment performed at a nongovernmental facility if the treatment is performed at nongovernment expense under the supervision of an inspector and in accordance with 7 CFR part 305 and in accordance with any treatment required by an inspector as an emergency measure in order to prevent the dissemination of any quarantine pests. However, treatment could be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, the plants for planting can be transported to such nongovernmental facility without the risk of introduction into the United States of quarantine pests.

Paragraph (c) of proposed § 319.37–9 would be drawn from current paragraph (c) of § 319.37–13. It would require any treatment performed outside the United States to be monitored and certified by an APHIS inspector or an official from the NPPO of the exporting country. If

monitored and certified by an official of the NPPO of the exporting country, then a phytosanitary certificate would have to be issued with the following declaration: "The consignment of (fill in taxon) has been treated in accordance with 7 CFR part 305." (We are proposing to replace the term "botanical name" in the current text with the term "taxon.") During the entire interval between treatment and export, the consignment would have to be stored and handled in a manner that prevents any infestation by quarantine pests.

#### *Growing Media*

Proposed § 319.37–10 would set out requirements with respect to the importation of plants for planting in growing media. It would be based on current § 319.37–8, but we would revise the current regulations to reflect the removal of restrictions on the importation of specific types of plants for planting from the regulations and to add a notice-based process for updating the list of approved growing media.

Paragraph (a) of proposed § 319.37–10 would require plants for planting at the time of importation or offer for importation into the United States to be free of sand, soil, earth, and other growing media, except as provided in the remainder of the section.

Paragraph (b) of § 319.37–8 currently states that a restricted article from Canada may be imported in any growing medium, except that a restricted article from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road may only be imported in an approved growing medium if the phytosanitary certificate accompanying it contains an additional declaration that that the plants were grown in a manner to prevent infestation by potato cyst nematodes. Articles imported from Canada are generally exempt from the prohibition on importation with growing media because the pest risks in the United States and Canada are similar.

We are proposing to revise this paragraph to remove the specific restrictions on plants for planting grown in certain areas in Canada. Instead, proposed paragraph (b) would state that plants for planting from Canada may be imported in any growing medium, except as restricted in the Plants for Planting Manual. Restrictions on growing media for specific types of plants for planting imported from Canada would be added, changed, or removed in accordance with proposed § 319.37–20. Using the notice-based process to update these restrictions

would provide flexibility and allow us to respond to changing pest conditions more quickly.

Paragraph (c) of § 319.37–8 allows a restricted article growing solely in agar or in other agar-like tissue culture medium to be imported established in such growing media. Paragraph (d) allows epiphytic plants (including orchid plants) established solely on tree fern slabs, coconut husks, coconut fiber, new clay pots, or new wooden baskets to be imported on such growing media. New wooden baskets must meet all applicable requirements in §§ 319.40–1 through 319.40–11, which contain requirements for the importation of wood.

We are proposing to remove these specific requirements and instead generally provide, in proposed paragraph (c), that certain types of plants for planting growing solely in certain growing media listed in the Plants for Planting Manual may be imported established in such growing media. We would state that the Administrator has determined that the importation of the specified types of plants for planting in these growing media does not pose a risk of introducing quarantine pests into the United States, thus communicating the condition for allowing types of plants for planting to be imported in growing media without further restrictions.

Proposed paragraph (c) would also provide that, if we determine that a new growing medium may be added to the list of growing media in which imported plants for planting may be established, or that a growing medium currently listed for such purposes is no longer suitable for establishment of imported plants for planting, we will publish in the **Federal Register** a notice that announces our determination and requests comment on the change. In our notice, we will provide for a public comment period, typically 60 days. After the close of the comment period, we will publish another notice informing the public regarding our decision on the change to the list of growing media in which imported types of plants for planting may be established. Establishing this process would allow us to quickly approve growing media or revoke their approval, depending on changing scientific information.

Paragraph (e) of § 319.37–8 lists several taxa of plants for planting that may be imported in certain approved growing media subject to conditions designed to prevent their infestation with quarantine pests. We are proposing to remove these specific requirements from the regulations. In their place,

proposed paragraph (d) would state that certain types of plants for planting, as listed in the Plants for Planting Manual, may be imported when they are established in a growing medium approved by the Administrator and they are produced in accordance with additional requirements specified in the Plants for Planting Manual. (In addition to changing the provisions currently in paragraph (e), this would also allow for changes to the lists of plants for planting allowed to be imported in approved growing media that are currently found in paragraphs (c) and (d) of § 319.37–8.) Changes to the list of plants for planting that may be imported in growing media, and to the requirements for the importation of those plants for planting, would be made in accordance with § 319.37–20.

#### *Packing and Approved Packing Material*

Proposed § 319.37–11 would set out requirements for packing imported plants for planting and for their importation in packing material. Packing material is distinguished from growing media in that the plant is not rooted in packing material and the plant's roots are easily removed from packing material for inspection. This proposed section incorporates requirements from current §§ 319.37–9 and 319.37–12.

Paragraph (a) of proposed § 319.37–11 would indicate that plants for planting for importation into the United States must not be packed in the same container as plants for planting whose importation into the United States is NAPPRA in accordance with proposed § 319.37–4. Currently, § 319.37–12 prohibits restricted articles from being imported into the United States in the same container as prohibited articles; we propose to update this section to use the terminology established elsewhere in this proposal.

Paragraph (b) of proposed § 319.37–11 would be based on current § 319.37–9, which contains a list of approved packing materials. However, we would remove the list of approved packing materials from the regulations. Instead, proposed paragraph (b) would provide that any plants for planting at the time of importation or offer for importation into the United States shall not be packed in a packing material unless the plants were packed in the packing material immediately prior to shipment; such packing material is free from sand, soil, or earth (except as designated in the Plants for Planting Manual); has not been used previously as packing material or otherwise; and is approved by the Administrator as not posing a risk of introducing quarantine pests.

Approved packing materials (and the sand that can be found on approved packing material) would be listed in the Plants for Planting Manual. There is a great diversity of packing materials that do not support the development of quarantine pests; allowing the Administrator to approve such packing material, rather than going through the rulemaking process to list new packing material in the regulations, will make it easier for importers to use newly available, risk-free packing materials.

Paragraph (c) of proposed § 319.37–11 would set out our process for changing the list of approved packing materials. Similar to the process for changing the list of approved growing media, proposed paragraph (c) would provide that, if we determine that a new packing material may be added to the list of approved packing materials, or that a packing material currently listed should no longer be approved, we will publish in the **Federal Register** a notice that announces our determination and requests comment on the change. In our notice, we will provide for a public comment period, typically of 60 days. After the close of the comment period, we will publish another notice informing the public regarding our decision on the change to the list of approved packing materials in which imported types of plants for planting may be established. Establishing this process would allow us to quickly approve packing materials or revoke their approval, depending on changing scientific information.

#### *Integrated Pest Risk Management Measures*

We have already discussed proposed § 319.37–20, which would set out the process for adding, changing, or removing restrictions on the importation of specific types of plants for planting. We are proposing to include in our revised regulations three sections that would set out procedures for certain plant type-specific restrictions.

Proposed § 319.37–21 would set out general requirements for the development of integrated pest risk management measures, when we determine that such measures are necessary to mitigate the risk associated with the importation of a specific type of plants for planting. We currently have several programs in the regulations that use integrated pest risk management measures in order to ensure that specific types of plants for planting are imported free of a quarantine pest or pests. The program in § 319.37–5(r) for the importation of *Pelargonium* spp. and *Solanum* spp. from areas where *R. solanacearum* race 3 biovar 2 is present



is one example. It incorporates requirements for ongoing testing for that pathogen, construction of production sites to prevent the pathogen from entering from outside sources such as water or workers' clothing, disinfection of equipment used in the production site, ensuring that growing media is free of the pathogen, training of production site personnel, remedial measures in case the pathogen is detected, and phytosanitary certification.

An example of a program focused on an insect pest is the program in § 319.37–5(v) for the importation of plants for planting from Israel, which is designed to prevent the introduction of *Spodoptera littoralis* and other quarantine pests. This program includes requirements for registration of production sites, construction of production sites to prevent the introduction of *S. littoralis*, regular inspections for the pest, remedial measures in case the pest is detected, and phytosanitary certification.

Although we are proposing to move the requirements for these specific programs from the regulations to the Plants for Planting Manual, we believe it will benefit stakeholders and other interested parties to see what general provisions we would use to develop such programs in the future. The provisions we are proposing to include in § 319.37–21 are based on Regional Standard for Phytosanitary Measures (RSPM) No. 24<sup>6</sup> of the North American Plant Protection Organization, of which APHIS is a member, and are consistent with the IPPC's ISPM No. 36; both of these standards address plants for planting.

In the past, we have referred to these programs as "systems approaches." We are proposing to use the term "integrated pest risk management measures" in the plants for planting regulations to be consistent with RSPM No. 24 and industry terminology and to emphasize the fact that such programs involve multiple measures, each of which is necessary for a comprehensive approach to managing pest risk.

The introductory text of proposed § 319.37–21 would indicate that, if a type of plants for planting is a host of a quarantine pest or pests, APHIS may require the type to be produced in accordance with integrated pest risk management measures as a condition of importation. Proposed § 319.37–21 would set out a general framework for integrated pest risk management measures.

When appropriate, we would require a type of plants for planting to be imported subject to integrated pest risk management measures that mitigate the quarantine pest risks associated with that type of plants for planting through the process described in § 319.37–20. In the documentation accompanying the notice we would publish under § 319.37–20, we would specify the quarantine pests identified and the specific measures we would use to manage them. Those measures would be consistent with the general measures described in proposed § 319.37–21, but would be targeted to the identified quarantine pests.

The NAPPO standard and our proposed regulations describe the responsibilities of all parties involved in integrated pest risk management measures: The place of production, the NPPO of the exporting country, plant brokers, and the NPPO of the importing country (i.e., APHIS). We are not proposing to include most of the information in RSPM No. 24 with respect to our responsibilities, as it is not necessary to specify the actions we will take in the regulations. However, the proposed regulations provide us with the authority to take any action we may deem to be necessary. As a practical matter, we concur with RSPM No. 24 and would take action in accordance with its principles when developing and implementing integrated pest risk management measures.

Paragraph (a) of proposed § 319.37–21 would discuss the responsibilities of the place of production. RSPM No. 24 uses "place of production" as that term is defined in the IPPC Glossary. Accordingly, we would add to the regulations a definition of *place of production*, which would be consistent with the definition of that term in the IPPC Glossary. The definition would read: "Any premises or collection of fields operated as a single production or farming unit. This may include a production site that is separately managed for phytosanitary purposes."

The introductory text of paragraph (a) would indicate that, for integrated pest risk management measures, the place of production would be responsible for identifying, developing, and implementing procedures that meet the requirements of both the NPPO of the exporting country and APHIS. Participants in the export program would have to be approved by the NPPO or its designee and APHIS. Approval would be conferred by the NPPO or its designee and APHIS after the participant meets the conditions required for integrated pest risk

management. Approval would be withdrawn if the participant fails to meet the conditions at any time. All documentation required under paragraph (a)(5) of proposed § 319.37–21 would be maintained by the exporting place of production and made available to official representatives of the NPPO of the exporting country and APHIS upon request. The place of production would have to be open to necessary and reasonable audit, monitoring, and evaluation of compliance by the NPPO of the exporting country and APHIS. The management of the place of production would be responsible for complying with the integrated pest risk management measures. Management would have to specify the roles and responsibilities of its personnel to perform program activities. The place of production would have to notify the NPPO of the exporting country of deficiencies detected during internal audits. The NPPO of the exporting country would be responsible for ensuring that the place of production is in compliance with the integrated pest risk management measures. These requirements are all necessary to properly establish accountability for the successful implementation of integrated pest risk management measures by the place of production.

The most important requirement for the place of production is its program to manage pests. Under proposed paragraph (a)(1), the place of production would have to develop and implement an approved pest management program that contains ongoing pest monitoring and procedures for the exclusion and control of plant pests. The place of production would have to obtain material used to produce plants for planting from sources that are free of quarantine pests and that are approved by the NPPO of the exporting country and APHIS. All sources of plants for planting and the phytosanitary status of those plants would have to be well-documented, and the program for producing plants for planting would have to be carefully monitored.

Under proposed paragraph (a)(2), a training program approved by the NPPO of the exporting country and APHIS would have to be established, documented, and regularly conducted at the place of production. The training program would have to ensure that all those involved in the export program possess specific knowledge related to the relevant components of the program and a general understanding of its requirements. This requirement would ensure that the pest management program is properly implemented.

<sup>6</sup> Available at <http://www.napponline.org/en/data/files/download/PDF/RSPM24-16-10-05-e.pdf>.

To ensure that the pest management program is effective, proposed paragraph (a)(3) would require the place of production to perform, or designate parties to perform internal audits that ensure that a plan approved and documented by APHIS and the NPPO of the exporting country is being followed and is achieving the appropriate level of pest management.

Proposed paragraph (a)(4) would require the place of production to implement a procedure approved by APHIS and the NPPO of the exporting country or its designee that documents and identifies plants from propagation through harvest and sale to ensure that plants can be traced forward and back from the place of production. The system would at a minimum have to account for:

- The origin and pest status of mother stock. To clarify the meaning of this term, we would define *mother stock* in § 319.37–2 as a group of plants from which plant parts are taken to produce new plants;
- The year of propagation and the place of production of all plant parts that make up the plants for planting intended for export;
- Geographic location of the place of production;
- Location of plants for planting within the place of production;
- The plant taxon; and
- The purchaser's identity.

This requirement would ensure that, in the event of a pest problem, all responsible parties could quickly identify the source and potential distribution of the problem.

To ensure a common understanding of the integrated measures, under proposed paragraph (a)(5), the place of production would be required to develop a manual approved by the NPPO of the exporting country and APHIS that guides the place of production's operation and that includes the following components:

- Administrative procedures (including roles and responsibilities and training procedures);
- Pest management plan;
- Place of production internal audit procedures;
- Management of noncompliant product or procedures;
- Traceability procedures; and
- Recordkeeping systems.

Proposed paragraph (a)(6) would require the place of production to maintain records on its premises as specified by APHIS and the NPPO of the exporting country. These records would have to be made available to APHIS and the NPPO of the exporting country upon request. These documents would

include all the elements described in proposed paragraph (a) and copies of all internal and external audit documents and reports.

Proposed paragraph (b) would describe the joint responsibilities of APHIS and the NPPO of the exporting country. Under this paragraph, APHIS and the NPPO of the exporting country would be responsible for collaborating to establish program requirements, including workplans and compliance agreements as necessary, for recognizing and implementing particular import programs. Technically justified modifications to the program would be negotiated. The administration of program requirements would include such elements as clarification of terminology, testing and retesting requirements, eligibility, the nomenclature of certification levels, horticultural management, isolation and sanitation requirements, inspection, documentation, identification and labeling, quality assurance, noncompliance and remedial measures, and postentry quarantine requirements. The criteria for approving, suspending, removing, and reinstating approval for a particular program would be jointly developed and agreed upon by APHIS and the NPPO of the exporting country. Information would be exchanged between APHIS and the NPPO of the exporting country through officially designated contact points.

Proposed paragraph (c) would describe the responsibilities of the NPPO of the exporting country. Paragraph (c)(1) would require the NPPO of the exporting country to provide sufficient information to APHIS to support the evaluation and acceptance of export programs. This could include:

- Specific identification of the commodity, place of production, and expected volume and frequency of consignments;
- Relevant production, harvest, packing, handling, and transport details;
- Pests associated with the plant including prevalence, distribution, and damage potential;
- Risk management measures proposed for a pest management program; and
- Relevant efficacy data.

Proposed paragraph (c)(2) would require a phytosanitary certificate to be issued by the NPPO of the exporting country unless APHIS and the NPPO of the exporting country agree to use other documentation in accordance with proposed § 319.37–6(c).

Under proposed paragraph (c)(3), other responsibilities of the NPPO of the exporting country would include:

- Establishing and maintaining compliance agreements as necessary;
- Oversight and enforcement of program provisions;
- Arrangements for monitoring and audit; and
- Maintaining appropriate records.

Paragraph (d) of proposed § 319.37–21 would address the responsibilities of plant brokers. Persons trading in plants for planting intended for export without growing the plants (referred to as plant brokers) would have to be approved by the NPPO of the exporting country or its designee. The list of plant brokers would have to be provided to APHIS upon request. Approval would only be conferred by the NPPO or its designee after the participant meets the requirements of proposed paragraph (d). Approval would have to be withdrawn if the participant fails to meet the conditions at any time. Plant brokers would have to ensure the traceability of export consignments to an approved place of production or production site. Brokers would have to maintain the phytosanitary status of the plants in a manner equivalent to an approved place of production from purchase, storage, and transportation to the export destination. Plant brokers would have to document these processes for verifying status and maintaining traceability.

Paragraph (e) of proposed § 319.37–21 would set out requirements for external audits. APHIS and the NPPO of the exporting country would agree to the requirements for auditing.

Under proposed paragraph (e)(1), APHIS would evaluate the integrated pest risk management measures of the NPPO of the exporting country before acceptance. This could consist of documentation review, site visits, and inspection and testing of plants produced under the system. Following approval, APHIS or its designee would monitor and periodically audit the system to ensure that it continues to meet the stated objectives. Audits would include inspection of imported plants for planting, site visits, and review of the integrated pest risk management measures and internal audit processes of the place of production and the NPPO of the exporting country.

Under proposed paragraph (e)(2), the NPPO of the exporting country would arrange for audits of the exporting system. Audits would be conducted by the NPPO or its designee and may consist of inspection and testing of plants for planting and the documentation and management practices as they relate to the program. Audits would verify that:

- The places of production in the program are free of quarantine pests;

- Program participants are complying with the specified standards;
- The integrated pest management measures continue to meet APHIS requirements; and
- Arrangements with designees are complied with.

Paragraph (f) of proposed § 319.37–21 would set out procedures in case of noncompliance. Proposed paragraph (f)(1) would require the exporting NPPO to notify APHIS of noncompliance within the integrity of the system or noncompliance by a place of production that affects the phytosanitary integrity of the plants for planting. The requirements for notification would be determined between the NPPO of the exporting country and APHIS.

Proposed paragraph (f)(2) would indicate that regulatory responses to program failures would be based on existing bilateral agreements. Contingency plans could be established in advance to ensure that alternative measures are available in the event that all or part of a program fails. APHIS would specify the consequences of noncompliance to the NPPO of the exporting country. The NPPO would have to specify the consequences of noncompliance to the participants in the program. These could vary depending on the nature and severity of the infraction. In addition, remedial measures would be specified to enable a suspended or decertified place of production or plant broker to become eligible for reinstatement or recertification.

Proposed paragraph (f)(3) would require places of production or plant brokers that do not meet the conditions of the program to be suspended. Plants for planting could not be exported from a place of production or a plant broker that has failed to meet the program requirements.

Proposed paragraph (f)(4) would require the effectiveness of remedial measures taken to be verified before reinstatement to the program by the exporting NPPO, and where appropriate, by APHIS.

As can be seen, the requirements in proposed § 319.37–21 are general requirements that could be adapted to any quarantine pests and any measures used to control or exclude them from places of production. They would provide a comprehensive framework for the development of specific requirements. We invite public comment on whether other aspects of implementing integrated pest risk management measures should be included in the regulations.

#### *Trust Fund Agreements*

Some of the tasks undertaken in support of integrated pest risk management measures would require APHIS to perform phytosanitary services (for example, audits) in the exporting country. To ensure that APHIS is properly reimbursed for its services, proposed § 319.37–22 would provide for the creation of trust funds in order to fund such activities, similar to those currently required in paragraphs (r)(3)(xv) and (v)(7) of § 319.37–5.

Under proposed § 319.37–22, if APHIS personnel need to be physically present in an exporting country or region to facilitate the exportation of plants for planting and APHIS services are to be funded by the NPPO of the exporting country or a private export group, then the NPPO or the private export group would have to enter into a trust fund agreement with APHIS that is in effect at the time APHIS' services are needed. Under the agreement, the NPPO of the exporting country or the private export group would be required to pay in advance all estimated costs that APHIS expects to incur in providing inspection services in the exporting country. These costs would include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing services. The agreement would require the NPPO of the exporting country or region or a private export group to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. The agreement would have to specify that, if the deposit is not sufficient to meet all costs incurred by APHIS, the NPPO of the exporting country or a private export group must deposit with APHIS, before the services will be completed, a certified or cashier's check for the amount of the remaining costs, as determined by APHIS. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO of the exporting country or region or a private export group, or held on account.

#### *Postentry Quarantine*

Proposed § 319.37–23 would contain requirements for postentry quarantine. Under current § 319.37–7, certain taxa of plants for planting are required to be grown in postentry quarantine in order to determine whether they are infested with quarantine pests, typically

pathogens. Section 319.37–7 also provides a framework of requirements under which postentry quarantine must be conducted and completed. We would move the lists of taxa that must be grown in postentry quarantine that are currently found in paragraphs (a) and (b) of § 319.37–7 to the Plants for Planting Manual. However, we would retain much of the framework in the regulations, since it is generally applicable to growing plants for planting in postentry quarantine.

Paragraph (a) of proposed § 319.37–23 would contain the requirements currently in the introductory text of paragraph (a) of § 319.37–7, before the table of restricted articles for which postentry quarantine is required. The paragraph would explain that one specific restriction that may be placed upon the importation of a type of plants for planting in accordance with proposed § 319.37–20 is that it be grown in postentry quarantine. Plants for planting grown in postentry quarantine could be grown under postentry quarantine conditions specified in paragraphs (c) and (d) of proposed § 319.37–23, and could be imported or offered for importation into the United States only:

- If destined for a State that has completed a State postentry quarantine agreement with APHIS;
- If an importer postentry quarantine growing agreement has been completed and submitted to PPQ. (This agreement is currently referred to simply as a “postentry quarantine agreement,” but we believe specifying that it is the importer's agreement would better differentiate it from the State postentry quarantine agreement.) The agreement would have to be signed by the person (the importer) applying for a written permit for importation of the plants for planting in accordance with proposed § 319.37–5; and,
- If PPQ has determined that the completed postentry quarantine growing agreement fulfills the applicable requirements of proposed § 319.37–23 and that services by State inspectors are available to monitor and enforce the postentry quarantine.

Paragraph (b) of proposed § 319.37–23 would set out requirements for State postentry quarantine agreements. Such requirements are currently found in paragraph (c) of § 319.37–7. We believe that there is no need to retain the level of detail regarding such agreements that is found in current paragraph (c), which sets out extensive requirements that States must meet in order to be sites for postentry quarantine; for example, the paragraph includes detailed requirements for State laws and

regulations, duties of State inspectors, services APHIS agrees to provide, and provisions for termination of a State postentry quarantine agreement. Current paragraph (c) also lists the States with active State postentry quarantine agreements.

Although we continue to believe that all these requirements are necessary, we believe they would be better addressed in the agreement itself, rather than detailed in the regulations. This would allow us to tailor State postentry quarantine agreements to specific circumstances and to simplify the regulations. Accordingly, proposed paragraph (b) would state only that plants for planting required to undergo postentry quarantine in accordance with proposed § 319.37–23 may only be imported if destined for postentry quarantine growing in a State which has entered into a written agreement with APHIS, signed by the Administrator or his or her designee and by the State Plant Regulatory Official (SPRO). Proposed paragraph (b) would note that, in accordance with the laws of individual States, inspection and other postentry quarantine services provided by a State may be subject to charges imposed by the State.

Rather than include the list of States that have entered into a postentry quarantine agreement in the regulations, we would provide such a list of States in the Plants for Planting Manual. This would allow us to quickly update the list if changes are necessary, providing up-to-date information to stakeholders. The list of States with a postentry quarantine agreement (all U.S. States and Territories, except the District of Columbia, Guam, Hawaii, Kansas, and the Northern Mariana Islands) would not change; it would simply be moved to the manual.

Proposed paragraph (c) of § 319.37–23 would contain requirements for importer postentry quarantine growing agreements. Such requirements are currently found in paragraph (d) of § 319.37–7. Similar to the requirements for State postentry quarantine agreements, we would simplify the requirements currently found in § 319.37–7(d) in proposed paragraph (c). Proposed paragraph (c) would require that any plants for planting required to be grown under postentry quarantine conditions, as well as any increase therefrom, be grown in accordance with an importer postentry quarantine growing agreement signed by the person (the importer) applying for a written permit in accordance with § 319.37–5 for importation of the plants for planting and submitted to PPQ. On each importer postentry quarantine growing

agreement, the person would also have to obtain the signature of the SPRO for the State in which plants for planting covered by the agreement will be grown. (Currently, APHIS is required to obtain the signature of the SPRO; however, in practice, we have required the person obtaining the permit to obtain the SPRO's signature, and it is appropriate to require that the person seeking to grow plants in postentry quarantine obtain the necessary approvals to do so. Therefore, we are proposing to update the regulations to match current practice.)

The importer postentry quarantine growing agreement would specify the kind, number, and origin of plants to be imported; the conditions specified in the Plants for Planting Manual under which the plants for planting will be grown, maintained, and labeled; and the reporting requirements in the case of abnormal or dead plants for planting. The agreement would certify to APHIS and to the State in which the plants for planting are grown that the signer of the agreement will comply with the conditions of the agreement for the postentry quarantine growing period prescribed for the type of plants for planting in the Plants for Planting Manual. (The standard postentry quarantine growing period, as described in current paragraph (d)(7), is 2 years, but some taxa are grown for other periods; we would move all these requirements to the Plants for Planting Manual.)

All these elements of the postentry quarantine growing agreement are described in more detail in current § 319.37–7(d); retaining less detailed performance standards in proposed § 319.37–23(c) would allow us to tailor postentry quarantine growing agreements to specific circumstances and to simplify the regulations.

Paragraph (d) of proposed § 319.37–23 would specify how to apply for permits. A completed importer postentry quarantine agreement would have to accompany the application for a written permit for plants for planting required to be grown under postentry quarantine conditions. Importer postentry quarantine agreement forms would be available without charge from APHIS, PPQ, Permit Unit, 4700 River Road Unit 136, Riverdale, Maryland 20737–1236 or on the Internet at [http://www.aphis.usda.gov/permits/ppq\\_epermits.shtml](http://www.aphis.usda.gov/permits/ppq_epermits.shtml). We are proposing to update the address for importer postentry quarantine agreement forms and add a Web address for convenience.

Paragraph (e) of proposed § 319.37–23 would address inspector-ordered disposal, movement, or safeguarding of

plants for planting, costs and charges, and civil and criminal liabilities. It would be taken unchanged from current paragraph (f) of § 319.37–7.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The proposed 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.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

While nearly all importers of plants for planting that would be directly affected by the proposed rule are small, APHIS believes it unlikely that any economic impacts would be significant, including instances in which phytosanitary certification would be newly required. The proposed changes would facilitate access to information on import restrictions for specific types of plants for planting, and create a more efficient process for amending import requirements.

#### **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.

**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***7 CFR Part 319*

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

*7 CFR Part 340*

Administrative practice and procedure, Biotechnology, Genetic engineering, Imports, Packaging and containers, Plant diseases and pests, Transportation.

Accordingly, we propose to amend 7 CFR parts 319 and 340 as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.8 is amended as follows:

- a. By redesignating paragraph (b) as paragraph (c).
- b. By adding a new paragraph (b) to read as set forth below.

**§ 319.8 Notice of quarantine.**

\* \* \* \* \*

(b) The importation of cotton plants (including any plant parts) that are for planting or capable of being planted is restricted in “Subpart—Plants for Planting” of this part.

\* \* \* \* \*

**§ 319.8–1 [Amended]**

■ 3. In § 319.8–1, the definition of *cottonseed* is amended by adding the words “and that is intended for processing or consumption” before the period.

■ 4. Section 319.15 is amended as follows:

- a. By redesignating paragraph (b) as paragraph (c).
- b. By adding a new paragraph (b) to read as set forth below.

**§ 319.15 Notice of quarantine.**

\* \* \* \* \*

(b) The importation of sugarcane plants (including any plant parts) that are for planting or capable of being planted is restricted in “Subpart—Plants for Planting” of this part.

\* \* \* \* \*

**Subpart—Citrus Canker and Other Citrus Diseases [Removed]**

■ 5. Subpart—Citrus Canker and Other Citrus Diseases, consisting of § 319.19, is removed.

■ 6. Section 319.24 is amended as follows:

- a. By redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively.
- b. By adding a new paragraph (b) to read as set forth below.

**§ 319.24 Notice of quarantine.**

\* \* \* \* \*

(b) The importation of corn plants (including any plant parts) that are for planting or capable of being planted is restricted in “Subpart—Plants for Planting” of this part.

\* \* \* \* \*

■ 7. Subpart—Plants for Planting, §§ 319.37 through 319.37–14, is revised to read as follows:

**Subpart—Plants for Planting**

Sec.

- 319.37–1 Notice of quarantine.
- 319.37–2 Definitions.
- 319.37–3 General restrictions on the importation of plants for planting.
- 319.37–4 Taxa of plants for planting whose importation is not authorized pending pest risk analysis.
- 319.37–5 Permits.
- 319.37–6 Phytosanitary certificates.
- 319.37–7 Marking and identity.
- 319.37–8 Ports of entry: Approved ports, notification of arrival, inspection, and refusal of entry.
- 319.37–9 Treatment of plants for planting; costs and charges for inspection and treatment; treatments applied outside the United States.
- 319.37–10 Growing media.
- 319.37–11 Packing and approved packing material.
- 319.37–12 through 319.37–19 [Reserved]
- 319.37–20 Restrictions on the importation of specific types of plants for planting.
- 319.37–21 Integrated pest risk management measures.
- 319.37–22 Trust fund agreements.
- 319.37–23 Postentry quarantine.

**Subpart—Plants for Planting****§ 319.37–1 Notice of quarantine.**

(a) Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

(b) The Secretary has determined that it is necessary to designate the importation of certain taxa of plants for

planting as not authorized pending pest risk analysis, as provided in § 319.37–4. The Secretary has determined that it is necessary to restrict the importation into the United States of all other plants for planting and to impose additional restrictions on the importation of specific types of plants for planting, in accordance with this subpart and as described in the Plants for Planting Manual.

(c) The importation of plants that are imported for processing, as determined by an inspector based on documentation accompanying the articles, is not subject to this subpart.

(d) The importation of taxa of plants for planting that are listed in parts 360 and 361 of this chapter is subject to the restrictions in those parts.

(e) The Plant Protection and Quarantine Programs also enforces regulations promulgated under the Endangered Species Act of 1973 (16 U.S.C. 1531–1544) which contain additional prohibitions and restrictions on importation into the United States of plants for planting subject to this subpart (see 50 CFR parts 17 and 23).

(f) One or more common names of plants for planting are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the plants for planting represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all plants for planting within the taxon represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name. When restrictions apply to the importation of a taxon of plants for planting for which there are taxonomic synonyms, those restrictions apply to the importation of all the synonyms of that taxon as well.

**§ 319.37–2 Definitions.**

The following definitions apply to this subpart:

**Administrator.** The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the United States Department of Agriculture authorized to act in his or her stead.

**Bulb.** The portion of a plant commonly known as a bulb, bulbil, bulblet, corm, cormel, rhizome, tuber, or pip, and including fleshy roots or other underground fleshy growths, a unit of which produces an individual plant.

**Consignment.** A quantity of plants for planting being moved from one country to another and covered, when required, by a single phytosanitary certificate (a

consignment may be composed of one or more lots or taxa).

**Earth.** The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

**From.** Plants for planting are considered to be "from" any country or locality in which it was grown.

**Provided.** That plants for planting imported into Canada from another country or locality shall be considered as being solely from Canada if they meet the following conditions:

(1) They are imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

(2) They have never been grown in a country from which their importation would not be authorized pending pest risk analysis under § 319.37–4,

(3) They have never been grown in a country other than Canada from which it would be subject to certain restrictions on the importation of specific types of plants for planting under § 319.37–20, which are listed in the Plants for Planting Manual; **Provided**, that plants for planting that would be subject to postentry quarantine if imported into the United States may be imported from Canada after growth in another country if they were grown in Canada in postentry quarantine under conditions equivalent to those specified in the Plants for Planting Manual, and

(4) They were not imported into Canada in growing media.

**Inspector.** Any individual authorized by the Administrator or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

**Lot.** A number of units of a single commodity, identifiable by its homogeneity of composition and origin, forming all or part of a consignment.

**Mother stock.** A group of plants from which plant parts are taken to produce new plants.

**National plant protection organization (NPPO).** The official service established by a government to discharge the functions specified by the International Plant Protection Convention.

**Noxious weed.** Any plant or plant product that can directly or indirectly injure or cause damage to crops (including plants for planting or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the

United States, the public health, or the environment.

**Official control.** The active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests.

**Person.** Any individual, partnership, corporation, association, joint venture, or other legal entity.

**Phytosanitary certificate.** A document relating to a consignment of plants for planting, which is issued by an official of the NPPO of the country in which the plants for planting were grown, which is issued not more than 15 days prior to shipment of the plants for planting from the country in which grown, which is addressed to the NPPO of the United States (Plant Protection and Quarantine Programs), which contains a description of the plants for planting intended to be imported into the United States, which certifies that the plant has been thoroughly inspected, is believed to be free from quarantine pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required in accordance with § 319.37–20 and specified in the Plants for Planting Manual.

**Place of production.** Any premises or collection of fields operated as a single production or farming unit. This may include a production site that is separately managed for phytosanitary purposes.

**Plant.** Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

**Plant pest.** Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of these articles.

**Plant Protection and Quarantine Programs.** The organizational unit with the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*) and related legislation, quarantines, and regulations.

**Plants for planting.** Regulated plants (including any plant parts) that are for planting or capable of being planted.

**Plants for Planting Manual.** The document that contains restrictions on the importation of specific types of plants for planting, as provided in § 319.37–20, and other information about the importation of plants for planting as provided in this subpart. The Plants for Planting Manual is available on the Internet at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/plants\\_for\\_planting.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf) or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 133, Riverdale, MD 20737–1236.

**Planting.** Any operation for the placing of plants in a growing medium, or by grafting or similar operations, to ensure their subsequent growth, reproduction, or propagation.

**Port of first arrival.** The land area (such as a seaport, airport, or land border station) where a person, or a land, water, or air vehicle, first arrives after entering the territory of the United States, and where inspection of plants for planting is carried out by inspectors.

**Preclearance.** Phytosanitary inspection and/or clearance in the country in which the plants for planting were grown, performed by or under the regular supervision of APHIS.

**Production site.** A defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, greenhouse, screenhouse, or premises.

**Quarantine pest.** A plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

**Regulated plant.** A vascular or nonvascular plant. Vascular plants include gymnosperms, angiosperms, ferns, and fern allies. Gymnosperms include cycads, conifers, and ginkgo. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts. Nonvascular plants include mosses, liverworts, hornworts, and green algae.

**Secretary.** The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his/her stead has been or may hereafter be delegated.

**Soil.** The loose surface material of the earth in which plants, trees, and shrubs

grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

*Species (spp.).* All species, clones, cultivars, strains, varieties, and hybrids of a genus.

*State.* Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

*State Plant Regulatory Official.* The official authorized by the State to sign agreements with Federal agencies involving operations of the State plant protection agency.

*Taxon (taxa).* Any grouping within botanical nomenclature, such as family, genus, species, or cultivar.

*Type of plants for planting.* A grouping of plants for planting based on shared characteristics such as biological traits, morphology, botanical nomenclature, or risk factors.

*United States.* All of the States.

**§ 319.37–3 General restrictions on the importation of plants for planting.**

(a) The importation of certain taxa of plants for planting is not authorized pending pest risk analysis in accordance with § 319.37–4.

(b) General restrictions that apply to the importation of all plants for planting other than those whose importation is not authorized pending pest risk analysis are found in §§ 319.37–5 through 319.37–11.

(c) In accordance with § 319.37–20, the Administrator may impose restrictions on the importation of specific types of plants for planting. These restrictions are listed in the Plants for Planting Manual. Additional information on certain restrictions on the importation of specific types of plants for planting can be found in §§ 319.37–21 through 319.37–23.

**§ 319.37–4 Taxa of plants for planting whose importation is not authorized pending pest risk analysis.**

(a) *Determination by the Administrator.* The importation of certain taxa of plants for planting poses a risk of introducing quarantine pests into the United States. Therefore, the importation of these taxa is not authorized pending the completion of a pest risk analysis, except as provided in paragraph (f) of this section. These taxa are listed in the Plants for Planting Manual. There are two lists of taxa whose importation is not authorized pending pest risk analysis: A list of taxa of plants for planting that are quarantine

pests, and a list of taxa of plants for planting that are hosts of quarantine pests. For taxa of plants for planting that have been determined to be quarantine pests, the list includes the names of the taxa. For taxa of plants for planting that are hosts of quarantine pests, the list includes the names of the taxa, the foreign places from which the taxa's importation is not authorized, and the quarantine pests of concern.

(b) *Addition of taxa.* A taxon of plants for planting may be added to one of the lists of taxa not authorized for importation pending pest risk analysis under this section as follows:

(1) *Data sheet.* APHIS will publish in the **Federal Register** a notice that announces our determination that a taxon of plants for planting is either a quarantine pest or a host of a quarantine pest. This notice will make available a data sheet that details the scientific evidence APHIS evaluated in making the determination that the taxon is a quarantine pest or a host of a quarantine pest. The data sheet will include references to the scientific evidence that APHIS used in making the determination. In our notice, we will provide for a public comment period of a minimum of 60 days on our addition to the list.

(2) *Response to comments.* (i) APHIS will issue a notice after the close of the public comment period indicating that the taxon will be added to the list of taxa not authorized for importation pending pest risk analysis if:

(A) No comments were received on the data sheet;

(B) The comments on the data sheet revealed that no changes to the data sheet were necessary; or

(C) Changes to the data sheet were made in response to public comments, but the changes did not affect APHIS' determination that the taxon poses a risk of introducing a quarantine pest into the United States.

(ii) If comments present information that leads us to determine that the importation of the taxon does not pose a risk of introducing a quarantine pest into the United States, APHIS will not add the taxon to the list of plants for planting whose importation is not authorized pending pest risk analysis. APHIS will issue a notice giving public notice of this determination after the close of the comment period.

(c) *Criterion for listing a taxon of plants for planting as a quarantine pest.* A taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a quarantine pest.

(d) *Criteria for listing a taxon of plants for planting as a host of a quarantine pest.* A taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a host of a quarantine pest. The following criteria must be fulfilled in order to make this determination:

(1) The plant pest in question must be determined to be a quarantine pest; and

(2) The taxon of plants for planting must be determined to be a host of that quarantine pest.

(e) *Removing a taxon from the list of taxa not authorized pending pest risk analysis.* (1) Requests to remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis must be made in accordance with § 319.5 of this part. APHIS will conduct a pest risk analysis in response to such a request. The pest risk analysis will examine the risk associated with the importation of that taxon as well as measures available to mitigate that risk. The pest risk analysis may analyze importation of the taxon from a specific area, country, or countries, or from all areas of the world. The conclusions of the pest risk analysis will apply accordingly.

(2) If the pest risk analysis indicates that the taxon is a quarantine pest or a host of a quarantine pest and the Administrator determines that there are no measures available that adequately mitigate the risk of introducing a quarantine pest into the United States through the taxon's importation, we will continue to list the taxon as not authorized for importation pending pest risk analysis. We will publish a notice making the pest risk analysis available for comment. If comments cause us to change our determination, we will publish another notice in accordance with either paragraph (e)(3) or paragraph (e)(4) of this section, as appropriate. If comments do not cause us to change our determination, we will publish a second notice responding to the comments and affirming our determination that the taxon should continue to be listed as NAPPRA.

(3) If the pest risk analysis supports a determination that importation of the taxon be allowed subject to taxon-specific restrictions, APHIS will publish a notice making the pest risk analysis available to the public for comment in accordance with the process in § 319.37–20(c).

(4) If the pest risk analysis supports a determination that importation of the taxon be allowed subject to the general restrictions of this subpart, APHIS will publish a notice announcing our intent



to remove the taxon from the list of taxa whose importation is not authorized pending pest risk analysis and making the pest risk analysis supporting the taxon's removal available for public comment.

(i) APHIS will issue a notice after the close of the public comment period indicating that the importation of the taxon will be subject only to the general restrictions of this subpart if:

(A) No comments were received on the pest risk analysis;

(B) The comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or

(C) Changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination that the importation of the taxon does not pose a risk of introducing a quarantine pest into the United States.

(ii) If information presented by commenters indicates that the pest risk analysis needs to be revised, APHIS will issue a notice after the close of the public comment period indicating that the importation of the taxon will continue to be listed as not authorized pending pest risk analysis while the information presented by commenters is analyzed and incorporated into the pest risk analysis. APHIS will subsequently publish a new notice announcing the availability of the revised pest risk analysis.

(5) APHIS may also remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis when APHIS determines that the evidence used to add the taxon to the list was erroneous (for example, involving a taxonomic misidentification).

(f) *Departmental permits.* Any plants for planting whose importation is not authorized pending pest risk analysis in accordance with this section may be imported or offered for entry into the United States if:

(1) Imported by the United States Department of Agriculture for experimental or scientific purposes;

(2) Imported at the National Plant Germplasm Inspection Station, Building 580, Beltsville Agricultural Research Center East, Beltsville, MD 20705 or through any Federal plant inspection station listed in the Plants for Planting Manual;

(3) Imported pursuant to a Departmental permit issued for such plants for planting and kept on file at the port of entry;

(4) Imported under conditions specified on the Departmental permit

and found by the Administrator to be adequate to prevent the introduction into the United States of quarantine pests, i.e., conditions of treatment, processing, growing, shipment, disposal; and

(5) Imported with a Departmental tag or label securely attached to the outside of the container containing the plants for planting or securely attached to the plant itself if not in a container, and with such tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such plants for planting.

#### § 319.37–5 Permits.

(a)(1) Plants for planting may be imported or offered for importation into the United States only after issuance of a written permit by the Plant Protection and Quarantine Programs, except as provided in the Plants for Planting Manual. Exceptions from the requirement for a written permit will be added, changed, or removed in accordance with § 319.37–20.

(2) Plants for planting whose importation is subject to postentry quarantine, as listed in the Plants for Planting Manual must also be imported under an importer postentry quarantine growing agreement in accordance with § 319.37–23(c).

(b) An application for a written permit should be submitted to the Plant Protection and Quarantine Programs (Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permits, Permit Unit, 4700 River Road Unit 133, Riverdale, MD 20737–1236) at least 30 days prior to arrival of the plants for planting at the port of entry. Application forms are available without charge from that address or on the Internet at [http://www.aphis.usda.gov/permits/ppq\\_epermits.shtml](http://www.aphis.usda.gov/permits/ppq_epermits.shtml). The completed application shall include the following information:

(1) Name, address, and telephone number of the importer;

(2) The taxon or taxa and the approximate quantity of plants for planting intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

(c) A permit indicating the applicable conditions for importation under this subpart will be issued by Plant Protection and Quarantine Programs if, after review of the application, the

plants for planting are deemed eligible to be imported into the United States under the conditions specified in the permit. However, even if such a permit is issued, the plants for planting may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of entry determines that no remedial measures pursuant to the Plant Protection Act are necessary with respect to the plants for planting.<sup>1</sup>

(d) Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the holder thereof has not complied with any condition for the use of the document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

(e) Any plants for planting not required to be imported with a permit in accordance with paragraph (a) of this section may be imported or offered for importation into the United States only after issuance of an oral permit for importation issued by an inspector at the port of entry.

(f) An oral permit for importation of plants for planting shall be issued at a port of entry by an inspector only if all applicable requirements of this subpart are met, such plants for planting are eligible to be imported under an oral permit, and an inspector at the port of entry determines that no measures pursuant to section 414 of the Plant Protection Act (7 U.S.C. 7714) are necessary with respect to such plants for planting.<sup>1</sup>

#### § 319.37–6 Phytosanitary certificates.

(a) *Phytosanitary certificates.* Any plants for planting offered for importation into the United States must be accompanied by a phytosanitary certificate, except as described in paragraphs (b) and (c) of this section.

<sup>1</sup> An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

The phytosanitary certificate must identify the genus of the plants for planting it accompanies. When the importation of individual species or cultivars within a genus is restricted in accordance with § 319.37–20, the phytosanitary certificate must also identify the species or cultivar of the plants for planting it accompanies. Otherwise, identification of the species is strongly preferred, but not required. Intergeneric and interspecific hybrids must be designated by placing the multiplication sign “x” between the names of the parent taxa. If the hybrid is named, the multiplication sign may instead be placed before the name of an intergeneric hybrid or before the epithet in the name of an interspecific hybrid.

(b) *Small lots of seed.* Lots of seed may be imported without a phytosanitary certificate required by paragraph (a) of this section under the following conditions:

(1) The importation of the seed is authorized by a written permit issued in accordance with § 319.37–5.

(2) The seed is not listed as not authorized pending pest risk analysis, as provided in § 319.37–4; is not of any noxious weed species listed in part 360 of this chapter; is not subject to restrictions on specific types of plants for planting as provided in § 319.37–20; is not restricted under the regulations in parts 330 and 340 of this chapter; and meets the requirements of part 361 of this chapter.

(3) The seed meets the following packaging and shipping requirements:

(i) Each seed packet is clearly labeled with the name of the collector/shipper, the country of origin, and the scientific name at least to the genus, and preferably to the species, level;

(ii) There are a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet; or a maximum weight not to exceed 10 grams of seed of 1 taxon per packet;

(iii) There are a maximum of 50 seed packets per shipment;

(iv) The seeds are free from pesticides;

(v) The seeds are securely packaged in packets or envelopes and sealed to prevent spillage;

(vi) The shipment is free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms such as parasitic plants, pathogens, insects, snails, mites; and

(vii) At the time of importation, the shipment is sent to either the Plant Germplasm Quarantine Center in Beltsville, MD, or a USDA plant inspection station.

(c) *Importation of other plants for planting without phytosanitary*

*certificates.* (1) The Administrator may authorize the importation of types of plants for planting without a phytosanitary certificate if the plants for planting are accompanied by equivalent documentation agreed upon by the Administrator and the NPPO of the exporting country as sufficient to establish the origin, identity, and quarantine pest status of the plants. The documentation must be provided by the NPPO or refer to documentation of the origin, identity, and quarantine pest status of the plants for planting provided by the NPPO. The documentation must be agreed upon before the plants for planting are exported from the exporting country to the United States.

(2) The Administrator may impose additional restrictions on the importation of plants for planting that are not accompanied by a phytosanitary certificate to ensure that the plants are appropriately identified and free of quarantine pests.

(3) The Plants for Planting Manual lists types of plants for planting that are not required to be accompanied by a phytosanitary certificate; the countries from which their importation without a phytosanitary certificate is authorized; the approved documentation of their origin, identity, and quarantine pest status; and any additional conditions on their importation.

(4) Types of plants for planting may be added to or removed from the list of plants for planting that are not required to be accompanied by a phytosanitary certificate in accordance with § 319.37–20. The requirements for importing types of plants for planting without a phytosanitary certificate may also be changed in accordance with § 319.37–20. The notice published for comment will describe the documentation agreed upon by the Administrator and the NPPO of the exporting country and any additional restrictions to be imposed on the importation of the type of plants for planting.

#### § 319.37–7 Marking and identity.

(a) Any plants for planting for importation other than by mail at the time of importation or offer for importation into the United States shall plainly and correctly bear on the outer container (if in a container) or the plants for planting (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the plants for planting,

(4) Name and address of consignee,

(5) Identifying shipper's mark and number, and

(6) Number of written permit authorizing the importation, if one was required under § 319.37–5.

(b) Any plants for planting for importation by mail shall be plainly and correctly addressed and mailed to the Plant Protection and Quarantine Programs at a port of entry listed in the Plants for Planting Manual as approved to receive imported plants for planting, shall be accompanied by a separate sheet of paper within the package plainly and correctly bearing the name, address, and telephone number of the intended recipient, and shall plainly and correctly bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the plants for planting, and

(4) Number of written permit authorizing the importation, if one was required under § 319.37–5.

(c) Any plants for planting for importation (by mail or otherwise), at the time of importation or offer for importation into the United States shall be accompanied by an invoice or packing list indicating the contents of the consignment.

#### § 319.37–8 Ports of entry: Approved ports, notification of arrival, inspection, and refusal of entry.

(a) *Approved ports of entry.* Any plants for planting required to be imported under a written permit pursuant to § 319.37–5(a), if not precleared, may be imported or offered for importation only at a USDA plant inspection station listed in the Plants for Planting Manual. Ports of entry through which plants for planting must pass before arriving at these USDA plant inspection stations are listed in the Plants for Planting Manual. Any other plants for planting that are not required to be imported under a written permit pursuant to § 319.37–5(a) may be imported or offered for importation at any Customs designated port of entry indicated in 19 CFR 101.3(b)(1). Exceptions may be listed in § 330.104 of this chapter. Plants for planting that are required to be imported under a written permit that are also precleared in the country of export are not required to enter at an inspection station and may enter through any Customs port of entry. Exceptions may be listed in § 330.104 of this chapter.

(b) *Notification upon arrival at the port of entry.* Promptly upon arrival of any plants for planting at a port of entry,

the importer shall notify the Plant Protection and Quarantine Programs of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

(c) *Inspection and treatment.* Any plants for planting may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country in which the plants for planting were grown, and must undergo treatment in accordance with part 305 of this chapter if treatment is ordered by the inspector. Any plants for planting found upon inspection to contain or be contaminated with quarantine pests that cannot be eliminated by treatment will be denied entry at the first United States port of arrival and must be destroyed or shipped to a point outside the United States.

(d) *Disposition of plants for planting not in compliance with this subpart.* The importer of any plants for planting denied entry for noncompliance with this subpart must, at the importer's expense and within the time specified in an emergency action notification (PPQ Form 523), destroy, ship to a point outside the United States, treat in accordance with part 305 of this chapter, or apply other safeguards to the plants for planting, as prescribed by an inspector, to prevent the introduction into the United States of quarantine pests. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest associated with the plants for planting, whether the plants for planting are a host of the pest, the types of other host materials for the pest in or near the port, the climate and season at the port in relation to the pest's survival range, and the availability of treatment facilities for the plants for planting.

(e) *Removal of plants for planting from port of first arrival.* No person shall remove any plants for planting from the port of first arrival unless and until notice is given to the collector of customs by the inspector that the plants for planting has satisfied all requirements under this subpart.

**§ 319.37–9 Treatment of plants for planting; costs and charges for inspection and treatment; treatments applied outside the United States.**

(a) The services of a Plant Protection and Quarantine inspector during regularly assigned hours of duty and at the usual places of duty shall be

furnished without cost to the importer.<sup>2</sup> No charge will be made to the importer for Government-owned or -controlled special inspection facilities and equipment used in treatment, but the inspector may require the importer to furnish any special labor, chemicals, packing materials, or other supplies required in handling an importation under the regulations in this subpart. The Plant Protection and Quarantine Programs will not be responsible for any costs or charges, other than those indicated in this section.

(b) Any treatment performed in the United States on plants for planting must be performed at the time of importation into the United States. Treatment shall be performed by an inspector or under an inspector's supervision at a Government-operated special inspection facility, except that an importer may have such treatment performed at a nongovernmental facility if the treatment is performed at nongovernment expense under the supervision of an inspector and in accordance with part 305 of this chapter and in accordance with any treatment required by an inspector as an emergency measure in order to prevent the dissemination of any quarantine pests. However, treatment may be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, the plants for planting can be transported to such nongovernmental facility without the risk of introduction into the United States of quarantine pests.

(c) Any treatment performed outside the United States must be monitored and certified by an APHIS inspector or an official from the NPPO of the exporting country. If monitored and certified by an official of the NPPO of the exporting country, then a phytosanitary certificate must be issued with the following declaration: "The consignment of (fill in taxon) has been treated in accordance with 7 CFR part 305." During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by quarantine pests.

**§ 319.37–10 Growing media.**

(a) Any plants for planting at the time of importation or offer for importation into the United States shall be free of sand, soil, earth, and other growing media, except as provided in paragraph (b), (c), or (d) of this section.

<sup>2</sup> Provisions relating to costs for other services of an inspector are contained in part 354.

(b) Plants for planting from Canada may be imported in any growing medium, except as restricted in the Plants for Planting Manual. Restrictions on growing media for specific types of plants for planting imported from Canada will be added, changed, or removed in accordance with § 319.37–20.

(c) Certain types of plants for planting growing solely in certain growing media listed in the Plants for Planting Manual may be imported established in such growing media. The Administrator has determined that the importation of the specified types of plants for planting in these growing media does not pose a risk of introducing quarantine pests into the United States. If the Administrator determines that a new growing medium may be added to the list of growing media in which imported plants for planting may be established, or that a growing medium currently listed for such purposes is no longer suitable for establishment of imported plants for planting, APHIS will publish in the **Federal Register** a notice that announces our determination and requests comment on the change. After the close of the comment period, APHIS will publish another notice informing the public regarding the Administrator's decision on the change to the list of growing media in which imported types of plants for planting may be established.

(d) Certain types of plants for planting, as listed in the Plants for Planting Manual, may be imported when they are established in a growing medium approved by the Administrator and they are produced in accordance with additional requirements specified in the Plants for Planting Manual. Changes to the list of plants for planting that may be imported in growing media, and to the requirements for the importation of those types of plants for planting, will be made in accordance with § 319.37–20.

**§ 319.37–11 Packing and approved packing material.**

(a) Plants for planting for importation into the United States must not be packed in the same container as plants for planting whose importation into the United States is not authorized pending pest risk analysis in accordance with § 319.37–4.

(b) Any plants for planting at the time of importation or offer for importation into the United States shall not be packed in a packing material unless the plants were packed in the packing material immediately prior to shipment; such packing material is free from sand, soil, or earth (except as designated in

the Plants for Planting Manual); has not been used previously as packing material or otherwise; and is approved by the Administrator as not posing a risk of introducing quarantine pests. Approved packing materials are listed in the Plants for Planting Manual.

(c) If the Administrator determines that a new packing material may be added to the list of packing materials, or that a packing material currently listed should no longer be approved, APHIS will publish in the **Federal Register** a notice that announces our determination and requests comment on the change. After the close of the comment period, APHIS will publish another notice informing the public regarding the Administrator's decision on the change to the list of approved packing materials.

**§§ 319.37–12 through 319.37–19**  
[Reserved]

**§ 319.37–20 Restrictions on the importation of specific types of plants for planting.**

(a) *Plant type-specific restrictions.* In addition to the general restrictions in this subpart, the Administrator may impose additional restrictions on the importation of specific types of plants for planting necessary to effectively mitigate the risk of introducing quarantine pests into the United States through the importation of those plants for planting. Additional restrictions may be placed on the importation of the entire plant or on certain plant parts. A list of the types of plants for planting whose importation is subject to additional restrictions, and the specific restrictions that apply to the importation of each type of plants for planting, may be found in the Plants for Planting Manual.

(b) *Basis for changing restrictions.* The Administrator may determine that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting, based on the risk of introducing a quarantine pest through the importation of that type of plants for planting. The Administrator will make this determination based on the findings of a pest risk analysis or on other scientific evidence.

(c) *Process for adding, changing, or removing restrictions.* Restrictions on the importation of a specific type of plants for planting beyond the general restrictions in §§ 319.37–5 through 319.37–11 will be changed through the following process:

(1) *Document describing restrictions.* APHIS will publish in the **Federal Register** a notice that announces our determination that it is necessary to

add, change, or remove restrictions on the importation of a specific type of plants for planting. This notice will make available for public comment a document describing the restrictions that the Administrator has determined are necessary and how these restrictions will mitigate the risk of introducing quarantine pests into the United States.

(2) *Response to comments.* APHIS will issue a notice after the close of the public comment period on the notice described in paragraph (c)(1) of this section. This notice will inform the public of the specific restrictions, if any, that the Administrator has determined to be necessary in order to mitigate the risk of introducing quarantine pests into the United States through the importation of the type of plants for planting. In response to the information submitted in public comments, the Administrator may implement the restrictions described in the document made available by the initial notice, amend the restrictions in response to public comment, or determine that changes to the restrictions on the importation of the type of plants for planting are unnecessary.

(d) *Previously imposed restrictions on specific types of plants for planting.* Types of plants for planting whose importation was subject to specific restrictions by specific regulation as of [insert effective date of final rule] will continue to be subject to those restrictions, except as changed in accordance with the process specified in paragraph (c) of this section. The restrictions will be found in the Plants for Planting Manual.

**§ 319.37–21 Integrated pest risk management measures.**

If a type of plants for planting is a host of a quarantine pest or pests, APHIS may require the type of plants for planting to be produced in accordance with integrated pest risk management measures as a condition of importation. This section sets out a general framework for integrated pest risk management measures. When appropriate, APHIS will require a type of plants for planting to be imported subject to integrated pest risk management measures that mitigate the quarantine pest risks associated with that type of plants for planting through the process described in § 319.37–20.

(a) *Responsibilities of the place of production.* The place of production is responsible for identifying, developing, and implementing procedures that meet the requirements of both the NPPO of the exporting country and APHIS. Participants in the export program must be approved by the NPPO or its

designee and APHIS. Approval will be conferred by the NPPO or its designee and APHIS after the participant meets the conditions required for integrated pest risk management. Approval will be withdrawn if the participant fails to meet the conditions at any time. All documentation required under paragraph (a)(5) of this section will be maintained by the exporting place of production and made available to official representatives of the NPPO of the exporting country and APHIS upon request. The place of production must be open to necessary and reasonable audit, monitoring, and evaluation of compliance by the NPPO of the exporting country and APHIS. The management of the place of production will be responsible for complying with the integrated pest risk management measures. Management must specify the roles and responsibilities of its personnel to perform program activities. The place of production must notify the NPPO of the exporting country of deficiencies detected during internal audits. The NPPO of the exporting country will be responsible for ensuring that the place of production is in compliance with the integrated pest risk management measures.

(1) *Pest management program.* The place of production must develop and implement an approved pest management program that contains ongoing pest monitoring and procedures for the exclusion and control of plant pests. The place of production must obtain material used to produce plants for planting from sources that are free of quarantine pests and that are approved by the NPPO of the exporting country and APHIS. All sources of plants for planting and the phytosanitary status of those plants must be well-documented and the program for producing plants for planting carefully monitored.

(2) *Training.* A training program approved by the NPPO of the exporting country and APHIS must be established, documented, and regularly conducted at the place of production. The training program must ensure that all those involved in the export program possess specific knowledge related to the relevant components of the program and a general understanding of its requirements.

(3) *Internal audits.* The place of production must perform, or designate parties to perform internal audits that ensure that a plan approved and documented by APHIS and the NPPO of the exporting country is being followed and is achieving the appropriate level of pest management.

(4) *Traceability.* The place of production must implement a procedure

approved by APHIS and the NPPO of the exporting country or its designee that documents and identifies plants from propagation through harvest and sale to ensure that plants can be traced forward and back from the place of production. The system must at a minimum account for:

- (i) The origin and pest status of mother stock;
- (ii) The year of propagation and the place of production of all plant parts that make up the plants for planting intended for export;
- (iii) Geographic location of the place of production;

- (iv) Location of plants for planting within the place of production;
- (v) The plant taxon; and
- (vi) The purchaser's identity.

(5) *Documentation of program procedures.* The place of production must develop a manual approved by the NPPO of the exporting country and APHIS that guides the place of production's operation and that includes the following components:

- (i) Administrative procedures (including roles and responsibilities and training procedures);
- (ii) Pest management plan;
- (iii) Place of production internal audit procedures;
- (iv) Management of noncompliant product or procedures;
- (v) Traceability procedures; and
- (vi) Recordkeeping systems.

(6) *Records.* A place of production must maintain records on its premises as specified by APHIS and the NPPO of the exporting country. These records must be made available to APHIS and the NPPO of the exporting country upon request. These documents include all the elements described in this paragraph (a) and copies of all internal and external audit documents and reports.

(b) *Responsibilities of APHIS and the NPPO of the exporting country.* APHIS and the NPPO of the exporting country are responsible for collaborating to establish program requirements, including workplans and compliance agreements as necessary, for recognizing and implementing particular import programs. Technically justified modifications to the program may be negotiated. The administration of program requirements must include such elements as clarification of terminology, testing and retesting requirements, eligibility, the nomenclature of certification levels, horticultural management, isolation and sanitation requirements, inspection, documentation, identification and labeling, quality assurance, noncompliance and remedial measures, and postentry quarantine requirements.

The criteria for approving, suspending, removing, and reinstating approval for a particular program should be jointly developed and agreed upon by APHIS and the NPPO of the exporting country. Information should be exchanged between APHIS and the NPPO of the exporting country through officially designated contact points.

(c) *Responsibilities of the NPPO of the exporting country.* (1) The NPPO of the exporting country must provide sufficient information to APHIS to support the evaluation and acceptance of export programs. This may include:

- (i) Specific identification of the commodity, place of production, and expected volume and frequency of consignments;
- (ii) Relevant production, harvest, packing, handling, and transport details;
- (iii) Pests associated with the plant including prevalence, distribution, and damage potential;
- (iv) Risk management measures proposed for a pest management program; and
- (v) Relevant efficacy data.

(2) A phytosanitary certificate should be issued by the NPPO of the exporting country unless APHIS and the NPPO of the exporting country agree to use other documentation in accordance with § 319.37–6(c).

(3) Other responsibilities of the NPPO of the exporting country include:

- (i) Establishing and maintaining compliance agreements as necessary;
- (ii) Oversight and enforcement of program provisions;
- (iii) Arrangements for monitoring and audit; and
- (iv) Maintaining appropriate records.

(d) *Responsibilities of plant brokers trading in plants for planting for export.* Persons trading in plants for planting intended for export without growing the plants (referred to as plant brokers) must be approved by the NPPO of the exporting country or its designee. The list of plant brokers must be provided to APHIS upon request. Approval may only be conferred by the NPPO or its designee after the participant demonstrates that it can meet the requirements of this paragraph. Approval must be withdrawn if the participant fails to meet the conditions at any time. Plant brokers must ensure the traceability of export consignments to an approved place of production or production site. Brokers must maintain the phytosanitary status of the plants in a manner equivalent to an approved place of production from purchase, storage, and transportation to the export destination. Plant brokers must document these processes for verifying status and maintaining traceability.

(e) *External audits.* APHIS and the NPPO of the exporting country will agree to the requirements for external audits.

(1) *APHIS audits.* APHIS will evaluate the integrated pest risk management measures of the NPPO of the exporting country before acceptance. This could consist of documentation review, site visits, and inspection and testing of plants produced under the system. Following approval, APHIS or its designee will monitor and periodically audit the system to ensure that it continues to meet the stated objectives. Audits will include inspection of imported plants for planting, site visits, and review of the integrated pest risk management measures and internal audit processes of the place of production and the NPPO of the exporting country.

(2) *Audits by the NPPO of the exporting country.* The NPPO must arrange for audits of the exporting system. Audits may be conducted by the NPPO or its designee and may consist of inspection and testing of plants for planting and the documentation and management practices as they relate to the program. Audits should verify that:

- (i) The places of production in the program are free of quarantine pests;
- (ii) Program participants are complying with the specified standards;
- (iii) The integrated pest management measures continue to meet APHIS requirements; and
- (iv) Arrangements with designees are complied with.

(f) *Noncompliance.* (1) The exporting NPPO must notify APHIS of noncompliance within the integrity of the system or noncompliance by a place of production that affects the phytosanitary integrity of the commodity. The requirements for notification will be determined between the NPPO of the exporting country and APHIS.

(2) Regulatory responses to program failures will be based on existing bilateral agreements. Contingency plans may be established in advance to ensure that alternative measures are available in the event that all or part of a program fails. APHIS will specify the consequences of noncompliance to the NPPO of the exporting country. The NPPO must specify the consequences of noncompliance to the participants in the program. These may vary depending on the nature and severity of the infraction. In addition, remedial measures should be specified to enable a suspended or decertified place of production or plant broker to become eligible for reinstatement or recertification.

(3) Places of production or plant brokers that do not meet the conditions of the program must be suspended. Plants for planting must not be exported from a place of production or a plant broker that has failed to meet the program requirements.

(4) The effectiveness of remedial measures taken must be verified before reinstatement to the program by the exporting NPPO and, where appropriate, by APHIS.

**§ 319.37–22 Trust fund agreements.**

If APHIS personnel need to be physically present in an exporting country or region to facilitate the exportation of plants for planting and APHIS services are to be funded by the NPPO of the exporting country or a private export group, then the NPPO or the private export group must enter into a trust fund agreement with APHIS that is in effect at the time APHIS' services are needed. Under the agreement, the NPPO of the exporting country or the private export group must pay in advance all estimated costs that APHIS expects to incur in providing inspection services in the exporting country. These costs will include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing services. The agreement must require the NPPO of the exporting country or region or a private export group to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. The agreement must further specify that, if the deposit is not sufficient to meet all costs incurred by APHIS, the NPPO of the exporting country or a private export group must deposit with APHIS, before the services will be completed, a certified or cashier's check for the amount of the remaining costs, as determined by APHIS. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO of the exporting country or region or a private export group, or held on account.

**§ 319.37–23 Postentry quarantine.**

(a) *Postentry quarantine.* One specific restriction that may be placed upon the importation of a type of plants for planting in accordance with § 319.37–20 is that it be grown in postentry quarantine. A list of taxa required to be imported into postentry quarantine may be found in the Plants for Planting Manual. Plants for planting grown in

postentry quarantine must be grown under postentry quarantine conditions specified in paragraphs (c) and (d) of this section, and may be imported or offered for importation into the United States only:

(1) If destined for a State that has completed a State postentry quarantine agreement with APHIS in accordance with paragraph (b) of this section;

(2) If an importer postentry quarantine growing agreement has been completed and submitted to Plant Protection and Quarantine in accordance with paragraph (c) of this section. The agreement must be signed by the person (the importer) applying for a written permit for importation of the plants for planting in accordance with § 319.37–5; and,

(3) If Plant Protection and Quarantine has determined that the completed postentry quarantine growing agreement fulfills the applicable requirements of this section and that services by State inspectors are available to monitor and enforce the postentry quarantine.

(b) *State postentry quarantine agreement.* Plants for planting required to undergo postentry quarantine in accordance with § 319.37–20 may only be imported if destined for postentry quarantine growing in a State which has entered into a written agreement with the Animal and Plant Health Inspection Service, signed by the Administrator or his or her designee and by the State Plant Regulatory Official. In accordance with the laws of individual States, inspection and other postentry quarantine services provided by a State may be subject to charges imposed by the State. A list of States that have entered into a postentry quarantine agreement in accordance with this paragraph can be found in the Plants for Planting Manual.

(c) *Importer postentry quarantine growing agreements.* Any plants for planting required to be grown under postentry quarantine conditions, as well as any increase therefrom, shall be grown in accordance with an importer postentry quarantine growing agreement signed by the person (the importer) applying for a written permit in accordance with § 319.37–5 for importation of the plants for planting and submitted to Plant Protection and Quarantine. On each importer postentry quarantine growing agreement, the person shall also obtain the signature of the State Plant Regulatory Official for the State in which plants for planting covered by the agreement will be grown. The importer postentry quarantine growing agreement shall specify the kind, number, and origin of plants to be imported; the conditions specified in

the Plants for Planting Manual under which the plants for planting will be grown, maintained, and labeled; and the reporting requirements in the case of abnormal or dead plants for planting. The agreement shall certify to APHIS and to the State in which the plants for planting are grown that the signer of the agreement will comply with the conditions of the agreement for the postentry quarantine growing period prescribed for the type of plants for planting in the Plants for Planting Manual.

(d) *Applications for permits.* A completed importer postentry quarantine agreement shall accompany the application for a written permit for plants for planting required to be grown under postentry quarantine conditions. Importer postentry quarantine agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Unit, 4700 River Road Unit 136, Riverdale, MD 20737–1236 or on the Internet at [http://www.aphis.usda.gov/permits/ppq\\_epermits.shtml](http://www.aphis.usda.gov/permits/ppq_epermits.shtml).

(e) *Inspector-ordered disposal, movement, or safeguarding of plants for planting; costs and charges, civil and criminal liabilities—*(1) *Growing at unauthorized sites.* If an inspector determines that any plants for planting subject to the postentry quarantine growing requirements of this section, or any increase therefrom, is being grown at an unauthorized site, the inspector may file an emergency action notification (PPQ form 523) with the owner of the plants for planting or the person who owns or is in possession of the site on which the plants for planting is being grown. The person named in the form 523 must, within the time specified in form 523, sign a postentry quarantine growing agreement, destroy, ship to a point outside the United States, move to an authorized postentry quarantine site, and/or apply treatments or other safeguards to the plants for planting, the increase therefrom, or any portion of the plants for planting or the increase therefrom, as prescribed by an inspector to prevent the introduction of quarantine pests into the United States. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the quarantine pests associated with the type of plants for planting (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(2) *Growing at authorized sites.* If an inspector determines that any plants for planting, or any increase therefrom, grown at a site specified in an authorized postentry quarantine growing agreement is being grown contrary to the provisions of this section, including in numbers greater than the number approved by the postentry quarantine growing agreement, or in a manner that otherwise presents a risk of introducing quarantine pests into the United States, the inspector shall issue an emergency action notification (PPQ form 523) to the person who signed the postentry quarantine growing agreement. That person shall be responsible for carrying out all actions specified in the emergency action notification. The emergency action notification may extend the time for which the plants for planting and the increase therefrom must be grown under the postentry quarantine conditions specified in the authorized postentry quarantine growing agreement, or may require that the person named in the notification must destroy, ship to a point outside the United States, or apply treatments or other safeguards to the plants for planting, the increase therefrom, or any portion of the plants for planting or the increase therefrom, within the time specified in the emergency action notification. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the quarantine pests associated with the type of plants for planting (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(3) *Costs and charges.* All costs pursuant to any action ordered by an inspector in accordance with this section shall be borne by the person who signed the postentry quarantine growing agreement covering the site where the plants for planting were grown, or if no such agreement was signed, by the owner of the plants for planting at the growing site.

**§ 319.40–2 [Amended]**

- 8. In § 319.40–2, paragraph (c) is amended by removing the words “Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products” and adding the words “Plants for Planting” in their place.
- 9. Section 319.41 is amended as follows:
  - a. By redesignating paragraph (d) as paragraph (e).

- b. By adding a new paragraph (d) to read as set forth below.

**§ 319.41 Notice of quarantine.**

\* \* \* \* \*

(d) The importation of plants (including any plant parts) of any of the taxa listed in paragraph (b) of this section that are for planting or capable of being planted is restricted under “Subpart—Plants for Planting” of this part.

\* \* \* \* \*

- 10. Section 319.55 is amended as follows:

- a. By revising paragraphs (a) and (b) to read as set forth below.
- b. By redesignating paragraph (d) as paragraph (e).
- c. By adding a new paragraph (d) to read as set forth below.

**§ 319.55 Notice of quarantine.**

(a) The fact has been determined by the Secretary of Agriculture, and notice is hereby given:

(1) That injurious fungous diseases of rice, including downy, mildew (*Sclerospora macrospora*), leaf smut (*Entyloma oryzae*), blight (*Oospora oryzaetorum*), and glume blotch (*Melanomma glumarum*), as well as dangerous insect pests, new to and not heretofore widely prevalent or distributed within and throughout the United States, exist, as to one or more of such diseases and pests, in Europe, Asia, Africa, Central America, South America, and other foreign countries and localities, and may be introduced into this country through importations of rice straw and rice hulls; and

(2) That the unrestricted importation of rice straw and rice hulls may result in the entry into the United States of the injurious plant diseases heretofore enumerated, as well as insect pests.

(b) To prevent the introduction into the United States of the plant pests and diseases indicated above, the Secretary has determined that it is necessary to restrict the importation of rice straw and rice hulls from all foreign locations, except as otherwise provided in this subpart.

\* \* \* \* \*

(d) The importation of seed or paddy rice is restricted under “Subpart—Plants for Planting” of this part.

\* \* \* \* \*

**§ 319.55–2 [Amended]**

- 11. Section 319.55–2 is amended as follows:
  - a. In paragraph (a), by removing the words “seed or paddy rice from Mexico or” and the words “from any country,”.

- b. In paragraph (c), by removing the word “mader” and adding the word “made” in its place.

**§ 319.55–3 [Amended]**

- 12. Section 319.55–3 is amended as follows:
  - a. By removing paragraph (a) and redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.
  - b. In newly redesignated paragraph (a), by removing the words “from all foreign countries”.
  - c. In newly redesignated paragraph (b), by removing the words “seed or paddy rice,” and by removing the comma after the word “straw”.

**§ 319.55–6 [Amended]**

- 13. Section 319.55–6 is amended as follows:
  - a. By removing and reserving paragraph (a).
  - b. By redesignating paragraphs (c)(1) and (c)(2) as paragraphs (b)(3) and (b)(4).
  - c. By removing the designation and heading of paragraph (c).

**§ 319.55–7 [Amended]**

- 14. Section 319.55–7 is amended by removing the words “seed and paddy rice from Mexico, and of” and the words “from all foreign countries and localities.”.

**§ 319.59–1 [Amended]**

- 15. In § 319.59–1, the definition of *grain* is amended by adding the words “and not for planting” before the period.
- 16. Section 319.59–2 is amended as follows:
  - a. By removing and reserving paragraph (a).
  - b. In paragraph (b), by removing the words “*Triticum* spp. plants, articles” and adding the word “Articles” in their place.
  - c. By adding a new paragraph (c) to read as set forth below.

**§ 319.59–2 General import prohibitions; exceptions.**

\* \* \* \* \*

(c) The importation of any host crops (including seed and any other plant parts) that are for planting or capable of being planted is restricted under “Subpart—Plants for Planting” of this part.

- 17. Section 319.59–3 is amended by revising paragraph (a) to read as follows:

**§ 319.59–3 Articles prohibited importation pending risk evaluation.**

\* \* \* \* \*

- (a) The following articles of *Triticum* spp. (wheat) or of *Aegilops* spp. (barb goatgrass, goatgrass): Straw (other than straw, with or without heads, which has



been processed or manufactured for use indoors, such as for decorative purposes or for use in toys); chaff; and products of the milling process (i.e., bran, shorts, thistle sharps, and pollards) other than flour.

\* \* \* \* \*

#### § 319.59–4 [Amended]

■ 18. In § 319.59–4, paragraph (a)(2) is amended by removing the word “seed,”.

#### § 319.73–1 [Amended]

■ 19. In § 319.73–1, the definition of *unroasted coffee* is amended by adding the words “intended for processing” before the period.

■ 20. Section 319.73–2 is amended by revising paragraphs (a)(2) and (b) to read as follows:

#### § 319.73–2 Products prohibited importation.

(a) \* \* \*

(2) Coffee leaves; and

\* \* \* \* \*

(b) The importation of any coffee plants (including bare seeds, seeds in pulp, and any other plant parts) that are for planting or capable of being planted is restricted under “Subpart—Plants for Planting” of this part.

#### § 319.74–1 [Amended]

■ 21. In § 319.74–1, the definition of *cut flower* is amended by adding the words “and not for planting” after the word “state”.

#### § 319.75–1 [Amended]

■ 22. Section 319.75–1 is amended by removing the definition of *nursery stock*.

■ 23. Section 319.75–2 is amended by revising footnote 1 to read as set forth below.

#### § 319.75–2 Restricted articles.<sup>1</sup>

\* \* \* \* \*

<sup>1</sup> The importation of restricted articles may be subject to prohibitions or restrictions under other provisions of 7 CFR part 319. For example, fresh whole chilies (*Capsicum* spp.) and fresh whole red peppers (*Capsicum* spp.) from Pakistan are prohibited from being imported into the United States under the provisions of Subpart—Fruits and Vegetables of this part, and the importation of any restricted articles that are for planting or capable of being planted is restricted under Subpart—Plants for Planting of this part.

#### § 319.75–9 [Amended]

■ 24. In § 319.75–9, paragraphs (a), (b), and (c) are amended by removing the words “nursery stock, plant,” and the words “root, bulb,” each time they occur.

#### § 319.77–2 [Amended]

■ 25. Section 319.77–2 is amended as follows:

■ a. In the introductory text of the section, by removing the words “through (g)” and adding the words “through (e)” in their place.

■ b. By removing paragraphs (b) and (c) and redesignating paragraphs (d) through (h) as (b) through (f), respectively.

■ 26. Section 319.77–4 is amended as follows:

■ a. By revising footnote 1 to read as set forth below.

■ b. In paragraphs (a)(1) and (a)(2), by removing the words “, trees with roots, and shrubs with roots and persistent woody stems” each time they occur.

■ c. In paragraphs (a)(2)(i) and (a)(2)(ii), by removing the words “or shrubs” each time they occur.

#### § 319.77–4 Conditions for the importation of regulated articles.

(a) \* \* \*<sup>1</sup>

\* \* \* \* \*

<sup>1</sup> Trees and shrubs from Canada may be subject to additional restrictions under “Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles” (§§319.40–1 through 310.40–11 of this part).

### PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

■ 27. The authority citation for part 340 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

#### § 340.0 [Amended]

■ 28. In § 340.0, footnote 1 is amended as follows:

■ a. By removing the words “Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products” and adding the words “Plants for Planting” in their place.

■ b. By removing the words “nursery stock” both times they appear and adding the words “plants for planting” in their place.

■ c. By removing the words “stock is” and adding the words “plants are” in their place.

Done in Washington, DC, this 18th day of April 2013.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013–09737 Filed 4–24–13; 8:45 am]

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