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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318, 319, 330, 340, 360, and 361

[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: Final rule.

SUMMARY: We are restructuring the regulations governing the importation of plants for planting. In the new structure, restrictions on the importation of specific types of plants for planting will no longer be found in the regulations, but instead will be found in the Plants for Planting Manual. We will make changes to the restrictions in the manual after taking public comment through notices published in the *Federal Register*. As part of this restructuring, we are grouping together restrictions in the plants for planting regulations that apply to the importation of most or all plants for planting, and we are adding general requirements for the development of integrated pest risk management measures that we may use to mitigate the risk associated with the importation of a specific type of plants for planting. We are also amending 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 will also be found in the Plants for Planting Manual. This action does not make any major changes to the restrictions that currently apply to the importation of plants for

planting. These changes will 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: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Dr. Shailaja Rabindran, Assistant Director, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2167.

#### 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 authority 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 the official control of an eradication or containment program.

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. The term *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."

On April 25, 2013, we published in the *Federal Register* (78 FR 24634-24663, Docket No. APHIS-2008-0011) a proposal<sup>1</sup> to revise the plants for planting regulations and make several related changes to the foreign quarantine notices in 7 CFR part 319. Briefly, we proposed to do the following:

- 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.
- 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 not authorized pending pest risk analysis (NAPPRA) in accordance with current § 319.37-2a. We proposed to characterize the other prohibitions as restrictions, rather than prohibitions, and to list them as such in the Plants for Planting Manual. This manual 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, group together the requirements that apply to the importation of all or most plants for planting.
- Move restrictions on the importation of specific types of plants for planting from the regulations to the Plants for Planting Manual. We proposed to revise how we change these restrictions. We proposed to publish a notice in the *Federal Register* 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

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<sup>1</sup> To view the proposed rule, extensions of comment period, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0011>.

comment on the notice and the document it makes available. We would then respond to any comments we receive in a second notice published in the *Federal Register*, and implement the restrictions if our determination remains unchanged.

- 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 proposed to update these lists, when necessary, using the same double-notice process we are proposing to use to update restrictions on the importation of specific types of plants for planting.
- Establish a framework for the use of integrated pest risk management measures (IPRMM) 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.
- Make several minor changes to the regulations to improve their clarity and reflect current program operations.

We did not propose to make major changes to the restrictions that currently apply to the importation of plants for planting. The proposal was directed towards making the regulations easier to use and to implement.

Comments on the proposed rule were required to be received on or before June 24, 2013. We reopened and extended the deadline for comments until September 10, 2013, in a document published in the *Federal Register* on July 12, 2013 (78 FR 41866-41867, Docket No. APHIS-2008-0011). We reopened and extended the deadline for comments a second time, until January 30, 2014, in a document published in the *Federal Register* on December 31, 2013 (78 FR 79636-79637, Docket No. APHIS-2008-0011). In the latter document, we asked specifically for

comments regarding whether to base the framework for the use of IPRMM on regional or international standards. We also asked for specific comments regarding the risk posed when plant brokers purchase and move plants for planting after they leave their place of production and before they are exported to the United States.

We received 17 comments by the January 30, 2014, close of the comment period. They were from producer organizations, State departments of agriculture, a foreign national plant protection organization, an environmental protection organization, and private citizens. They are discussed below by topic.

#### Scope of the Proposed Rule

Two commenters expressed concern about the length and complexity of the proposed rule, stating that it should have been broken into separate, smaller regulatory actions.

Many of the changes in the proposed rule were dependent on each other, and making one or two at a time would have left the regulations in an unsettled state. In addition, proposing the changes in separate chunks would have made the overall process of restructuring the regulations take much longer.

#### Plants for Planting Manual

One commenter stated that the updated Plants for Planting Manual should be made available for review prior to the publication of the final rule.

We will make the updated manual available upon the effective date of the final rule. Making it available earlier, when the final rule is not effective and the current version of the manual is still in use, could create confusion.

Another commenter stated that navigation of and access to the manual should be as open and easy as possible, and that stakeholders should be notified of changes.

We agree. As part of this regulatory process, we have undertaken a wholesale revision of the Plants for Planting Manual to make it easier to use. The new version of the manual will be maintained at [https://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/plants\\_for\\_planting.pdf](https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf). Stakeholders can keep abreast of updates to the Plants for Planting Manual through the APHIS Stakeholder Registry; interested parties can sign up for email notifications at <https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new>. Finally, whenever we determine that we need to add, change, or remove phytosanitary restrictions in the Plants for Planting Manual to address the risk posed by imported plants for planting, we will publish a notice in the *Federal Register* requesting public comment.

#### Consolidation of Plants for Planting Provisions

We proposed to move provisions from other subparts in 7 CFR part 319 that regulate the importation of plants for planting and consolidate all requirements for importation of plants for planting in a single location.

One commenter requested clarification on whether we were limiting the plants for planting regulations to cover only some plants for planting, or whether we were clarifying that plants for planting rules do not apply to plants not for planting.

We are neither limiting the plants for planting regulations nor clarifying as the commenter suggests, but rather making sure that all plants for planting are imported in accordance with the plants for planting regulations. Subparts of 7 CFR part 319 not specifically about plants for planting had contained some provisions regulating plants for planting. For example, the sugarcane regulations in § 319.15 regulate the importation of all sugarcane plants and plant parts, whether they are for planting or not.

We proposed to remove provisions in those other subparts that applied to plants for planting and put them in the Plants for Planting Manual or to change those subparts to explicitly indicate that they did not apply to plants for planting, when applicable. For example, we proposed to amend the subpart regulating the importation of cut flowers in 7 CFR part 319 to explicitly indicate that such flowers must not be for planting.

One commenter stated that inspectors should keep the possibility of planting in mind when conducting inspections.

We agree. The definition of *plant* in this final rule includes any plant or plant part that is capable of propagation. This definition affords our inspectors discretion to determine whether a plant or plant part that is capable of propagation and offered for importation should be considered a plant for planting.

#### Definitions

We proposed to retain many of the current definitions in § 319.37-1 and add a few new ones. We received comments on three of these definitions.

The definition of *from* specifies that an article is considered to be "from" any country or locality where it was grown, with exceptions for articles imported to Canada and subsequently re-exported to the United States under certain conditions. These conditions are specified in subparagraphs (1) through (4) of the definition. We proposed to change the terminology in the definition to reflect the proposal but did not propose any substantive modifications.

One commenter asked that we further clarify current subparagraph (3) in the definition of *from*. Under this subparagraph, to be considered from Canada, an article must not have been grown in a country or locality which would subject it to postentry quarantine in the United States, unless it was grown in Canada under equivalent postentry quarantine conditions. The

commenter understood this provision to mean that such articles would be subject to two post-entry quarantines, one in Canada following importation from the country in which it was grown, the other in the United States following importation from Canada. The commenter stated that if Canada and the United States fully harmonize their postentry quarantine requirements, the article should be allowed to be imported directly from Canada into the United States, without a second postentry quarantine.

We agree. Should such harmonization occur, we will initiate rulemaking accordingly.

With respect to current paragraph (4) in the definition of *from*, which requires plants for planting to not be imported in growing media in order to be considered "from" Canada, another commenter stated that we should allow the importation of plants for planting produced in APHIS programs for the importation of plants in growing media but imported into Canada before movement to the United States to be considered "from" Canada.

We understand the commenter to be referring to plants in growing media that are produced in one of two manners: Either (1), the plants have been grown in the United States, exported to Canada for finishing, then subsequently offered for importation back into the United States, or (2), the plants have been produced in a third country under conditions that would make the articles eligible for importation into the United States, exported to Canada, then subsequently offered for importation into the United States. With regard to the first class of articles, we are currently in discussions with the national plant protection organization (NPPO) of Canada regarding the importation of such articles into the United States, and will take appropriate follow-up action based on this dialogue.

With regard to the second class of articles, our evaluation will be on a case-by-case basis based on the safeguards applied to the articles within Canada.

We proposed to establish a new definition of the term *place of production*. The proposed definition indicated that the term may include “a production site that is separately managed for phytosanitary purposes.” One commenter stated that we should modify this definition to be consistent with the definition in International Plant Protection Convention's (IPPC) Glossary of Phytosanitary Terms,<sup>2</sup> which refers to multiple production sites.

We based our proposed definition on the IPPC definition; the inconsistency was inadvertent. We have corrected the definition in this final rule.

We proposed to define *plants for planting* as: "Regulated plants (including any plant parts) that are for planting or capable of being planted." This proposed definition differs from the IPPC definition of that term. One commenter suggested that IPPC signatories, such as the United States, should use the IPPC definitions, or submit proposed revisions to those definitions to the IPPC.

Although we intended to use a version of the definition of *plants for planting* not substantively different from the IPPC's, the definition in our proposed rule did not include the intended use of the article. After reviewing our proposed definition in light of the commenter's concerns, we determined that the IPPC definition, “plants intended to remain planted, to be planted, or replanted,” emphasizes the intended use of the article, and that this is an important distinction. Intended use has long played a role in our determining whether a specific article is a plant for planting; for example, it is our basis for determining whether to regulate a commercial consignment of potato tubers, which are articles capable of propagation, as plants for planting. Accordingly, in this final rule, we have decided to use the IPPC definition of *plants for planting*, which had been in the previous regulations.

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<sup>2</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.

### Moving Prohibited Taxa to the NAPPRA Category

In § 319.37-2 of the regulations, paragraphs (a) and (b) currently list several taxa of plants for planting as prohibited. We proposed to remove these lists from the regulations and add most of these taxa to the NAPPRA lists.

One commenter asked for clarification on what plants or groups of prohibited plants would not be added to the NAPPRA lists.

The NAPPRA category lists taxa of plants for planting that are not authorized for importation pending pest risk analysis, as well as the parts of those plants that are subject to NAPPRA. We proposed to add those taxa listed in § 319.37-2 as prohibited articles to the NAPPRA list if they were listed in § 319.37-2 without any additional conditions. Some of the prohibited taxa in § 319.37-2 had additional conditions regarding their prohibited status, e.g., the articles were prohibited importation only if they were a certain size or age, or only if they were imported in pulp. Those prohibitions can more accurately be characterized as restrictions on the importation of plants for planting, rather than outright prohibitions. Accordingly, we are characterizing them as such and moving the restrictions to the Plants for Planting Manual.

One commenter asked how the proposal to add the prohibited taxa to the NAPPRA list would affect any pest risk analyses (PRAs) that had been done for the taxa. Another asked why we chose to add the prohibited taxa to the NAPPRA category given that PRAs have presumably already been done for these plants, and their pest risk considered such that we prohibited their importation into the United States.

To answer the former commenter, any new PRAs conducted regarding taxa on the NAPPRA list supersede previously conducted PRAs.

To answer the latter commenter, although pest risk information led us to prohibit the importation of the taxa listed in § 319.37-2, this information may change. For example, a foreign country may undertake eradication efforts to combat a particular pest, or new measures may become available to mitigate the risk associated with the pest. Additionally, the quarantine significance of a particular pest may be reevaluated based on new scientific information, or the introduction and dissemination of that pest within the United States. Adding the prohibited taxa to the NAPPRA category allows us to reexamine the risk in light of these possible changes.

Rather than simply add the current prohibited taxa to the NAPPRA category, one commenter asked that we propose to add the taxa to the NAPPRA category through an additional regulatory action and opportunity for public comment.

We do not believe it would be appropriate or necessary to request additional public comment on the addition of prohibited taxa to the NAPPRA list. When we added those taxa to the prohibited list based on their quarantine pest risk, we took public comment through the rulemaking process. Additionally, we afforded the public an opportunity to comment on the addition of the taxa to the NAPPRA list during the comment period associated with the proposed rule.

One commenter asked where information about the taxa of plants for planting that are NAPPRA would be found. Specifically, the commenter asked whether the information would be maintained both on the Plants for Planting website and in the Plants for Planting Manual.

The information will be maintained solely in the Plants for Planting Manual; the Plants for Planting website will indicate this and link to the manual. Maintaining the list in two different places could result in discrepancies between the two lists. We have reformatted the lists based on this decision to move them to the Plants for Planting Manual.

Previously, we had maintained two NAPPRA lists on the Internet, one of taxa that we have determined to be quarantine pests and another of taxa that we have determined to be hosts of a quarantine pest. In adding the NAPPRA taxa to the Plants for Planting Manual, however, we discovered that a clearer and more user-friendly format was simply to list all NAPPRA taxa alphabetically in one list. As such, we have made a slight change to proposed paragraph (a) of § 319.37-4. The paragraph had stated that there are two lists of NAPPRA plants for planting. It now indicates that there are two categories of NAPPRA plants for planting.

### Permits

We proposed to move the current permit requirements from § 319.37-3 to § 319.37-5 and make a few changes. One of the changes we proposed was to change how the current permit requirements are presented. Rather than indicate which lots of plants for planting must be imported with a permit, we proposed to indicate that all lots of plants for planting must be imported with a permit, with exceptions listed in the Plants for Planting Manual.

One commenter stated that the new proposal appeared to require permits for all plants, while the previous regulations exempted lots of 13 or fewer plants. The commenter requested further explanation and the opportunity for public comment on this change. Another commenter supported what the commenter believed was our proposal to require permits for lots containing 12 or fewer plants. The regulations exempted, among other things, lots of 13 or more plants from the permit requirement if they are composed of seeds of herbaceous plants, precleared bulbs of a taxon approved by APHIS for preclearance, or sterile cultures of orchid plants. One commenter stated that bulbs should not be required to be accompanied by a permit, and asked us to confirm that existing bulb import programs (which do not involve the issuance of permits) would remain in place.

We did not propose to remove or otherwise alter any exemptions from permitting for plants for planting. We merely proposed to move the exemptions from the regulations to the Plants for Planting Manual. We believe the Plants for Planting Manual affords us an opportunity to present the exemptions more clearly, and in a manner that is more accessible to the general public.

The requirement that lots of 13 or more plants be accompanied by a permit also exempted lots of any size if they were from Canada. One commenter asked whether we should continue to allow plants to be imported from Canada without a permit, as this could leave a substantial gap in our information about what plants we import and where they are from. The commenter noted that 95 percent of imported woody shrubs and trees come from Canada.

The exemption is long-standing and has not resulted in the introduction of quarantine plant pests into the United States. Removing it in the absence of demonstrable quarantine plant pest risk is not justified.

One commenter stated that the new regulations should reflect the adoption of controlled import permits (CIP).

We agree. After the proposed rule to revise the plants for planting regulations was published, we published a final rule on May 2, 2013 (78 FR 25565-25572, Docket No. APHIS-2008-0055) establishing provisions in a new § 319.6 for the issuance of CIPs for articles otherwise prohibited or restricted from importation, including plants for planting. The May 2013 final rule made several changes to the plants for planting regulations as part of establishing the CIP provisions. We are incorporating most of those changes into the revision of the plants for planting regulations in this final rule, and have made corresponding changes to proposed §§ 319.37-1, 319.37-4, 319.37-5, and 319.37-23.

We are not incorporating one provision of the final rule that implemented CIPs, which required plants for planting imported into postentry quarantine to be accompanied by a CIP. When we implemented that final rule, we discovered that it had inadvertently changed the regulatory status of plants for planting that are subject to postentry quarantine from restricted articles to prohibited articles. This caused significant confusion among stakeholders, and had the unintended effect of significantly restructuring our postentry quarantine programs by exempting plants for planting intended for postentry quarantine from the general requirements of the regulations. As a result, operationally, we have not required CIPs for plants for planting intended for post entry quarantine for several years.

One commenter made the general comment that permits should only be required when the importation of the plant is prohibited or allowed under certain prescribed conditions. For other plants for planting that are allowed entry, import requirements should be communicated in a general manner to exporting countries to allow NPPOs to process and distribute the information to their inspectors as well as their stakeholders.

When we consider the plant pest risk associated with the importation of plants for planting, we must consider both the risk posed by the articles and the risk posed by the person importing the articles. Requiring prospective importers to apply for a permit allows us to deny or revoke permits to applicants who have failed to honor APHIS plant import regulations in the past or who otherwise appear to pose a risk of noncompliance. We discuss this at greater length in a final rule that we published in the *Federal Register* (79 FR 19805-19812, Docket No. APHIS-2011-0085) on April 10, 2014. That rule amended, among other things, the conditions under which plants for planting permit applications are denied within APHIS.

On a related matter, the April 2014 rule also amended the conditions under which plants for planting permits are revoked within APHIS. Those amended conditions are retained in this final rule.

### Phytosanitary Certificates

We proposed to move the requirements for phytosanitary certificates from § 319.37-4 to § 319.37-6. In moving them, we proposed to remove three paragraphs in current § 319.37-4 that describe programs under which a phytosanitary certificate is not required, and replace them with general standards that encompass these three current programs and allow for the development of future programs. Specifically, we proposed to state that that the Administrator may authorize the importation of some 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.

One commenter stated that the requirement to identify place of origin on documentation that substitutes for a phytosanitary certificate would be unworkable in the context of the Canadian greenhouse certification program, which had been set out in paragraph (c) of § 319.37-4. The commenter pointed out that, under that program, Canadian producers were not currently required to document the origin of the plants exported under this program. Implementing this change, the commenter stated, would create a new administrative burden for program participants.

It was not our intention to create new burdens for participants in this program, but rather to put in place general language that could encompass all the current and future programs under which phytosanitary certificates are not required.

In this final rule, we are changing proposed § 319.37-6 to indicate 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 eligibility of the plants for importation into the United States. We believe this will accommodate the Canadian greenhouse-grown plant program and address the commenter's concern.

#### Marking and Identity

We proposed to move § 319.37-10, which contained requirements for marking and identity of imported plants for planting, to proposed § 319.37-7 and make minor changes to it.

One commenter noted that proposed § 319.37-7(a) would require any imported plants for planting to be marked with the number of the written permit authorizing the importation, if one was required. The commenter stated that it was unclear whether every individual plant would have to be marked or if the mark applied to the whole consignment of plants. The commenter expressed concern about the administrative burden that would result if each individual plant were required to be marked, and asked for clarification.

We intend for each consignment of plants for planting to be marked with the permit number, not each individual plant. We have changed the text of § 319.37-7 to reflect this.

One commenter stated that some requirements in the section appeared to be new. The commenter recommended that the requirements be moved to the Plants for Planting Manual, since they are modified by the ports from time to time, in recognition of changing trade and shipping patterns and to improve the inspection process.

Except for some terminology changes, the requirements in proposed § 319.37-7 were identical to current § 319.37-10, which has been in place for decades. We are not aware of these

requirements being modified at the ports of entry; they represent a minimum amount of information that should be conveyed about every consignment of plants for planting for the purposes of identification and, if a pest is found at port-of-entry inspection, for traceback.

### Ports of Entry

The regulations governing ports of entry for imported plants for planting were found in § 319.37-14. We proposed to move them to § 319.37-8 and make some changes. The regulations had stated that any regulated article required to be imported under a written permit pursuant to § 319.37-3(a)(1) through (6) must be imported or offered for importation at a U.S. Department of Agriculture (USDA) plant inspection station. We proposed to indicate instead 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 listed in the Plants for Planting Manual.

One commenter noted that the proposed provision did not precisely parallel the previous regulations, in that the current language only requires certain plants for planting that must be imported under a written permit to enter at a USDA plant inspection station, while the proposed language would have required all plants for planting that must be accompanied by a permit to enter at a USDA plant inspection station. The commenter stated that the revised regulations should be consistent with the previous regulations.

We agree with the commenter. We had intended to propose language substantively identical to the scope of the previous requirements, which had required plants for planting that must be imported under a written permit, if not precleared, to be imported or offered for importation only at a plant inspection station, with limited exceptions. Our intent was not to remove any of these exceptions.

Accordingly, we have revised the proposed language to state that any plants for planting required to be imported under a written permit in accordance with § 319.37-5(a), if not precleared, must be imported or offered for importation only at a plant inspection station, unless the Plants for Planting Manual indicates otherwise. The Plants for Planting Manual will list the conditions under which an imported plant for planting does not have to be offered for importation at a plant inspection station. This change will preserve the status quo while allowing more flexibility to change these conditions in the future should a change be warranted.

#### Growing Media

Proposed § 319.37-10 set out requirements for the importation of plants for planting in growing media. It was based on previous § 319.37-8, but we proposed to revise the current regulations to move restrictions on the importation of specific types of plants for planting from the regulations to the Plants for Planting Manual and to add a notice-based process for updating the list of approved growing media.

One commenter expressed concern that our proposed regulations did not specifically allow the importation of plants for planting grown in agar or agar-like tissue culture medium. The commenter asked us to confirm that no new restrictions are part of this revision with respect to plants for planting that are currently allowed into the United States in agar or agar-like growing media.

We did not propose to make any changes to the current provisions regarding the importation of plants for planting in agar or agar-like growing media; we simply proposed to move them to the Plants for Planting Manual.

One commenter asked that we change the current restrictions to allow the importation of tissue culture plants that have been produced in completely sterile conditions but are contained in sterile peat, rather than in transparent agar or other tissue culture media.

As we did not propose to make any changes to the current restrictions on the importation of plants for planting in growing media, making such a change would be outside the scope of this final rule. However, the changes we are making in this final rule will allow for more timely addition of this exemption to the Plants for Planting Manual, should we determine that the requested change is warranted.

#### Streamlined Process for Changes to Import Restrictions

Several commenters had questions about the streamlined process we proposed in § 319.37-20 for making changes to the Plants for Planting Manual.

One commenter asked to confirm that the process will apply to requests from foreign trading partners seeking to export new types of plants for planting in growing media to the United States.

The process will be used to make all changes to the restrictions on the importation of specific types of plants for planting, including importation of any specific type of plants for planting in growing media.

One commenter expressed concern regarding whether changes to the Plants for Planting Manual would be readily evident to stakeholders. The commenter also asked that sufficient time be provided for comments from stakeholders, and inquired whether there will be additional notification through the PPQ Stakeholder Registry to advise stakeholders of changes. Another commenter stated that it is the commenter's understanding that the comment period will typically be 60 days.

The second commenter is correct. We will typically provide for a comment period of 60 days on notices to change restrictions in the Plants for Planting Manual, and we have the option of extending the comment period upon request. We will provide notice of all changes we propose and all changes we make to the Plants for Planting Manual through the Stakeholder Registry.

One commenter expressed concern that making it easier to propose to change the requirements for importing specific types of plants for planting could result in a very large number of proposals being posted at one time, overwhelming a stakeholder's resources to respond by posted deadlines. The commenter asked how the process will be managed to facilitate stakeholder input.

Stakeholders will still have the opportunity to submit comments on proposed changes. Making the restrictions on the importation of planting for planting easier to update may result in more updates, but we hope that they will also be smaller in scope than our periodic amendments to the regulations have been. Wherever possible, we will avoid requesting comment on many actions at once. We also have the option of extending comment periods if stakeholders indicate they are unable to provide input on any changes within the initial comment period.

#### Integrated Pest Risk Management Measures

We proposed to set out a framework for the development of integrated pest risk management measures (IPRMM) for the importation of plants for planting in § 319.37-21. The framework covered pest management and traceability at the place of production; administration of the program by APHIS and the NPPO of the supporting country; the responsibilities of plant brokers; audits of the program; and actions to take in case of noncompliance.

In the past, we have referred to these programs as "systems approaches." We stated in the proposed rule that the term "integrated pest risk management measures" in the plants for

planting regulations is consistent with the North American Plant Protection Organization's (NAPPO) Regional Standard for Phytosanitary Measures (RSPM) No. 24 and ISPM No. 36 and industry terminology. The term also emphasizes the fact that such programs involve multiple measures, each of which plays a necessary part for a comprehensive approach to managing pest risk.

One commenter stated that IPRMM were not defined as being composed of multiple separate measures that act synergistically to mitigate plant pest risk. The commenter stated that the elements of separate action and synergistic effects have long been a foundational principle of systems approaches. The commenter asked that we state explicitly in the regulations that the agency will incorporate the elements of separate action and synergistic effects into its requirements for integrated pest risk management programs.

In an IPRMM, every measure may be necessary to prevent the plants from being infested by a particular pest, rather than the measures having separate, synergistic effects as in a classic systems approach. The program for production of *Pelargonium* and *Solanum* spp. free of *Ralstonia solanacearum* race 3 biovar 2, which had been specified in § 319.37-5(r)(3) of the plants for planting regulations, is an example of an IPRMM; each of the production practices in the paragraph must be followed or there will be a significant risk of introduction of the pathogen into the production site. Therefore, although some IPRMM are likely to incorporate the effects of separate action and synergistic effects, it would be inappropriate to state that we will incorporate these into every IPRMM. However, where we can achieve such effects, we will consider them as we design our programs.

The proposed rule stated that we would require plants for planting to be imported in accordance with IPRMM when appropriate. Several commenters asked for further information

about when we might consider IPRMM appropriate for the importation of plants for planting and whether we would require them for every type of imported plants for planting, or if there would be exceptions. One commenter asked whether certain host/pest associations would be subject to IPRMM, and stated that they seemed to be most valuable for asymptomatic, cryptic, or seasonally symptomatic pests and pathogens.

Other commenters made recommendations about when we should employ such measures. One stated that they should be employed for all plants for planting to maintain a high level of protection. Two commenters stated that other mitigation strategies may be appropriate, depending on the circumstances.

We did not intend that IPRMM would be used for all imported plants for planting. Such measures, properly implemented, can provide a high level of protection against pests that are otherwise difficult to detect or that pose a high risk. However, an IPRMM approach is not necessary for all types of imported plants for planting. For plants for planting covered by the inspection and certification program that had been found in § 319.37-5(a), for example, a simple inspection is sufficient to assure freedom from quarantine pests.

Our goal is to establish the least restrictive measures for the importation of plants for planting that will prevent the introduction of quarantine pests into the United States. The IPRMM framework described in proposed § 319.37-21 is a means to achieve that goal, but it will not be the only means we use.

In response to these comments, we have changed the introductory text of proposed § 319.37-21 to indicate that IPRMM will be developed when such measures are necessary to mitigate risk.

We stated in the proposed rule that our IPRMM framework was based on RSPM No. 24 and was consistent with the IPPC's ISPM No. 36, both of which address plants for planting.

One commenter supported basing our proposed measures on RSPM No. 24. Other commenters stated that they should be based on ISPM No. 36. Those commenters stated that using the international standard would make it easier for growers and exporters to adopt and meet a single standard that is applied globally. They also favored the approach of ISPM No. 36, which incorporates some general baseline measures for growing plants for planting and offers the ability to develop pest-specific measures should they prove necessary. One of these commenters stated that the RSPM is far more specific in its requirements than the ISPM, and that the specificity is not appropriate and will not encourage participation. The minimal components that are part of the general standards in the ISPM, this commenter stated, would encourage producers to adopt the measures; the RSPM has the potential to be complex and burdensome on growers.

We believe that some of these comments may have arisen from confusion about the applicability of IPRMM. We would only require plants for planting to be imported under these measures if the risk warrants it; these will not be general requirements for exporting plants for planting to the United States.

In that sense, our regulatory approach is similar to that of ISPM No. 36. As revised by this final rule, the regulations will contain general standards for the importation of plants for planting, and restrictions on the importation of specific types of plants for planting will be found in the Plants for Planting Manual. The framework in § 319.37-21 is simply one way we plan to address the risks associated with specific types of imported plants for planting.

One commenter noted that the NAPPO Plants for Planting Panel that authored RSPM No. 24 subsequently compared the NAPPO and IPPC standards and recommended the following: "In light of the many similarities with ISPM 36, maintaining RSPM 24 may well cause confusion for NAPPO countries trying to implement both standards and [we recommend] that RSPM 24 not be maintained."

The quote provided by the commenter is correct. However, the comparison document was not the final word from NAPPO but was intended to be the subject of further discussion. In fact, NAPPO made the decision to maintain RSPM No. 24, incorporating references to ISPM No. 36.<sup>3</sup> The RSPM was most recently revised in August 2013. As the document noted, the two standards are very similar, but the NAPPO Plants for Planting Panel concluded that the differences were significant enough to maintain two separate standards.

One commenter stated that we should pilot ISPM No. 36 with high-volume plants for planting trading partners as the first step in reducing the largely unmitigated risks of such trade.

As stated earlier, we only intend to require IPRMM in response to an identified pest risk. However, we believe the general practices in ISPM No. 36 are baseline practices for anyone who wishes to maintain a successful plants for planting production facility.

One commenter stated that we should indicate in the regulations that we will rely on the Annex to ISPM No. 36 when evaluating pest risk and on section 2.2.1.2 and Appendix 1 to the standard in developing mitigation measures.

We do not believe specific references in the regulations to these sections of ISPM No. 36 are necessary. As a signatory to the IPPC, we are committed to taking actions that are consistent with any relevant ISPMs. In addition, the specific sections of the ISPM may change or be

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<sup>3</sup> See <http://www.nappo.org/files/3414/3895/8942/RSPM24-Revision-01-08-13-e.pdf> for a discussion.

removed, meaning we would have to change our regulations to reflect that. One goal of this rulemaking is to reduce the number of changes we have to make to keep the regulations current so including references to specific sections of the ISPM would be counterproductive.

One commenter noted two differences between ISPM No. 36 and RSPM No. 24:

- ISPM No. 36 does not exclude plants as pests, while RSPM No. 24 does.
- ISPM No. 36 excludes seeds from consideration, while RSPM No. 24 does not.

The commenter expressed openness to including plants as pests in IPRMM, and felt that seeds should be excluded.

The aim of IPRMM is to prevent the introduction of quarantine pests via the importation of plants for planting. A plant that was itself a quarantine pest could not have measures applied to it to prevent it from being a quarantine pest, meaning that it is appropriate to exclude pest plants from IPRMM. However, if we identify a seed-borne pathogen as a pest, we may need to develop IPRMM to ensure that the pathogen is not present in imported seed. Therefore, we are making no changes in response to these comments.

One commenter encouraged us to implement IPRMM so that any enterable type of plants for planting grown under those measures will also be allowed entry into the United States in approved growing media. The commenter pointed out that it is currently our policy to conduct pest risk assessments each time a country requests authorization to import a taxon of plants for planting in approved growing media into the United States, even if the same taxon is already authorized importation into the United States, if it is bare-rooted. The commenter stated that, after the final rule has been published, a pest risk assessment for every new plant and growing media combination should not be a mandatory requirement anymore, and that instead an approved IPRMM system will allow a currently enterable plant to be imported in growing media.

As plants in growing media pose different risks than plants not in growing media, we will continue to consider the risk they pose separately. We would need to identify the pests that could be introduced in growing media and develop separate mitigations for them, as we do now. However, we are open to the possibility of IPRMM for plants in growing media that could address all types of quarantine pests that could be associated with a type of plants for planting.

One commenter asked us to establish clear criteria for the approval of IPRMM so that the NPPO of an exporting country, along with the NPPO's stakeholders, can evaluate whether a proposed use of IPRMM will be feasible. The commenter noted that the proposed rule did not specify a timeframe for the approval process for IPRMM.

We will develop IPRMM in consultation with foreign NPPOs that desire to export plants for planting to the United States. We do not want to put in place requirements that an exporting country cannot meet; where difficulties arise, we will work with exporting countries to find equivalent mitigations. The framework for IPRMM is open to the use of any means to effectively mitigate the pest risk, as it allows places of production and NPPOs to come up with pest management plans for their facilities.

As with our other programs for importation of plants and plant products, the time necessary to develop and approve a set of IPRMM will vary with the number of pests that must be mitigated and the complexity of the mitigations that are necessary.

One commenter stated that the current regulations for importation of plants in growing media in § 319.37-8 require that APHIS and the NPPO of the exporting country establish a written agreement for enforcement of the regulations, which is reflected through a bilateral workplan. The commenter asked whether the workplans would be replaced by IPRMM or would continue to exist in parallel with such measures.

We are not making any changes to our existing use of workplans to help implement the plants for planting regulations. When we develop IPRMM, it is likely that a workplan will be necessary to implement them.

Paragraph (a) of proposed § 319.37-21 describes the responsibilities of the place of production. It refers to documentation required under proposed paragraph (a)(5), which required documentation of program procedures being maintained by the place of production and available to the NPPO of the exporting country and APHIS upon request.

One commenter suggested that this reference should be to proposed paragraph (a)(6), which requires recordkeeping, rather than (a)(5).

We believe the documentation of program procedures maintained by places of production should be available to the NPPO of the exporting country and APHIS, but so should records required under paragraph (a)(6), as the commenter suggests. In this final rule, the reference includes both paragraphs.

Paragraph (a)(4) of proposed § 319.37-21 set out requirements for approved places of production to maintain traceability. We proposed that the system would at a minimum have to account for:

- The origin and pest status of mother stock;
- 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.

One commenter stated that the requirements for traceability in RSPM No. 24 are far too prescriptive, often beyond the capacity of a grower. The commenter stated that it is impossible, for many faster-growing crops, to keep records on the location of plants for planting within the place of production. Within greenhouse production, the commenter stated that the limitations of space, timing of turns, and modern production practices would make it nearly impossible and certainly too costly to accomplish this level of traceability. The commenter added that in nursery production there are often multiple growing operations involved with producing a marketable crop, typically many iterations away from mother stock. In the commenter's opinion, the reality of pest and pathogen dispersal make it overwhelmingly unlikely that information connecting a plant to mother stock would be of any value and would be costly far beyond its utility. The commenter stated that the same general concern about being overly specific applies to many of the prescriptive elements in this section.

We disagree with the commenter that these requirements are unrealistic. Knowing where in the production facility plants are located, for example, is not only necessary to maintain phytosanitary security but also to fulfill orders. Records of the mother stock used to produce plants allows for tracking which stock is most successful, as well as providing traceability in the event of a pest outbreak. A well-maintained place of production will keep these records as a means to ensure that its plants grow well so that orders can be fulfilled safely and efficiently.

ISPM No. 36 supports our judgment. The standard indicates in section 2.1.1 that the following conditions (among others) should be included in the approval process for producers seeking to use the general integrated measures:

- Maintaining an updated plan of the place of production as well as keeping records of when, where and how plants for planting were produced, treated, stored or prepared for

movement from the place of production (including information on all plant species at the place of production and the type of plant material such as cuttings, *in vitro* cultures, bare root plants).

- Keeping records for a period determined by the NPPO of the exporting country that verify where and how plants for planting were purchased, stored, produced, distributed and any other relevant information on their plant health status.

These are substantively identical to the traceability requirements in proposed paragraph (a)(4).

However, we have reviewed the proposed traceability requirements and determined that they may not all need to be in place for every set of IPRMM. Different pests will require different levels and types of traceability. Therefore, this final rule indicates that, depending on the nature of the quarantine pest, the system may need to include those traceability elements. This change will ensure that our traceability requirements in IPRMM are not unnecessarily restrictive.

Paragraph (c)(1) of proposed § 319.37-21 required the NPPO of the exporting country to provide APHIS with information about, among other things, the pests associated with the plant, including prevalence, distribution, and damage potential. One commenter asked how the exporting country can assess the potential damage that might occur in the United States.

If the exporting country has information about the damage a plant pest causes in that country, we can use it to inform our assessment of the potential damage the pest can cause in the United States. Requesting such information is consistent with the requirements for requests to change the general requirements for importing a plant or plant product into the United States in § 319.5.

Paragraph (d) of proposed § 319.37-21 addressed the responsibilities of plant brokers trading in plants for planting for export that are produced in accordance with IPRMM. We proposed to require plant brokers to be approved by the NPPO of the exporting country or its designee. Under the proposed rule, plant brokers would have to ensure the traceability of consignments from an approved place of production or production site and 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. Brokers would also have to document their processes for verifying status and maintaining traceability.

We received several comments on these provisions. One commenter opposed the proposed requirements for plant brokers, stating that they were overly restrictive and should be rewritten in consultation with industry. The commenter specifically opposed the requirements that brokers maintain the phytosanitary status and traceability of their plants, stating that brokers are likely commingling material from several places of production. The commenter supported the approach of ISPM No. 36, which limits integrated measures to the place of production.

Five commenters supported the proposed provisions. One stated that brokers play an extremely important role in ensuring the integrity of the proposed measures and that consignments of plants that have been produced under different IPRMM or outside any such measures cannot be allowed to be mixed because such mixing would undermine the system. Another stated that, in the commenter's experience, sales demands or lack of inventory lead to substitutions by brokers, especially if untrained employees are responsible for fulfilling orders, and supported the requirements as an effort to ensure that careful consideration is given to the role and responsibilities of brokers in the importation process.

We are retaining the proposed provisions for plant brokers in this final rule. We agree with the latter commenters that the step of the export chain after the plants leave the place of production and before they are exported is crucial to ensuring the success of IPRMM. For example, if a plant was produced in accordance with measures designed to exclude an insect pest, it would need to be secured to prevent infestation after it left the production site. In particular, commingling the plants for planting with plants for planting not produced in accordance with IPRMM could result in infested plants being exported to the United States. Brokers have a responsibility to maintain such security.

One commenter stated that we should prohibit plant brokers from commingling plants from various sources.

The requirement that plant brokers maintain the phytosanitary status of their plants will prevent plant brokers from commingling plants for planting produced in accordance with IPRMM and plants not produced in accordance with such measures. However, there is no phytosanitary risk-based reason to prohibit plant brokers from commingling plants for planting produced in accordance with IPRMM from different places of production. The places of production with commingled plants assume a risk that, if a pest is detected at the port of entry, and, depending on the biology of the pest, it is necessary to destroy, treat, or re-export the shipment, all the plants in the shipment would be affected.

One commenter asked whether plant brokers are considered plant exporters. Another asked whether brokers who take possession of plants for planting at U.S. ports would be covered by proposed paragraph (d).

We do not know the distinction the first commenter intends between the terms “plant broker” and “plant exporter.” In response to the second comment, brokers who take possession

of plants for planting at U.S. ports would not be covered by the IPRMM. However, these two comments indicate to us that we need to define the term "plant broker" more clearly. RSPM No. 24 includes a definition that reads as follows: "An entity that purchases or takes possession of plants for planting from an approved place of production for the purpose of exporting those plants without further growing beyond maintaining the plants until export." In this final rule, we are adding this definition of *plant broker* to § 319.37-2 to provide further clarity.

One commenter asked about the rationale for requiring plant brokers to be officially approved, noting that such a requirement does not exist currently when exporting plants for planting to the United States. The commenter stated that such a requirement could be a barrier to trade, preventing brokers from taking advantage of export opportunities. The commenter recommended that certification of traceability be left to the NPPO of the exporting country.

As discussed earlier, we will only use IPRMM when the pest risk warrants doing so. Pests for which such measures will be developed will likely be high-risk, difficult or impossible to detect through visual inspection, or both. In such cases, we believe plant brokers must be approved by the NPPO of the exporting country. This will ensure additional accountability in the context of the IPRMM. As noted later in the framework, a plant broker could be suspended from participating in an IPRMM program if he or she was found to have failed to meet the program requirements. In order to be suspended, the plant broker must first be approved.

It is important to note again that approval of plant brokers by the NPPO of the exporting country will not be a general requirement for the importation of all plants for planting, just those whose importation will be subject to IPRMM. Plant brokers who, for whatever reason, cannot or do not want to get approval from their NPPO to act as plant brokers in IPRMM programs will be able to participate in the export of other plants. To make this clear, this final rule modifies

proposed paragraph (d) to indicate that the requirements for plant brokers only apply when they trade in plants for planting produced in accordance with IPRMM.

One commenter asked how traceback would affect plant brokers and approved production sites or places of production if a pest was detected at the port of entry in a consignment of plants for planting produced in accordance with IPRMM. The commenter asked how traceback would function to decide at which point the system failed, and whether the place of production or the broker would be held responsible. The commenter also asked what remedies would be applied if the broker was not approved.

Under our current regulations and in accordance with international standards, when a pest is detected at the port of entry in exported plants for planting, the NPPO of the exporting country conducts traceback to determine where phytosanitary security may have been compromised. This would continue to be the case for any plants for planting produced in accordance with IPRMM. Responsibility would be determined based on the investigation. Any place of production or plant broker not meeting the conditions of the IPRMM would be suspended. If a broker is not approved to participate in the IPRMM program, APHIS and the NPPO of the exporting country would work together to determine whether tighter controls should be applied.

As noted earlier, the proposed plant broker requirements included a requirement that the brokers 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. We also proposed to require plant brokers to document their process for verifying status.

One commenter asked how a broker would write up a "place of production" manual and audit it.

We believe the wording of the proposed requirement may have created some confusion. We do not intend for plant brokers to maintain the phytosanitary status of plants exactly as a place of production would, but rather to ensure that the plants remain free of the pests of concern after they leave the place of production. For example, if the pest of concern is an insect pest, the place of production may be required to have double-entry doors, trapping and monitoring, or other such mitigations. The plant broker may be able to secure the plants simply by keeping them in a sealed container or making sure they are covered with insect-proof mesh at all times. To make this clear, we are removing the words "in a manner" from the proposed text, so that the broker is required to maintain the phytosanitary status of the plants after they leave the place of production but not necessarily to use the same methods as the place of production to do so.

Paragraph (e) of proposed § 319.37-21 set out requirements for external audits of IPRMM. Paragraph (e)(1) set out provisions for APHIS audits.

One commenter stated that it is considered the responsibility of the NPPO of the exporting country to verify compliance, not the importing country, under the IPPC. The commenter also objected to the idea that APHIS would audit the performance of the NPPO of the exporting country.

We agree with the commenter. The proposed requirements indicated that APHIS or its designee will periodically audit the system to ensure that it continues to meet the stated objectives, but the performance of the NPPO will not be audited. In the proposed rule, we indicated that post-approval audits will include inspection of imported plants for planting, site visits, and review of the IPRMM and internal audit processes of both the place of production and the NPPO of the exporting country. We are indicating in this final rule that such audits may

include those things, as we so require, to allow for more leeway to choose the appropriate level of auditing.

Paragraph (f) of proposed § 319.37-21 set out a framework for determining actions in case of noncompliance. It stated that regulatory responses to program failures will be based on existing bilateral agreements and that APHIS will specify the consequences of noncompliance to the NPPO of the exporting country.

One commenter stated that we should incorporate the strongest penalties listed in ISPM No. 36, RSPM No. 24, and the proposal, wherever they may happen to be found, into the final regulations.

We understand the commenter's concerns about the potential consequences of noncompliance. However, as different IPRMM will necessarily have different points of concern and potential noncompliance, we believe it will be simpler and more flexible to determine the actions we take in case of noncompliance within the individual IPRMM.

#### Postentry Quarantine

We proposed to set out requirements for postentry quarantine in § 319.37-23. 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 proposed to 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 and update them with the streamlined process.

One commenter expressed concerns about the use of postentry quarantine. The commenter stated that the system has proved inadequate to prevent pests from escaping, as in the escape of citrus longhorned beetle (*Anoplophora chinensis*) at a nursery in Tukwila, WA. The

commenter hoped that APHIS will shift from using postentry quarantine as a mitigation to the use of IPRMM.

We do intend to emphasize the use of IPRMM to address pest risks rather than postentry quarantine in the future. The restructuring of the plants for planting regulations will make it easier to do so.

We proposed to set out requirements for State postentry quarantine agreements in paragraph (b) of proposed § 319.37-23. Such requirements were previously found in paragraph (c) of § 319.37-7. We stated 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.

One commenter expressed concern about removing this detail, believing that the agreements could be subject to political pressure and other nonscientific factors during negotiation that could result in heightened pest risk.

We do not anticipate that anything will change as a result of removing the details, and, as the commenter noted, removing those details will allow us to tailor the agreements to specific circumstances.

#### Miscellaneous Changes

Proposed paragraph (c) of § 319.37-1 indicated 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. However, the importation of

such plants may be subject to other regulations, and the proposed text could have given the impression that there were no further requirements for the importation of such plants. Therefore, in this final rule, we have changed the proposed paragraph to indicate that the importation of such plants is not subject to the plants for planting regulations but may be subject to regulations elsewhere in 7 CFR part 319, which contains the import quarantine notices.

Additionally, plants that are imported for consumption, as determined by an inspector based on documentation accompanying the articles, are similarly not subject to the plants for planting regulations. We have changed proposed paragraph (c) to reflect this as well.

In the same section, proposed paragraph (f) had indicated that common names of plants for planting may be given in parentheses after most scientific names, when common names are known. This was intended to refer to the Plants for Planting Manual, rather than the regulations themselves, since we were proposing to move taxa-specific restrictions and prohibitions to the manual. In this final rule, we clarify that paragraph (f) of § 319.37-1 pertains to the Plants for Planting Manual.

In the definitions section of this final rule, § 319.37-2, we are adding a definition of *Animal and Plant Health Inspection Service (APHIS)* for clarity. Adding this definition allows us to simplify the wording of the definition of *Plant Protection and Quarantine Programs* and reflects the use of the acronym “APHIS” throughout the subpart. Additionally, since the proposed rule was issued, we revised the definition of *phytosanitary certificate* within the plants for planting regulations. We are retaining this revised definition, with minor edits to reflect the structure of the revised subpart.

Finally, the revisions to the subpart make it necessary for us to update references and citations that appear elsewhere in our regulations in title 7. We are making these nonsubstantive updates in 7 CFR parts 318, 319, 330, 340, 360, and 361.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order (EO) 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This rule is not expected to be an EO 13771 regulatory action because it is not significant under EO 12866. Further, APHIS considers this rule to be a deregulatory action under EO 13771 as it will facilitate access to information on import restrictions for specific types of plants for planting and create a more efficient process for amending import requirements.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

This analysis examines the potential economic impacts on small entities of a final rule to restructure the regulations contained in 7 CFR part 319 that govern the importation of plants for planting. This action will provide for more efficient application of these regulations, while not making any major changes to current import restrictions. Besides improving the clarity of these regulations, the rule will:

- Consolidate the requirements for importation of plants for planting into one subpart in 7 CFR part 319;
- Add most of the plants for planting that are listed as prohibited to the list of those whose importation is NAPPRA;
- Characterize the other prohibitions as restrictions, and add them to the Plants for Planting manual;
- Remove several lists of approved items (for example, 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;
- Move restrictions on the importation of specific types of plants for planting from the regulations to the Plants for Planting Manual;
- Establish a framework for the use of IPRMM where appropriate in the production of specific types of plants for planting for importation into the United States;
- Clarify postentry quarantine requirements; and
- Establish a process for making changes to import restrictions on specific types of plants for planting after taking public comment on notices published in the *Federal Register*, rather than by publishing proposed and final rules.

The changes will facilitate access to information on import restrictions for specific types of plants for planting, and create a more efficient process for amending import requirements. Importers of plants for planting can expect changes in import restrictions to be accomplished more than 4 months sooner than they would be through rulemaking. While nearly all importers of plants for planting that are directly affected by the rule are small, any associated costs will be modest, including instances in which phytosanitary certification are newly required.

## Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

## Paperwork Reduction Act

This final rule contains no new reporting, recordkeeping, or third party disclosure requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects

### **7 CFR Part 318**

Cotton, Cottonseeds, Fruits, Guam, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

### **7 CFR Part 319**

Coffee, Cotton, Fruits, Imports, Logs, Plant diseases and pests, Plants for planting, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

### **7 CFR Part 330**

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

### **7 CFR Part 340**

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

### **7 CFR Part 360**

Plants, Quarantine, Reporting and recordkeeping requirements, Transportation.

**7 CFR Part 361**

Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds.

Accordingly, we are amending 7 CFR parts 318, 319, 330, 340, 360, and 361 as follows:

**PART 318—STATE OF HAWAII AND TERRITORIES QUARANTINE NOTICES**

1. The authority citation for part 318 continues to read as follows.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

2. Section 318.60 is amended by revising paragraph (c)(2) to read as follows:

**§ 318.60 Notice of quarantine.**

\* \* \* \* \*

(c) Sand (other than clean ocean sand), soil, or earth around the roots of plants shall not be shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any person from Hawaii, Puerto Rico, or the Virgin Islands of the United States into or through any other State, Territory, or District of the United States: *Provided*, That the prohibitions of this section shall not apply to the movement of such products in either direction between Puerto Rico and the Virgin Islands of the United States: *Provided further*, That such prohibitions shall not prohibit the movement of such products by the United States Department of Agriculture for scientific or experimental purposes, nor prohibit the movement of sand, soil, or earth around the roots of plants which are carried, for ornamental purposes, on vessels into mainland ports of the United States and which are not intended to be landed thereat, when evidence is presented satisfactory to the inspector of the Plant Protection and Quarantine Programs of the Department of Agriculture that such sand, soil, or earth has been so processed or is of such nature that no pest risk is

involved, or that the plants with sand, soil, or earth around them are maintained on board under such safeguards as will preclude pest escape: *And provided further*, That such prohibitions shall not prohibit the movement of plant cuttings or plants that have been—

(1) Freed from sand, soil, and earth;

(2) Subsequently potted and established in sphagnum moss or other packing material approved under § 319.37-11 of this chapter that had been stored under shelter and had not been previously used for growing or packing plants;

(3) Grown thereafter in a manner satisfactory to an inspector of the Plant Protection and Quarantine Programs to prevent infestation through contact with sand, soil, or earth; and

(4) Certified by an inspector of the Plant Protection and Quarantine Programs as meeting the requirements of paragraphs (c)(1) through (3) of this section.

\* \* \* \* \*

## **PART 319—FOREIGN QUARANTINE NOTICES**

3. 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.

### **§ 319.6 [Amended]**

4. In § 319.6, paragraph (d)(4) is amended by removing the citation “§ 319.37-9” and adding the citation “§ 319.37-11” in its place.

5. Section 319.8 is amended as follows:

a. By designating the current text of the section as paragraph (a); and

b. By adding paragraph (b).

The addition reads as follows:

**§ 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]**

6. 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.

7. Section 319.15 is amended as follows:

- a. By redesignating paragraph (b) as paragraph (c); and
- b. By adding a new paragraph (b).

The addition reads as follows:

**§ 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 under Subpart--Plants for Planting of this part.

\* \* \* \* \*

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

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

9. Section 319.24 is amended as follows:

- a. By redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively; and
- b. By adding a new paragraph (b).

The addition reads as follows:

**§ 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.

\* \* \* \* \*

10. Subpart—Citrus Fruit, is amended by revising the first paragraph of the Note below the subpart heading that precedes § 319.28 to read as follows:

**Subpart—Citrus Fruit**

Note 1 to Subpart—Citrus Fruit: Citrus plants for planting may be imported in accordance with Subpart—Plants for Planting of this part.

\* \* \* \* \*

11. Section 319.28 is amended as follows:

a. In paragraph (a)(4), by removing the words “§§ 319.37 through 319.37-27” and adding the words “§§ 319.37-1 through 319.37-23” in their place;

b. In paragraph (b)(8) introductory text, by removing the words “port of entry identified in § 319.37-14” and adding the words “Customs designated port of entry indicated in 19 CFR 101.3(b)(1)” in their place; and

c. By revising the OMB citation at the end of the section.

The revision reads as follows:

**§ 319.28 Notice of quarantine.**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 0579-0173 and 0579-0314)

12. Subpart--Plants for Planting, consisting currently of §§ 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 or consumption, as determined by an inspector based on documentation accompanying the articles, is not subject to this subpart but may be subject to restrictions elsewhere in this part.

(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) Within the Plants for Planting Manual, one or more common names of plants for planting may be 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.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service, United States Department of Agriculture.

*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).

*Controlled import permit.* A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6.

*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 they are 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, including electronic versions, that is related to a restricted article and is issued not more than 15 days prior to shipment of the restricted article from the country in which it was grown and that:

(1) Is patterned after the model certificate of the International Plant Protection Convention, a multilateral convention on plant protection under the authority of the Food and Agriculture Organization of the United Nations (FAO);

(2) Is issued by an official of a foreign national plant protection organization in one of the five official languages of the FAO;

(3) Is addressed to the national plant protection organization of the United States (Animal and Plant Health Inspection Service);

(4) Describes the shipment;

(5) Certifies the place of origin for all contents of the shipment;

(6) Certifies that the shipment has been inspected and/or tested according to appropriate official procedures and is considered free from quarantine pests of the United States;

(7) Contains any additional declarations required in the Plants for Planting Manual; and

(8) Certifies that the shipment conforms with the phytosanitary requirements of the United States and is considered eligible for importation pursuant to the laws and regulations of the United States.

*Place of production.* Any premises or collection of fields operated as a single production or farming unit. This may include production sites that are 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 broker.* An entity that purchases or takes possession of plants for planting from an approved place of production for the purpose of exporting those plants without further growing beyond maintaining the plants until export.

*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 within APHIS that is delegated responsibility for enforcing provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*) and related legislation, quarantines, and regulations.

*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.

*Plants for planting.* Plants intended to remain planted, to be planted, or replanted.

*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 [https://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/plants\\_for\\_planting.pdf](https://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.

*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 restrictions applicable to the importation of specific types of plants for planting can be found in §§ 319.37-20 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 categories of taxa whose importation is not authorized pending pest risk analysis: Taxa of plants for planting that are quarantine pests, and 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 document 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 additions 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 (NAPPRA) must be made in accordance with § 319.5. 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 (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) *Controlled import 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 for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6;

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

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

(4) Imported under conditions specified on the controlled import 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 controlled import 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 controlled import permit number corresponding to the number of the controlled import permit issued for such plants for planting.

(Approved by the Office of Management and Budget under control number 0579-0380)

**§ 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 that has been issued may be revoked by an inspector or APHIS in accordance with § 319.7-4.

(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 authorization for importation issued by an inspector at the port of entry.

(f) An oral authorization 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 authorization, 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.

(g) Persons wishing to import plants for planting into the United States for experimental, therapeutic, or developmental purposes must apply for a controlled import permit in accordance with §§ 319.6 and 319.37-3.

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<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).

(Approved by the Office of Management and Budget under control numbers 0579-0190, 0579-0285, and 0579-0319)

**§ 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. 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 eligibility of the plants for importation into the United States. The documentation must be provided by the NPPO or refer to documentation 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 eligibility for importation; 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 by a notice issued 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.

(Approved by the Office of Management and Budget under control numbers 0579-0142, 0579-0190, 0579-0285, and 0579-0319)

**§ 319.37-7 Marking and identity.**

(a) Any consignment of 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 consignment of 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 consignment of 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.

(Approved by the Office of Management and Budget under control numbers 0579-0190 and 0579-0319)

§ 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 in accordance with § 319.37-5(a), if not precleared, must be imported or offered for importation only at a USDA plant inspection station, unless the Plants for Planting Manual indicates otherwise. Ports of entry through which plants for planting must pass through before arriving at these USDA plant inspection stations are listed in the Plants for Planting Manual. All other plants for planting 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.

(Approved by the Office of Management and Budget under control numbers 0579-0190, 0579-0310, and 0579-0319)

**§ 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

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

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.

(Approved by the Office of Management and Budget under control number 0579-0190)

**§ 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.

(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 proposed determination and requests comment on the change. After the close of the comment period, APHIS will publish another notice informing the public of 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.

(Approved by the Office of Management and Budget under control numbers 0579-0190, 0579-0439, 0579-0454, 0579-0458, and 0579-0463)

**§ 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 proposed determination and requests comment on the change. After the close of the comment period, APHIS will publish another notice informing the public of the Administrator's decision on the change to the list of approved packing materials.

(Approved by the Office of Management and Budget under control number 0579-0190)

**§§ 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 specific 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 proposed 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 second 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 public comments submitted, 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 date 30 days after date of publication in the Federal Register], 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 are 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 APHIS determines that integrated measures are necessary to mitigate risk, APHIS will use this framework to develop 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 paragraphs (a)(5) and (6) 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. Depending on the nature of the quarantine pests, the system may need to 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 points of contact.

(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 produced in accordance with integrated pest risk management measures.* Plant brokers trading in plants for planting produced in accordance with integrated pest risk management measures 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 (d). 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 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.

(Approved by the Office of Management and Budget under control number 0579-0190)

**§ 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.

(Approved by the Office of Management and Budget under control number 0579-0190)

**§ 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. The Plants for Planting Manual lists the taxa required to be imported into postentry quarantine. 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 the importation of the plants for planting in accordance with § 319.6; 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 PPQ Form 523 must, within the time specified in PPQ 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.

(Approved by the Office of Management and Budget under control number 0579-0190)

13. Section 319.40-2 is amended by revising paragraph (c) to read as follows:

**§ 319.40-2 General prohibitions and restrictions; relation to other regulations.**

\* \* \* \* \*

(c) *Regulation of articles imported for propagation or human consumption.* The requirements of this subpart do not apply to regulated articles that are allowed importation in accordance with Subpart—Plants for Planting of this part or to regulated articles imported for

human consumption that are allowed importation in accordance with Subpart—Fruits and Vegetables of this part.

\* \* \* \* \*

14. Section 319.41 is amended as follows:

- a. By redesignating paragraph (d) as paragraph (e); and
- b. By adding a new paragraph (d).

The addition reads as follows:

**§ 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.

\* \* \* \* \*

**§ 319.41a [Amended]**

15. In § 319.41a, paragraph (b) is amended by removing the citation “§ 319.37-4(a)” and adding the citation “§ 319.37-6(a)” in its place.

16. Section 319.55 is amended as follows:

- a. By revising paragraphs (a) and (b);
- b. By redesignating paragraph (d) as paragraph (e); and
- c. By adding a new paragraph (d).

The revisions and addition read as follows:

**§ 319.55 Notice of quarantine.**

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

(1) That injurious fungal 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]**

17. Section 319.55-2 is amended by removing the words "seed or paddy rice from Mexico or" and the words "from any country".

**§ 319.55-3 [Amended]**

18. 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"; and
- 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]**

19. Section 319.55-6 is amended as follows:

- a. By removing and reserving paragraph (a);
- b. By redesignating paragraphs (c)(1) and (2) as paragraphs (b)(3) and (4), respectively; and
- c. By removing the designation and heading of paragraph (c).

20. Section 319.55-7 is revised as follows:

**§ 319.55-7 Importations by mail.**

Importations of rice straw and rice hulls may be made by mail or cargo, provided that a permit has been issued for the importation in accordance with §§ 319.7 through 319.7-5 and all conditions of the permit are met.

(Approved by the Office of Management and Budget under control number 0579-0049)

**§ 319.56-10 [Amended]**

21. In § 319.56-10, paragraph (a)(2) is amended by removing the words “§ 319.37-2 of this part” and adding the citation “§ 319.37-20” in their place.

**§ 319.56-11 [Amended]**

22. In § 319.56-11, paragraph (b)(3) is amended by removing the words “§§ 319.37 through 319.37-14 of this part” and adding the words “§§ 319.37-1 through 319.37-23” in their place.

**§ 319.59-1 [Amended]**

23. In § 319.59-1, the definition of *grain* is amended by adding the words "and not for planting" before the period.

24. Section 319.59-2 is amended as follows:

- a. By removing and reserving paragraph (a);
- b. In paragraph (b) introductory text, by removing the words "*Triticum* spp. plants, articles" and adding the word "Articles" in their place;
- c. In paragraph (b)(1), by removing the words “§ 319.37-14 of this part” and adding the words “accordance with § 319.37-8(a)” in their place; and
- d. By adding paragraph (c).

The addition reads as follows:

**§ 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.

25. 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]**

26. In § 319.59-4, paragraph (a)(2) is amended by removing the word "seed,".

**§ 319.69a [Amended]**

27. In § 319.69a, paragraph (c) is amended by removing the citation “§ 319.37-9” and adding the citation “§ 319.37-11” in its place.

**§ 319.73-1 [Amended]**

28. In § 319.73-1, the definition of *unroasted coffee* is amended by adding the words "intended for processing" before the period.

29. 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]**

30. 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 [Amended]**

31. In § 319.75, paragraph (c)(2) is amended by removing the citation “§ 319.37-14” and adding the words “accordance with § 319.37-8(a)” in its place.

**§ 319.75-1 [Amended]**

32. Section 319.75-1 is amended by removing the definition of *nursery stock*.

33. Section 319.75-2 is amended by revising footnote 1 to read as follows:

**§ 319.75-2 Restricted articles.<sup>1</sup>**

\* \* \* \* \*

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<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.

**§ 319.75-8 [Amended]**

34. Section 319.75-8 is amended by removing the words “port of entry identified in § 319.37-14 of this part” and adding the words “Customs designated port of entry indicated in 19 CFR 101.3(b)(1)” in their place.

**§ 319.75-9 [Amended]**

35. 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]**

36. Section 319.77-2 is amended as follows:

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

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

37. Section 319.77-4 is amended as follows:

a. By revising footnote 1;

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

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

The revision reads as follows:

**§ 319.77-4 Conditions for the importation of regulated articles.**

(a) *Trees and shrubs.*<sup>1</sup>

\* \* \* \* \*

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<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 319.40-11).

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

38. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

**§ 330.300a [Amended]**

39. In § 330.300a, footnote 1 is amended by removing the words “by § 319.37-5” and adding the words “under §§ 319.37-1 through 319.37-23” in their place.

**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**

40. 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]**

41. 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 citation “7 CFR 319.37-3” and adding the words “§ 319.37-5 of this chapter” in its place;

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

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

**§ 340.4 [Amended]**

42. In § 340.4, paragraph (f)(11)(i) is amended by removing the citation “§ 319.37-14” and adding the words “accordance with § 319.37-8(a)” in its place.

**§ 340.7 [Amended]**

43. In § 340.7, paragraph (b) introductory text is amended by removing the citation “§ 319.37-14” and adding the words “accordance with § 319.37-8(a)” in its place.

## **PART 360–NOXIOUS WEED REGULATIONS**

44. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

### **§ 360.400 [Amended]**

45. In § 360.400, paragraph (a)(2) is amended by removing the citation “§ 319.37-6” and adding the words “§ 319.37-9(c) of this chapter” in its place, and by removing the citation “§ 319.37-13(c)” and adding the citation “§ 319.37-9(c)” in its place.

## **PART 361–IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT**

46. The authority citation for part 361 continues to read as follows:

Authority: 7 U.S.C. 1581-1610; 7 CFR 2.22, 2.80, and 371.3.

**§ 361.2 [Amended]**

47. In § 361.2, paragraph (d) is amended by removing the words “restrictions of § 319.37-3(a)(7)” and adding the words “permit requirements of § 319.37-5 of this chapter” in their place.

Done in Washington, DC, this 9<sup>th</sup> day of March 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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