

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 319 and 361

[Docket No. APHIS–2008–0071]

RIN 0579–AD47

#### Importation of Plants for Planting

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations on importing plants for planting to add Turkey to the list of countries from which the importation of restricted articles of *Chrysanthemum* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* into the United States is prohibited due to the presence of white rust of *Chrysanthemum*; to require permits for the importation of any seed that is coated, pelleted, or embedded in a substrate that obscures visibility; to provide for an alternate additional declaration on phytosanitary certificates that accompany articles imported from a country in which potato cyst nematodes are known to occur; to provide conditions for the importation of *Prunus* spp. articles from Canada that address the presence of plum pox potyvirus in that country; and to provide for the importation of *Dianthus* spp. (carnations) from the Netherlands. We are also proposing other changes to update and clarify the regulations and to improve their effectiveness. These changes are necessary to relieve restrictions that appear unnecessary, to update existing provisions, and to make the regulations easier to understand and implement.

**DATES:** We will consider all comments that receive on or before April 15, 2013.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/>

*#!documentDetail;D=APHIS-2008-0071-0001.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2008–0071, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/> *#!docketDetail;D=APHIS-2008-0071* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Tschanz, Senior Plant Pathologist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2179.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of quarantine plant pests. The regulations contained in “Subpart—Plants for Planting,” §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict among other things, the importation of living plants, plant parts, and seeds for propagation or planting.

We are proposing to make several amendments to the regulations. Our proposed amendments are discussed below.

##### *Prohibitions and Restrictions on Importation; Disposal of Articles Refused Importation (§ 319.37)*

Paragraph (b) of § 319.37 currently provides that, if a regulated article is denied entry into the United States for non-compliance with the regulations, the importer must destroy, ship to a point outside the United States, or apply treatments or other safeguards to the article in the manner and within the time period prescribed by an inspector, to prevent the introduction into the United States of quarantine pests. The

paragraph further specifies that, in choosing which actions to order and in setting the time limit for the actions, the inspector shall consider the degree of pest risk presented by the quarantine pest associated with the article, whether the article is a host of the pest, the types of other host materials for the pest in or near the port, the climate or season at the port in relation to the pest’s survival range, and the availability of treatment facilities for the article.

However, there are often other factors that an inspector considers in determining what remedial measures to order. For example, an inspector may consider whether the manifest accompanying the article is missing or incomplete, thus making it difficult to determine the origin or contents of the shipment, or whether the article is considered a high-risk pathway for the introduction of a quarantine pest into the United States. To clarify, we would amend the paragraph to specify that, in addition to the considerations already listed, an inspector may also consider any other factors pertaining to the risk that the article may present to plants, plant parts, or plant products within the United States that he or she considers necessary in order to choose an action and set a time limit.

##### *Definitions (§ 319.37–1)*

Currently, we define *bulb* in § 319.37–1 of the regulations as: “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.”

We have determined that this definition needs to be modified.

Primarily, the current definition conflates two types of plant parts, bulbs and dormant herbaceous perennials, that are, in fact, distinct. Bulbs, which include bulbils, corms, and cormels, are the storage organ for a plant’s reproductive structure while the plant is in a state of dormancy. Within the context of our enforcement of the regulations, we consider a bulb to remain a bulb until such time as environmental conditions induce it to produce shoots. At that time, we no longer regulate it as a bulb, but instead regulate it as a plant.

Dormant herbaceous perennials, which include rhizomes, tubers, tuberous roots, pips, fleshy roots,

divisions, and underground fleshy growths, are the parts of a herbaceous perennial plant that remain after the above-ground parts of the plant have died back to the earth at the end of a growing season, and while the perennial remains dormant. We consider a dormant herbaceous perennial to include all plant parts of this dormant plant, except the bulb. As we do for bulbs, we consider these plant parts to be dormant herbaceous perennials until such time as they start to sprout; at that point we consider them plants.

To reflect this distinction, we would revise the definition of *bulb* to read as follows: "The storage organ of a plant that serves as the plant's sexual structure during dormancy. Examples include bulbs, bulbils, bulblets, corms, and cormels. For purposes of this subpart, a bulb remains a bulb until such time as environmental conditions induce it to produce shoots. It is then considered a plant."

We would define *dormant herbaceous perennial* as: "Except for bulbs, the portions of an herbaceous perennial that remain after the above-ground parts of the plant have died back to the earth after the growing season and the plant remains dormant. Examples include rhizomes, tubers, tuberous roots, pips, fleshy roots, divisions, and underground fleshy growths. For purposes of this subpart, dormant herbaceous perennials remain dormant herbaceous perennials until such time as environmental conditions induce them to sprout. They are then considered plants."

Several of our proposed amendments to the regulations in this rule would draw a distinction between bulbs and dormant herbaceous perennials. Adding a definition of *dormant herbaceous perennial* to the regulations would clarify the nature of the distinction.

Currently, the definition of *from* provides, as a general rule, that an article is "from" the country or locality in which it is grown. However, the definition does provide that an article that was not grown in Canada may be considered from Canada, subject to certain conditions. One of these conditions is that the article must never have been grown in a country from which it would be a prohibited article.

This condition presupposes that there is only one category of articles, prohibited articles, whose importation into the United States is not authorized under the regulations. However, in a final rule published in the **Federal Register** on May 27, 2011 (76 FR 31172–31210, Docket No. APHIS–2006–0011), we established another category, articles whose importation into the United States is not authorized pending pest

risk analysis. Accordingly, we would amend the definition of *from* to clarify that, for an article to be from Canada, it must never have been grown in a country from which it would be a prohibited article or an article whose importation into the United States is not authorized pending pest risk analysis.

Additionally, we would revise the definition of *phytosanitary certificate of inspection*, to make it consistent with the definition provided in "Subpart—Fruits and Vegetables" (§§ 319.56–1 to 319.56–58). That definition, found in § 319.56–2, specifies that all phytosanitary certificates of inspection must be consistent with the model phytosanitary certificate provided by the International Plant Protection Committee, of which the United States is a contracting party, and more accurately describes the intent and content of phytosanitary certificates of inspection.

We would, however, retain a provision in the current definition that all phytosanitary certificates of inspection for plants for planting must be issued not more than 15 days prior to shipment of restricted articles. This provision is necessary because the potential for infestation after phytosanitary inspection is, generally, greater for plants for planting than it is for fruits and vegetables, and often increases if the time period between inspection and shipment is pronounced.

Finally, we would add a definition of *Administrator*. That term is used frequently throughout the regulations, but is not defined. Our proposed definition, "the Administrator of the Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator," would be identical to the definition of *Administrator* found in other parts of Chapter III of 7 CFR, and is the definition most commonly associated with the term *Administrator* by regulated entities.

#### *Prohibited Articles (§ 319.37–2)*

The table in paragraph (a) of § 319.37–2 lists prohibited articles. We are proposing several changes to entries in the table.

First, we would revise the entries for "*Chrysanthemum* spp." (*chrysanthemum*, includes *Dendranthema* spp.), "*Leucanthemella serotina*," and "*Nipponanthemum nipponicum*," which prohibit the importation of regulated articles of these genera from countries in which *Chrysanthemum* white rust (CWR), a pest of concern for *Chrysanthemum* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum*, is

known to exist. In order to facilitate regulatory compliance, we would amend the entries for *Chrysanthemum* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* to specify that articles of these species are prohibited from all countries, unless they meet the conditions of §§ 319.37–5 and 319.37–7. In §§ 319.37–5 and 319.37–7, we would update the lists of regions of the world from which *Chrysanthemum* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* articles may not be imported to list continents, followed by countries, and to remove references to lines of longitude and latitude.

In amending §§ 319.37–2, 319.37–5, and 319.37–7 in this manner, we would expand the current prohibitions to include all of Europe and Asia, including Turkey. Although the current regulations do not list Turkey as a country in which CWR is known to exist, in February and March 2007, there was a severe outbreak of the disease in the cut flower-producing regions of Turkey. Since the outbreak, we have considered Turkey to be a country in which CWR is known to occur, and have imposed restrictions on the importation of *Chrysanthemum* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* plants from Turkey in order to prevent the introduction of CWR into the United States. Adding Turkey to the list of countries where CWR is known to exist would codify those restrictions.

We would amend the entries for "*Acer* spp. (maple) (except *Acer palmatum* and *Acer japonicum* meeting the conditions for importation in § 319.37–5(m))", "*Chaenomeles* (flowering quince) spp. not meeting the conditions for importation in § 319.37–5(b)", "*Cydonia* (quince) spp. not meeting the conditions for importation in § 319.37–5(b)", "*Malus* spp. (apple, crabapple) not meeting the conditions for importation in § 319.37–5(b)", and "*Vitis* spp. (grape) not meeting the conditions for importation in § 319.37–5(b)." Conditions governing the importation of restricted articles of these species into the United States are found not only in § 319.37–5, but also in § 319.37–7. (We would make parallel changes to §§ 319.37–5 and 319.37–7.)

We would also make several changes to update the nomenclature of plant species listed in the table. First, there are currently entries for *Berberis*, *Mahoberberis*, and *Mahonia* spp. that, apart from the nomenclature used for the prohibited genera, are otherwise identical. However, the international taxonomic community currently does not consider *Mahoberberis* or *Mahonia*

to differ from *Berberis*. We would therefore remove each entry for “*Mahoberberis*” or “*Mahonia*” and add “(includes *Mahoberberis* and *Mahonia* spp.)” to the entries for “*Berberis* spp.”

For a similar reason, we would also remove the entries for “*Chrysalidocarpus* spp. (butterfly palm)” and “*Neodypsis* spp. (palm),” and replace them with a single entry for “*Dypsis* spp. (butterfly palm).” Finally, we would remove the entry for “*Arikuryoba* spp. (arikury palm),” and replace it with an entry for “*Syagrus schizophylla* (Mart.) Glassman (arikury palm).”

Additionally, we would update the entry for *Salix* spp. (willow). Currently, the entry prohibits the importation of *Salix* spp. plants from Belgium, Germany, Great Britain, Japan, and the Netherlands to prevent the introduction of *Erwinia salicis* (Day) Chester, or Watermark disease. However, *Erwinia salicis* (Day) Chester is now considered a synonym for *Brenneria salicis* (Day) Hauben et al. The updated entry would specify that Watermark disease is known both as *Brenneria salicis* (Day) Hauben et al. and as *Erwinia salicis* (Day) Chester.

(Please note that these proposed changes would pertain only to nomenclature. We are not proposing to remove or otherwise alter the existing prohibitions on the importation of plants of these genera.)

#### Permits (§ 319.37–3)

Section 319.37–3 lists certain categories of restricted articles that may only be imported into the United States following issuance of a written permit by APHIS. It also contains the process for obtaining a permit, the conditions that will lead us to withdraw a permit that we have issued, and the circumstances under which we may issue an oral permit. We would make several additions, deletions, re-orderings, and other amendments to paragraph (a); update paragraph (b); and make nonsubstantive changes to paragraph (d).

Paragraph (a) lists restricted articles, currently found in subparagraphs (a)(1) through (a)(19), that may be imported into the United States only after issuance of a written permit.

Currently, these subparagraphs are arranged according to when they were added to the regulations, and therefore are not in any particular order. Thus, one of the broadest categories, which requires permits for most small lots of seed imported into the United States, is subparagraph (a)(18), while one of the most limited, which applies only to articles of *Corylus* spp. that are from

certain provinces in Canada and that are destined to Oregon or Washington, is subparagraph (a)(14).

From time to time, this lack of order has led to inadvertent oversights by importers, who have sought importation of an article into the United States without the required permit solely because the category the article belonged to was not one of the more prominent subparagraphs. Therefore, we would reorder the subparagraphs to place the broadest categories first.

We would redesignate current subparagraph (a)(5), which requires permits for the importation of lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada, as subparagraph (a)(1). (Current subparagraph (a)(1), which requires permits for articles subject to treatment and other requirements of § 319.37–6, would be redesignated as subparagraph (a)(6).) We would also amend current subparagraph (a)(5) to clarify that one of the exemptions within it applies both to bulbs and to dormant herbaceous perennials, provided that they have been precleared and belong to a plant taxon approved by APHIS for preclearance, and another of the exemptions applies only to seeds of herbaceous plants.

The first amendment is necessary to codify a long-standing APHIS policy and operational practice. Bulbs and dormant herbaceous perennials that are precleared have been inspected by an inspector in the country from which they were exported in accordance with an APHIS-approved preclearance program and have been determined to meet the conditions for importation of the articles into the United States. Hence, prior to their arrival in the United States, they have already been determined not to present a risk of introducing or disseminating plant pests within the United States; requiring a permit to be issued in order for the articles to be imported would be unnecessary. However, bulbs and dormant herbaceous perennials that have not been precleared have not necessarily been produced under such conditions or subject to such inspections. Hence a risk basis exists for requiring such articles to be accompanied by permits, and, operationally, we have long done so.

The latter amendment is necessary in order to distinguish this exemption from the provisions of current subparagraph (a)(6), discussed immediately below, which otherwise might appear in tension with the exemption.

We would redesignate current subparagraph (a)(6), which requires

permits for the importation of seeds of trees or shrubs from any country or locality except Canada, as paragraph (a)(2). To distinguish the provisions of this subparagraph from the exemption in current subparagraph (a)(5), we would also amend this subparagraph to clarify that it pertains to seeds of non-herbaceous plants, such as trees and shrubs.

We would remove current subparagraph (a)(3), which requires permits for the importation of bulbs of *Allium sativum* (garlic), *Crocosmia* spp. (montebretia), *Gladiolus* spp. (gladiolus), and *Watsonia* spp. (bugle lily) from New Zealand. There have historically been no importations of lots of fewer than 13 bulbs of these species from New Zealand into the United States, and New Zealand does not have a preclearance program. Hence, practically speaking, we consider the restrictions of this subparagraph to duplicate those of proposed subparagraph (a)(1).

In place of current subparagraph (a)(3), proposed subparagraph (a)(3) would list a new category of articles. Section 319.37–5 of the regulations lists certain categories of restricted articles that must be accompanied by a phytosanitary certificate of inspection containing an additional declaration that the articles are free of specified quarantine pests or have been produced in accordance with certain requirements. Operationally, we have long required that such articles be accompanied not only by a phytosanitary certificate, but also by a written permit. The permit makes it clear to inspectors at a port of first arrival that APHIS considers the phytosanitary certificate to provide adequate assurance that the article is free of quarantine pests and that, accordingly, APHIS authorizes the importation of the article into the United States. Proposed subparagraph (a)(3) would codify this operational practice.

We would remove current subparagraph (a)(4), which requires permits for the importation of articles of *Cocos nucifera* (coconut) and articles (except seeds) of *Dianthus* spp. (carnation, sweet-william) from any country or locality except Canada. Only two countries, Jamaica and Costa Rica, are authorized to export coconuts to the United States under the regulations, and there are no documented importations of lots of fewer than 13 coconuts from either country into the United States. In addition, with very limited exceptions, importations of *Dianthus* spp. require postentry quarantine in accordance with § 319.37–7. Hence this subparagraph

substantively duplicates the restrictions of proposed subparagraphs (a)(2) and (a)(4).

We are proposing to add a new subparagraph (a)(7). This subparagraph would codify a long-standing APHIS policy and operational protocol by requiring permits for the importation of seed of herbaceous plants for planting that is coated, pelleted, or embedded in a substrate that obscures visibility. Visual identification and inspection of coated, pelleted, or embedded seed is often difficult or practically impossible. In the absence of an accompanying permit, it would therefore be reasonable for an inspector at a port of first arrival to consider the material to present an unknown risk to plants, plant parts, or plant products within the United States, and to prohibit or greatly restrict its importation. Hence, for the last several years, we have required permits to be issued for the importation of such seed so that the permit and its conditions may serve as the primary means of identifying the articles at the port of first arrival, and so that importers are provided with the specific importation requirements for such seed.

(On a related matter, 7 CFR part 361 contains regulations that APHIS has issued pursuant to the Federal Seed Act (7 U.S.C 1551–1661) regarding the importation of seed of certain fruits, vegetables, and herbs into the United States. Section 361.2 contains general restrictions on the importation of such seed. Paragraph (d) of § 361.2 provides that, except for Canadian-origin seed, if the seed is coated or pelleted, it must be accompanied by an officially drawn and sealed sample that was drawn before the seed was coated or pelleted. That paragraph, and the other buttressing paragraphs in that section, are written in a manner by which one could construe paragraph (d) of § 361.2 as providing the sole restrictions on the importation of coated or pelleted seed in 7 CFR. However, the importation of such seed has long been subject to the policy and operational protocol referenced in the preceding paragraph. Hence we would amend paragraph (d) of § 361.2 to clarify that it is meant to work in conjunction with proposed paragraph (a)(7) of § 319.37–3. In so doing, we would also extend the scope of that paragraph to seed that is embedded in a substrate that obscures visibility.)

In our proposed revision, subparagraphs (a)(8) through (a)(10) would pertain to certain types of articles from Canada for which permits are required. Current subparagraph (a)(7), which requires permits for the importation of articles (except seeds) of *Malus* spp. (apple, crabapple), *Pyrus*

spp. (pear), *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune), *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Canada, would be redesignated as subparagraph (a)(8). We would also amend that subparagraph to include articles (except seeds) of *Vitis* spp. (grape). This amendment is necessary because the paragraph is meant to work in conjunction with paragraph (b)(1) of § 319.37–5, which requires phytosanitary certificates for the importation of restricted articles of these species from Canada. However, while paragraph (b)(5) of § 319.37–5 currently requires restricted articles of *Vitis* spp. from Canada to be accompanied by a phytosanitary certificate, articles of *Vitis* spp. are not currently listed in subparagraph (a)(7) of § 319.37–3.

In the current regulations, subparagraphs (a)(8) through (a)(14) and (a)(16) provide that permits must be issued prior to the importation of certain restricted articles into the United States only if those articles are destined to certain States.

We developed these subparagraphs in coordination with State departments of agriculture. In order for a State to be listed in one of the subparagraphs, it had to have promulgated State quarantine regulations regarding the movement of the restricted article into the State in order to prevent the spread of a quarantine pest for which the article is a host, and had to state that notification regarding the importation of the article into the State was necessary for the purposes of enforcing these quarantine regulations. APHIS would then submit a copy of the permit to the State in order to provide such notification.

Several of the States currently listed in these subparagraphs have rescinded the quarantine regulations that led them to request notification, or have stated to APHIS that notification is no longer necessary for purposes of enforcing their regulations. In addition, for those States that still request notification, we have long provided such notification through other means and methods. Hence we consider these subparagraphs to no longer be necessary, and are proposing to remove them from the regulations.

Paragraph (b) of § 319.37–3 contains the process for obtaining a permit. It states that applications for permits should be submitted to the Permits, Registrations, Imports and Manuals branch of APHIS' Plant Protection and Quarantine (PPQ) program. However, due to organizational restructuring, that

branch no longer exists, and permitting of plants, plant parts, and plant products is no longer under the purview of only one branch within PPQ. Hence we would amend paragraph (b) to provide that applications should be addressed directly to PPQ. We would also amend a footnote in the paragraph to specify that applications may be obtained via the Internet at [http://www.aphis.usda.gov/plant\\_health/permits/index.shtml](http://www.aphis.usda.gov/plant_health/permits/index.shtml). That Web site provides eAuthenticated persons with access to ePermits, APHIS' secure site for online permit applications.

We are proposing to make nonsubstantive editorial changes to paragraph (d) of the section. Specifically, we would remove references to the Deputy Administrator of PPQ and replacing them with references to the Administrator of APHIS, and we would replace certain legal terms of art in the paragraph with more colloquial terms that express the same concept.

*Inspection, Treatment, and Phytosanitary Certificates of Inspection (§ 319.37–4)*

Paragraph (a) of § 319.37–4 requires that most restricted articles imported into the United States be accompanied by a phytosanitary certificate of inspection, and specifies certain types of general information required for such certificates. Subparagraphs (a)(1) through (a)(4) list categories of restricted articles that we allow to be imported into the United States without a phytosanitary certificate or with documentation in lieu of a phytosanitary certificate.

Currently, paragraph (a) does not provide specific phytosanitary certificate requirements for plants that have been grafted, budded, or otherwise contain interpolated plant parts. However, as an operational policy, we have long asked that phytosanitary certificates for such plants list the identity of any parts of the plant (e.g., scion, rootstock, interstem) that belong to restricted taxa to the lowest regulated taxonomic classification; this is because all restricted taxa within the regulations are known to be a host of at least one quarantine pest and restricted taxa do not lose this host status by being grafted, budded, or interpolated. We would amend paragraph (a) to codify this policy. We would also make nonsubstantive editorial changes to the paragraph to make its relationship with the following paragraphs in the section clearer.

Subparagraph (a)(4) of § 319.37–4 exempts bulbs from the Netherlands from having to be accompanied by a

phytosanitary certificate, provided that they are accompanied by a special certificate that lists a serial number, the scientific name of the bulb, the country of its origin, and the date on which the special certificate expires. This paragraph is intended to pertain only to a small subset of bulbs that are sold in small packages to international travelers visiting the Netherlands, and that cannot feasibly be precleared and inspected prior to export; commercial quantities of bulbs from the Netherlands are subject to the restrictions of paragraph (a) of § 319.37–5, which requires the bulbs to be precleared by the national plant protection organization (NPPO) of the Netherlands and accompanied by a phytosanitary certificate.<sup>1</sup> We would make editorial changes to the paragraph to clarify its scope accordingly.

Paragraph (b) of § 319.37–4 provides for inspection of restricted articles. The paragraph currently states that restricted articles imported into the United States may be sampled and inspected by an inspector at the port of first arrival, or alternatively, under preclearance agreement arrangements in the country where the article was grown. The language of this paragraph has occasionally proven problematic, insofar as it is silent regarding the responsibilities of the person importing the article, and can be construed to suggest that inspections are entirely random, and initiated solely at the request of the inspector. This is not the case; all restricted articles must be presented for inspection by the importer. The inspector then determines whether to sample and inspect the articles. We would amend paragraph (b) to clarify the responsibilities of the importing party.

#### *Special Foreign Inspection and Certification Requirements (§ 319.37–5)*

Section 319.37–5 lists restricted articles that may be imported into the United States only if the phytosanitary certificate required by § 319.37–4 of the regulations contains an additional declaration that the restricted articles are free of specified quarantine pests or have been produced in accordance with certain requirements. We are proposing a number of changes to this section.

#### **Importation of Restricted Articles from Countries in which Potato Cyst Nematode is Known to Exist**

Currently, paragraph (a) of the section lists countries in which potato cyst

nematodes (*Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens, PCN) are known to exist, and requires restricted articles from those countries to be accompanied by a phytosanitary certificate which contains an additional declaration that the article was grown on land which has been sampled and microscopically inspected by the NPPO of the country in which it was grown within 12 months preceding issuance of the certificate and found free from PCN. The paragraph currently exempts restricted seeds, unrooted cuttings, articles collected from the wild, and articles solely for food, analytical, or manufacturing purposes from these additional declaration requirements.

We would remove the exemption for articles collected from the wild. Such articles may not only be infested with PCN, but also pose an unknown risk of being contaminated with other quarantine pests.

In addition, we would add an alternate additional declaration option. Several countries in which PCN are known to exist have stated that the additional declaration required under paragraph (a) pertains only to restricted articles that are grown in soil or in contact with soil, and thus the paragraph effectively prohibits the importation of most restricted articles that are grown in media other than soil and in a protected environment that precludes contact with soil (e.g., a greenhouse with a concrete floor) within a country in which PCN are known to exist. Since PCN are soil-borne pests, however, these countries have stated that importation of articles grown in such conditions should be allowed. We agree. Therefore, we would allow restricted articles to be imported from the countries listed in paragraph (a) if they are accompanied by a phytosanitary certificate with the current additional declaration, or with an additional declaration that the articles have been grown within a secure environment in a production area that is free of PCN, in a soilless growing medium, or *in vitro*, within a secure environment, and have not been grown in soil nor come in contact with soil.

We would also update the list of countries in which PCN are known to exist. Since we last updated the listed countries in a final rule published in the **Federal Register** on August 6, 2007 (72 FR 43503–43524, Docket No. 03–002–3), PCN have been discovered in Albania, Falkland Islands, Indonesia, Libya, Liechtenstein, Madeira, Mallorca, Romania, Sierra Leone, Sri Lanka, and Turkey. In addition, while the regulations currently consider PCN to

exist within Canada only in Newfoundland and a portion of the Municipality of Central Saanich in the Province of British Columbia, PCN were discovered in Quebec in 2006 and Alberta in 2007, at significant distances from all previous detections of PCN. Moreover, since the movement of soil within Canada has historically not been stringently regulated, there is a significant possibility of future detections of PCN in other areas of Canada. Hence, we would amend the list to consider PCN to exist in all areas of Canada that are regulated by the NPPO of Canada for PCN. (We would also make parallel changes to paragraph (b)(2) of § 319.37–8, which contains restrictions on the growing media that may accompany a restricted article imported from an area of Canada that is regulated for PCN.)

Finally, we would restructure paragraph (a) so that it more closely resembles other paragraphs within § 319.37–5 that contain an extensive list of countries, which would make that paragraph easier to read.

#### **Importation of Restricted Articles of the Genera *Chaenomeles*, *Cydonia*, *Malus*, *Prunus*, *Pyrus*, and *Vitis***

The importation of all articles other than seed of the genera *Chaenomeles*, *Cydonia*, *Malus*, *Prunus*, *Pyrus*, and *Vitis* from anywhere in the world is prohibited in § 319.37–2 unless those articles are imported in accordance with paragraph (b) of § 319.37–5. In addition, the importation of seed of *Prunus* spp. seed from anywhere in the world is prohibited in § 319.37–2 unless the seed is imported in accordance with paragraph (j) of § 319.37–5.

Paragraph (b)(1) of § 319.37–5 currently authorizes the importation into the United States of restricted articles (except seeds) of *Chaenomeles*, *Cydonia*, *Malus*, *Prunus*, *Pyrus*, and *Vitis* spp. from Belgium, Canada, France, Germany, Great Britain, or the Netherlands, if they are accompanied by a phytosanitary certificate with an additional declaration that the articles were grown in a nursery and found by the NPPO of the country in which they were grown to be free of certain plant diseases, or alternatively, with an additional declaration that those plant diseases do not occur in that country. Paragraph (b)(3) of § 319.37–5 lists the relevant plant diseases.

Paragraph (b)(2) of § 319.37–5 is meant to complement paragraph (b)(1), and contains what are intended to be conditions for the importation of budwood of certain *Prunus* species that are susceptible to plum pox potyvirus from Belgium, France, Germany, Great

<sup>1</sup> For a discussion of the scope of subparagraph (a)(4), see the December 15, 2005, proposed rule to add the subparagraph to the regulations (70 FR 74215–74235, Docket No. 03–002–1).

Britain, or the Netherlands. The restrictions in this paragraph are necessary because the restrictions of paragraph (b)(1), in themselves, do not adequately address the risk that plum pox potyvirus could follow the pathway of susceptible *Prunus* spp. budwood that is imported from these five countries.

In a similar manner, paragraph (j)(1) of § 319.37–5 contains conditions for the importation of seed of *Prunus* spp. that are susceptible to plum pox potyvirus from Belgium, France, Germany, Great Britain, or the Netherlands. This paragraph is necessary because plum pox potyvirus can be transmitted by seed, and therefore could follow the pathway of *Prunus* spp. seed imported from these five countries.

Paragraph (j)(2) complements paragraph (j)(1), and provides additional conditions for the importation of seed of these *Prunus* spp. from all other countries, unless plum pox potyvirus is known to exist in that country.

We have determined that these paragraphs need to be both consolidated and revised. A number of considerations have led us to this conclusion. First, although paragraph (b)(2) is intended to apply solely to budwood of *Prunus* spp. susceptible to plum pox potyvirus, the regulations do not specify this restriction, but, rather, refer simply to species of *Prunus*. When we added the provisions in this paragraph to the regulations in 1980, the only article for which Belgium, France, Germany, Great Britain, or the Netherlands sought importation into the United States was budwood produced in pest-exclusionary nurseries that were operated by the NPPO of the respective country or that participated in a fruit tree certification program conducted by the NPPO of the country, and that had also been approved by APHIS. Thus, at that time, the scope of the paragraph was clear to the regulated entities to which it pertained.

However, since 1980, production of *Prunus* spp. articles other than budwood within those countries and demand for such *Prunus* spp. articles within the United States have both increased significantly. Correspondingly, the original intent and limited scope of the paragraph has become more difficult to understand and apply. Hence, some importers have considered paragraphs (b)(1) and (b)(2) to provide alternative conditions for the importation of *Prunus* spp. articles from Belgium, France, Germany, Great Britain, or the Netherlands, while other importers have considered paragraphs (b)(2) and (j)(1) to provide alternative

conditions for the importation of *Prunus* spp. seed from these same countries.

Second, since paragraphs (b) and (j) were last updated, plum pox potyvirus has been detected in Canada. Accordingly, we need to amend the regulations to specify conditions regarding the importation of *Prunus* spp. from Canada that reflect the presence of this disease within Canada.<sup>2</sup> In addition, the list in paragraph (j)(2) of regions and countries in which plum pox potyvirus is known to exist does not reflect the detection of plum pox potyvirus in Argentina, Chile, and Japan.

Third, paragraph (b)(1) needs to be rewritten in a manner which makes it clear that the paragraph pertains only to species of *Prunus* that are not susceptible to plum pox potyvirus, and is not intended to address the risk associated with the importation of species that are susceptible to the disease.

Fourth, paragraph (b)(1) is currently silent with regard to grafted articles, or articles in which plant parts from one plant are inserted into those of another plant for purposes of propagation. This has led several importers to assume that grafted articles need only be accompanied by a permit addressing the relevant diseases of the rootstock (the plant part selected for its roots), the scion (the plant part selected for propagation), or interstem (an intermediate plant part grafted between the rootstock and the scion). However, it has long been PPQ's policy that the quarantine pest risk for a grafted article includes both pests of the rootstock and those of the scion and any interstem inserted between the rootstock and scion; this is because plant parts remain hosts of plant pests particular to their species even after these parts are grafted.

Finally, the list of plant diseases found in paragraph (b)(3) of the section uses outdated taxonomy and does not include several new quarantine pests of *Malus* spp., one quarantine pest of *Malus*, *Prunus*, and *Pyrus* spp., and one quarantine pest of *Prunus* spp. that have been discovered in recent years. Accordingly, we would amend paragraph (b)(3) by adding entries for apple fruit crinkle apscaviroid, apple dimple fruit apscaviroid, apple scar skin apscaviroid, *Monilinia polystroma*, and

<sup>2</sup> Paragraph (b)(1) of § 319.37–5 does currently regulate *Prunus* spp. for plum pox (=Sharka) potyvirus. However, as noted above, the restrictions of this current paragraph do not address the risk that plum pox potyvirus could follow the pathway of *Prunus* spp. budwood or seed that is imported into the United States.

apricot pseudo-chlorotic leaf spot trichovirus.

Similarly, we would update the entries for apple proliferation agent, pear blister canker virus, apple green crinkle virus, apple chat fruit virus, plum pox (=Sharka) virus, cherry leaf roll virus, cherry rusty mottle (European) agent, apricot chlorotic leaf roll agent, plum bark split virus, arabis mosaic virus, raspberry ringspot virus, tomato blackring virus, strawberry latent ringspot virus, quince yellow blotch agent, apple ringspot virus, grapevine leaf roll agent, flavescence-doree agent, and black wood agent (bois-noir) to reflect the current nomenclature for the pathogens used by the U.S. taxonomic community. For reasons specified below, we would also redesignate the paragraph as paragraph (b)(5).

We would amend paragraph (b)(1) to reflect this redesignation, to clarify that it provides mitigations only for articles of *Prunus* species that are not susceptible to plum pox potyvirus, and to provide that, if the scion, interstem, rootstock, or any other plant part of the finished plant that is offered for importation belongs to a regulated taxon, the additional declaration in the phytosanitary certificate that accompanies the article must both list these plant parts and address the quarantine pests and related restrictions associated with that taxon.

We would amend paragraph (b)(2) to specify that it pertains only to budwood of *Prunus* spp. susceptible to plum pox potyvirus and grown in Belgium, France, Germany, Great Britain, or the Netherlands under pest-exclusionary conditions within an APHIS-approved facility that is part of a nuclear stock certification program. We would also make nonsubstantive editorial changes to improve the paragraph's clarity.

In our proposed revision, paragraph (b)(3) of § 319.37–5 would establish conditions for importation from Canada of restricted articles, except seed, of *Prunus* spp. that are susceptible to plum pox potyvirus. The conditions for importation of the species would be those for the importation of *Prunus* spp. that are not susceptible to plum pox potyvirus—the species covered by our proposed revisions to paragraph (b)(1) of § 319.37–5—and one additional condition: We would require that the article be grown in an area that has been surveyed and found free of plum pox potyvirus according to a surveying protocol mutually agreed upon by APHIS and the NPPO of Canada. Finally, because it is common for plants for planting to be produced in countries other than Canada and shipped to Canada for export to the United States,

paragraph (b)(3) would specify that if any plant part of an article of *Prunus* spp. susceptible to plum pox potyvirus is not from Canada, but rather a third country, that article would have to meet the entry requirements of the subpart as if the article had been directly imported into the United States from that third country.

We recognize that these conditions would be somewhat less restrictive than the conditions for the importation of budwood that are contained in paragraph (b)(2) of § 319.37–5. However, we consider less restrictive conditions to be warranted because, while plum pox potyvirus is known to be widely prevalent in Belgium, France, Germany, Great Britain, and the Netherlands, in Canada, plum pox potyvirus is only known to exist in a relatively small area within the Province of Ontario.

We would redesignate current paragraph (j)(1) as paragraph (b)(4)(i). We would specify that the paragraph applies to Canada, as well as Belgium, France, Germany, Great Britain, and the Netherlands. We would also make nonsubstantive editorial changes to the paragraph to make its relation to paragraphs (b)(1) and (b)(2) clearer.

In a similar manner, we would redesignate paragraph (j)(2) as paragraph (b)(4)(ii), would add Argentina, Canada, Chile, and Japan to the list of areas in which plum pox potyvirus is known to exist, and would make nonsubstantive editorial changes to the paragraph to improve its clarity.

(We would amend the definition of the term *from* in § 319.37–1 to reflect the provisions of proposed paragraph (b)(3) and these proposed redesignations.)

Finally, we are proposing to amend the entries for *Prunus* spp. located in the table found within paragraph (a) of § 319.37–2 and to the entries for *Chaenomeles*, *Cydonia*, *Malus*, *Prunus*, *Pyrus*, and *Vitis* spp. within the table in paragraph (a) of § 319.37–7 to reflect these revisions to paragraphs (b) and (j) of § 319.37–5.

#### ***Dianthus* spp. from the Netherlands**

Restricted articles (except seed) of *Dianthus* spp. (carnation, sweet-william) from Great Britain that are imported into the United States must be grown under postentry quarantine conditions in accordance with § 319.37–7 of the regulations, unless they are imported in accordance with paragraph (d) of § 319.37–5. Paragraph (d) authorizes the importation of restricted articles (except seeds) of *Dianthus* spp. from Great Britain, provided that the articles are accompanied by a phytosanitary certificate with an

additional declaration that the article was grown in a greenhouse nursery in Great Britain and found by the NPPO of Great Britain to be free from injurious plant diseases caused by *Phialophora cinerescens* (Wr.) van Beyma, (= *Verticillium cinerescens* Wr.), carnation etched ring virus, carnation “streak” virus, and carnation “fleck” virus, based on visual examination of the parent stock, of the articles for importation, and of the greenhouse nursery in which the articles for importation and the parent stock are grown, once a month for 4 consecutive months immediately prior to importation, and based on indexing of the parent stock.

The NPPO of the Netherlands requested that we authorize importation of *Dianthus* spp. from that country under the same conditions provided for Great Britain. In support of this request, the NPPO subsequently presented APHIS with information regarding the diseases of *Dianthus* known to exist in the Netherlands, the protocol under which they would certify greenhouse nurseries, and the manner in which *Dianthus* spp. articles within those nurseries would be visually examined and indexed for diseases of *Dianthus*.

Based on the information provided, APHIS has determined that the quarantine pests of *Dianthus* known to exist in the Netherlands are carnation etched ring virus, carnation “streak” virus, and carnation “fleck” virus, that the certification protocol provides oversight of greenhouses that is adequate to ensure their ongoing freedom from these pests, and that the procedures that the NPPO of the Netherlands employs to examine and index articles are consistent with or exceed those used by the NPPO of Great Britain. Accordingly, we have concluded that the certification protocols and procedures set forth by the NPPO of the Netherlands meet the provisions of § 319.37–5(d) and would mitigate the pest risk presented by *Dianthus* spp. from the Netherlands. In accordance with this conclusion, we would amend paragraph (d) so that it applies both to Great Britain and to the Netherlands.

In a related matter, § 319.37–7(a) currently exempts *Dianthus* spp. imported from Great Britain under the conditions of § 319.37–5(d) from postentry quarantine requirements that otherwise apply to all *Dianthus* spp. articles that are imported from countries other than Canada. We would amend § 319.37–7(a) so that this exemption would extend to *Dianthus* spp. from the Netherlands imported under the conditions of § 319.37–5(d), as well.

Paragraph (k) of § 319.37–5 contains requirements for the importation of restricted articles of *Feijoa* (feijoa, pineapple guava) from New Zealand. The term “*Feijoa*” is considered archaic by the international taxonomic community. Therefore, to reflect current usage, we would remove the term from the regulations, and add “*Acca sellowiana* (O. Berg) Burret” in its place.

Finally, we would amend paragraph (v) of § 319.37–5, which provides conditions for the importation of plants from Israel, to make it clear that packing material used for such plants must not introduce pests of concern either to the plants or in general.

#### ***Specific Treatment and Other Requirements (§ 319.37–6)***

Section 319.37–6 lists treatment and other requirements under which seeds, bulbs, and dormant herbaceous perennials of certain genera and species may be imported into the United States from countries and localities in which a quarantine pest is known to be present.

Currently, the section does not specify that any articles of *Dioscorea* spp. (yam) must be treated for quarantine pests. However, if articles of *Dioscorea* spp. (including, but not limited to, dormant herbaceous perennials, minisetts, and yam-setts) are not treated at the time of their importation into the United States, they may present a pathway for the dissemination of *Aspidiotosis hartii* (yam scale), *Palaeopus costicollis* (yam weevil), and several other external and internal feeders that are quarantine pests.

Because of these pest risks, we have long required *Dioscorea* spp. plants for planting to be treated according to methyl bromide treatment schedule T202–d, found in the PPQ Treatment Manual at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/treatment.shtml](http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml), in accordance with 7 CFR part 305.

Accordingly, we would amend § 319.37–6 to specify that *Dioscorea* spp. (yam) plants for planting, including, but not limited to, dormant herbaceous perennials, minisetts, and yam-setts from any country present a risk of disseminating internal and external feeders, including but not limited to *Aspidiotosis hartii* (yam scale) and *Palaeopus costicollis* (yam weevil), into the United States, and to state that such articles may be imported into the United States only if they have been treated in accordance with 7 CFR part 305.

The PPQ Treatment Manual currently lists three exceptions to this requirement; we would codify these

exceptions in § 319.37–6. The exceptions are:

- Dormant herbaceous perennials, minisetts, and yam-setts of *Dioscorea* spp. that are imported from Japan. Pests of yams that are of quarantine significance are not known to exist in Japan.

- Dormant herbaceous perennials, minisetts, and yam-setts of *Dioscorea* spp. that are imported from the Dominican Republic into Puerto Rico. Pests of yams that are of quarantine significance and are known to exist in the Dominican Republic are also known to exist in Puerto Rico.

- Dormant herbaceous perennials, minisetts, and yam-setts of *Dioscorea* spp. (yam) that are imported from the West Indies into the U.S. Virgin Islands. Pests of yams that are of quarantine significance and are known to exist in the West Indies are also known to exist in the U.S. Virgin Islands.

We would specify that all yam dormant herbaceous perennials, minisetts, and yam-setts imported into the United States, including those that would be exempted from methyl bromide treatment, would nonetheless be subject to inspection at the port of first arrival.

#### *Postentry Quarantine (§ 319.37–7)*

As we mentioned earlier in this document, § 319.37–7 contains our regulations governing postentry quarantine of certain restricted articles. Such articles may be imported into the United States only if they are destined for a State that has completed a postentry quarantine agreement with APHIS, if a postentry quarantine growing agreement, signed by the importer, has been completed and submitted to PPQ, and if PPQ has determined both that the growing agreement fulfills relevant requirements of § 319.37–7 and that State inspectors are available to monitor and enforce the postentry quarantine. In addition to the changes to § 319.37–7 discussed in the sections above, we would make several other changes to § 319.37–7.

Throughout the section, there are multiple references to PPQ's Postentry Quarantine Unit. That unit no longer exists, and the functions it performed are now carried out by PPQ's National Postentry Quarantine Coordinator. We would amend the section to reflect this change.

Paragraph (c)(1)(i) of § 319.37–7 lists the States that have entered into a postentry quarantine agreement with APHIS. Currently, the paragraph states that all U.S. States and Territories have entered into such an agreement, except the District of Columbia, Guam, Hawaii,

Kansas, and the Northern Mariana Islands. However, all States and Territories have in fact entered into such an agreement. We would amend the paragraph accordingly.

Paragraph (d) sets forth requirements for postentry quarantine growing agreements. Among other requirements, the agreement must certify to APHIS and to the State in which the articles were grown that the signer of the agreement will move, propagate, or allow propagation of the article while it is under postentry quarantine only after having obtained written permission from PPQ to do so. However, the address for PPQ provided in the section is out of date. Therefore, we would amend the paragraph to list the current address.

In addition, within the paragraph, subparagraph (d)(7) is currently written in a manner that suggests that the signer of the agreement may move the articles without written permission from PPQ once the time period for postentry quarantine specified within the section has elapsed. This is not the case; the articles must remain under postentry quarantine conditions until the National Postentry Quarantine Coordinator issues a written release for the article. We would therefore amend the paragraph by adding a new subparagraph, (d)(8), specifying that each agreement must certify that the person signing the agreement will keep the article under postentry quarantine until the coordinator issues such a release.

#### *Marking and Identity (§ 319.37–10)*

Section 319.37–10 provides marking and identity requirements for restricted articles. Paragraph (c) of the section requires restricted articles, other than those imported by mail, to be accompanied by an invoice or packing list indicating the contents of the shipment at the time of importation or offer for importation into the United States.

We have discovered that term “contents of the shipment” is somewhat nebulous, and, as a result, invoices and packing lists do not always provide the information needed to readily identify the articles or route the shipment for inspection. Therefore, we would amend paragraph (c) so that the invoice or packing list would have to indicate the scientific names of the articles, at least to the level of genus, and the quantity of plants for planting in the shipment. The quantity would have to be expressed in the number of plant units, or in the case of seeds, by weight in grams or kilograms. Finally, when the regulations place restrictions on individual species or cultivars within a

genus, the invoice or packing list would also have to identify the species or cultivar of the articles.

#### *Arrival Notification (§ 319.37–11)*

Section 319.37–11 provides that, promptly upon arrival of any restricted article at a port of entry, the importer must notify PPQ of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose. However, in 2002, most of inspection services at ports of entry were transferred from APHIS to United States Customs and Border Protection of the Department of Homeland Security. Since this transfer, only certain restricted articles—those that must be accompanied by a permit and that would be listed in redesignated subparagraphs (a)(1) through (a)(11) of § 319.37–3—have been inspected by PPQ at ports of entry. Therefore, we would amend § 319.37–11 to clarify that notification of arrival is necessary only for those restricted articles.

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

This proposed rule has been reviewed under Executive Order 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis identifies importers and wholesale merchants of

flowers, nursery stock, and florists' supplies, as well as wholesale merchants of fresh fruits and vegetables, as the small entities most likely to be affected by this action. The analysis considers the losses that may occur due to relaxing restrictions on the importation of certain plants for planting into the United States, while strengthening or expanding the scope of certain other restrictions. The analysis expects such losses to be relatively minor and anticipates that they would not substantively adversely impact small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

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

#### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection or recordkeeping requirements included in the regulations that would be amended by this proposed rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0049.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### List of Subjects

##### 7 CFR Part 319

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

##### 7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we propose to amend 7 CFR parts 319 and 361 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

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

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

##### § 319.37 [Amended]

■ 2. In § 319.37, in paragraph (b), the final sentence is amended by removing the words “and the availability of treatment facilities for the article” and adding the words “the availability of treatment facilities for the article, and any other factors pertaining to the risk that the article may present to plants, plant parts, or plant products within the United States that he or she considers necessary.”

■ 3. Section 319.37-1 is amended as follows:

■ a. In the definition of *from*, in paragraph (b), by adding the words “or an article whose importation into the United States is not authorized pending pest risk analysis” after the words “prohibited article”, and by removing the words “(c), (d), (e), (f), (g), (h), (i), (j), (k)” and adding the words “(b)(3), (b)(4), (c), (d), (e), (f), (g), (h), (i), (k)” in their place;

■ b. By revising the definitions of *bulb* and *phytosanitary certificate of inspection*; and

■ c. By adding, in alphabetical order, new definitions of *Administrator* and *dormant herbaceous perennial*.

The revisions and additions read as follows:

##### § 319.37-1 Definitions.

\* \* \* \* \*

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

*Bulb.* The storage organ of a plant that serves as the plant's sexual structure during dormancy. Examples include bulbs, bulbils, bulblets, corms, and cormels. For purposes of this subpart, a bulb remains a bulb until such time as environmental conditions induce it to produce shoots. It is then considered a plant.

\* \* \* \* \*

*Dormant herbaceous perennial.* Except for bulbs, the portions of an herbaceous perennial that remain after

the above-ground parts of the plant have died back to the earth after the growing season and the plant remains dormant. Examples include rhizomes, tubers, tuberous roots, pips, fleshy roots, divisions, and underground fleshy growths. For purposes of this subpart, dormant herbaceous perennials remain dormant herbaceous perennials until such time as environmental conditions induce them to sprout. They are then considered plants.

\* \* \* \* \*

*Phytosanitary certificate of inspection.* 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 States (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 by this subpart; 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.

\* \* \* \* \*

■ 4. In § 319.37-2, in paragraph (a), the table is amended as follows:

■ a. By removing the entries for “*Arikuryoba* spp. (arikury palm)”, “*Chrysalidocarpus* spp. (butterfly palm)”, “*Mahoberberis* spp. (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter)”, “*Mahoberberis* spp. destined to an eradication State listed in § 301.38-2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of

this chapter)", "*Mahoberberis* spp. seed", "*Mahonia* spp. (mahonia) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter)", "*Mahonia* spp. (mahonia) destined to an eradication State listed in § 301.38-2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter)", "*Mahonia* spp. seed", and "*Neodypsis* spp. (palm)";

■ b. In the entry for "*Acer* spp. (maple) (except *Acer palmatum* and *Acer japonicum* meeting the conditions for importation in § 319.37-5(m)", by removing the words "in § 319.375(m)" and adding the words "in §§ 319.37-5 or 319.37-7" in their place;

■ c. In the entry for "*Berberis* spp. (barberry) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter)", by removing the word "(barberry)" and adding the words "(barberry, includes *Mahoberberis* and *Mahonia* spp.)" in its place;

■ d. In the entry for "*Berberis* spp. (barberry) destined to an eradication State listed in § 301.38-2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this

chapter)", by removing the word "(barberry)" and adding the words "(barberry, includes *Mahoberberis* and *Mahonia* spp.)" in its place;

■ e. In the entry for "*Berberis* spp. (barberry) seed", by removing the word "(barberry)" and adding the words "(barberry, includes *Mahoberberis* and *Mahonia* spp.)" in its place;

■ f. By revising the entry for "*Chaenomeles* spp. (flowering quince) not meeting the conditions for importation in § 319.37-5(b)";

■ g. By revising the entry for "*Chrysanthemum*, spp. (chrysanthemum, includes *Dendranthema* spp.)";

■ h. In the entry for "*Cydonia* spp. (quince) not meeting the conditions for importation in § 319.37-5(b)" by removing the words "in § 319.37-5(b)" and adding the words "in §§ 319.37-5(b) and 319.37-7" in their place;

■ i. By adding an entry for "*Dypsis* spp. (butterfly palm)";

■ j. By revising the entry for "*Leucanthemella serotina*";

■ k. In the entry for "*Malus* spp. (apple, crabapple) not meeting the conditions for importation in § 319.37-5(b)", by removing the words "in § 319.37-5(b)" and adding the words "in §§ 319.37-5(b) and 319.37-7" in their place;

■ l. By revising the entry for "*Nipponanthemum nipponicum*";

■ m. By removing the entry for "*Prunus* spp. (almond, apricot, cherry, cherry

laurel, English laurel, nectarine, peach, plum, prune) not meeting the conditions for importation in § 319.37-5(b)" and adding a new entry for "*Prunus* spp. not meeting the conditions for importation in § 319.37-5(b)" in its place;

■ n. By removing the entry for "*Prunus* spp. seed only (almond, apricot, nectarine, peach, plum, and prune, but not species in subgenus *Cerasus*) not meeting the conditions for importation in § 319.37-5(j)" and adding a new entry for "*Prunus* spp. seed only not meeting the conditions for importation in § 319.37-5(b)" in its place;

■ o. In the entry for "*Salix* spp. (willow)", by removing the words "*Erwinia salicis* (Day) Chester" and adding the words "*Brenneria salicis* (Day) Hauben et al., syn. *Erwinia salicis* (Day) Chester" in their place.

■ p. By adding an entry for "*Syagrus schizophylla* (Mart.) Glassman (arikury palm)"; and

■ q. In the entry for "*Vitis* spp. (grape) not meeting the conditions for importation in § 319.37-5(b)", by removing the words "in § 319.37-5(b)" and adding the words "in §§ 319.37-5(b) and 319.37-7" in their place.

The additions and revisions read as follows:

**§ 319.37-2 Prohibited articles.**

(a) \* \* \*

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Quarantine pests existing in the places named and capable of being transported with the prohibited article
* * * <i>Chaenomeles</i> spp. (flowering quince) not meeting the conditions for importation in §§ 319.37-5(b) and 319.37-7.	All	A diversity of diseases including but not limited to those listed for <i>Chaenomeles</i> in § 319.37-5(b)(3).
* * * <i>Chrysanthemum</i> spp. (chrysanthemum, includes <i>Dendranthema</i> spp.) not meeting the conditions for importation in §§ 319.37-5(c) and 319.37-7.	All	<i>Puccinia horiana</i> P. Henn. (white rust of chrysanthemum).
* * * <i>Dypsis</i> spp. (butterfly palm) .....	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
* * * <i>Leucanthemella serotina</i> not meeting the conditions for importation in §§ 319.37-5(c) and 319.37-7.	All	<i>Puccinia horiana</i> P. Henn. (white rust of chrysanthemum).
* * * <i>Nipponanthemum nipponicum</i> not meeting the conditions for importation in §§ 319.37-5(c) and 319.37-7.	All	<i>Puccinia horiana</i> P. Henn. (white rust of chrysanthemum).
* * * <i>Prunus</i> spp. not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to those listed for <i>Prunus</i> in § 319.37-5(b).

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Quarantine pests existing in the places named and capable of being transported with the prohibited article
<i>Prunus</i> spp. seed only not meeting the conditions for importation in § 319.37–5(b).	All	Plum pox (=Sharka) potyvirus.
* * * * *	* * * * *	* * * * *
<i>Syagrus schizophylla</i> (Mart.) Glassman (arikury palm).	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
* * * * *	* * * * *	* * * * *

\* \* \* \* \*  
 ■ 5. In § 319.37–3, paragraphs (a), (b), and (d) are revised to read as follows:

**§ 319.37–3 Permits.**

- (a) \* \* \*
- (1) Lots of 13 or more articles (other than seeds of herbaceous plants, precleared bulbs or dormant herbaceous perennials of a taxon approved by APHIS for preclearance, or sterile cultures of orchid plants) from any country or locality except Canada;
  - (2) Seeds of non-herbaceous plants, such as trees and shrubs, from any country or locality except Canada;
  - (3) Articles subject to the requirements of § 319.37–5;
  - (4) Articles subject to the postentry quarantine conditions of § 319.37–7;
  - (5) Small lots of seed imported in accordance with § 319.37–4(d) of this subpart;
  - (6) Articles subject to treatment and other requirements of § 319.37–6;
  - (7) Seed of herbaceous plants for planting that is coated, pelleted, or embedded in a substrate that obscures visibility;
  - (8) Articles (except seeds) of *Malus* spp. (apple, crabapple), *Pyrus* spp. (pear), *Prunus* spp., *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), and *Vitis* spp. (grape) from Canada;
  - (9) Articles (except seeds) of *Fraxinus* spp. (ash) from counties or municipal regional counties in Canada that are not regulated for emerald ash borer (EAB) but that are within an EAB-regulated Province or Territory and are not prohibited under § 317.37–2;
  - (10) Articles (except seeds) of *Pinus* spp. from Canada; and
  - (11) *Solanum tuberosum* true seed from New Zealand and the X region of Chile (that area of Chile between 39° and 44° South latitude—see § 317.37–5(o));
- (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, 4700 River Road Unit 136, Riverdale, MD 20737–1236) at least 30 days prior to the arrival of the article at the port of entry. The completed application must contain the following information:<sup>4</sup>

- (1) Name, address, and telephone number of the importer;
- (2) Approximate quantity and kinds (botanical designations) of articles 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.

\* \* \* \* \*

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

a hearing shall be held to resolve the conflict.

- \* \* \* \* \*
6. Section 319.37–4 is amended as follows:
- a. By revising paragraph (a) introductory text;
  - b. In paragraph (a)(4), by removing the word “Bulbs” and adding the words “Small packages of bulbs offered to travelers returning” in its place, and by adding the word “within” before the words “6 weeks after the issuance”; and
  - c. In paragraph (b), by removing the words “may be sampled and inspected” and adding the words “must be presented for inspection” in their place.
- The revision reads as follows:

**§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.**

(a) *Phytosanitary certificates of inspection.* Any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate, unless the article is explicitly exempted from this requirement in the paragraphs below. The phytosanitary certificate must identify the genus of the article it accompanies. When the regulations in this subpart place restrictions on individual species or cultivars within a genus, the phytosanitary certificate must also identify the species or cultivar of the article it accompanies. If the plant is grafted, budded, or otherwise contains interpolated plant parts, the phytosanitary certificate must list the identity of any plant parts (e.g., scion, rootstock, or interstem) that belong to restricted taxa to the lowest regulated taxon, e.g., genus, species, or cultivar. Otherwise, identification of the species is strongly preferred, but not required. Intergeneric and interspecific hybrids must be designated by placing the multiplication sign “×” 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. Phytosanitary certificates are not

<sup>4</sup> Application forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 136, Riverdale, MD 20737–1236, or from local offices, which are listed in telephone directories. Application forms are also available online at the following Web site: [http://www.aphis.usda.gov/plant\\_health/permits/http://www.aphis.usda.gov/plant\\_health/permits/index.shtml](http://www.aphis.usda.gov/plant_health/permits/http://www.aphis.usda.gov/plant_health/permits/index.shtml). Please note that this Internet site requires persons to establish an eAuthentication account prior to use.

required to accompany the following restricted articles:

\* \* \* \* \*

■ 7. Section 319.37–5 is amended as follows:

■ a. By revising paragraphs (a), (b), and (c);

■ b. In paragraph (d), by adding the words “or the Netherlands” after the words “Great Britain” each time they occur;

■ c. By removing and reserving paragraph (j);

■ d. In paragraph (k), by removing the word “Feijoa” and adding the words “*Acca sellowiana* (O. Berg) Burret” in its place;

■ e. In paragraph (m), by adding the words “, and unless the article is subject to the postentry quarantine requirements of § 319.37–7(a)” at the end of the sentence; and

■ f. In paragraph (v)(4)(iv), by removing the words “to the plants”.

The revisions read as follows:

**§ 319.37–5 Special foreign inspection and certification requirements.**

(a) Any restricted article (except seeds, unrooted cuttings, and articles declared solely for food, analytical, or manufacturing purposes) from Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Azores, Belarus, Belgium, Bolivia, Bulgaria, Canada (all areas regulated by the national plant protection organization of Canada for potato cyst nematodes), Channel Islands, Chile, Columbia, Costa Rica, Crete, Croatia, Cyprus, Czech Republic, Denmark (including Faeroe Islands), Ecuador, Egypt, Estonia, Falkland Islands, Finland, France, Georgia, Germany, Great Britain, Greece, Guernsey, Hungary, Iceland, India, Indonesia, Ireland, Italy, Japan, Jersey, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Morocco, the Netherlands, New Zealand, Northern Ireland, Norway, Pakistan, Panama, Peru, the Philippines, Poland, Portugal (including Madeira), Romania, Russian Federation, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, South Africa, Spain (including Canary Islands and Mallorca), Sri Lanka, Sweden, Switzerland, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan, and Venezuela must be accompanied by a phytosanitary certificate of inspection with an additional declaration either:

(1) That the article was grown on land or in a substrate which has been microscopically inspected by the national plant protection organization of the country in which it was grown

within 12 months preceding issuance of the certificate and found free from potato cyst nematodes, *Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens; or

(2) That the article has been grown within a secure environment in a production area that is free of potato cyst nematodes, in a soilless growing medium, or *in vitro*, and has never been grown in soil nor come in contact with soil.

(b)(1) Any of the following restricted articles (except seeds) at the time of arrival at the port of first arrival in the United States must be accompanied by a phytosanitary certificate that contains an additional declaration that the article was grown in a nursery in Belgium, Canada, France, Germany, Great Britain, or the Netherlands and that the article was found by the national plant protection organization of the country in which the article was grown to be free of the following injurious plant pathogens listed in paragraph (b)(5) of this section: For *Chaenomeles* spp. (flowering quince) and *Cydonia* spp. (quince), pathogens (i), (ii), (iv), (xviii), (xix), (xx), and (xxi); for *Malus* spp. (apple, crabapple), pathogens (i), (ii), (iii), (vi), (vii), (viii), (xxii), (xxiii), (xliv), (xlv), (xlvi), and (xlvii); for *Prunus* spp. not susceptible to plum pox (=Sharka) potyvirus (*P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*), pathogens (i), (x) through (xvii), (xxii), and (xlvii); for *Pyrus* spp. (pear), pathogens (i), (ii), (iv), (v), (xviii), (xix), (xx), (xlvii), and (xlviii); and for *Vitis* spp. (grape) from Canada, pathogens (xiv) through (xvii) and (xxiv) through (xliii). The determination by the national plant protection organization that the article is free of these pathogens will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified pathogens. An additional declaration on the phytosanitary certificate of inspection by the national plant protection organization that a pathogen does not occur in the country in which the article is grown may be used in lieu of visual examination and indexing of the parent stock for that pathogen and inspection of the nursery. Finally, for articles containing more than one plant part (e.g., grafted or budded plants), if the scion, interstem, rootstock, or any other plant part of the finished plant that is offered for importation belongs to a taxon listed within this paragraph as a regulated

taxon, the additional declaration must address the quarantine pests and related restrictions associated with that taxon. The additional declaration must list all plant parts of regulated taxa that have been incorporated into the finished plant.

(2) Budwood of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*) and grown in Belgium, France, Germany, Great Britain, or the Netherlands may be imported into the United States only if is accompanied by a phytosanitary certificate with an additional declaration that the original parent stock (nuclear stock) has been indexed and found free of pathogens (i), (ix) through (xvii), (xxii), (xlvii), and (xlviii) of paragraph (b)(5) of this section by the appropriate national fruit tree certification program, and only if the original parent stock from which the budwood is taken is produced within a secure, enclosed, APHIS-approved pest-exclusionary facility within a national plant protection organization-operated or -approved nuclear stock program where the parent stock is maintained in a pathogen-free state.

(3) Restricted articles, except seed, of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*) from Canada must be accompanied by a phytosanitary certificate that contains an additional declaration that the article was grown in a nursery in Canada, that the article was found by the national plant protection organization of Canada to be free of the following injurious plant pathogens listed in paragraph (b)(5) of this section: (i), (ix) through (xvii), (xxii), (xlvii), and (xlviii), and that the article was grown in an area that has been surveyed and found free of plum pox (=Sharka) potyvirus according to a surveying protocol mutually agreed upon by APHIS and the national plant protection organization of Canada. The determination by the national plant protection organization of Canada that the article is free of these pathogens will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified pathogens. An additional declaration on the phytosanitary certificate of inspection by the national

plant protection organization of Canada that a pathogen does not occur in Canada may be used in lieu of visual examination and indexing of the parent stock for that pathogen and inspection of the nursery. Finally, if any part of the article is not from Canada, but rather from a third country, that article must meet the entry requirements of this subpart as if the article had been directly imported into the United States from that third country.

(4)(i) Seeds of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*) from Belgium, Canada, France, Germany, Great Britain, or the Netherlands shall, at the time of arrival at the port of first arrival at the United States, be accompanied by a phytosanitary certificate of inspection containing accurate additional declarations that:

(A) The seeds are from parent stock grown in a nursery in Belgium, Canada, France, Germany, Great Britain, or the Netherlands that is free of plum pox (=Sharka) potyvirus; and

(B) The seeds have been found by the national plant protection organization of the country in which they are produced to be free of plum pox (=Sharka) potyvirus based on the testing of parent stock by visual examination and indexing.

(ii) Seeds of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*) from all countries except those in Europe, Argentina, Canada, Chile, Cyprus, Japan, Syria, and Turkey shall, at the time of arrival at the port of first arrival, be accompanied by a phytosanitary certificate of inspection, containing an accurate additional declaration that plum pox (=Sharka) potyvirus does not occur in the country in which the seeds were produced.

(5) List of pathogens.

(i) *Monilinia fructigena* (Aderh. & Ruhl.) Honey (Brown rot of fruit).

(ii) *Guignardia piricola* (Nose) Yamamoto (Leaf, branch, and fruit disease).

(iii) Apple proliferation phytoplasma.

(iv) Pear blister canker apscaviroid.

(v) Pear bud drop virus.

(vi) *Diaporthe mali* Bres. (Leaf, branch, and fruit fungus).

(vii) Apple green crinkle agent (Apple false sting virus).

(viii) Apple chat fruit agent (Apple small fruit).

(ix) Plum pox (=Sharka) potyvirus and its strains.

(x) Cherry leaf roll nepovirus (Elm mosaic virus, golden elderberry virus).

(xi) European cherry rusty mottle virus.

(xii) European stone fruit yellows phytoplasma (Apricot chlorotic leaf roll agent).

(xiii) Plum bark split trichovirus.

(xiv) Arabis mosaic nepovirus and its strains.

(xv) Raspberry ringspot nepovirus (European cherry rasp leaf) and its strains.

(xvi) Tomato blackring nepovirus (Myrobalan latent ringspot, peach shoot stunting) and its strains.

(xvii) Strawberry latent ringspot sadwavivirus (Peach willow leaf rosette, Court noue) and its strains.

(xviii) Quince sooty ringspot agent.

(xix) Quince yellow blotch agent (Pear yellow blotch agent, Apple rubbery wood phytoplasma).

(xx) Quince stunt agent.

(xxi) *Gymnosporangium asiaticum* Miyabe ex. Yamada (Rust).

(xxii) *Valsa mali* Miyabe and Yamada ex. Miura (Branch canker fungus).

(xxiii) Apple ringspot agent (Apple thumb mark, Thumb mark, Apple Henderson spot agent).

(xxiv) The following nematode transmitted viruses: Artichoke Italian latent virus, Grapevine Bulgarian latent virus, Grapevine fanleaf virus and its strains, and Hungarian chrome mosaic virus.

(xxv) Grapevine asteroid mosaic agent.

(xxvi) Grapevine Bratislava mosaic virus.

(xxvii) Grapevine chasselas latent agent.

(xxviii) Grapevine corky bark "Legno riccio" agent.

(xxix) Grapevine leaf roll viruses.

(xxx) Grapevine little leaf agent.

(xxxi) Grapevine stem pitting agent.

(xxxii) Grapevine vein mosaic agent.

(xxxiii) Grapevine vein necrosis agent.

(xxxiv) Flavescence-doree phytoplasma.

(xxxv) Black wood phytoplasma (bois-noir).

(xxxvi) Grapevine infectious necrosis bacterium.

(xxxvii) Grapevine yellows disease bacterium.

(xxxviii) *Xanthomonas ampelina* Panagopoulos.

(xxxix) *Peyronellaea glomerata* Ciferri.

(xl) *Pseudopeziza tracheiphila* Muller-Thurgau.

(xli) *Rhacodiella vitis* Sterenberg.

(xlii) *Rosellinia necatrix* Prill.

(xliii) *Septoria melanosa* (Violla and Ravav) Elenk.

(xliv) Apple fruit crinkle apscaviroid.

(xlv) Apple dimple fruit apscaviroid.

(xlvi) Apple scar skin apscaviroid.

(xlvii) *Monilinia polystroma*.

(xlviii) Apricot pseudo-chlorotic leaf spot trichovirus.

(c) Any restricted article (except seeds) of *Chrysanthemum* spp. (chrysanthemum, includes

*Dendranthema* spp.), *Leucanthemella serotina*, or *Nipponathemum nipponicum*, from a foreign place except Asia, Europe, South America, Australia, Mexico, New Zealand, Oceania (Melanesia, Micronesia, and Polynesia), Republic of South Africa, and Tunisia shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection. The phytosanitary certificate of inspection must contain a declaration that the article was grown in a greenhouse nursery and found by the national plant protection organization of the country in which the article was grown to be free of white rust of chrysanthemum (caused by the rust fungus *Puccinia horiana* P. Henn.) based on visual examination of parent stock, the articles for importation, and the greenhouse nursery in which the articles for importation and the parent stock were grown, once a month for 4 consecutive months immediately prior to importation. Such articles are also subject to the postentry quarantine requirements of § 319.37–7.

\* \* \* \* \*

■ 8. Section 319.37–6 is amended as follows:

■ a. In paragraph (a), in the table, by adding an entry for "*Dioscorea* spp. (yam) plants for planting, including, but not limited to, dormant herbaceous perennials, minisets, and yam-sets"; and

■ b. By adding a new paragraph (e).

The additions read as follows:

**§ 319.37–6 Specific treatment and other requirements.**

(a) \* \* \*

Seed/Bulb	Country/Locality	Pest(s) for which treatment is required
* <i>Dioscorea</i> spp. (yam) plants for planting, including, but not limited to, dormant herbaceous perennials, minisets, and yam-sets.	* All countries, except as provided in paragraphs (e)(1) through (e)(3) of this section.	* A diversity of internal and external feeders, including but not limited to: <i>Aspidiotosis hartii</i> (yam scale) and <i>Palaeopus costicollis</i> (yam weevil).

(e) *Dioscorea* spp. (yam) plants for planting, including, but not limited to, dormant herbaceous perennials, minisets, and yam-sets, may be imported into the United States without being treated in accordance with part 305 of this chapter if:

- (1) They are imported from Japan.
- (2) They are imported from the Dominican Republic into Puerto Rico.
- (3) They are imported from the West Indies into the U.S. Virgin Islands.
- 9. Section 319.37–7 is amended as follows:
  - a. By removing the words “Postentry Quarantine Unit” wherever they occur and adding the words “National Postentry Quarantine Coordinator” in their place;
  - b. In paragraph (a)(3), in the table, by revising the entries for “*Acer* spp.

(maple)”, “*Chaenomeles* spp. (flowering quince) meeting the conditions for importation in § 319.37–5(b)”, “*Chrysanthemum* spp. (chrysanthemum, includes *Dendranthema* spp.), meeting the conditions in § 319.37–5(c)”, “*Cydonia* spp. (quince) meeting the conditions for importation in § 319.37–5(b)”, “*Leucanthemella serotina*”, “*Malus* spp. (apple, crabapple) meeting the conditions for importation in § 319.37–5(b)”, “*Nipponanthemum nipponicum*”, “*Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) meeting the conditions for importation in § 319.37–5(b)”, and “*Pyrus* spp. (pear) meeting the conditions for importation in § 319.37–5(b)”;  
 ■ c. In paragraph (a)(3), in the table, in the entry for “*Dianthus* spp. (carnation,

sweet-william)”, by adding the words “and the Netherlands” after the words “Great Britain”;  
 ■ d. In paragraph (c)(1)(i), by removing the words “, except the District of Columbia, Guam, Hawaii, Kansas, and the Northern Mariana Islands”;  
 ■ e. In paragraph (d)(1), by removing the words “Building 580, BARC-East, Beltsville, MD 20705” and adding the words “4700 River Road, Unit 133 Riverdale, MD 20737–1236” in their place; and  
 ■ f. By adding a new paragraph (d)(8).  
 The revisions and additions read as follows:

**§ 319.37–7 Postentry quarantine.**  
 (a) \* \* \*  
 (3) \* \* \*

Restricted Article (excluding seeds)	Foreign Country(ies) or Locality(ies) from which imported
* <i>Acer</i> spp. (maple)	* All except Canada, Europe (except the Netherlands in accordance with § 319.37–5(m)), and Japan.
* <i>Chaenomeles</i> spp. (flowering quince) meeting the conditions for importation in § 319.37–5(b).	* All countries listed in § 319.37–5(b).
* <i>Chrysanthemum</i> spp. (chrysanthemum), includes <i>Dendranthema</i> spp.), meeting the conditions for importation in § 319.37–5.	* All except Asia, Europe, South America, Australia, Mexico, New Zealand, Oceania (Melanesia, Micronesia, and Polynesia), Republic of South Africa, and Tunisia.
* <i>Cydonia</i> spp. (quince) meeting the conditions for importation in § 319.37–5(b).	* All countries listed in § 319.37–5(b).
* <i>Leucanthemella serotina</i> meeting the conditions for importation in § 319.37–5.	* All except Asia, Europe, South America, Australia, Mexico, New Zealand, Oceania (Melanesia, Micronesia, and Polynesia), Republic of South Africa, and Tunisia.
* <i>Malus</i> spp. (apple, crabapple) meeting the conditions for importation in § 319.37–5(b).	* All countries listed in § 319.37–5(b).
* <i>Nipponanthemum nipponicum</i> meeting the conditions for importation in § 319.37–5.	* All except Asia, Europe, South America, Australia, Mexico, New Zealand, Oceania (Melanesia, Micronesia, and Polynesia), Republic of South Africa, and Tunisia.
* <i>Prunus</i> spp. meeting the conditions for importation in § 319.37–5(b)	* All countries listed in § 319.37–5(b).

Restricted Article (excluding seeds)

Foreign Country(ies) or Locality(ies) from which imported

\* \* \* \* \*

*Pyrus* spp. (pear) meeting the conditions for importation in § 319.37–5(b). All countries listed in § 319.37–5(b).

\* \* \* \* \*

\* \* \* \* \*

(d) \* \* \*

(8) To keep the article under postentry quarantine conditions until the National Postentry Quarantine Coordinator issues a written release for the article.

\* \* \* \* \*

#### § 319.37–8 [Amended]

■ 10. In § 319.37–8, paragraph (b)(2) is amended by removing the words “Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road” and adding the words “all areas of Canada regulated by the national plant protection organization of Canada for potato cyst nematode” in their place.

■ 11. In § 319.37–10, paragraph (c) is revised to read as set forth below.

#### § 319.37–10 Marking and identity.

\* \* \* \* \*

(c) Any restricted article 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 scientific names of the articles, at least to the level of genus, and the quantity of plants for planting in the shipment. Quantity must be expressed in the number of plant units, or in the case of seeds, by weight in grams or kilograms. Finally, when the regulations in this subpart place restrictions on individual species or cultivars within a genus, the invoice or packing list must also identify the species or cultivar of the articles.

\* \* \* \* \*

#### § 319.37–11 [Amended]

■ 12. Section 319.37–11 is amended by adding the words “that must be accompanied by a permit in accordance with paragraphs (a)(1) through (a)(11) of § 319.37–3” after the words “restricted article”.

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

■ 13. 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]

■ 14. In § 361.2, paragraph (d) is amended by adding the words “and in

addition to the restrictions of § 319.37–3(a)(7),” before the words “coated or pelleted seed”, and by adding the words “, or seed that is embedded in a substrate that obscures visibility” after the words “coated or pelleted seed”.

Done in Washington, DC, this 6th day of February 2013.

**Kevin Shea,**

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

[FR Doc. 2013–03058 Filed 2–11–13; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Parts 121 and 135

[Docket No. FAA–2011–1136; Notice No. 12–07]

**RIN 2120–AJ33**

#### Air Carrier Contract Maintenance Requirements; Extension of Comment Period

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); extension of comment period.

**SUMMARY:** This action extends the comment period for an NPRM that was published November 13, 2012. In that rulemaking, the FAA proposed to amend the maintenance regulations for domestic, flag, and supplemental operations, and commuter and on-demand operations for aircraft type certificated with a passenger seating configuration of 10 seats or more (excluding any pilot seat). It would require these operators to develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA and to include them in their maintenance manuals. It would also require the operators to provide a list to the FAA of all persons with whom they contract their maintenance. At the behest of several of their FAA-certificated air carrier members, Regional Air Cargo Carriers Association (RACCA) requested that the FAA extend the comment period closing date to allow time to adequately analyze the NPRM and prepare comments.

**DATES:** The comment period for the NPRM published on November 13, 2012 (77 FR 67584), was scheduled to close on February 11, 2013, and is extended until March 13, 2013.

**ADDRESSES:** You may send comments identified by docket number FAA–2011–1136 using any of the following methods:

1. *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

2. *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

3. *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

4. *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT’s complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at <http://DocketsInfo.dot.gov>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ralen Gao, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3168; email [ralen.gao@faa.gov](mailto:ralen.gao@faa.gov).