

§ 319.37-22 Trust fund agreements.

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

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§ 319.37-23 Postentry quarantine.

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

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

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

(2) If an importer postentry quarantine growing agreement has been completed and submitted to Plant Protection and Quarantine in accordance with paragraph (c) of this section. The agreement must be signed by the person (the importer) applying for the importation of the plants for planting in accordance with § 319.6; and,

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

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

(c) *Importer postentry quarantine growing agreements.* Any plants for planting required to be grown under postentry quarantine conditions, as well as any increase therefrom, shall be grown in accordance with an importer postentry quarantine growing agreement signed by the person (the importer) applying for a written permit in accordance with § 319.37-5 for importation of the plants for planting and submitted to Plant Protection and Quarantine. On each

importer postentry quarantine growing agreement, the person shall also obtain the signature of the State Plant Regulatory Official for the State in which plants for planting covered by the agreement will be grown. The importer postentry quarantine growing agreement shall specify the kind, number, and origin of plants to be imported; the conditions specified in the Plants for Planting Manual under which the plants for planting will be grown, maintained, and labeled; and the reporting requirements in the case of abnormal or dead plants for planting. The agreement shall certify to APHIS and to the State in which the plants for planting are grown that the signer of the agreement will comply with the conditions of the agreement for the postentry quarantine growing period prescribed for the type of plants for planting in the Plants for Planting Manual.

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

(e) *Inspector-ordered disposal, movement, or safeguarding of plants for planting; costs and charges, civil and criminal liabilities—(1) Growing at unauthorized sites.* If an inspector determines that any plants for planting subject to the postentry quarantine growing requirements of this section, or any increase therefrom, is being grown at an unauthorized site, the inspector may file an emergency action notification (PPQ Form 523) with the owner of the plants for planting or the person who owns or is in possession of the site on which the plants for planting is being grown. The person named in the PPQ Form 523 must, within the time specified in PPQ Form 523, sign a postentry quarantine growing agreement, destroy, ship to a point outside the United States, move

to an authorized postentry quarantine site, and/or apply treatments or other safeguards to the plants for planting, the increase therefrom, or any portion of the plants for planting or the increase therefrom, as prescribed by an inspector to prevent the introduction of quarantine pests into the United States. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the quarantine pests associated with the type of plants for planting (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

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

pests associated with the type of plants for planting (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

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

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Subpart I—Logs, Lumber, and Other Wood Articles

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§ 319.40-1 Definitions.

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

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

Bark chips. Bark fragments broken or shredded from log or branch surfaces.

Certificate. A certificate of inspection relating to a regulated article, which is issued by an official authorized by the national government of the country in which the regulated article was produced or grown, which is addressed to the plant protection service of the United States (Plant Protection and Quarantine Programs), which contains a description of the regulated article, which certifies that the regulated article has been inspected, is believed to be free of plant pests, and is believed to be eligible for importation pursuant to the laws and regulations of the United States, and which may contain any specific additional declarations required under this subpart.

Compliance agreement. A written agreement between APHIS and a person engaged in processing, handling, or moving regulated articles, in which the person agrees to comply with requirements contained in the agreement.

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

Fines. Small particles or fragments of wood, slightly larger than sawdust, that result from chipping, sawing, or processing wood.

Free from rot. No more than two percent by weight of the regulated articles in a lot show visual evidence of fructification of fungi or growth of other microorganisms that cause decay and the breakdown of cell walls in the regulated articles.

General permit. A written authorization contained in § 319.40-3 for any person to import the articles named by the general permit, in accordance with the requirements specified by the general permit, without being issued a specific permit.

Humus, compost, and litter. Partially or wholly decayed plant matter.

Import (imported, importation). To bring or move into the territorial limits of the United States.

Importer document. A written declaration signed by the importer of regulated articles, which must accompany the regulated articles at the time of importation, in which the importer accurately declares information about the regulated articles required to be disclosed by § 319.40-2(b).

Inspector. Any individual authorized by the Administrator to enforce this subpart.

Log. The bole of a tree; trimmed timber that has not been sawn further than to form cants.

Loose wood packing material. Excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces.