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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 Part 319

[Docket No. APHIS–2006–0011]

RIN 0579–AC03

Importation of Plants for Planting; Establishing a Category of Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a new category of regulated articles in the regulations governing the importation of nursery stock, also known as plants for planting. This category would list taxa of plants for planting whose importation is not authorized pending pest risk analysis. If scientific evidence indicated that the taxon of plants for planting is a potential quarantine pest or a potential host of a quarantine pest, we would publish a notice that would announce our determination that the taxon is a potential quarantine pest or a potential host of a quarantine pest, cite the scientific evidence we considered in making this determination, and give the public an opportunity to comment on our determination. If we received no comments that changed our determination, the taxon would subsequently be added to the new category. We would allow any person to petition for a pest risk analysis to be conducted for a taxon that has been added to the new category. After the pest risk analysis was completed, we would remove the taxon from the category and allow its importation subject to general requirements, allow its importation subject to specific restrictions, or prohibit its importation. We would consider applications for permits to import small quantities of

germplasm from taxa whose importation is not authorized pending pest risk analysis, for experimental or scientific purposes under controlled conditions. This new category would allow us to take prompt action on evidence that the importation of a taxon of plants for planting may pose a risk while continuing to allow for public participation in the process.

DATES: We will consider all comments that we receive on or before October 21, 2009.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0011> to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2006–0011, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0011.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room 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) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Tschanz, Senior Plant Pathologist, Risk Management and Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant

pests and noxious weeds within the United States. The Secretary has delegated this responsibility to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control to eradicate or contain them within the United States.¹ The regulations in “Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,” §§ 319.37 through 319.37–14 (referred to below as the regulations, and often referred to colloquially as the “Quarantine 37” regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting or propagation. The regulations in 7 CFR part 360, “Noxious Weed Regulations,” contain restrictions on the movement of noxious weeds or plant products listed in that part into or through the United States and interstate; the importation of some plants is subject to both the nursery stock regulations and the noxious weed regulations.

To refer to the articles subject to the nursery stock regulations collectively in this document, we will use the term “plants for planting,” which the International Plant Protection Convention (IPPC) defines as: “Plants intended to remain planted, to be planted or replanted.” Planting is defined by the IPPC as: “Any operation for the placing of plants in a growing medium, or by grafting or similar operations, to ensure their subsequent growth, reproduction or propagation.”² In a final rule published in the **Federal Register** on August 6, 2007, and effective September 5, 2007 (72 FR 43503–43524, Docket No. 03–002–3), we added a definition of *plant* to the regulations that is drawn from the Plant Protection Act and includes any plant (including any plant part) for or capable

¹ The term “official control” is further defined later in this proposal.

² See the Glossary of Phytosanitary Terms (2007), which is International Standard for Phytosanitary Measures (ISPM) Number 5. To view this and other ISPMs on the Internet, go to <http://www.ippc.int/IPP/En/default.jsp> and click on the “Adopted ISPMs” link under the “Standards (ISPMs)” heading.

of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed. We consider the term “plants for planting” to include all the articles subject to the nursery stock regulations, and thus to be equivalent to the term “nursery stock” as it is used in the current regulations.

Plants for planting that cannot be feasibly inspected, treated, or handled to prevent quarantine pests that may accompany them from being introduced into the United States are listed in § 319.37–2(a) or (b) of the regulations as prohibited articles. Prohibited articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under safeguards specified in the permit issued for the importation of the articles.

Plants for planting that can be inspected, treated, or handled to mitigate the risk of introduction of quarantine pests associated with the importation of the plants into the United States are referred to in the regulations as restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that may include permit and phytosanitary certificate requirements, inspection, treatment, postentry quarantine, or combinations of these safeguards. Except for certain bulbs from the Netherlands, Canadian greenhouse-grown plants, small lots of seed, and certain seeds from Canada (as described in § 319.37–4(a)(4), (c), (d), and (e), respectively), the regulations require that a phytosanitary certificate issued by the exporting country’s national plant protection organization (NPPO) accompany all restricted articles imported into the United States.

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

Security’s Bureau of Customs and Border Protection.

After inspection, the plants may be allowed entry into the United States (with treatment, if necessary), destroyed, or reexported, depending on the results of the inspection. Because lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada are required to be imported under a permit, most shipments of plants for planting are inspected at USDA plant inspection stations.

Summary of New Category of Plants for Planting

Currently, the regulations categorize imported plants for planting as either prohibited articles or restricted articles. We are proposing to create a new category of plants for planting whose importation is not authorized pending the completion of a pest risk analysis. We will refer to the category in this document as the “not authorized pending pest risk analysis” (NAPPRA) category. The NAPPRA category would include two lists: A list of taxa that we have judged, on the basis of scientific evidence, to be potential quarantine pest plants, and therefore potential noxious weeds; and a list of taxa that we have judged, on the basis of scientific evidence, to be potential hosts of quarantine pests.³

We typically provide notice of our intent to designate plants for planting as prohibited articles, or place additional restrictions on their importation, through proposed rules, and we often complete a pest risk analysis (PRA) to support such a designation. By contrast, taxa of plants for planting would be added to the NAPPRA category based on scientific evidence that indicates that they pose a risk of introducing a quarantine pest into the United States, rather than on a comprehensive PRA. Additionally, we would establish the NAPPRA lists on a PPQ Web site and notify the public of our determination that taxa of plants for planting are potential quarantine pests or potential hosts of quarantine pests, and thus should be added to the NAPPRA lists, by publishing notices in the **Federal Register**. Thus, the NAPPRA category would allow us to take more timely action when evidence indicates that the importation of a taxon of plants for

planting may pose a risk of introducing a quarantine pest into the United States.

Any person would be able to request that APHIS conduct a PRA on any plant taxon listed in the NAPPRA category. After completing the PRA, we would initiate rulemaking either to allow the importation of the taxon subject to the restrictions described in the risk management section of the PRA or, if the risk associated with the importation of the taxon cannot be feasibly mitigated, to prohibit its importation.

The December 2004 Advance Notice of Proposed Rulemaking and the Current State of the Nursery Stock Regulations

We first notified the public that we were considering establishing a new category of imported plants for planting in an advance notice of proposed rulemaking (ANPR) that we published in the **Federal Register** on December 10, 2004 (69 FR 71736–71744, Docket No. 03–069–1).⁴ This ANPR presented several possible changes that we were considering to revise the plants for planting regulations, one of which was implementing the NAPPRA category. (In the December 2004 ANPR, the NAPPRA category described above was called “Option 2” for establishing a category of plants excluded from importation pending risk evaluation and approval; we have changed the terminology we are using in this proposal in an effort to improve clarity. Option 1 in the December 2004 ANPR was to exclude from importation into the United States all taxa that were not currently being imported in significant amounts; we are not proposing to implement Option 1 or requesting comment on it in this document.)

As we discussed in the December 2004 ANPR, the only pest risk mitigation measures required for the importation of most taxa of plants for planting are that they be accompanied by a phytosanitary certificate and that they enter the United States through a USDA plant inspection station, at which the plants for planting are sampled and visually inspected. The Plant Protection Act provides APHIS with the authority to require individual shipments of plants for planting to be treated, destroyed, or reexported if inspectors find quarantine pests in the shipments. However, this inspection may not always provide an adequate level of

³ We use the term “taxon” (plural: taxa) in this document to refer to any grouping within botanical nomenclature, such as family, genus, species, or cultivar. We are proposing to add this term to the regulations as well; see the section headed “Definitions” later in this document.

⁴ The ANPR, as well as the comments we received on the ANPR, can be viewed on Regulations.gov at <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2004-0024>. The ANPR contains a detailed discussion of the history of the nursery stock regulations that is helpful for understanding their original intent and current state.

protection against quarantine pests, particularly if a pest is rare, small in size, borne within the plant, or an asymptomatic plant pathogen.

We take action to generally prohibit or restrict the importation of an entire taxon of plants for planting beyond the general permit, phytosanitary certificate, and inspection requirements only if there is specific evidence that importation of that taxon could introduce a quarantine pest into the United States. If we have reason to believe that a currently admissible taxon of plants for planting may be a quarantine pest itself or may be a host of a quarantine pest, we typically complete a comprehensive PRA to examine the available evidence on the subject. The PRA considers all the scientific resources available to the agency and makes determinations on the following issues:

- Whether importation of the taxon poses a risk;
- If importation of the taxon poses a risk, what level of risk it poses;
- If the importation poses a risk that warrants mitigation, whether that risk can be mitigated; and
- If the risk can be mitigated, what risk management strategies can accomplish the mitigation.

Many scientific resources exist that provide evidence regarding the potential of taxa of plants for planting to be quarantine pests themselves or to serve as hosts for quarantine pests. PPQ regularly reviews these resources to keep up to date with emerging pest risks. Information gathered from these scientific resources can serve as a trigger to begin the PRA process. In situations that we judge to pose an emergency, we can take action immediately to stop the importation of a taxon into the United States. In other situations, we strive to complete a PRA promptly, so that we can address any pest risks discovered in the PRA through regulatory action.

However, as both the volume and number of plants for planting that are imported has increased dramatically over the last decade, it has been a challenge for us to follow up on the available scientific evidence by initiating PRAs, and, when necessary, amending the regulations to address risks presented by the importation of plants for planting. We estimate that species of plants for planting from more than 2,000 genera are being imported or have been imported in the past; most taxa of plants for planting that are imported into the United States for the first time enter without a PRA having been conducted prior to their importation. In the meantime, taxa of plants for planting that scientific

evidence indicates are potential quarantine pests or potential hosts of a quarantine pest may continue to be imported with no restrictions other than the requirements for a phytosanitary certificate, a port-of-entry phytosanitary inspection, and, for certain articles, a written permit. During the time a PRA is being completed to evaluate the potential pest risk associated with a taxon, U.S. agricultural and environmental resources may be at risk due to the importation of the taxon.

Appropriately mitigating the risks of quarantine pest introduction associated with the importation of plants for planting is especially important because quarantine pests introduced via imported plants for planting are generally much more likely to become established than quarantine pests introduced via other imported articles that are not intended for planting or propagation. Imported plants for planting themselves may serve as hosts for quarantine pests for months or years. In addition, the destinations of imported plants for planting, such as plant nurseries, farms, greenhouses, orchards, and gardens, are likely to be favorable environments for plant growth and pest development in general, which could present problems in the event that a taxon of imported plants for planting turns out to be a carrier of a quarantine pest or is itself a quarantine pest plant. Under these circumstances, the introduction of even a few individuals of a quarantine pest species via imported plants for planting may lead to the establishment of that pest in the United States.

The National Plant Board's 1999 "Safeguarding American Plant Resources" report⁵ contrasted the approach of the regulations governing the importation of plants for planting with the approach of the regulations governing the importation of fruits and vegetables, which are found in "Subpart—Fruits and Vegetables" (§§ 319.56–1 through 319.56–49) within 7 CFR part 319.

Although quarantine pests that enter the United States via imported plants for planting are more likely to become established than quarantine pests that enter the United States via imported fruits and vegetables, the nursery stock regulations do not require a PRA to be completed prior to the importation of a new taxon of plants for planting or prior to the taxon's importation from a new area.

By contrast, the importation of fruits and vegetables is generally prohibited

under the regulations in "Subpart—Fruits and Vegetables," and the completion of a PRA is generally required before a commodity can enter from a new area. The process of allowing the importation of a fruit or vegetable from a particular area or country begins when APHIS receives an import request from an exporting country or when there is a request to reconsider the entry status of a commodity previously denied entry. The request must be accompanied by information about the commodity proposed for importation into the United States, shipping information, a description of pests and diseases associated with the commodity, and current strategies for risk mitigation or management, as described in § 319.5.

If the request is for a fruit or vegetable for which no previous entry decision has been made, or if new evidence indicates that the previous entry decision may no longer be applicable, then a PRA is completed to determine the sources of pest risk associated with the requested importation. The fruit or vegetable is only allowed to be imported if the PRA indicates that the risk can be effectively mitigated and if we receive no public comments on the analysis that lead us to change the conclusions of the PRA. In other words, the importation of all commodities whose importation is governed by "Subpart—Fruits and Vegetables" is not authorized pending pest risk analysis and approval.

This difference between the regulatory approaches for plants for planting and for fruits and vegetables means that APHIS typically has less information about the risks associated with the importation of particular taxa of plants for planting than we have about the risks associated with the importation of taxa of fruits and vegetables. While our records of importation indicate that some taxa of plants for planting have been safely imported for years, the data on other taxa is less conclusive and sometimes indicates that importation of the taxa may pose a pest risk. Given the relative lack of information available about the risks posed by the importation of plants for planting, it can be assumed that some taxa of plants for planting that are presently being imported pose risks of introducing quarantine pests that have not been assessed through the PRA process.

The North American Plant Protection Organization (NAPPO), a regional plant protection organization recognized by the IPPC, coordinates efforts among the NPPOs of Canada, the United States, and Mexico to protect their plant resources from the entry, establishment

⁵ The Safeguarding Report can be viewed on the Internet at <http://www.safeguarding.org>.

and spread of regulated plant pests, while facilitating intra- and interregional trade. In its Regional Standard for Phytosanitary Measures No. 24, NAPPO examined the regulatory issues associated with international trade in plants for planting. The standard ultimately concluded that “current regulatory measures are insufficient to ensure adequate protection for NAPPO countries in today’s trading environment.”⁶ The standard called for regulatory officials, the horticulture industry, and the environmental community from Canada, the United States, and Mexico to adopt more effective regulations to mitigate the risk of pest introductions on plants for planting.

Establishing the NAPPRA Category To Provide an Appropriate Level of Phytosanitary Protection

We are proposing to establish the NAPPRA category in order to provide a more appropriate level of phytosanitary protection against the introduction of quarantine pests through the importation of plants for planting.

Based on the increased diversity and volume of plants currently being imported, we have determined that the current regulations need to be enhanced to provide a level of phytosanitary protection commensurate with the risks posed by the importation of plants for planting. For this proposal, APHIS has prepared a risk document, “Foundation Document Demonstrating the Risk Basis for Establishing the Regulatory Category ‘Not Authorized Pending Pest Risk Analysis’ (NAPPRA) Associated with the Importation of Plants for Planting,” which analyzes current trends in the importation of plants for planting and the general risks associated with plants for planting.⁷ It concludes, “The risk associated with imported plants is considered, by APHIS, to be higher than other pathways, *e.g.*, imported fruits and vegetables. Because they are normally placed in conditions that encourage growth, plants serve as long-term hosts to the pests that they carry and therefore increase the probability that these pests will establish, and spread. In addition, the importation of plants that develop invasive or other harmful characteristics is particularly dangerous because the original intent of importation was to

introduce and spread the plant. * * * Evidence indicates that while the original assumptions and designs for Quarantine 37 and the noxious weed regulations may have been valid when the challenges to the system were less intense, the contemporary situation is orders of magnitude more challenging.”

The foundation document identifies the following factors supporting our determination that the current regulatory approach to the importation of plants for planting needs to be enhanced to adequately address this risk:

- The volume of imported seed has increased 2,000 percent in the last decade;
- 1,000 more genera were imported through the Miami plant inspection station (the primary plant inspection station for such importation) in 2006 than in 2004;
- The number of shipments through the Miami plant inspection station nearly doubled (from 29,251 to 52,540) in the same period;
- Plants are imported from all regions of the world, including areas where available pest information is limited;
- The number of pests that escape detection in the inspection process increases with the volume of plant importation;
- Inspection is approaching, or may have reached, the limits of its operational efficacy due to the increased volume and diversity of importations; and
- Hundreds of pest plants have been introduced into the United States as imports.

We have therefore determined that the foundation document indicates a need to revise the regulations to provide a more appropriate level of protection against the risks associated with the importation of plants for planting. The NAPPRA category described in this proposal is the first step we are proposing to take to accomplish this goal.

Comments Received on This Subject in Response to the December 2004 ANPR and the May 2005 Public Meeting

We solicited comments concerning the December 2004 ANPR for 90 days, ending March 10, 2005. In a notice published in the **Federal Register** on March 10, 2005 (70 FR 11886, Docket No. 03–069–2), we extended the comment period for the ANPR for an additional 30 days ending April 11, 2005, to allow interested persons additional time to prepare and submit comments.

In a document published in the **Federal Register** on May 2, 2005 (70 FR

22612–22613, Docket No. 03–069–3), we announced the availability of a draft set of criteria that could be used to determine which taxa might be included in the NAPPRA category, should we decide to establish such a category. In order to provide a forum for discussing those draft criteria and associated issues, such as how such a category might be defined and implemented were it to be adopted, we held a public meeting on May 25, 2005, in Riverdale, MD. As part of that document, we also reopened the comment period for our December 2004 ANPR until June 3, 2005.

We received a total of 275 comments on the ANPR. (Not all of these comments addressed the NAPPRA category.) In addition, we recorded extensive notes of the discussions at the public meeting of May 25, 2005. We have carefully considered the comments we received on the ANPR and the views expressed at the public meeting in developing this proposal.

Some commenters, particularly Federal, State, and local government agencies, environmental advocacy groups, and industry groups, supported adding the category so that APHIS could promptly prevent the importation of taxa of plants for planting that posed a potential risk of introducing a quarantine pest. Some of these commenters also favored changing the approach of the plants for planting regulations by adding all plants for planting to the NAPPRA category, unless a PRA showed that the risk associated with the importation of a specific taxon could be appropriately mitigated, similar to the fruits and vegetables regulations. A few commenters proposed alternatives to the regulatory approach we had outlined in the ANPR.

A larger group of commenters, mostly private citizens and small businesses, opposed establishing the NAPPRA category. They believed that a comprehensive PRA specifically examining the risks associated with the importation of a taxon of plants for planting is the only evidence that should be used to restrict or prohibit the importation of that taxon.

While a comprehensive PRA is necessary to determine all the quarantine pests that may be associated with a taxon and, if appropriate, offer means to mitigate the risk associated with these pests, the scientific evidence we would use to add a taxon to the NAPPRA category would be sufficient to establish that the taxon is a quarantine pest or is a host of a quarantine pest. This proposal would provide the public with the ability to request that a PRA be

⁶ The standard (“Integrated Pest Risk Management Measures for the Importation of Plants for Planting into NAPPO Member Countries”) can be viewed on the Internet at <http://www.nappo.org/Standards/NEW/RSPMNo.24-e.pdf>.

⁷ The foundation document is available on the Regulations.gov Web site and in our reading room (see ADDRESSES above) and may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

conducted for any taxon that we add to the NAPPRA category.

Some commenters from this group stated that any further restrictions on the importation of plants for planting would adversely impact the overall biodiversity of plants in the United States.

The purpose of establishing the NAPPRA category, as with all our restrictions on the importation of plants for planting, is to prevent damage to agricultural and other resources caused by plants that are plant pests or that are hosts of plant pests. Preventing this damage helps to ensure that the current biodiversity of the United States is not adversely affected.

Some of these commenters were concerned that small businesses would be unfairly harmed by the imposition of additional restrictions on the importation of plants for planting, as such businesses often depend on novel plants to sell to consumers.

Although we acknowledge that restricting the importation of risky plant taxa may have impacts on small businesses, we have determined that the NAPPRA category is necessary to allow APHIS to appropriately respond to risks associated with the importation of plants for planting and to provide an appropriate level of protection against such risks. We would decide to restrict the importation of taxa of plants for planting on the basis of scientific evidence indicating that the importation of the taxa poses a risk. Though some taxa of plants for planting would be listed on the NAPPRA lists, most other taxa of plants for planting could continue to be imported subject to general restrictions.

Others who were opposed to the NAPPRA category questioned whether the decision to add a taxon to the new category would be sufficiently grounded in sound science, often stating that plants should be considered not to pose a risk unless specific evidence exists indicating that they do. Commenters also questioned whether the process for adding a taxon would be transparent and allow for adequate public participation.

We took these comments into account as we developed the NAPPRA process, which is detailed in the remainder of this document. Under this proposed rule, taxa would only be added to the NAPPRA category based on scientific evidence, and we would publish notices indicating our intent to add taxa to the NAPPRA category that would describe the scientific evidence and giving the public the opportunity to comment on our decisions. For these reasons, we are confident that the proposed NAPPRA

category and process would fulfill our commitments to base our decisions on sound science, to employ transparent processes in reaching and communicating our decisions, and to allow for public participation in the process. We invite any suggestions commenters may have for improving the transparency of any aspect of the process, as outlined in this proposal. We also invite comment on whether the process for adding plants to the NAPPRA category is sufficiently scientifically rigorous.

The December 2004 ANPR also discussed consolidating the regulations governing plants for planting into one subpart. As discussed above, we are proposing to address risks posed by importation of plants for planting that are potential quarantine pests themselves and risks posed by importation of plants for planting that are potential hosts of quarantine pests in the same section of the nursery stock regulations. We plan to pursue consolidating all the regulations governing the importation of plants for planting into a single subpart in a later document.

Detailed Description of NAPPRA Category and Associated Changes

Definitions

The regulations currently do not contain definitions of the terms *noxious weed*, *official control*, *planting*, *plants for planting*, *quarantine pest*, and *taxon*. (The concept of official control is part of the IPPC definition of *quarantine pest*.) Therefore, we are proposing to add definitions for these terms to the “Definitions” section in § 319.37–1.

We would add a definition of *noxious weed* based on the definition of that term in the Plant Protection Act. The definition of “noxious weed” in the Plant Protection Act refers to nursery stock rather than plants for planting; the definition we would add in § 319.37–1 would refer to plants for planting, to be consistent with the other changes we are making to the regulations. Thus, the definition of *noxious weed* would read as follows:

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

The other definitions we are proposing to add are based on definitions in the IPPC Glossary of

Phytosanitary Terms. These definitions would read as follows:

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

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

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

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

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

The definition of *official control* is based on the definition in the IPPC Glossary of Phytosanitary Terms. However, our proposed definition does not include the provisions of the IPPC definition that address regulated non-quarantine pests, because the plants for planting regulations do not presently include provisions for regulating non-quarantine pests. We believe it would be confusing to include in our definition of *official control* a reference to a type of pest that would not otherwise be referred to in the regulations. If, in the future, we propose to amend the plants for planting regulations to address regulated non-quarantine pests, we would amend this definition to include regulated non-quarantine pests, consistent with the IPPC definition.

We would use “plants for planting” in the proposed regulations where we would have formerly used the term “nursery stock.” We would remove the definition of *nursery stock* and replace the references to nursery stock in the definitions of *prohibited article* and *restricted article* with references to “plants for planting.” We would also revise the title of the subpart that contains the regulations to read “Subpart—Plants for Planting.”

The definition of *quarantine pest* is based on the definition in the IPPC Glossary of Phytosanitary Terms. The definition we are proposing differs in two ways from the IPPC definition:

- The definition of *quarantine pest* that we are proposing refers to “a plant pest or noxious weed” rather than “a pest.” Such an approach is consistent with our authority under the Plant Protection Act, which specifically refers

to plant pests and noxious weeds. It is also consistent with the IPPC definition, since the IPPC definition of “pest” includes plants as well as animals and pathogenic agents. (The Plant Protection Act definition of noxious weeds includes references to the weed’s impact on agriculture, natural resources, public health, and the environment, among other things, while the IPPC definition of quarantine pest itself refers only to economic importance. However, Appendix 2 to the Glossary of Phytosanitary Terms explains that the term “economic importance” is to be understood as having a broad meaning encompassing potential damage to the natural environment as well.)

- The definition of *quarantine pest* that we are proposing also specifically refers to the United States.

In addition to adding a definition of *quarantine pest* to the regulations, we are proposing to remove the term *plant pest* and add the term *quarantine pest* in its place in the regulations. We would also remove the definition of *plant pest* in § 319.37–1. APHIS takes action on plant pests based on whether they qualify as quarantine pests, in keeping with our commitments under international trade agreements. For example, APHIS typically would not restrict the importation of a taxon of plants for planting because it could introduce a plant pest if that plant pest is already present in the United States and not under official control; such a restriction could be inconsistent with the national treatment principle of the WTO. Therefore, we believe it is appropriate to refer specifically to quarantine pests rather than to plant pests in the plants for planting regulations.

Regulating Noxious Weeds Through the NAPPRA Category

The nursery stock regulations in §§ 319.37 through 319.37–14 currently address only plants for planting that have been determined to be hosts of quarantine pests. Plants for planting that are themselves quarantine pests have been regulated under 7 CFR part 360, “Noxious Weed Regulations.” However, the new definition of *quarantine pest* that we are proposing includes a specific reference to noxious weeds, and the definition of *noxious weed* from the Plant Protection Act would be added to the regulations as well, meaning that the definition of *quarantine pest* would allow us to address both plants for planting that are potential hosts of quarantine pests and plants for planting that are potential noxious weeds (*i.e.*, quarantine pest plants).

We are proposing to address the potential risks posed by the importation of taxa of plants for planting that could be quarantine pests themselves and those that could serve as hosts for quarantine pests through the same set of proposed regulations. This decision follows from a potential change to the regulations we discussed in the December 2004 ANPR, in which all the regulations relating to the importation of plants for planting would be consolidated into a single subpart. (Commenters who addressed this issue generally approved of consolidating the plants for planting regulations.) We are not proposing to consolidate the plants for planting regulations in this document, but we do not want to further disperse the regulations governing plants for planting by establishing separate provisions for the NAPPRA category in 7 CFR part 319 (for potential hosts of quarantine pests) and 7 CFR part 360 (for potential pest plants). We welcome public comment on this approach.

Proposed Process for Adding Taxa of Plants for Planting to the NAPPRA Category

We are proposing to add a new § 319.37–2a, “Taxa whose importation is not authorized pending pest risk analysis,” to the regulations to describe the process by which taxa of plants for planting would be added to the lists of taxa whose importation is not authorized pending pest risk analysis (the “NAPPRA lists”), to describe the criteria we would use when determining whether to add a taxon to the NAPPRA lists, and to provide instructions to persons who wish to request that taxa be removed from the NAPPRA lists.

Paragraph (a) of proposed § 319.37–2a would state that we have determined that certain taxa of plants for planting potentially pose a risk of introducing quarantine pests into the United States and that the importation of these taxa is not authorized pending the completion of a pest risk analysis.

There would be two lists of taxa whose importation is not authorized pending pest risk analysis: A list of taxa of plants for planting that are potential quarantine pests, and a list of taxa of plants for planting that are potential hosts of quarantine pests. These lists would be established on the PPQ Web site at http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37.shtml.

For taxa that had been determined to be potential quarantine pests, the list would include the names of the taxa. For the list of taxa that had been

determined to be potential hosts of quarantine pests, the list would include:

- The names of the taxa;
- The foreign places from which the taxa’s importation is not authorized; and
- The quarantine pests of concern.

The list would indicate that the importation of seed from taxa listed as potential hosts of quarantine pests is permitted unless specifically restricted by APHIS based on scientific evidence that the associated pest is seedborne. Even when a taxon is determined to be a potential host of a quarantine pest, its seed can often be imported safely, depending on the biology of the pest.

Proposed paragraph (b) would describe the process by which APHIS would add taxa to the NAPPRA lists.

Under proposed paragraph (b)(1), APHIS would publish in the **Federal Register** a notice announcing our determination that a taxon of plants for planting is either a potential quarantine pest or a potential host of a quarantine pest. This notice would make available a data sheet that would detail the scientific evidence that we evaluated in making our determination, including references for that scientific evidence. In the notice, we would provide for a public comment period of a minimum of 60 days on our proposed addition to the list.

Proposed paragraph (b)(2) would describe how we would respond to comments on the notices. APHIS would issue a notice after the close of the public comment period indicating that the taxon will be added to the list of taxa not authorized for importation pending pest risk analysis if:

- No comments were received on the data sheet;
- The comments on the data sheet revealed that no changes to the data sheet were necessary; or
- Changes to the data sheet were made in response to public comments, but the changes did not affect our determination that the taxon poses a potential risk of introducing a quarantine pest into the United States.

If comments presented information that leads us to determine that that the taxon does not pose a potential risk of introducing a quarantine pest into the United States, APHIS would not add the taxon to the NAPPRA list. We would issue a notice giving public notice of this determination after the close of the comment period.

This proposed process for adding taxa of plants for planting to the NAPPRA lists would streamline the process of taking action based on sound scientific evidence while providing the public with the opportunity to participate. We

invite public comment on the process we have described.

The process for removing taxa from the NAPPRA lists is discussed in detail later in this document under the heading "Process for Removing Taxa of Plants for Planting from the NAPPRA Category."

Sources of Scientific Evidence for Taxa That Are Potential Quarantine Pests

Paragraphs (c) and (d) of proposed § 319.37–2a would describe the criteria that we would use in determining whether to add a taxon of plants for planting to the NAPPRA category.

For both taxa of plants for planting that are potential quarantine pests and taxa of plants for planting that are potential hosts of quarantine pests, we are basing our steps for making a determination and the sources of scientific evidence we would use to make the determination on "Criteria for adding plants to a new category of plants for planting, 'Not Authorized Pending Risk Analysis' (NAPRA)," a document discussed at the May 25, 2005, meeting and revised in October 2005. We have made some modifications to the wording and application of these criteria in this proposed rule. We have also simplified the criteria where possible.

Proposed paragraph (c) would state that a taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a potential quarantine pest, as we are proposing to define that term in § 319.37–1.

There are several sources of scientific evidence that we anticipate using to make the determination that a taxon of plants for planting is a potential quarantine pest that should be added to the NAPPRA list. Those sources include, but are not necessarily limited to, the following:

- National and international pest alerts, reports, and quarantine lists.
- Articles from peer-reviewed scientific journals or other published scientific literature. Examples of journals that we might consult to determine whether a taxon is a potential quarantine pest are *Weed Science* and *Plant Protection Quarterly*.
- Published international weed references. Two examples of international weed references we might use are *Invasive Plant Species of the World: A Reference Guide to Environmental Weeds* (Weber, Ewald, 2003; CABI Publishing, Cambridge, MA) and *Noxious Weeds of Australia* (W.T. Parsons and E.G. Cuthbertson, 1992;

Inkata Press, Melbourne and Sydney, Australia).

- Information from international databases, such as the Crop Protection Compendium (CPC). The CPC is an interactive, encyclopedic tool that draws together information on all aspects of crop protection. The CPC is composed of information sourced from experts. It is edited and compiled by an independent scientific organization and draws resources from a diverse international development consortium. It is published on CD-ROM and on the Internet and is updated annually. We would consider using other international databases of similar reputation as well.

- Reports from regional plant protection organizations, such as NAPPO and the European and Mediterranean Plant Protection Organization, and from professional societies such as the Weed Science Society of America (WSSA).

- Scientific screening systems and predictive models, such as the WSSA's prioritization model, that seek to identify weeds of global significance that pose a threat to the United States. Most scientific screening systems and predictive models are question-based scoring methods that ask about climatic preferences, biological attributes, and reproductive and dispersal methods. Often a system generates a numerical score, which is used to rank species to determine which species are the highest priorities for official control or to determine whether a taxon can be imported into a country or area. Some systems are used to predict whether a species may be a weed of agriculture or the environment.

APHIS specifically requested that WSSA develop the prioritization model to screen taxa of plants for planting that could be quarantine pests and to rank the taxa based on how much potential risk they pose. WSSA has also provided detailed fact sheets on the taxa deemed to pose the greatest risk. We plan to use the information generated by the WSSA to add taxa to the NAPPRA category.⁸

We would also consider using other work that is being done in this area. Several such systems besides the WSSA prioritization model already exist, including models developed by Australia, Western Australia, and the Hawaiian Ecosystems at Risk project. Several university scientists are also studying invasiveness prediction, and

some have published articles on various models.⁹

- Any information available from other APHIS PRAs, including the weediness screening portions of APHIS fruit and vegetable commodity PRAs. As mentioned earlier in this document, APHIS conducts PRAs to determine whether and how fruits or vegetables can be imported into the United States. One of the first steps in a fruit and vegetable PRA is a weediness screening of the commodity itself. A taxon of plants for planting might be identified as a candidate for the NAPPRA category because it was identified as a potential quarantine pest in an assessment that was initiated by a request to import the taxon for human consumption. The PRA will indicate what sources led the risk assessor to make the determination that the taxon, if imported for planting, could be a quarantine pest; we would then consult those sources to determine whether to add it to the NAPPRA category.

It is important to note that APHIS would not automatically determine that a taxon should be added to the NAPPRA category simply because some scientific evidence indicates that the taxon is a potential quarantine pest. An obvious example is that if a foreign country has a taxon of plants for planting on its quarantine list, we would not use that evidence to add the taxon to the NAPPRA category if the taxon is already present and not under official control in the United States. Another example: If a weediness screening model predicted that a certain taxon was a potential quarantine pest, but other evidence indicated that the taxon was not likely to be a quarantine pest, we might not add that taxon to the NAPPRA category. The sources of scientific evidence described here would serve as a basis for judgment; the existence of evidence from these sources would not replace the judgment of PPQ technical experts.

For those sources of scientific evidence for which we have provided examples, it is important to note that the examples are not intended to be exhaustive. For example, we would consider evidence from all peer-reviewed scientific journals in determining whether to add a taxon of plants for planting to the NAPPRA category, not just those we have listed for the purposes of illustration. Similarly, we would consider information from scientific screening systems other than the WSSA's system, provided that we judged those screening

⁸ Parker, C., B.P. Caton and L. Fowler. 2007. "Ranking non-indigenous weed species by their potential to invade the United States: 'The Parker model.'" *Weed Science* 55:386–397.

⁹ See, for example, "Predicting Invasions of Woody Plants in North America" (Reichard and Hamilton, 1997).

systems to be as rigorous and useful as the WSSA's system.

Sources of Scientific Evidence for Taxa That Are Potential Hosts of Quarantine Pests

Proposed paragraph (d) would describe the criteria that APHIS would use in making the determination that a taxon of plants for planting is a potential host of a quarantine pest that should be added to the NAPPRA category. The following criteria would have to be fulfilled in order to make this determination:

1. The plant pest in question would have to be determined to be a quarantine pest, according to the definition of *quarantine pest* that we are proposing to add to the regulations; and

2. The taxon of plants for planting would have to be determined to be a potential host of that quarantine pest. However, reports of the host status of a taxon of plants for planting that are based on the taxon's role as a laboratory or experimental host may be discounted if we determine that they are not relevant to the actual conditions under which the taxon would be grown and imported.

There are several sources of scientific evidence that we anticipate using to make the determination that a taxon of plants for planting is a potential host of a quarantine pest, and thus that the taxon should be added to the NAPPRA category. The sources of evidence might include, but would not necessarily be limited to, the following:

- National and international pest alerts, reports, and quarantine lists.
- Reports and quarantine lists from State and local governments.
- The Plant Protection and Quarantine plant pest interception database. PPQ maintains a centralized database system that is designed to help manage the APHIS-PPQ port interception information more effectively. The system is designed to record and track all quarantine significant pests found (intercepted) during inspection.

- Articles from peer-reviewed scientific journals. Examples of journals that we might consult are *Phytopathology*, *Plant Disease*, *Mycologia*, *Plant Pathology*, *Journal of Economic Entomology*, and *Annals of Applied Biology*.

- Other scientific publications used as references, on topics like entomology, plant pathology, nematology, agronomy, and horticulture. Examples of references we might consult are the Commonwealth Agriculture Bureau International's Abstracts on the above topics and the American

Phytopathological Society's Compendium of Crop Diseases.

- Information from international databases, such as the CPC.
- Reports from regional plant protection organizations, such as NAPPO and the European and Mediterranean Plant Protection Organization, and from professional societies, such as the American Phytopathological Society and the Entomological Society of America.
- Any information available from other APHIS PRAs, particularly PRAs prepared to allow the importation of plants in growing media under § 319.37-8(e) and APHIS fruit and vegetable commodity PRAs. Besides containing a weediness screening component, as discussed earlier, APHIS fruit and vegetable commodity PRAs typically examine the scientific evidence and establishes a list of quarantine pests associated with all parts of the taxon of plants in question, even if not all of the plant would be imported for consumption. For example, while a pest associated with the stem of a plant may not affect importation of the fruit of that plant, it would be useful information in determining how to regulate that plant when it is imported for planting.

As with taxa of plants for planting that are potential quarantine pests, we would not automatically consider a taxon of plants for planting a potential host of a quarantine pest based on the existence of scientific evidence from any of these sources. Similarly, the examples listed here are also not intended to be exhaustive; for example, we would consider reports from all professional societies whose activities involve plants for planting, not just those that we have listed as examples. We invite public comment on the process of determining whether a taxon is a potential quarantine pest or a potential host of a quarantine pest.

Proposed Process for Removing a Taxon From the NAPPRA Lists

Paragraph (e) of proposed § 319.37-2a would state that any person may request that APHIS remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis. We would encourage persons who submit such a request to provide as much information as possible regarding the taxon and, if the taxon is a potential host of a quarantine pest, any quarantine pests that may be associated with it. It is likely that providing such information would allow us to complete a PRA more promptly than we would otherwise be able to.

Once a request has been submitted to remove a taxon of plants for planting from one of the NAPPRA lists, PPQ would conduct a PRA to determine the risk associated with the importation of that taxon. Upon completion of the PRA, PPQ would determine whether the importation of the taxon should be prohibited; allowed subject to special restrictions, such as a systems approach, treatment, or postentry quarantine; or allowed subject to the general requirements of the plants for planting regulations.

If the PRA supported a determination that importation of the taxon should be prohibited or allowed subject to special restrictions, we would then publish a proposed rule that would make the PRA available to the public and propose to take the action recommended by the PRA. We would consider any comments we received on the proposed rule and finalize the action through a final rule. This process would be identical to the process currently used to prohibit or place special restrictions on the importation of a taxon.

If the PRA supported a determination that importation of the taxon should be allowed subject to the general requirements of the plants for planting regulations, we would publish a notice announcing our intent to remove the taxon from the NAPPRA list and making the PRA supporting the taxon's removal available for public review. We would respond to comments in a manner similar to that proposed for responding to comments on notices adding taxa to the NAPPRA lists.

Allowing Importation of Taxa on the NAPPRA List Through Permits

The regulations in § 319.37-2(c) provide that articles listed as prohibited articles in paragraphs (a) and (b) of § 319.37-2 may nevertheless be imported if they are imported under a permit for prohibited articles, referred to in the regulations as a Departmental permit. Such articles must be imported by the USDA for experimental or scientific purposes and imported at the Plant Germplasm Quarantine Center or at a plant inspection station and must be labeled with the permit number. The permit must specify conditions for importation that are adequate to prevent the introduction of plant pests into the United States. These provisions exist because scientific and experimental research must be done on plants for planting in order to understand their biology and develop effective mitigation strategies for any risks their importation may pose.

Similar impetus would exist to import articles of taxa on the NAPPRA lists,

and we believe the conditions under which prohibited articles have been allowed to be imported would be effective at mitigating risks associated with importation of taxa on the NAPPRA lists as well. Therefore, we are proposing to amend § 319.37–2(c) to indicate that it would also apply to articles whose importation is not authorized pending pest risk analysis, as listed in accordance with proposed § 319.37–2a.

A similar matter arises in the regulations in § 319.37–12. This section indicates that a restricted article for importation into the United States may not be packed in the same container as a prohibited article. We would amend this requirement to indicate that a restricted article also may not be packed in the same container as an article whose importation is not authorized pending pest risk analysis.

Expanding the Scope of Plants for Planting Regulated in the Nursery Stock Subpart

The definition of *regulated plant* in § 319.37–1 reads: “Any gymnosperm, angiosperm, fern, or fern ally. Gymnosperms include cycads, conifers, and ginkgo. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts.” We include a definition of *regulated plant* in the regulations because the definition of *plant* is drawn from the Plant Protection Act and does not specify the scope of plants that APHIS regulates in the nursery stock subpart.

The definition of *regulated plant* does not include nonvascular green plants, such as mosses and green algae. However, in recent years mosses and green algae have been imported to be grown as ornamental plants, and commenters at our May 2005 meeting favored changing the regulations to explicitly include nonvascular green plants.

Therefore, we are proposing to revise the definition of *regulated plant* to read: “A vascular or nonvascular plant. Vascular plants include gymnosperms, angiosperms, ferns, and fern allies. Gymnosperms include cycads, conifers, and ginkgo. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts. Nonvascular plants include mosses, liverworts, hornworts, and green algae.” This proposed change would update the regulations to reflect the full range of plants currently being allowed for importation.

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 significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this proposed rule. It provides a cost-benefit analysis as required by Executive Order 12866, as well as an initial regulatory flexibility analysis, which considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. The full economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** at the beginning of this document for a link to Regulations.gov). You may request paper copies of the economic analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS–2006–0011 when requesting copies. The economic analysis is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this document).

The proposed rule would amend the regulations by establishing a new category of taxa of plants for planting whose importation is not authorized pending pest risk analysis. The NAPPRA category would include a list of taxa that have the potential to be quarantine pest plants, and therefore could be noxious weeds, and a list of taxa that are potential hosts for quarantine pests. This action is being proposed in order to provide phytosanitary protection commensurate with the risks posed by the importation of plants for planting.

Establishing the NAPPRA category would better protect U.S. agriculture and the environment from the introduction of plant pests and noxious weeds into the United States by allowing APHIS to take timely action to prevent their importation. Strengthening our safeguards against these invasive pests is expected to result in far-reaching economic and environmental benefits. In 1999, the National Plant Board reported that introduced invasive plant pests cost about \$41 billion annually in lost production and in prevention and control expenses. One study estimates that in U.S. agriculture, noxious weeds cause an overall reduction in crop yield of 12 percent,

which translates into a \$23.4 billion loss annually.¹⁰ It is important to note that invasive plant pests cause significant control expenses in addition to lost production. As a result of nonindigenous weeds, approximately \$3 billion is spent each year on herbicides that are applied to U.S. crops. Pimentel *et al.* (2000) further estimate that nonindigenous plant pathogens cause \$21 billion in U.S. crop losses each year, and that growers spend approximately \$500 million annually on fungicides to combat these pathogens. Crop losses to invasive pests and weeds and related control costs contribute to lower levels of domestic production and, in general, higher prices for consumers. Given the current rate of inflation, it is estimated that the introduction of invasive plant pests could cost between \$26.0 and 52.5 billion annually in lost production, prevention, and control costs depending on the value of the host crop. Furthermore, reduced crop yields could result in \$29 billion in damages annually.¹¹

Recent introductions of pests of plants demonstrate the need for proactively addressing the risks of invasive pests and the possible impacts we would avoid or lessen as a result of this proposed rule. For instance, in 2001 a plant pest called the citrus longhorned beetle (CLHB) was imported in a shipment of bonsai maple trees and detected in a Washington State nursery. The resulting response involved quarantining an area having a 1/2-mile radius around the infestation site, destroying about 1,000 trees, injecting surrounding trees with an insecticide to prevent the infestation's spread, and surveying of more than 20,000 trees in the quarantined area. As a result of these efforts, no new CLHB cases have been reported.¹²

Washington State officials responded aggressively to the CLHB introduction in light of the devastation caused on the East Coast by a similar introduced pest, the Asian longhorned beetle (ALB), which is believed to have been introduced via the importation of untreated wood packaging material. The fight to eradicate ALB has persisted for more than 11 years, and has involved the destruction of thousands of beetle-infested trees, and over 230 square miles

¹⁰ Pimentel, D., L. Lach, R. Zuniga, and D. Morrison. “Environmental and Economic Costs of Nonindigenous Species in the United States.” *BioScience* 50.1 (2000): 53–65.

¹¹ A Consumer Price Index (CPI) price as estimated and reported by the Bureau of Labor Statistics is used to measure the current rate of inflation based on 1999 and 2000 dollars.

¹² “Citrus Longhorned Beetle Eradication Project.” Washington State Department of Agriculture (<http://www.agr.wa.gov>).

have been quarantined, at a total cost of more than \$350 million in public funds including APHIS and State obligations. APHIS obligations from 1997 to 2008 total \$282 million, including more than \$113 million in Commodity Credit Corporation transfers. State obligations for New York, New Jersey, and Illinois during the same time period amounted to nearly \$68 million, and an additional \$11.6 million was made available for the 2009 fiscal year. APHIS has treated approximately 72,000 trees susceptible to ALB with an insecticide in New York and New Jersey in 2009.

As another example of a pest introduced via the importation of plants for planting, in February 2003 the plant pathogen *Ralstonia solanacearum* race 3 biovar 2 was detected in geraniums in four greenhouses in Illinois, Indiana, Michigan, and Wisconsin. This plant pathogen was traced back to infected geraniums imported from Kenya. The resulting response cost growers and regulators an estimated \$7 million and involved the destruction of over 2 million plants.¹³ These are just two examples of the costs incurred due to the introduction of invasive pests that this proposed rule would help to prevent.

Another benefit of the proposed NAPPRA process involves streamlining the APHIS-PPQ process for addressing the risk associated with the importation of potential plant pests and noxious weeds prior to their introduction into the United States. Under the current regulations, we typically provide notice of our intent to designate plants for planting as prohibited articles, or place additional restrictions on their importation, through proposed rules, and we often complete a pest risk analysis (PRA) to support such a designation. However, under the new NAPPRA program, we would prohibit the importation of a plant taxon that has been scientifically shown to be a potential quarantine pest or a potential host of a quarantine pest prior to its importation. As such, our protection against potential pests would be increased, thus providing sufficient protection to the environment and to U.S. agricultural products that are vulnerable to these pests.

The NAPPRA regulations would initially list taxa of plants for planting that, to our knowledge, have not yet been imported into the United States but present a potential risk. As the taxa included in the NAPPRA lists would

not be plants for planting currently imported into the United States, we presume they would not be economically important to any U.S. entities. While entities and individuals wanting to import these plants for planting in the future may be affected, this proposed rule establishing the NAPPRA category would not pose direct impacts on domestic entities, including producers.

Entities and individuals that potentially would be interested in importing these plants for planting in the future could be affected through the addition of taxa to the NAPPRA lists through the notice process. Such entities would comprise farm supplies merchant wholesalers (North American Industry Classification System [NAICS] code 424910); flower, nursery stock, and florists' supplies merchant wholesalers (NAICS code 424930); and nursery and garden centers (NAICS code 444220). Comparing statistics from the 2002 Economic Census with the Small Business Administration's size standards, we have determined that the majority of these entities would be considered small by SBA standards. However, it is important to note that there would be no immediate impact on these small entities as a result of this proposed rule, which would simply establish the NAPPRA regulations.

The proposed NAPPRA program, with its accompanying restrictions on the importation of plants, may also have an economic effect on plant societies. Membership fees associated with these societies allow members to engage in the exchange of seed or plant material. We are unable to classify the extent of potential economic effects on such entities at this time; however, we welcome public comment that would clarify our understanding on this matter.

The proposed rule could affect the workload of other Federal agencies. Plant inspection activity at ports of entry conducted by the Bureau of Customs and Border Protection and by PPQ may become more stringent to ensure that plant taxa on the NAPPRA list are not allowed entry. Accordingly, PPQ staff would develop identification aids to assist port inspectors in targeting taxa on the NAPPRA list. Importers, including those Federal agencies that do research on NAPPRA taxa, would have to obtain a special permit prior to importing plants for planting that are listed under NAPPRA. As a result, depending on the number of species that are of interest for research purposes and the taxa included on one of the NAPPRA lists, PPQ's workload for processing permit applications could increase. Additionally, in the future, as

PPQ receives requests to remove taxa from the NAPPRA list, the workload for processing PRAs could increase.

Under the proposed rule, APHIS would be able to more efficiently respond to immediate risks associated with the importation of plants for planting. This proposed rule would establish a framework for restricting the importation of specific taxa of plants for planting in the future.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule, and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 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.

Subpart—Plants for Planting

2. The heading of the subpart consisting of §§ 319.37 through 319.37–14 is revised to read as set forth above.

§ 319.37 [Amended]

3. In § 319.37, paragraph (b) is amended by removing the words “plant pests” and adding the words “quarantine pests” in their place; and by removing the words “plant pest” and adding the words “quarantine pest” in their place.

4. Section 319.37–1 is amended as follows:

a. By adding, in alphabetical order, new definitions of *noxious weed*, *official control*, *planting*, *plants for planting*, *quarantine pest*, and *taxon (taxa)*.

b. By removing the definitions of *nursery stock* and *plant pest*.

¹³“Biology and Pathogenesis of *Ralstonia Solanacearum* Race 3 on Geraniums,” 2004 Annual Report. Beltsville, MD: Agricultural Research Service.

c. In the definition of *clean well water*, by removing the words “plant pathogens or other plant pests” and adding the words “quarantine pests” in their place.

d. In the definition of *phytosanitary certificate of inspection*, by removing the words “injurious plant diseases, injurious insect pests, and other plant pests” and adding the words “quarantine pests” in their place.

e. In the definition of *prohibited article*, by removing the words “nursery stock, plant, root, bulb, seed, or other plant product” and adding the words “plant for planting” in their place.

f. By revising the definitions of *regulated plant* and *restricted article* to read as set forth below.

§ 319.37–1 Definitions.

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

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

Restricted article. Any plant for planting, excluding any prohibited articles listed in § 319.37–2(a) or (b) of this subpart, any articles whose importation is not authorized pending pest risk analysis under § 319.37–2a of this subpart, and excluding any articles regulated in §§ 319.8 through 319.24 or 319.41 through 319.74–4 and any articles regulated in part 360 of this chapter.

* * * * *

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

* * * * *

§ 319.37–2 [Amended]

5. Section 319.37–2 is amended as follows:

a. In paragraph (a), in the third column heading of the table, by removing the words “Plant pests” and adding the words “Quarantine pests” in their place.

b. In paragraph (c) introductory text, by adding the words “, and any article listed in accordance with § 319.37–2a of this subpart as an article whose importation is not authorized pending pest risk analysis,” after the word “section”.

6. A new § 319.37–2a is added to read as follows:

§ 319.37–2a Taxa of regulated plants for planting whose importation is not authorized pending pest risk analysis.

(a) *Determination by the Administrator.* The importation of certain taxa of plants for planting potentially poses a risk of introducing quarantine pests into the United States. Therefore, the importation of these taxa is not authorized pending the completion of a pest risk analysis. Lists of these taxa may be found on the Internet at http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37.shiml. There are two lists of taxa whose importation is not authorized pending pest risk analysis: A list of taxa of plants for planting that are potential quarantine pests, and a list of taxa of plants for planting that are potential hosts of quarantine pests. For taxa of plants for planting that have been determined to be potential quarantine pests, the list includes the names of the taxa. For taxa of plants for planting that are potential hosts of quarantine pests, the list includes the names of the taxa, the foreign places from which the taxa’s importation is not authorized, and the quarantine pests of concern.

(b) *Addition of taxa.* A taxon of plants for planting may be added to one of the lists of taxa not authorized for

importation pending pest risk analysis under this section as follows:

(1) *Data sheet.* APHIS will publish in the **Federal Register** a notice that announces our determination that a taxon of plants for planting is either a potential quarantine pest or a potential host of a quarantine pest. This notice will make available a data sheet that details the scientific evidence APHIS evaluated in making the determination that the taxon is a potential quarantine pest or a potential host of a quarantine pest. The data sheet will include references to the scientific evidence that APHIS used in making the determination. In our notice, we will provide for a public comment period of a minimum of 60 days on our addition to the list and specify a proposed effective date for the addition of the taxon to the list of taxa of plants for planting whose importation is not authorized pending pest risk analysis.

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

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

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

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

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

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

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

fulfilled in order to make this determination:

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

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

(e) *Removing a taxon from the list of taxa not authorized pending pest risk analysis.* Any person may request that APHIS remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis. Persons who submit such a request are encouraged to provide as much information as possible regarding the taxon and any quarantine pests that may be associated with it. APHIS will conduct a pest risk analysis in response to such a request. The pest risk analysis will examine the risk associated with the importation of that taxon.

(1) If the pest risk analysis supports a determination that importation of the taxon be prohibited or allowed subject to special restrictions, such as a systems approach, treatment, or postentry quarantine, APHIS will publish a proposed rule making the pest risk analysis available to the public and proposing to take the action recommended by the pest risk analysis.

(2) If the pest risk analysis supports a determination that importation of the taxon be allowed subject to the general restrictions of this subpart, APHIS will publish a notice announcing our intent to remove the taxon from the NAPPRA list and making the pest risk analysis supporting the taxon's removal available for public review.

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

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

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

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

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

risk analysis. APHIS will subsequently publish a new notice announcing the availability of the revised pest risk analysis.

§ 319.37–5 [Amended]

7. In § 319.37–5, paragraph (i) introductory text is amended by removing the words “plant diseases” and adding the words “quarantine pests” in their place.

§ 319.37–7 [Amended]

8. Section 319.37–7 is amended as follows:

a. In paragraph (c)(2)(iii), by removing the words “exotic pests” and adding the words “quarantine pests” in their place.

b. In paragraph (c)(2)(iv), by removing the words “plant pests that are not known to exist in the United States” and adding the words “quarantine pests” in their place.

c. In paragraph (d)(5), by removing the words “injurious plant disease, injurious insect pest, or other plant pest” and adding the words “quarantine pest” in their place.

d. In paragraphs (f)(1) and (f)(2), by removing the words “plant pests” each time they occur and adding the words “quarantine pests” in their place.

e. In paragraphs (f)(1) and (f)(2), by removing the words “plant pest(s)” each time they occur and adding the words “quarantine pest(s)” in their place.

§ 319.37–8 [Amended]

9. Section 319.37–8 is amended as follows:

a. In paragraph (e)(2) introductory text, by removing the words “disease and pests” and adding the words “quarantine pests” in their place.

b. In paragraph (e)(2)(ii), by removing the words “plant pests and diseases” and adding the words “quarantine pests” in their place; and by removing the words “injurious plant diseases, injurious insect pests, and other plant pests” and adding the words “quarantine pests” in their place.

c. In paragraph (e)(2)(iv)(B), by adding the word “quarantine” before the word “pests.”

d. In paragraph (e)(2)(vii), by removing the words “plant pests” and adding the words “quarantine pests” in their place.

e. In paragraph (e)(2)(viii), by removing the words “plant pests and diseases” and adding the words “quarantine pests” in their place.

f. In paragraph (e)(2)(xi)(B) introductory text, by removing the words “plant pests” and adding the words “quarantine pests” in their place.

g. In paragraphs (f)(3)(i), (f)(3)(vii), (f)(3)(viii), and (f)(4), by removing the

words “injurious plant diseases, injurious insect pests, and other plant pests” and adding the words “quarantine pests” in their place.

10. Section 319.37–12 is revised to read as follows:

§ 319.37–12 Prohibited articles and articles whose importation is not authorized pending pest risk analysis accompanying restricted articles.

A restricted article for importation into the United States may not be packed in the same container as an article whose importation into the United States is prohibited by this subpart or in the same container as an article whose importation is not authorized pending pest risk analysis under § 319.37–2a of this subpart.

§ 319.37–13 [Amended]

11. Section 319.37–13 is amended as follows:

a. In paragraph (b), by removing the words “injurious plant disease, injurious insect pest, or other plant pest, new to or not theretofore known to be widely prevalent or distributed within and throughout the United States” and adding the words “quarantine pests” in their place; and by removing the words “injurious plant diseases, injurious insect pests, or other plant pests” and adding the words “quarantine pests” in their place.

b. In paragraph (c), by removing the words “pests and Federal noxious weeds” and adding the words “quarantine pests” in their place.

Done in Washington, DC, this 17th day of July 2009.

Cindy Smith,

Acting Deputy Under Secretary for Marketing and Regulatory Programs.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 119, 121, 125, 135, 141, 142, and 145

[Docket No. FAA–2009–0671; Notice No. 09–06]

RIN 2120–AJ15

Safety Management System

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM), request for comments.

SUMMARY: This ANPRM solicits public comments on a potential rulemaking