

# Rules and Regulations

Federal Register

Vol. 72, No. 150

Monday, August 6, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 319, 330, and 340

[Docket No. 03–002–3]

RIN 0579–AC51

#### Importation of Nursery Stock

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations on importing nursery stock to eliminate various restrictions on the importation of kenaf seed; to establish programs for the importation of approved plants from the Canary Islands and from Israel; to require an additional declaration on the phytosanitary certificate accompanying blueberry plants imported from Canada; to require that phytosanitary certificates include the genus names of the restricted articles they accompany, and the species names when restrictions apply to species within a genus; to change the phytosanitary certificate requirements for several restricted articles; to reduce the postentry quarantine growing period for *Hydrangea* spp.; and to update the list of ports of entry and Federal plant inspection stations. We are also making several other changes to update and clarify the regulations and improve their effectiveness. These changes are necessary to relieve restrictions that appear unnecessary, update existing provisions, and make the regulations easier to understand and implement.

**DATES:** *Effective Date:* September 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold T. Tschanz, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700

River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–5306.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

On December 15, 2005, we published in the **Federal Register** (70 FR 74215–74235, Docket No. 03–002–1) a proposal<sup>1</sup> to make several amendments to the nursery stock regulations. We solicited comments concerning the proposal for 60 days ending February 13, 2006. We reopened and extended the deadline for comments until March 31, 2006, in a document published in the **Federal Register** on February 28, 2006 (71 FR 9978, Docket No. 03–002–2). We received 25 comments by that date, from 23 commenters, including private citizens, State and local governments, industry organizations, individual industry companies, and foreign national plant protection organizations. The comments are discussed below by topic.

##### General Comments

Two commenters asked how the proposed rule fits into the ongoing revision of the nursery stock regulations, which was first discussed in an advanced notice of proposed rulemaking (ANPR) that was published in the **Federal Register** on December 10, 2004 (69 FR 71736–71744, Docket No. 03–069–1).

We are continuing with our efforts to revise the nursery stock regulations. As the commenters noted, the revision will take several years to fully implement. We anticipate completing the revision in stages. As we implement the revisions, we will continue to enforce the current regulations. The changes in the proposed rule were designed to

address specific issues that have arisen as we continue to enforce the regulations.

One commenter expressed concern about the introduction of invasive species into the United States via the importation of nursery stock and stated that any species of nursery stock being imported into the United States should be studied for 1 year prior to importation. The commenter also suggested that a tax be imposed on the importation of nursery stock to help defray the cost of eradicating invasive species.

As discussed in the December 2004 ANPR, we are considering whether to adopt more restrictive regulations for the importation of nursery stock. We may in the future elect to establish regulations that will allow us to take a precautionary approach to the importation of species that have not been imported before. In response to the commenter’s second suggestion, APHIS does not have the authority to impose a tax on the importation of nursery stock; we are only authorized to charge user fees for services we provide.

##### Definition of *From*

The definition of *from* in § 319.37–1 currently provides that an article is considered to be “from” any country or locality in which it was grown. The current regulations also provide that an article imported into Canada from another country or locality shall be considered as being solely “from” Canada if it is imported into the United States directly from Canada after having been grown for at least 1 year in Canada; has never been grown in a country from which it would be a prohibited article or from which it would be subject to special foreign inspection, certification, treatment, or other requirements; was not grown in a country or locality from which it would be subject to postentry quarantine requirements, unless it was grown in Canada under postentry growing conditions equivalent to those specified for the article in § 319.37–7; and was not imported into Canada in growing media.

We proposed to replace this definition with a new definition of *from*, in order to remove the language that imposed special restrictions on the importation of regulated articles from Canada. The proposed definition of *from* read: “An article is considered to be “from” an exporting country or area when it was

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2005-0081>.

grown or propagated only in the exporting country or area, or when it was grown in the exporting country or area after it entered the exporting country or area from another country or area under conditions that are equivalent to those that would be required by the United States if the plant were imported into the United States directly from any of the countries or areas where the plant was grown prior to its entry into the exporting country or area.”

We received several comments on our proposed definition. Many of these commenters were concerned that the proposed definition might weaken our protections against the importation of potentially risky nursery stock. Three commenters asked us to clarify whether articles prohibited from another country would continue to be prohibited even after importation to a second country, regardless of the time that the articles remained in that country.

Some commenters expressed concern that the proposed definition would be difficult to enforce, since the national plant protection organization (NPPO) of an exporting country would have to keep track of any plant material that entered its country in case it was reexported at some point in the future. Other commenters expressed general concern about whether the restrictions on the importation of nursery stock in general are adequate to prevent the introduction of plant pests, when it can be difficult to determine what pests a plant has been exposed to.

We agree that these commenters have identified significant issues with our proposed definition of *from*. We are withdrawing that proposed change in this final rule. We will revisit this issue in a separate proposed rule.

#### Definition of Preclearance

We proposed to add a definition of *preclearance* to § 319.37–1. The definition we proposed to add is consistent with the definition of that term in the International Plant Protection Convention’s (IPPC) 2002 Glossary of Phytosanitary Terms (International Standards for Phytosanitary Measures [ISPM] publication number 5).<sup>2</sup> The proposed definition read: “Phytosanitary certification and/or clearance in the country in which the articles were grown, performed by or under the regular supervision of APHIS.” Our intention was to clarify the conditions

under which sampling and inspection can take place in the country of origin in a preclearance program.

One commenter supported the expression of our intent to provide regular supervision in preclearance and asked whether the word “regular” meant that APHIS would supervise at set intervals, rather than a random basis.

We have always provided regular supervision of inspection and clearance during preclearance according to the terms of the workplan developed between APHIS and the NPPO of the country of origin of the precleared articles.<sup>3</sup> Typically, the workplan requires APHIS’ participation in preclearance activities, either at set intervals or at specific points during the production process for the articles.

Two commenters recommended that preclearance sampling and inspection at the production site be one of the main elements of plant protection employed by APHIS. These commenters stated that this would require a greater commitment to assigning trained personnel to work on location, perhaps stationing APHIS employees permanently at foreign sites of production.

We implement preclearance procedures based on the type of restricted articles being precleared for importation and the level of APHIS involvement we believe is warranted. This may involve, as the commenter suggests, stationing APHIS employees permanently at foreign sites of production or treatment facilities, or sending APHIS personnel to production sites for specific tours of duty to survey and inspect at the appropriate times during the production process. It may also involve APHIS employees consulting with employees of the NPPO of the country of origin regarding standards or requirements for phytosanitary certification. For any preclearance program, the details of APHIS supervision are specified in the workplan developed between APHIS and the NPPO of the country of origin.

One commenter was concerned that the proposed definition would not accommodate a bulb export program currently under development in which bulbs would be produced in certified fields in Germany and Poland, thus meeting the requirements in § 319.37–5(a), and then moved to the Netherlands for processing prior to export. In this program, APHIS inspectors would preclear bulbs in the Netherlands, rather

than in the country of origin of the articles being exported.

The program the commenter referred to has not yet been approved by the parties that would participate in it. If the program is approved, we will make any changes to our regulations that may be necessary for its implementation.

We are making one change to our proposed definition of *preclearance* in this final rule. The proposed definition, taken directly from the IPPC Glossary of Phytosanitary Terms, referred to APHIS providing phytosanitary certification in the country in which an article of nursery stock to be imported is grown. However, under our arrangements with foreign NPPOs, only the foreign NPPO issues phytosanitary certificates; APHIS preclearance officers instead inspect articles to ensure that they meet the requirements of the regulations. Therefore, in this final rule, we have replaced the reference to phytosanitary certification with a reference to phytosanitary inspection.

#### Plant Protection Act Definitions

We proposed to add definitions of two terms to the regulations and to revise the definitions of three other terms to make those definitions consistent with the definitions found in title IV of the Agricultural Risk Protection Act of 2000, known as the Plant Protection Act (7 U.S.C. 7701 *et seq.*). One of the terms that we proposed to add to the regulations was *plant*, which we proposed to define, following the Plant Protection Act, as: “Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.”

One commenter recommended that the definition of *plant* include cell cultures in solution.

The definition includes any plant (including any plant part) for or capable of propagation. This category includes cell cultures in solution, even though cell cultures in solution are not listed as examples of members of the category. (In the definition, the use of the term “includes” indicates that the list is not exhaustive.) We are not changing the proposed definition to include cell cultures in solution as an example because we believe it is important for the regulations to be consistent with the Plant Protection Act.

Because the definition of *plant* that we proposed to add to the regulations is broader than the scope of the plants we regulate in the nursery stock regulations, we also proposed to add a definition of *regulated plant* to the regulations that would include only

<sup>2</sup> ISPMs may be viewed on the World Wide Web at <https://www.ippc.int/IPPC/En/default.jsp>. Click on the “Standards” link on the home page to view the ISPMs.

<sup>3</sup> We published in the **Federal Register** a notice providing background information on bilateral workplans on May 10, 2006 (71 FR 27221–27224, Docket No. APHIS–2005–0085).

those plants regulated in the nursery stock regulations. This proposed definition read: "Any gymnosperm, angiosperm, fern, or fern ally. Gymnosperms include cycads, conifers, and ginkgo. Angiosperms include any flowering plant. Fern allies include club moss, horsetail, whisk fern, spike moss, and quillwort."

One commenter asked why the term "regulated" was used and stated that the proposed definition appeared to be even broader than the proposed definition of *plant*.

We are using the term "regulated" to make it clear that the scope of plants included in the nursery stock regulations is limited to the plants included in the definition of *regulated plant*. We believe that the meaning of the term "regulated" is apparent to most readers of the regulations. The definition of *regulated plant* is narrower in scope than the definition of *plant*; the former excludes nonvascular plants such as mosses and green algae, to name two examples.

We are making one minor change to the proposed definition of *regulated plant* in this final rule. To make the last sentence of the definition of *regulated plant* consistent with the second sentence of the definition, we are making the examples in that sentence plural rather than singular.

We also proposed to revise the definition of *plant pest* to make it consistent with the definition of that term in the Plant Protection Act. The definition had read: "The egg, pupal, and larval stages as well as any other living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants." We proposed to revise it to read: "Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of these articles."

One commenter noted that the proposed definition, which included nonhuman animals, was broader in scope than the previous definition, which only included invertebrate animals.

Again, our intention in revising the definition of *plant pest* was to make that definition consistent with the definition of that term in the Plant Protection Act. We have no intention of broadening the scope of the pests we regulate or issue permits for at this time.

We are making one other minor change to the Plant Protection Act-derived definitions we proposed. Like the current definition of *regulated article*, the definition of *regulated article* in the December 2005 proposed rule began: "Any class of nursery stock or other regulated plant, root, bulb, seed, or other plant product \* \* \*" The words "class of nursery stock or other" are redundant, and we are removing them in this final rule.

#### *Plants In Vitro*

We proposed to remove several restrictions on plants *in vitro*. The IPPC's 2002 Glossary of Phytosanitary Terms defines plants *in vitro* as "plants in an aseptic medium in a closed container." Specifically:

- We proposed to amend § 319.37–3(a)(5) of the regulations to exempt shipments of plants *in vitro* from the requirement that lots of 13 or more articles offered for importation into the United States must be accompanied by a written permit issued by a Plant Protection and Quarantine (PPQ) inspector. This exemption would not apply if importation of the plants is restricted or prohibited elsewhere in the nursery stock regulations. This would also mean that plants *in vitro* could enter the United States at any port of entry authorized in 7 CFR part 330 for articles not required to be imported under a written permit.

- We also proposed to amend § 319.37–4(a) of the regulations to exempt plants *in vitro* from the requirement that restricted articles offered for importation into the United States be accompanied by a phytosanitary certificate from the country of origin, unless their importation is restricted or prohibited elsewhere in the nursery stock regulations. These changes would make plants *in vitro* whose importation is not otherwise restricted or prohibited generally admissible into the United States.

To accomplish these changes, we proposed to add a definition of *plants in vitro* to the regulations in § 319.37–1. The proposed definition was identical to the IPPC definition quoted above.

Six commenters recommended that we not proceed with these proposed changes. The commenters focused on the fact that plants *in vitro* pose an extremely low risk only if they are

produced from plants that have been determined to be free of plant pests and carefully monitored throughout the production process to ensure their continued freedom from plant pests. Along these lines, one commenter stated that some fastidious and cryptic organisms can survive the process if the source plant is infected. The commenter cited *Odontoglossum* ring spot virus and *Cymbidium* mosaic virus in orchids as good examples. This commenter further stated that the fact that a plant is growing in aseptic conditions does not imply that it is free of foliar nematodes. Other commenters noted that the proposed regulations placed no conditions on the importation of plants *in vitro* other than being imported in an aseptic medium; under the proposed regulations, there would be no way to verify that the proper production practices had been followed, or to trace the plants back to their production site if they proved to be affected by plant pests. Two commenters stated that plants *in vitro* should be generally admissible, but only if they are produced in accordance with a general clean stock program, as described in the December 2004 ANPR.

Based on these comments, we are withdrawing the proposed changes that would have made plants *in vitro* generally admissible. They will continue to be subject to the permit and phytosanitary certificate requirements. We agree with the commenters who stated that plants *in vitro* produced in a program designed to ensure pest freedom would pose an extremely low risk of introducing a quarantine pest into the United States. We are considering developing such a program and adding it to the regulations. However, in order to verify that producers of plants *in vitro* comply with the requirements of such a program, we would need to require that articles produced in such a program be accompanied by a phytosanitary certificate.

One commenter recommended that APHIS allow the importation of plants *in vitro* even if the importation of their genus or species is otherwise prohibited.

This may be possible if the plants are produced in accordance with a program of the type described above. We will consider this issue as part of our deliberation on whether to develop such a program.

In a related matter, we proposed to amend § 319.37–8(c) of the regulations, which had stated: "A restricted article growing solely in agar or in other transparent or translucent tissue culture medium may be imported established in

such growing media.” We proposed to remove the requirement that the growing medium be transparent or translucent in order to allow the use of charcoal in the growing medium. Charcoal is commonly used by importers of plants *in vitro* as a detoxifying agent; if it is used as an additive in growing media, it will still be easy to determine whether the growing media meets the aseptic standard prescribed in the definition of *plants in vitro*, because any bacteria in the growing media would quickly reproduce and form a large mass. Therefore, we proposed to revise this paragraph to read: “Plants *in vitro* may be imported in their growing media.”

Two commenters specifically addressed this issue, noting that our statement that bacteria in media would “quickly reproduce and form a large mass” assumes that the growing requirements in the regulations related to plant-associated bacteria are met when plants are produced in *in vitro* media. The commenters stated that this is not the case.

The regulations do not contain any general requirements for plants produced in *in vitro* media. The previous requirement was intended to aid inspection of plants grown and imported in their growing media. If we become aware of any specific risks related to the importation of certain plants in growing media, we will amend the regulations accordingly to address those specific risks. However, as a general requirement, we believe the use of growing media with a charcoal additive will still allow for effective inspection of the growing media upon importation, for the reasons stated in the proposed rule. We are making no changes to the proposed rule in response to this comment.

Because we are not adding a definition of plants *in vitro* to the regulations at this time, we need to revise our proposed wording. This final rule therefore modifies paragraph (c) of § 319.37–8 to read: “A restricted article growing solely in agar or in other tissue culture medium may be imported established in such growing media.”

#### *Genus and Species Name on Phytosanitary Certificates*

The regulations in § 319.37–4(a) currently require that any restricted article offered for importation into the United States be accompanied by a phytosanitary certificate of inspection, with certain exceptions. We proposed to additionally require that the phytosanitary certificate include the genus and species name of the restricted article that it accompanies.

Several commenters stated that the proposed requirement did not make any allowance for plants gathered on plant exploration research expeditions, where species data may not be available; unnamed, recently discovered species; or interspecific or intergeneric hybrids, including naturally occurring seedlings from unknown parents. One of these commenters suggested that instead we use the language in the IPPC’s ISPM No. 12, “Guidelines for Phytosanitary Certificates,” which recommends that plants and plant products be identified on a phytosanitary certificate using accepted scientific names, at least to genus level but preferably to the species level. Another commenter suggested allowing the cultivar name of a plant to be provided as an alternative to the species name. One commenter suggested establishing a system through which plants whose taxonomic information was unknown could be imported under permit, with monitoring of the destination and disposal of the material.

Other commenters opposed the change entirely. Two commenters asked why it was necessary to require species information to be listed in cases when our restrictions are applied at the genus level. Two other commenters stated that many genera of certain plant types can have dozens of species. These commenters expressed concern that the need for NPPO inspection staff to verify all plants in a consignment to the species level will cause unnecessary delays in the inspection and consequently the shipping process and will detract from the inspector’s primary objective to detect and identify diseases and insect pests. One of these commenters also expressed concern that use of the species name might cause identification errors that could result in delays when restricted articles are offered for importation. The commenters requested that the proposal be amended to require that only those species that have special requirements or are regulated by the Convention of International Trade in Endangered Species should be identified on the phytosanitary certificates by both genus and species.

We agree with the commenters who stated that we need to provide for situations in which the species name is not known, and we understand the burden that listing species names can impose. However, some requirements in the regulations place restrictions on specific species or cultivars within a genus; for example, the regulations in § 319.37–5(b) restrict the importation of certain species within the genus *Prunus* based on whether they are immune to

plum pox virus, and the regulations in § 319.37–2(a) prohibit the importation of *Berberis* spp. except for species and cultivars that have been designated as resistant to black stem rust. Inspectors enforcing such regulations need to be able to quickly distinguish what species or cultivar is being offered for importation in order to determine whether the plants meet the requirements in the regulations.

To ensure that inspectors have the information they need while accommodating the need for exceptions when species data are not available, we have changed the proposed requirement in this final rule. Instead of requiring that the genus and species name of a restricted article offered for importation be included on the phytosanitary certificate accompanying that article, this final rule requires that, when the regulations place restrictions on individual species or cultivars within a genus, the phytosanitary certificate must also identify the species or cultivar of the article it accompanies. Otherwise, identification of the species is strongly preferred, but not required. In cases in which species is not known, the phytosanitary certificate may identify the cultivar name of the restricted article it accompanies, except where the regulations place restrictions on individual species.

Further, we are requiring that intergeneric and interspecific hybrids be designated by placing the multiplication sign “x” between the names of the parent taxa. If the hybrid is named, the multiplication sign may instead be placed before the name of an intergeneric hybrid or before the epithet in the name of an interspecific hybrid.

We are not making an exception in the phytosanitary certificate regulations for unnamed or unknown articles, as the information we have indicates that they have been imported extremely infrequently. Persons wishing to import unnamed or unknown articles into the United States are encouraged to contact PPQ’s Permit Unit for information about importing such articles through a departmental permit. This would allow the unnamed or unknown articles to be imported for identification or research purposes, similar to the conditions described by one of the commenters.

The regulations in this final rule indicate that we strongly prefer that species be listed on the phytosanitary certificate, even when listing species is not required. We continue to request this information for data-gathering purposes. We need to know the number, size, and volume of imports of nursery stock in order to better assess what overall risks presented by plants for

planting need to be better addressed. This effort is part of the Q-37 revision mentioned earlier in this document. In addition, requesting that species information be entered where known is consistent with IPPC guidelines, as discussed earlier.

In discussing this change, the preamble of the proposed rule stated that "having the genus and species name available would allow inspectors to easily identify restricted articles presented for importation and thus better assess any risks that may be associated with their importation." One commenter stated that a risk assessment should be performed prior to importation of the articles in question, unless it is meant to give the individual inspector a management tool to make a selection of the products presented for importation.

As the commenter stated, our inspectors are not conducting risk assessments at the ports; rather, they make decisions about how to apply the regulations, which are the result of risk assessments. The phytosanitary certificates that have accompanied restricted articles may not have enough information to allow an inspector to determine what restrictions apply to its importation in cases where restrictions apply to species or cultivars within a genus. The proposed change was intended to address this problem. We appreciate the opportunity to clarify this point.

One commenter, addressing the fact that we need data on which species are imported to further our efforts to revise the nursery stock regulations, stated that the data should be obtained from forms other than the phytosanitary certificate.

The Paperwork Reduction Act obligates us to minimize paperwork burden on stakeholders; requiring genus and species data to be submitted on a different form would be an unjustifiable duplicate paperwork burden. We are making no further changes to the proposed rule in response to these comments.

#### *Phytosanitary Certificates for Bulbs From the Netherlands*

We proposed to amend paragraph § 319.37-4(a) of the regulations, which requires that most restricted articles imported into the United States be accompanied by a phytosanitary certificate, to allow small individual shipments of bulbs from the Netherlands to enter with a special certificate related to a phytosanitary certificate. The special certificate would list a serial number that would refer to a phytosanitary certificate held by the NPPO of the Netherlands. The special

certificate would also list the scientific name of the bulb, the bulbs' country of origin, and an expiration date after which the special certificate could no longer be used in lieu of a phytosanitary certificate. We proposed that the expiration date for the special certificates would be 4 weeks after the issuance of the phytosanitary certificate held by the NPPO of the Netherlands.

Commercial shipments of bulbs from the Netherlands must be precleared for entry into the United States by a PPQ inspector. In addition, under § 319.37-5(a), all bulbs imported from the Netherlands must be accompanied by a phytosanitary certificate with an additional declaration that the bulbs offered for importation were grown on land that has been sampled and microscopically inspected by the plant protection organization of the Netherlands and found to be free from the potato cyst nematodes *Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens within the past 12 months.

The proposed special certificate would accompany small individual shipments of bulbs imported into the United States in passenger baggage; the special certificate would be easier for individuals to obtain than a full phytosanitary certificate. The clearance process at the port of entry would continue to serve as an additional mitigation against the risk of introduction of nematodes into the United States.

One commenter was concerned that, while the special certificate would be linked to a phytosanitary certificate issued, held, and retrievable upon request by the NPPO of the Netherlands, the proposed regulations did not contain any provisions linking the bulbs imported under the special certificate to the requirements of § 319.37-5(a). Thus, the commenter stated, bulbs imported under the proposed special certificate might have originated in someone's backyard. Two other commenters stated that the proliferation of special certificates could allow these documents to be misused and thus increase the risk of introduction of potato cyst nematodes into the United States.

All bulbs imported from the Netherlands are subject to the requirements in § 319.37-5(a). Special certificates would be assigned to lots of bulbs inspected and certified under the phytosanitary certificate issued for that particular lot as part of the preclearance process. A phytosanitary certificate would not be issued for a lot of bulbs unless the bulbs in the lot meet all the requirements in the regulations for

importation into the United States. The special certificates will serve as an indication that the bulbs have been inspected and certified, and they will be related to a specific phytosanitary certificate in all cases. Any fraud committed using the special certificates would be investigated by APHIS' Investigation and Enforcement Services.

We do not believe it would be prudent to specifically refer to § 319.37-5(a) in the regulations governing the issuance and use of the special certificates, as the phytosanitary certification requirements for bulbs from the Netherlands may change over time and thus may be contained in different sections of the regulations. We are making no changes to the proposed rule in response to these comments.

One commenter cited high rejection rates in recent years for shipments of bulbs from the Netherlands and stated that using special certificates would not be advisable if the phytosanitary certificates were already suspect.

Our records do not indicate high rejection rates either for bulbs that are inspected and precleared in the Netherlands or for bulbs from the Netherlands that have been inspected and released at a U.S. port of entry. Bulbs entering the United States with a special certificate would have been inspected by the NPPO of the Netherlands. The special certificate indicates that the bulbs have been inspected and a phytosanitary certificate was issued for the lot of bulbs. The special certificate is traceable to the actual phytosanitary certificate on file in the Netherlands. These bulbs would also be subject to inspection when the passenger arrives at a United States port of entry. If there are phytosanitary problems with bulbs under the special certificate, we would notify the NPPO of the Netherlands for corrective action.

One commenter, the Netherlands NPPO, stated that the proposed program agreed to by APHIS and the Netherlands NPPO had specified that the special certificates would be valid for 6 weeks, rather than 4.

The commenter is correct, and we have made that change in this final rule.

The Netherlands NPPO also stated that it and APHIS had agreed to a workplan that states that no phytosanitary certificates, either originals or copies, will accompany shipments of bulbs that have been precleared in the Netherlands; they are given to the APHIS inspector in the Netherlands or mailed to APHIS offices. However, the language in § 319.37-5(a) states that the phytosanitary certificate must accompany the bulbs "at the time of arrival at the port of first arrival in the

United States,” which contradicts the workplan.

The commenter is correct that the specific language “at the time of arrival at the port of first arrival in the United States” would not allow the program to work as proposed. We are removing that language from § 319.37–5(a) in this final rule. The phytosanitary requirements in § 319.37–5(a) will remain otherwise unchanged.

One commenter expressed concern that the current preclearance program for bulbs from the Netherlands only addresses the specific nematode pests cited earlier. The commenter stated that imported bulbs can carry other pests that are of concern to nurseries, commercial flower growers, State departments of agriculture, and industries other than the nursery industry. The commenter cited *Ditylenchus dipsaci* and *D. destructor* as two pests that are of concern to the potato industry and that are regulated by some State departments of agriculture. The commenter urged APHIS to expend more effort on ensuring that regulated nonquarantine pests are not imported into the United States via bulbs and other nursery stock.

At this time, APHIS has not identified any regulated nonquarantine pests and has not established regulations for their official control. In order for APHIS to restrict the importation of regulated nonquarantine pests under the IPPC, we would have to identify regulated nonquarantine pests (including providing scientific justification for regulating them) and establish official control mechanisms. We have not yet done so. We are considering whether to develop procedures for identifying such pests and whether to establish regulations to control their importation. We cannot take any action against regulated nonquarantine pests in this final rule.

#### *Importation of Certain Seeds From Canada*

We proposed to add a new paragraph (d) to § 319.37–4 of the regulations to allow seed exported from Canada that meets certain conditions to be imported into the United States without a phytosanitary certificate. To be eligible for this exemption, Canadian exporters of seed would have to register with and participate in a seed export program that would be established by the Canadian Food Inspection Agency (CFIA).

One commenter asked whether Canada would establish a similar program to allow U.S. seed to be exported to Canada without a phytosanitary certificate.

We evaluated the Canadian request for a seed export program on the basis of whether such importation would increase the risk of introducing a seed-borne plant pest into the United States. Our evaluation concluded that, under the conditions specified in the proposal, the absence of a phytosanitary certificate would not increase that risk. Whether Canada would reciprocate was not a subject of our evaluation.

One commenter asked whether imposing these requirements on the importation of Canadian seed was unlawful discrimination against Canadian seed exports.

This change liberalizes trade by removing the requirement for a phytosanitary certificate while providing other conditions that maintain phytosanitary security. We proposed this change at the request of the Canadian NPPO, so we are assuming that they do not believe that this change discriminates against seed exports from their country. Canadian seed exporters still have the option of obtaining a phytosanitary certificate for each shipment they export to the United States.

One commenter, the Canadian NPPO, requested that the United States exempt small shipments of commercially packaged seed from all phytosanitary requirements to facilitate their export to the United States. The commenter stated that the risk presented by such packages should be minimal due to the small quantity of seeds being shipped under such an exemption.

We have not previously received a proposal for such an exemption, and we cannot make such a change without giving the public an opportunity to comment on it. We are making no changes in response to this comment. We will note that such a change would be inconsistent with the regulations that set out conditions for importing small lots of seed without a phytosanitary certificate, which we established in a final rule published in the **Federal Register** on April 13, 2006 (71 FR 19097–19102, Docket No. 02–119–2).

Related to the rule establishing conditions for the importation of small lots of seed without a phytosanitary certificate, we are making one change to the proposed rule text in this final rule. We had proposed to add the Canadian seed program in a new paragraph (d) in § 319.37–4. Since the publication of the proposed rule, the final rule establishing conditions under which small lots of seed may be imported without a phytosanitary certificate added a new paragraph (d) to § 319.37–4 that sets out those conditions. Accordingly, this final rule adds the Canadian seed program in

a new paragraph (e). We have also made minor adjustments to the language in proposed paragraph (a) to reflect this change.

#### *Blueberry Plants From Canada*

We proposed to add a new paragraph § 319.37–5(t) to the regulations to require that phytosanitary certificates that accompany *Vaccinium corymbosum* (blueberry) plants that are imported from Canada must contain an additional declaration stating that the plants are free of blueberry scorch carlavirus.

Blueberry scorch carlavirus causes blueberry scorch disease, the primary symptom of which is blighting of both flowers and new vegetative growth at peak bloom. Blighted blossoms fail to produce fruit, and infected plants in general are less vigorous than healthy plants. Bushes, once infected, may show symptoms each year. Initially, only one or few branches may have blighted flowers and leaves, but after a few years the entire bush may show symptoms.

We proposed to require this additional declaration on the phytosanitary certificate accompanying *V. corymbosum* plants because virulent strains of blueberry scorch carlavirus have been found that exist only in Canada.

One commenter stated that other plants can serve as hosts of blueberry scorch carlavirus, including huckleberry and cranberry plants.

We agree with this commenter. In this final rule, we are expanding the scope of the additional declaration requirement to include all *Vaccinium* spp., not just *V. corymbosum*.

One commenter asked us to change the proposed regulations so that they stated that the declaration of freedom has to be based on annual testing of the “mother” plants used for propagation rather than just visual inspection. Another commenter addressed the same issue in noting that the virus has a 2-year latent period.

We agree with these commenters. In this final rule, we are requiring that *Vaccinium* spp. from Canada be grown in an approved certification program for blueberry scorch carlavirus. APHIS would evaluate certification programs for blueberry scorch carlavirus upon request.

One commenter pointed out an inconsistency in our proposal: The proposed declaration applied broadly to all strains of blueberry scorch carlavirus, but the preamble to the proposed rule expressed concern about specific virulent strains of blueberry scorch carlavirus that have been found only in Canada. The commenter

asserted that restricting importation for all strains of the virus is not justified, as some strains of the virus are also found in the United States and are not under official control.

We agree with this comment. In this final rule, we are requiring that *Vaccinium* spp. imported into the United States be grown in an approved certification program and tested free of only the BC-1 and BC-2 strains of blueberry scorch carlavirus. Canadian government information indicates that these strains are distinct from the Northwest strain (present in the States of Oregon and Washington) and the East Coast strain (first identified in New Jersey and present in that and some surrounding States).<sup>4</sup> To our knowledge, the BC-1 and BC-2 strains are not present in the United States. These strains are more aggressive than the strains that are present in the United States, having infected approximately 30 percent of blueberry production fields in British Columbia since 2000.

With these changes, paragraph (t) of § 319.37-5 reads as follows in this final rule: "For any *Vaccinium* spp. plants from Canada, the phytosanitary certificate of inspection required by § 319.37-4 must contain an additional declaration that the articles were produced in an approved certification program and found by the national plant protection organization of Canada to be free of the BC-1 and BC-2 strains of blueberry scorch carlavirus."

In practice, these requirements will likely mean that *Vaccinium* spp. imported from Canada will be free of all strains of blueberry scorch carlavirus, not just the BC-1 and BC-2 strains, as testing for specific strains of blueberry scorch carlavirus is time- and resource-intensive. However, if *Vaccinium* spp. from Canada were tested for specific strains and found to be infected with strains of blueberry scorch carlavirus other than BC-1 and BC-2, we would allow their importation.

Two commenters stated that the movement of blueberry plants between Canada and the United States, in both directions, is common and has occurred for many years. The commenters stated that the fields of blueberry in the Canadian province of British Columbia that are known to be infected are just one-quarter mile north of the Canada-United States border. Because the virus is spread through the movement of virus-carrying aphids as well as through the movement of propagative materials, these commenters asserted that any regulations to restrict movement are unwarranted.

One of these commenters stated that the CFIA has conducted extensive surveying in the province of British Columbia; additional surveying would be required in suspect U.S. States to determine the true range of these new strains of the virus. The other stated that the commenter's organization was unaware of a risk assessment or national survey having been conducted by the United States to determine whether the strains of blueberry scorch carlavirus that are of concern are present in the United States.

While blueberry plants have moved between Canada and the United States, their importation into the United States has also been subject in many cases to State regulations that require them to be free of blueberry scorch carlavirus. (As one of these commenters noted, the British Columbia Ministry of Agriculture and Lands has worked with the State departments of agriculture in Oregon and Washington to develop a certification program for the propagation of blueberry plants based on testing and isolation.) Surveys that have been conducted at the State level in the United States have not detected the BC-1 or BC-2 strains of blueberry scorch carlavirus. We will continue to survey for these strains of blueberry scorch carlavirus, and we will revisit our regulations if either of the BC-1 or BC-2 strains is detected in the United States. We recognize that aphids can transport the virus across the U.S.-Canada border, but this transport is only in the immediate area of the border. Infected *Vaccinium* spp. plants are the principal means of long-distance spread to the major U.S. blueberry-producing areas. We believe restrictions on the importation of *Vaccinium* spp. from Canada are justified to prevent the introduction of the BC-1 and BC-2 strains of blueberry scorch carlavirus into the United States. We are making no changes in response to these comments.

One commenter noted that *Vaccinium* spp. can serve as hosts for *Phytophthora ramorum* (sudden oak death) and asked that we not overlook *P. ramorum* in promulgating restrictions on the importation of *Vaccinium* spp.

We are developing a separate interim rule that will place restrictions on the importation of *Vaccinium* spp. due to the presence of *P. ramorum* in certain countries. Temporary, emergency restrictions are already in place to prevent the introduction of *P. ramorum* in imported host plants.

One commenter asked that APHIS expand the regulations to include restrictions to prevent the introduction

of other blueberry diseases, such as blueberry shock virus.

Blueberry shock virus is present in the United States, and we do not have an official program to control its spread; therefore, we would not be justified in placing restrictions on the importation of blueberries to prevent its introduction. We are not currently aware of any blueberry diseases that are not present in the United States and that are present in other countries from which the United States imports blueberries that are not already addressed in the regulations. We welcome suggestions regarding other blueberry diseases that may be appropriate for us to address in the regulations.

#### *Programs for Importation of Approved Plants From the Canary Islands and From Israel*

We proposed to add new paragraphs (u) and (v) to § 319.37-5 to establish programs to govern the importation of approved plants from the Canary Islands of Spain and from Israel, respectively. Under this proposal, the NPPO of the country of origin, the growers in the country of origin, and APHIS would jointly implement safeguards to ensure that the relevant quarantine pests are not present in shipments of approved plants. In the case of the Canary Islands, the approved plants would be *Pelargonium* (geranium) spp., and the pests of concern are *Helicoverpa armigera*, the cotton bollworm; *Chrysodeixis chalcites*, the tomato looper; and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*).<sup>5</sup> In the case of Israel, all plants except bulbs, dormant perennials, and seeds that are imported into the United States would be required to be imported under this program. The main pest of concern in Israel is *Spodoptera littoralis*, the Egyptian cotton leafworm, although other quarantine pests are found in Israel and must be excluded from shipments of plants imported under this program.

Four commenters were concerned that the pests listed in these proposed programs did not include *Ralstonia solanacearum* race 3 biovar 2 (potato brown rot), a bacterial disease for which APHIS has established regulations in § 319.37-5(r). One of these commenters asked APHIS to amend the proposed regulations to indicate that the *R. solanacearum* race 3 biovar 2 regulations in § 319.37-5(r) superseded

<sup>5</sup> The proposed rule referred to this pest as *Cornutiplusia circumflexa*. We have since determined that its proper name is *Syngrapha circumflexa*, and we have updated the final rule accordingly.

<sup>4</sup> See <http://www.agf.gov.bc.ca/cropprot/blsv.htm>.



the proposed regulations. Two of these commenters also stated that quarantine-significant potato cyst nematodes and other exotic cyst-forming nematodes occur in the Canary Islands and Israel. These commenters expressed hope that the phytosanitary requirements for export of *Pelargonium* spp. and other plants to the United States also include rigorous exclusionary measures to prevent the contamination of plants and packing material with cysts of these nematode pests. Another commenter asked if there were any other pests of concern associated with the importation of these plants from the Canary Islands and Israel.

The importation of *Pelargonium* spp. from the Canary Islands and from Israel is subject to all requirements in the nursery stock regulations; none of the regulations in the nursery stock subpart supersede each other, and all must be complied with in order to import nursery stock into the United States. The proposed regulatory text stated that the importation of plants from the Canary Islands and from Israel would be subject to the requirements of "this section," i.e., § 319.37–5, which includes the requirements in paragraph (r) of § 319.37–5 as well as the proposed requirements.

Both Spain and Israel are countries where *R. solanacearum* race 3 biovar 2 is not known to occur. If *R. solanacearum* race 3 biovar 2 was detected in these countries, we would enforce the regulations in § 319.37–5(r)(3) as well as the relevant regulations elsewhere in § 319.37–5. Similarly, plants imported from the Canary Islands and Israel would have to meet all other applicable requirements in the regulations, including any restrictions based on the presence of potato cyst nematodes in those countries. We would ensure that all relevant requirements would be met in the workplan that APHIS develops with the NPPO of the country of origin and, if necessary, the grower. All nursery stock imported under these programs will be inspected at a USDA plant inspection station, and appropriate action will be taken if a quarantine pest is found.

One commenter was concerned about the level of APHIS involvement in the proposed programs. The commenter cited proposed provisions in which APHIS would inspect and approve production sites and packing materials and proposed provisions in which APHIS, along with the NPPO of the country of origin, would monitor compliance with the program requirements and decide whether to reinstate growers who had violated those requirements. The commenter

referred to the text of the IPPC<sup>6</sup> and stated that Articles IV and V.2 of that document grant responsibility for performing such tasks solely to the NPPO of the country in which production of the exported articles takes place. The commenter stated that, apart from very specific risk situations, the monitoring of programs in the exporting country should solely be the responsibility of the exporting country's NPPO. The commenter considered the proposed involvement of APHIS to present an unnecessary and unjustified interference with the exporting countries' responsibilities.

Both the Canary Islands program and the Israel program have been proposed because the high-risk plant pests addressed by these programs were frequently intercepted at U.S. ports of entry in shipments of plants from the Canary Islands and Israel. Because these programs have been agreed to by the relevant parties, and specifically because the foreign NPPOs involved have agreed that APHIS labor is necessary to help administer the programs, we do not believe that it would be appropriate to change the programs at this point. If, in the future, the foreign NPPOs wish to assume a more active role, we will entertain discussions with them regarding roles and responsibilities.

We received three comments specifically addressing the trust funds that we proposed to require as a means of funding APHIS involvement in these programs. One commenter supported our proposed use of the trust funds. Another commenter was concerned that other countries have begun requiring similar trust funds for commodities exported from the United States to those countries, and suggested that we think about other cost recovery mechanisms. A third commenter stated that the proposed rule may lead to substantial increase in the costs for the export of plant material to the United States, as there would be additional expenses for bilateral cooperation and the involvement of APHIS experts. As a consequence, this commenter stated, only large companies that can afford the additional financial and administrative burden for such a program may be able to export plant material to the United States in the future. This development would be in contrast to the IPPC requirement that importing countries take the least restrictive measures possible in order to reach a minimum

impediment to the international movement of commodities. In addition, the commenter questioned why the costs would have to be paid in advance.

The trust fund requirement is common practice under many other APHIS import regulations that require APHIS to assist in certification (e.g., importing *Pelargonium* spp. and *Solanum* spp. from areas where *R. solanacearum* race 3 biovar 2 is known to exist under § 319.37–5(r), or importing Hass avocados from Mexico for consumption under § 319.56–2ff). The trust fund is intended to ensure that the government of the country in which the articles are produced or its designated representative bears the costs of monitoring and inspection, rather than U.S. taxpayers. (The government of the country in which the articles are produced is, of course, free to pass this cost on to production sites producing plants for export to the United States.)

Given that the NPPOs for the Canary Islands and Israel have agreed that APHIS involvement is necessary to ensure that plants exported from those countries are free of quarantine pests, we believe that we are in fact requiring the least restrictive measures possible. Requiring that APHIS subsidize the production of plants grown in foreign countries for export to the United States by providing its labor free of charge would, we believe, be a misallocation of APHIS' limited resources.

The commenter asking us to consider other cost recovery mechanisms did not suggest any alternatives. Of the options for cost recovery we have considered, we have determined that the trust fund is the simplest and most direct means of cost recovery. We are making no changes to the proposed rule in response to these comments.

#### *Kenaf Seed From Mexico*

We proposed to allow kenaf seed from Mexico to be imported into pink bollworm generally infested areas in the United States without treatment. Under the current regulations in § 319.37–6(a), seeds of *Hibiscus* spp. (hibiscus, rose mallow) from any foreign country or locality, at the time of importation into the United States, must be treated for possible infestation with *Pectinophora gossypiella* (Saunders) (pink bollworm) in accordance with the applicable provisions of 7 CFR part 305.

However, the movement of untreated kenaf (*Hibiscus cannabinus*) seed from Mexico into pink bollworm generally infested areas of the United States (listed under our domestic pink bollworm quarantine and regulations in 7 CFR 301.52–2a, and currently the States of Arizona, New Mexico, and

<sup>6</sup> The text of the IPPC may be viewed on the Internet at <https://www.ippc.int/IPP/En/default.jsp>. Click on the "Convention text" link under "Convention" on the home page to view the IPPC.



Texas, and several counties in California) would pose little or no risk of increasing the area of pink bollworm infestation. Under our domestic pink bollworm quarantine regulations in § 301.52, these generally infested areas are quarantined to prevent the spread of pink bollworm, and kenaf seed is a regulated article under § 301.52(b) that may not be moved interstate from any quarantined area except under the conditions described in § 301.52–3.

We proposed that kenaf seed from Mexico imported into pink bollworm generally infested areas would be subject to inspection, and, immediately upon release, would be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, Subpart—Pink Bollworm.

Two commenters asked whether APHIS could allow Mexican kenaf seed to be imported into pink bollworm generally infested areas without allowing other kenaf seed from other countries to be imported into those areas as well.

As we stated in the proposal, we have reviewed the pests associated with kenaf seed in Mexico and found that the pink bollworm is the only pest of concern. We would provide similar treatment for kenaf seed imports from other countries only if it could be determined that the pink bollworm is the only pest of concern associated with kenaf seed in those countries as well and that the seed could be imported directly into the generally infested areas.

Two commenters stated that the proposal appeared to indicate that APHIS has domestic regulations that could allow the distribution of pink bollworm on kenaf seed. These commenters suggest that we first correct what appeared to them to be permissive domestic regulations prior to allowing the importation of kenaf seed into the United States from Mexico. The commenters asserted that there is no guarantee that potentially infested kenaf seed would not be moved to areas free of the pink bollworm.

We would only allow the importation of untreated kenaf seed from Mexico into generally infested areas for pink bollworm. In the generally infested areas, we are not pursuing eradication of pink bollworm. Instead, we have placed restrictions on the interstate movement of commodities whose movement could spread pink bollworm from generally infested areas to areas where we are pursuing eradication of pink bollworm or areas where pink bollworm is not known to occur. Once Mexican kenaf seed enters the United States, it would be subject to the domestic pink

bollworm regulations. These regulations are designed to prevent the movement of potentially infested kenaf seed, whether it has originated in a foreign country or domestically, from generally infested areas unless it is moved under conditions that would prevent the spread of pink bollworm, as listed in § 301.52–4(a). Any violations would be investigated by APHIS' Investigation and Enforcement Services. We are making no changes to the proposed regulations in response to these comments.

We also proposed to reorganize the regulations in § 319.37–6 into a table. The proposed table had one row for each of the six paragraphs in § 319.37–6. However, some of the paragraphs addressed multiple genera, and it could be confusing to list multiple genera in one row in a table. In this final rule, we have listed each genus in § 319.37–6 in a separate row in the table. In an effort to provide further clarity, we have also revised the proposed table entry for “Rutaceae seeds” to read “Rutaceae, seeds of all species in the family.” Finally, the proposed listing for the pests addressed by treating *Guizotia abyssinica* (niger) seeds, which stated that the treatment was intended to address *Cuscuta* spp., was incomplete; we have expanded the listing to include the other noxious weeds listed in 7 CFR 360.200.

#### *Postentry Quarantine Requirements for Hydrangea spp.*

We proposed to add a new provision in § 319.37–7(d)(7)(ii) allowing importers of *Hydrangea* spp. from all countries and localities except Canada and Japan who are operating under a postentry quarantine agreement to grow any article of *Hydrangea* spp. or increase therefrom for a period of 9 months after the importation of the plants, rather than 2 years as had been previously required.

Two commenters asked questions about the evidence leading us to the proposed reduction in the quarantine period, requesting that a risk assessment be made available. One of these commenters stated that the postentry quarantine period should be established on the basis of a risk assessment for importing *Hydrangea* spp. from each country of origin.

We determined that the 9-month postentry quarantine period was adequate based on a review of the available literature. We appreciate the opportunity to expand on our reasons for determining that a 9-month postentry quarantine period is adequate for *Hydrangea* spp.

The pest of concern for imported *Hydrangea* spp. is *Puccinia glyceriae* (*Aecidium hydrangeae-paniculatae*). This pest is a rust fungus known as a heteroecious macrocyclic rust. This means that this rust has four different life stages in its life cycle, with two of those stages occurring on *Hydrangea* spp. and the other two stages on *Glyceria* spp., a genus within Poaceae, the grass family. Both hosts are necessary in order for the pathogen to complete its life cycle. The spores produced by this pathogen on *Hydrangea* can not reinfect *Hydrangea* but have to land and germinate on *Glyceria* spp.; infections on *Hydrangea* are caused only by spores produced on the *Glyceria* spp. host.

The regulations only allow the importation of *Hydrangea* spp. from countries where *A. hydrangeae-paniculatae* is not known to occur, which means that the *Hydrangea* spp. plants imported into postentry quarantine would not be expected to be infected with the pest. In the event that an article of *Hydrangea* spp. was imported with an infection, however, the pathogen would only survive if the article of *Hydrangea* spp. were grown in postentry quarantine with *Glyceria* spp., which are not known to be grown in cultivation. If such conditions nevertheless prevailed, the pathogen would reveal itself in large lesions on the leaves of the *Hydrangea* plant early within a growing season, which is typically 9 months.

In general, the country of origin of a plant is irrelevant to the question of how long a period is required for a pest to express itself in a plant.

Three commenters recommended that the 9-month postentry quarantine period include the three most rust-conducive months of the year, to facilitate expression of the pest.

We agree with these commenters that *Hydrangea* spp. should be grown in conditions that will facilitate expression of the pest. Plants in postentry quarantine are usually grown outside during the quarantine period. The 9-month postentry quarantine period would thus contain periods conducive to developing symptoms of *A. hydrangeae-paniculatae*. In most regions of the United States, the outdoor growing season is less than 9 months. Given these facts, we believe it is not necessary to explicitly require in the regulations that the *Hydrangea* spp. be grown in rust-conducive conditions.

Two commenters expressed concern that *R. solanacearum* may be a pest of *Hydrangea* spp. that we have not addressed. They cited recent problems with latent bacterial wilt in the “Lady

in Red” cultivar of *Hydrangea macrophylla* as raising concerns about whether a 9-month postentry quarantine period would be adequate to manifest this pathogen under normal production practices. Although no *R. solanacearum* race 3 biovar 2 has been detected in any *Hydrangea* spp., these commenters suggested that APHIS require that the mother plants of imported *Hydrangea* spp. be regularly indexed for *R. solanacearum*.

We appreciate the commenters’ concerns. Because no *R. solanacearum* race 3 biovar 2 has been found in *Hydrangea* spp., we have no basis for establishing regulations to prevent the introduction of that pest via the importation of *Hydrangea* spp. If *R. solanacearum* race 3 biovar 2 were found in *Hydrangea* spp., we would likely address it through a systems approach (as we do for *Pelargonium* spp. and *Solanum* spp. in § 319.37–5(r)) rather than through postentry quarantine.

*Postentry Quarantine Requirements for Chrysanthemum spp., Dendranthema spp., Leucanthemella serotina, and Nipponanthemum nipponicum*

The regulations in § 319.37–7(a) designate as restricted articles any articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* that meet the conditions for importation in § 319.37–5(c) and that are imported from any foreign locality except Andorra, Argentina, Australia, Belarus, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canary Islands, Chile, China, Colombia, Croatia, Ecuador, Iceland, Japan, Korea, Liechtenstein, Macedonia, Malaysia, Mexico, Moldova, Monaco, New Zealand, Norway, Peru, Republic of South Africa, Romania, Russia, San Marino, Switzerland, Taiwan, Thailand, Tunisia, Ukraine, Uruguay, Venezuela, Yugoslavia; the European Union (Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and United Kingdom); and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude. Articles designated as restricted articles in § 319.37–7(a) must be grown in postentry quarantine under the conditions described in paragraphs (c) and (d) of § 319.37–7. Paragraph (d)(7)(ii) currently requires that any restricted articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and

*Nipponanthemum nipponicum* be grown in postentry quarantine for a period of 6 months. We proposed to reduce this postentry quarantine growing period to 2 months if the restricted articles are grown in accordance with the requirements of an APHIS-approved best management practices program.

We proposed this change because we had reviewed evidence indicating that the pest of concern with regard to imported articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum*, chrysanthemum white rust (CWR), will express symptoms within 2 months, meaning that 2 months would be an adequate postentry quarantine period for these articles. We proposed to reduce the postentry quarantine period for restricted articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* to 2 months only if the articles are grown in accordance with the requirements of an APHIS-approved best management practices program as an additional safeguard.

Sixteen commenters addressed the proposed change to the postentry quarantine requirements for articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum*. While many commenters supported the change, many commenters were confused regarding whether the best management practices program was intended to apply to production in the country of origin or postentry quarantine in the United States. In addition, some commenters disputed our conclusion that 2 months was an adequate amount of time for CWR to express itself in postentry quarantine.

Based on these comments, we are withdrawing the proposed change. We will revisit the issue in a separate proposed rule, providing information on the issues commenters raised and revising the proposed regulatory text to clarify our intentions.

*Plants in Growing Media From Certain Areas in Canada*

We proposed to amend § 319.37–8(b) of the regulations to allow the importation of restricted articles in growing media from two areas in Canada from which such importation is currently prohibited if those articles are grown under certain conditions. Paragraph (b) of § 319.37–8 allows the importation of restricted articles from Canada in any growing medium, except restricted articles from Newfoundland

or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road. Restricted articles from these areas may not enter in growing media because of the presence of potato cyst nematodes (*G. rostochiensis* and *G. pallida*) in those parts of Canada.

We determined that restricted articles that are grown in approved growing media and are isolated in such a manner as to prevent the restricted articles from being infested with potato cyst nematodes may be imported safely into the United States from these areas. Therefore, we are proposing to allow the importation of restricted articles in approved growing media from these areas in Canada if the phytosanitary certificate accompanying the articles contains an additional declaration stating that the restricted articles were produced in a production site approved by the NPPO of Canada as capable of isolating the plants from potato cyst nematode infestation and that the restricted articles were isolated from potato cyst nematode infestation throughout their production.

Two commenters were concerned that the sanitary conditions required for the production of the restricted articles to be shipped in growing media may not always provide complete protection to the United States from the introduction of cysts of potato cyst nematodes, which can easily contaminate plant shipments.

Because we are requiring specifically that the plants be grown in a manner to prevent infestation by potato cyst nematodes, we believe the proposed regulations addressed this concern. We are confident that we can work with the Canadian NPPO to develop measures that will be sufficient to protect restricted articles imported under these regulations from potato cyst nematode infestation.

Two commenters stated that other countries where potato cyst nematodes are present may feel discriminated against and ask to be allowed to export restricted articles under the same conditions.

Such countries are free to request that they be allowed to export restricted articles under the same conditions. If we can determine that the only quarantine pests associated with restricted articles to be exported from such a country are potato cyst nematodes, we will work with the NPPO of that country to develop conditions under which those restricted articles can be isolated from potato cyst nematodes during production and thus be authorized for importation into the United States. For many countries infested with potato cyst nematodes, our regulations in

§ 319.37–5(a) provide a means for exporting nematode host material to the United States under adequate safeguards.

One commenter asked whether Canada would enact similar regulations to allow the export to Canada of restricted articles from the nematode-infested areas of the State of New York.

Since outbreaks of potato cyst nematodes occurred recently in Quebec and Idaho, Canada and the United States have harmonized our regulations with regard to the importation of potential hosts of potato cyst nematodes. Currently, restricted articles from the nematode-infested areas of the States of New York and Idaho may be exported to Canada under certain conditions.

We are making one change to the proposed regulatory text. The proposed rule referred to an additional declaration stating that the restricted article was produced in a production site approved by the NPPO of Canada as capable of isolating the plants from infestation by potato cyst nematodes (*G. rostochiensis* and *G. pallida*) and that the restricted article was isolated from potato cyst nematode infestation throughout its production. During the deliberations on how to harmonize our potato cyst nematode-related regulations, the NPPO of Canada and APHIS agreed to similar, but simpler, text for the additional declaration. This final rule requires the additional declaration agreed to in the bilateral negotiations, which states simply that the plants were grown in a manner to prevent infestation by potato cyst nematodes (*G. rostochiensis* and *G. pallida*).

#### *Additions to the List of Approved Growing Media*

We proposed to add unused clay pots and new wooden baskets to the list of growing media approved for epiphytic plants found in § 319.37–8(d). Such media are used by many nurseries, and we proposed these additions at the request of importers. We believe that unused clay pots and new wooden baskets would be as safe as the current approved growing media.

One commenter suggested that “new” would be a better word than “unused” to describe the clay pots. We agree and have incorporated that change into this final rule.

Several commenters expressed concern that the wooden baskets we proposed to allow might be affected by wood-boring pests, and that importing epiphytic plants established in new wooden baskets might thus introduce such pests into the United States.

We did not make it clear in the proposal that new wooden baskets imported into the United States as growing media for epiphytic plants would have to comply with the existing regulations governing the importation of logs, lumber, and other unmanufactured wood articles in §§ 319.40–1 through 319.40–11. This final rule explicitly indicates that new wooden baskets must meet the requirements found in those regulations. Therefore, new wooden baskets will have to be imported under conditions designed to prevent the introduction of wood-boring pests into the United States.

#### *Federal Plant Inspection Stations and Other Ports of Entry*

We proposed to update the list of Federal plant inspection stations in § 319.37–14 to correct addresses, remove plant inspection stations no longer in use, and add new plant inspection stations. In addition, we proposed to remove the ports of entry that do not have plant inspection stations from the list in § 319.37–14 and instead indicate that restricted articles not required to be imported at a plant inspection station may enter the United States through any Customs designated port of entry. We also proposed to make several other updates to the regulations. We did not receive any comments on our reorganization of § 319.37–14 itself.

One commenter asked APHIS to confirm that the requirement that plants which are required to be imported under a written permit must be offered for import at a plant inspection station, if not precleared, does not apply to articles from Canada as described in § 319.37–3(a)(7).

Articles from Canada described in § 319.37–3(a)(7) are not required to be imported with a permit, and thus do not need to be imported into the United States through a plant inspection station.

One commenter suggested that, given the recent reassignment of some inspection responsibilities from APHIS to the Bureau of Customs and Border Protection, Department of Homeland Security, it would be advisable to change “Federal plant inspection stations” to “APHIS/PPQ plant inspection stations” in the regulations, to make it clear what organization operates the plant inspection stations.

We agree with this commenter that using the term “Federal” could create confusion. However, rather than the term suggested by the commenter, we would prefer to use the term “USDA plant inspection stations,” as this term is used internally in APHIS. We have made this change in the final rule.

In addition, the addresses for the USDA plant inspection stations in Miami, Agana, and Seattle have changed. We are updating them in this final rule. We are also amending the entry for San Diego to indicate that plants imported into San Ysidro may also be sent to this plant inspection station for inspection. Finally, we are amending the entry for Baltimore to clarify that only niger seed may be imported into this port for treatment.

#### *Miscellaneous Changes*

One commenter asked us to correct an error in the regulations: *Fragaria* spp. is listed in the postentry quarantine regulations in § 319.37–7 as eligible for postentry quarantine from several countries, but importation of *Fragaria* spp. is prohibited from all countries other than Canada and Israel under § 319.37–2. The commenter recommended that we remove the entry for *Fragaria* spp. from § 319.37–7. We are doing so in this final rule.

In addition, we are correcting one other error in the regulations. The regulations in § 319.37–12 state that a restricted article for importation into the United States shall not be packed in the same container as an article prohibited importation into the United States by 7 CFR part 319 or part 321. Part 321 no longer exists; therefore, we are removing the reference to it in this final rule.

In a final rule published in the **Federal Register** on April 3, 2007 (72 FR 15805–15812, Docket No. 03–016–3) and effective on May 3, 2007, in the table in § 319.37–7(a)(3), we inadvertently removed Canada from the lists of countries in the entries for *Chrysanthemum* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum*, thus erroneously indicating that postentry quarantine is required for these articles when they are imported from Canada. This final rule corrects that error.

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

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the effects of this final rule on small entities.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the

introduction of plant pests and noxious weeds.

We are amending the regulations on importing nursery stock to eliminate various restrictions on the importation of kenaf seed; to establish programs for the importation of approved plants from the Canary Islands and from Israel; to require an additional declaration on the phytosanitary certificate accompanying blueberry plants imported from Canada; to require that phytosanitary certificates include the genus and species names of the restricted articles they accompany when possible; to change the phytosanitary certificate requirements for several restricted articles; to reduce the postentry quarantine growing period for *Hydrangea* spp.; and to update the list of ports of entry and Federal plant inspection stations. The potential economic effects of the changes in this document are discussed below, by topic.

In our proposed rule, we stated that we did not have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Specifically, we lacked data regarding the number and kind of small entities that may incur benefits or costs from implementation of certain changes in this rule. In our proposed rule, we invited comments on these issues. However, none of the comments we received addressed these economic issues.

Several changes we are making, such as adding and changing definitions and reorganizing § 319.37–14, are administrative in nature and are not expected to have any impact on any U.S. entities, whether small or large. This analysis examines the economic effects of changes that could potentially have economic effects.

#### *Rubus* spp. From Europe

There are more than 400 species of *Rubus* in the temperate areas of the world. These are divided into subcategories that include dewberries, blackberries, and raspberries. Most species of *Rubus* grow as shrubs or trailing vines with thorny points. We are adding *Rubus* spp. from Europe not meeting the conditions for importation in § 319.37–5(f) to the list of prohibited articles in § 319.37–2(a). *Rubus* stunt agent (*Phytoplasma*) is a leafhopper-borne agent that causes damage to foliage and flowers. *Rubus* stunt agent has caused direct damage to European fruits through yield loss.<sup>7</sup> This amendment to § 319.37–2 will have no effect on domestic producers and

consumers, while safeguarding the multi-million dollar U.S. berry production industry (2002).<sup>8</sup>

#### *Genus and Species Name on Phytosanitary Certificates*

We are requiring that the phytosanitary certificate that must accompany any restricted article presented for importation into the United States under § 319.37–4(a) include the genus name of the restricted article that it accompanies. The regulations will indicate that including the species name is strongly preferred, and required if the regulations include restrictions based on species within a genus, as in § 319.37–5(b). Although this information is not currently required to be given to APHIS, this information is already available for the vast majority of importers and exporters on the invoices that typically also accompany restricted articles presented for importation into the United States. For this reason, we believe that this change will not have a significant impact on any entities, whether large or small.

#### *Phytosanitary Certificates for Bulbs From the Netherlands*

We are amending the regulations to allow bulbs from the Netherlands to enter the United States with a special certificate in lieu of a phytosanitary certificate. The special certificate will list special identification information for the shipment, including a serial number referring to the phytosanitary certificate on file in the Netherlands. The United States imported \$185 million worth of bulbs and tubers from the Netherlands in 2005. This change will expedite entry of bulbs and tubers from the Netherlands when they are carried in small amounts by individuals. We have no reason to expect that this change will have a significant effect on domestic producers and consumers of bulbs and tubers.

#### *Importation of Certain Seeds From Canada*

We are amending § 319.37–4 to exempt certain Canadian seeds from the requirement for a phytosanitary certificate. Certain seeds from specific establishments in Canada will be able to enter the United States with proper identification and an alternative document in lieu of the required phytosanitary certificate. The alternative document will be an export certification label and a document agreed upon by APHIS and CFIA. This change will

eliminate redundant paperwork requirements in the nursery stock regulations and the Federal Seed Act regulations in 7 CFR part 361.

The United States imported \$128.5 million worth of planting seeds from Canada in 2004 while exporting \$20.6 million planting seeds to Canada. The United States exported \$263.3 million worth of planting seeds to the world in 2004 and imported \$423 million worth of planting seeds from the world in 2004.<sup>9</sup> This amendment will allow the United States and Canada to trade seed more freely, benefiting both countries, with negligible impacts to domestic producers and consumers of seeds.

#### *Vaccinium* spp. Plants From Canada

We are amending § 319.37–5 to require that *Vaccinium* spp. plants from Canada be accompanied by a phytosanitary certificate with an additional declaration stating that the articles were produced in an approved certification program and found by the national plant protection organization of Canada to be free of the BC–1 and BC–2 strains of blueberry scorch carlavirus. Blueberry production in the United States was worth \$324 million in 2005.<sup>10</sup> This additional declaration will help to safeguard U.S. producers from virulent strains of the virus that only exist in Canada while continuing to allow imports of blueberry plants from Canada. This amendment will have a negligible impact on domestic producers and consumers of blueberry plants.

#### *Importation of Pelargonium* spp. Plants From the Canary Islands

We are amending the regulations to require that *Pelargonium* spp. plants from the Canary Islands be grown under certain conditions and accompanied by a phytosanitary certificate. A phytosanitary certificate with an additional declaration confirming that those growing conditions have been met for *Pelargonium* spp. plants will minimize risk that organisms such as *Helicoverpa armigera*, *Chrysodeixis chalcites* and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*) might enter the United States via the importation of these plants.

In 2005, the total number of U.S. growers of floriculture crops (including geraniums) was 10,563, according to USDA/NASS; 4,412 of these growers received \$100,000 or more in annual sales. The rest (6,151 growers) received less than \$100,000 in annual sales that

<sup>7</sup> Gordon S.C., et al. Progress towards Integrated Crop Management (ICM) for European raspberry production.

<sup>8</sup> National Agricultural Statistical Survey (NASS), Noncitrus Fruits and Nuts: Price and Value for the United States, 2000–2002.

<sup>9</sup> Foreign Agricultural Service (FAS), 2004.

<sup>10</sup> NASS, Noncitrus Fruits and Nuts: Price and Value by Crop.

year. The Small Business Administration considers a grower of floriculture crops to be small if it has less than \$750,000 in annual sales, so at least 6,151 small entities, and probably more, could be affected by this change.

The United States is a net importer of floriculture crops (including geraniums). Specifically, in 2005 the United States imported \$578 million worth of floriculture crops and exported \$304 million of floriculture crops. In 2006, the United States imported a \$695 value of floriculture crops and imported \$331 million value.

No export data are currently available for the Canary Islands regarding plant cuttings. Given that, we expect the potential amount of U.S. imports of geraniums from the Canary Islands to be very small. We do not expect this change to have a significant impact on any U.S. entities, including growers of geraniums, regardless of their size.

#### *Importation of Approved Plants From Israel*

We are amending the regulations to require that plants from Israel be grown under certain conditions and accompanied by a phytosanitary certificate along with an additional declaration confirming that those growing conditions have been met. Plants from Israel run the risk of harboring plant pests such as *Spodoptera littoralis* and other pests that could be introduced to the United States. *S. littoralis* is associated with cotton production losses around the world. Without control measures, *S. littoralis* could inflict heavy damage to both the yield and quality of U.S. cotton production.

Israel exported \$10.2 million worth of plant cuttings to the United States in 2004, while the United States exported \$9.5 million worth of cuttings to the world.<sup>11</sup> This change will help to safeguard the \$5.57 billion worth of U.S. cotton production (2005).<sup>12</sup> We have no reason to expect that this change will have a significant effect on importers of plants from Israel or on domestic cotton producers and consumers.

#### *Treatment of Regulated Articles*

Under the regulations in § 319.37–4(b), any restricted article may be sampled and inspected by an inspector under preclearance inspection arrangements in the country in which the article was grown, and must undergo any treatment contained in 7 CFR part 305 that is ordered by the inspector. We are adding a paragraph to § 319.37–6 to explicitly indicate that treatment of regulated articles of nursery stock may be administered outside the United States. We believe that this change will not have any significant impact on any U.S. entities, whether small or large.

#### *Kenaf Seed From Mexico*

The regulations in § 319.37–6(a) have required seeds of *Hibiscus* spp. (hibiscus, rose mallow) from any foreign country or locality, at the time of importation into the United States, to be treated for possible infestation with pink bollworm in accordance with the applicable provisions of 7 CFR part 305. We are providing an exception to the restriction for seeds of kenaf from Mexico that are imported into pink bollworm generally infested areas in the United States. The States of Arizona, New Mexico, and Texas, and specific

counties in California are pink bollworm generally infested areas. With this change, shipments of untreated kenaf seed from Mexico will be authorized entry into those pink bollworm generally infested areas subject to inspection. Immediately upon release, those shipments will be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, Subpart—Pink Bollworm.

Allowing the importation of untreated kenaf seed from Mexico into pink bollworm generally infested areas may have economic effects on some U.S. entities; however, if effects occur, they will be small, given that the United States imports mainly processed kenaf and very little seed and raw fiber.<sup>13</sup> For example, on average between 1999 and 2001, the United States imported 0.3 percent of world imports of raw (seeds are included) kenaf (table 1). U.S. demand for imported kenaf seed from Mexico is not expected to increase significantly as a result of the change.

Kenaf is an annual herbaceous plant of the Malvaceae family, and its flowers are closely related to those of cotton, okra, and hollyhock. Latin America, including Mexico, produces about 5 percent of the world's kenaf seed and fiber (table 2). Kenaf seed can grow in many parts of the United States, but it generally needs a long, warm growing season to produce the necessary yield to make it a profitable crop. Such a climate can only be found in the southern United States. Primary production areas in the United States are Texas (Lower Rio Grande Valley), Louisiana, Mississippi, Georgia, and Florida. An estimated 8,000 acres of kenaf was grown in the United States in 1997.<sup>14</sup>

TABLE 1.—WORLD IMPORTS OF RAW KENAF SEEDS AND FIBERS  
[Metric tons]

	Calendar year		
	1999	2000	2001
United States .....	2,400	800	500
Mexico .....	0	0	0
Rest of the world .....	330,300	288,200	272,200
World .....	332,700	289,000	272,700

<sup>11</sup> FAS., U.S. Trade Statistics, Israel and U.S., plant cuttings code # 06021, 2001.

<sup>12</sup> USDA–NASS, U.S. cotton production value 2005.

<sup>13</sup> The primary focus of the kenaf development has been on the newsprint industry with its annual

world production near the 30 million tons level (Scott & Taylor, 1990). U.S. publishers and other users account for nearly half of the world's total consumption of the processed kenaf. Annual production of newsprint in the United States is approximately 5 million tons. Traditionally, imports of processed kenaf have accounted for

about 60 percent of U.S. consumption and demand has steadily increased at about 2.5 percent annually.

<sup>14</sup> Economic Research Service, USDA, FLO–2002, May 2002. Floriculture and Nursery Crops. Situation and Outlook Yearbook.

TABLE 2.—WORLD PRODUCTION OF RAW KENAF SEEDS AND FIBERS  
[Metric tons]

	Crop year		
	1999–2000	2000–2001	2001–2002
Developed countries <sup>1</sup> .....	7,000	7,000	7,000
Latin America <sup>2</sup> .....	25,400	24,100	12,500
Rest of the world .....	427,100	388,300	409,800
World .....	459,500	419,400	440,500

<sup>1</sup> Developed countries include Europe, United States, Australia, New Zealand, Japan, and former Soviet Republics.

<sup>2</sup> Latin America includes Mexico.

Source: Food & Agriculture Organization of the U.N., Commodities and Trade Division, *Current Situation & Short Term Outlook for Hard Fibers, Kenaf, Jute, & Allied Fibers Statistics*, December 2002.

The number and size of the entities that will be affected by this change is unknown.

#### *Postentry Quarantine Requirements for Hydrangea spp.*

We are reducing the amount of time imported *Hydrangea* spp. from countries other than Canada and Japan must be grown in postentry quarantine conditions from 2 years to 9 months. This change might affect the volume of *Hydrangea* spp. imported into the United States because it will decrease the cost associated with growing *Hydrangea* spp. in postentry quarantine conditions after importation into the United States.

Hydrangeas are summer-flowering shrubs which are usually shipped in the late fall through early winter, after they have received a cold storage treatment. There are seven main *Hydrangea* species in the world. Only two, *H. arborescens* and *H. quercifolia*, are native to the United States; the other five are native to Asia.<sup>15</sup> The popularity and production of hydrangeas have both been increasing in the past few years in the United States and so has demand for them. Thus, the shorter quarantine period for imported *Hydrangea* spp. will benefit the U.S. public. However, it is difficult to measure the size of any possible economic impact of this change in postentry quarantine duration for imported hydrangeas due to lack of information about how much the cost of quarantine would decrease with a reduction in the quarantine period. In addition, we have no data number and size of small entities that will be affected by this change.

#### *Plants in Growing Media from Certain Areas in Canada*

We are amending § 319.37–8(b) to allow the importation of restricted articles from areas of Canada that are infested with potato cyst nematodes as

long as they are grown in approved media and isolated from potato cyst nematodes. APHIS has determined that restricted articles from these areas that are grown in approved media can be isolated in such a manner as to prevent the introduction of potato cyst nematodes. These articles will be allowed to be imported if they are grown in approved media and are accompanied by a phytosanitary certificate with an additional declaration stating that the plants were grown in a manner to prevent infestation by potato cyst nematodes. Allowing these restricted articles to enter under these conditions will increase the flexibility of imports while protecting the United States against potato cyst nematode infestation. We have no reason to expect that this change would have a significant effect on domestic producers and consumers of nursery stock.

#### *Additions to the List of Approved Growing Media*

We are amending § 319.37–8(d) to allow new clay pots and new wooden baskets to be used as a growing media for epiphytic plants. New wooden baskets used as growing media will have to meet the relevant requirements for the importation of logs, lumber, and other untreated wood products in §§ 319.40–1 through 319.40–11. No trade information is currently available for clay pots and wooden baskets. Establishing epiphytic plants on new clay pots and new wooden baskets is a standard nursery practice. Importers have requested that APHIS amend the regulations to allow them to import plants on wooden baskets and clay pots. Neither medium is believed to pose a pest risk. We have no reason to expect that this change will have a significant effect on domestic producers and consumers of nursery stock.

#### *USDA Plant Inspection Stations and Other Ports of Entry*

We are adding a plant inspection station in Linden, NJ, to the list of USDA plant inspection stations in § 319.37–14. Adding this facility to the list of USDA plant inspection stations will make importation of nursery stock more convenient and possibly less costly for domestic sellers and consumers without reducing the effectiveness of the regulations.

This final rule contains new information collection or recordkeeping requirements (see “Paperwork Reduction Act” below).

#### **Executive Order 12988**

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

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0279.

#### **E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS’ Information Collection Coordinator, at (301) 734–7477.

<sup>15</sup> *H. aspera*, *H. involucrata*, *H. macrophylla*, *H. paniculata*, *H. anomala*.

**Lists of Subjects****7 CFR Part 319**

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

**7 CFR Part 330**

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

**7 CFR Part 340**

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

■ Accordingly, we are amending 7 CFR parts 319, 330, and 340 as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

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

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

**§ 319.28 [Amended]**

■ 2. In § 319.28, the introductory text of paragraph (b)(7) is amended by removing the word “listed” and adding the word “identified” in its place.

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

■ a. By removing the definition for *bulbs*.

■ b. By adding new definitions, in alphabetical order, for *bulb*, *plant*, *precleanance*, *regulated plant*, and *State* to read as set forth below.

■ c. By revising the definitions for *inspector*, *person*, *plant pest*, *restricted article*, and *United States* to read as set forth below.

**§ 319.37–1 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

**Precleanance.** Phytosanitary inspection and/or clearance in the country in which the articles were grown, performed by or under the regular supervision of APHIS.

\* \* \* \* \*

**Regulated plant.** 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.

**Restricted article.** Any regulated plant, root, bulb, seed, or other plant product for or capable of propagation, excluding any prohibited articles listed in § 319.37–2(a) or (b) 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.

\* \* \* \* \*

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

\* \* \* \* \*

**United States.** All of the States.

■ 4. Section 319.37–2 is amended as follows:

■ a. In the table in paragraph (a), by adding new entries for “*Pelargonium* spp. plants not meeting the requirements for importation in § 319.37–5(u)”, “Plants (except bulbs, dormant perennials, and seeds) not meeting the requirements for importation in § 319.37–5(v)”, “*Rubus* spp. not meeting the conditions for importation in § 319.37–5(f)”, and “*Vaccinium* spp. plants not meeting the conditions for importation in § 319.37–5(t)”, in alphabetical order, to read as set forth below.

■ b. In paragraph (c)(2), by removing the words “Plant Germplasm Quarantine Center, Building 320” and adding the words “National Plant Germplasm Inspection Station, Building 580” in their place; and by removing the words “at a port of entry designated by an asterisk in § 319.37–14(b)” and adding the words “through any Federal plant inspection station listed in § 319.37–14” in their place.

**§ 319.37–2 Prohibited articles.**

(a) \* \* \*

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
<i>Pelargonium</i> spp. plants not meeting the conditions for importation in § 319.37–5(u).	Canary Islands (Spain) .....	<i>Helicoverpa armigera</i> , <i>Chrysodeixis chalcites</i> , and <i>Syngrapha circumflexa</i> (syn. <i>Comatiplusia circumflexa</i> ).
Plants (except bulbs, dormant herbaceous perennials, and seeds) not meeting the conditions for importation in § 319.37–5(v).	Israel .....	<i>Spodoptera littoralis</i> and other quarantine pests.
<i>Rubus</i> spp. not meeting the conditions for importation in § 319.37–5(f).	Europe .....	<i>Rubus</i> stunt agent



Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
*	*	*
<i>Vaccinium</i> spp. plants not meeting the conditions for importation in § 319.37–5(t).	Canada .....	Blueberry scorch carlavirus (strains BC–1 and BC–2).
*	*	*

\* \* \* \* \*

### § 319.37–3 [Amended]

■ 5. Section 319.37–3 is amended as follows:

■ a. In paragraph (a)(3), by removing the word “spp.” the first time it occurs.  
 ■ b. In paragraph (a)(8), by removing the words “*Castanea* spp. (chestnut) or”.  
 ■ c. In paragraph (b), in the introductory text of the paragraph and in footnote 4, by removing the words “Port Operations” and adding the words “Permits, Registrations, Imports and Manuals” in their place.

■ 6. Section 319.37–4 is amended as follows:

■ a. By revising paragraph (a) to read as set forth below.  
 ■ b. By adding a new paragraph (e) to read as set forth below.  
 ■ c. By revising the OMB citation at the end of the section to read as set forth below.

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

(a) *Phytosanitary certificates of inspection.* Any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate of inspection. The phytosanitary certificate must identify the genus of the article it accompanies. When the regulations in this subpart place restrictions on individual species or cultivars within a genus, the phytosanitary certificate must also identify the species or cultivar of the article it accompanies. Otherwise, identification of the species is strongly preferred, but not required. Intergeneric and interspecific hybrids must be designated by placing the multiplication sign “x” between the names of the parent taxa. If the hybrid is named, the multiplication sign may instead be placed before the name of an intergeneric hybrid or before the epithet in the name of an interspecific hybrid. Phytosanitary certificates are not required for the following restricted articles:

(1) Greenhouse-grown plants from Canada imported in accordance with paragraph (c) of this section. These plants must be accompanied by a certificate of inspection in the form of a label in accordance with paragraph

(c)(1)(iv) of this section attached to each carton of the articles and to an airway bill, bill of lading, or delivery ticket accompanying the articles.

(2) Small lots of seed imported in accordance with paragraph (d) of this section.

(3) Seeds from Canada imported in accordance with paragraph (e) of this section. Each carton of seed must be labeled as required by paragraph (e)(2)(ii) of this section. Each shipment of seed must be accompanied by the documents in paragraphs (e)(2)(iii)(A) and (e)(2)(iii)(B) of this section, as necessary.

(4) Bulbs from the Netherlands accompanied by a special certificate that lists a serial number, the scientific name of the bulb, the country of its origin, and a date on which the special certificate expires. The serial number must refer to a phytosanitary certificate issued, held, and retrievable upon request by the national plant protection organization of the Netherlands. The expiration date must be 6 weeks after the issuance of the phytosanitary certificate held by the national plant protection organization of the Netherlands. Shipments of bulbs from the Netherlands accompanied by this certificate may be imported into the United States without preclearance by APHIS.

\* \* \* \* \*

(e) *Certain seeds from Canada.* Seeds imported from Canada may be imported without a phytosanitary certificate if the following conditions are met:

(1) The Canadian Food Inspection Agency shall:

(i) Establish and administer a seed export program under which Canadian exporters of seed may operate;

(ii) Assign a unique identification number to each exporting establishment enrolled in and approved by the seed inspection program;

(iii) Provide APHIS with a current list of the establishments participating in its seed export program and their names, locations, telephone numbers, and establishment identification numbers at the start of the shipping season, and provide regular updates to that list throughout the shipping season;

(iv) Enter into an agreement with APHIS that specifies the documents that

must accompany shipments of seeds under the seed export program:

(A) Agricultural and vegetable seeds, as listed in the Federal Seed Act regulations in part 361 of this chapter, must be accompanied by a document certifying that the relevant provisions of the Federal Seed Act have been followed;

(B) Other seeds must be accompanied by a document certifying that the seeds have been inspected.

(2) Each seed exporter participating in the seed export program shall enter into an agreement with the Canadian Food Inspection Agency in which the exporter agrees to:

(i) Practice any and all safeguards the Canadian Food Inspection Agency may prescribe in order to ensure that seed exported to the United States is free of plant pests and that seed that does not meet the requirements for exportation to the United States is separated from seed that does;

(ii) Include an export certification document with each shipment indicating the common name of the seed, the country of origin of the seed, the establishment identification number assigned to the exporting establishment under the Canadian Food Inspection Agency's seed export program, and the lot number in addition to all other information required to be present by § 361.3 of this chapter.

(iii) Include other shipping documents as required with each shipment:

(A) Shipments of agricultural and vegetable seeds, as listed in the Federal Seed Act, must be accompanied by a document certifying that the relevant provisions of the Federal Seed Act regulations in part 361 of this chapter have been followed, as agreed upon by the Canadian Food Inspection Agency and APHIS;

(B) Shipments of other seeds must be accompanied by a document certifying that the seeds have been inspected, as agreed upon by the Canadian Food Inspection Agency and APHIS. (Approved by the Office of Management and Budget under control numbers 0579–0285 and 0579–0279)

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

- a. In paragraph (a), by removing the words “at the time of arrival at the port of first arrival in the United States” and by revising the country list at the end of the paragraph to read as set forth below.
- b. In paragraph (b)(1), by removing the words “Federal Republic of Germany,” and by adding the word “Germany,” after the word “France,”.
- c. In the introductory text of paragraph (j)(1) and in paragraph (j)(1)(i), by removing the words “Federal Republic of”.
- d. By adding new paragraphs (t), (u), and (v) to read as set forth below.
- e. By revising the OMB citation at the end of the section to read as set forth below.

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

(a) \* \* \*

Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Azores, Belarus, Belgium, Bolivia, Bulgaria, Canada (only that portion comprising Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road), Channel Islands, Chile, Colombia, Costa Rica, Crete, Croatia, Cyprus, Czech Republic, Denmark (including Faeroe Islands), Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Great Britain, Greece, Guernsey, Hungary, Iceland, India, Ireland, Italy, Japan, Jersey, Jordan, Latvia, Lebanon, Lithuania, Luxembourg, Kazakhstan, Kyrgyzstan, Malta, Mexico, Republic of Moldova, Morocco, the Netherlands, New Zealand, Northern Ireland, Norway, Pakistan, Panama, Peru, the Philippines, Poland, Portugal, Russian Federation, Serbia and Montenegro, South Africa, Spain (including Canary Islands), Slovakia, Slovenia, Sweden, Switzerland, Tajikistan, Tunisia, Turkmenistan, Ukraine, Uzbekistan, and Venezuela.

\* \* \* \* \*

(t) For any *Vaccinium* spp. plants from Canada, the phytosanitary certificate of inspection required by § 319.37–4 must contain an additional declaration that such article was produced in an approved certification program and found by the national plant protection organization of Canada to be free of the BC–1 and BC–2 strains of blueberry scorch carlavirus.

(u) *Special foreign inspection and certification requirements for Pelargonium* spp. plants from the Canary Islands. *Pelargonium* spp. plants from the Canary Islands may only be imported into the United States in accordance with the requirements of this section, to prevent the plant pests

*Helicoverpa armigera*, *Chrysodeixis chalcites*, and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*) from entering the United States.

(1) *Phytosanitary certificate*. The phytosanitary certificate of inspection required by § 319.37–4 that accompanies *Pelargonium* spp. plants from the Canary Islands must contain additional declarations that the plants were produced in an approved Spanish (Canary Island) production site, that the production site is operated by a grower participating in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain, and that the plants were grown under conditions specified by APHIS as described in this paragraph § 319.37–5(u) to prevent infestation with *Helicoverpa armigera*, *Chrysodeixis chalcites*, and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*).

(2) *Grower registration and agreement*. Persons in the Canary Islands who produce *Pelargonium* spp. plants for export to the United States must:

(i) Be registered and approved by the national plant protection organization of Spain; and

(ii) Enter into an agreement with the national plant protection organization of Spain whereby the producer agrees to participate in and follow the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain.

(3) *Growing requirements*. Growers in the Canary Islands who produce *Pelargonium* spp. plants for export to the United States must meet the following requirements for inclusion in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain:

(i) *Pelargonium* spp. plants destined for export to the United States must be produced in a production site devoted solely to production of such plants.

(ii) The production sites in which such plants are produced must be registered with the national plant protection organization of Spain. Such production sites must employ safeguards agreed on by APHIS and the national plant protection organization of Spain, including, but not limited to, prescribed mesh screen size (if the production site is a greenhouse) and automatically closing doors, to ensure the exclusion of *H. armigera*.

(iii) Each production site in which plants destined for export to the United States are grown must have at least one blacklight trap for 1 year following any of the following events:

(A) The construction of the production site;

(B) The entry of the production site into the approved plants export program;

(C) The replacement of the covering of the production site; or

(D) The detection and repair of a break or tear in the plastic or screening in the production site.

(4) *Inspections*. Inspections undertaken in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain will include, but may not be limited to, the following:

(i) The national plant protection organization of Spain will inspect the plants and the production site during the growing season and during packing.

(ii) Packing materials and shipping containers for the plants must be inspected and approved by APHIS to ensure that they do not introduce pests of concern to the plants.

(iii) Either APHIS or the national plant protection organization of Spain will inspect the production site of the plants to ensure that they meet standards of sanitation agreed upon by APHIS and the national plant protection organization of Spain.

(iv) Inspectors from both APHIS and the national plant protection organization of Spain will have access to the production site as necessary to ensure that growers are employing the proper safeguards against infestation of *H. armigera*, *C. chalcites*, and *S. circumflexa* and that those safeguards are correctly implemented.

(v) The national plant protection organization of Spain will provide APHIS with access to the list of registered and approved growers at least annually.

(5) *Ineligibility for participation*. (i) Growers will be ineligible for participation in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain and their production sites will lose approved status if:

(A) Live *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*), or any other moth of the family Noctuidae, are found in a production site;

(B) Live *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*), or any other moth of the family Noctuidae, are found in a shipment of plants; or

(C) Growers violate the requirements set out in this section and by the export program established by the national plant protection organization of Spain.

(ii) A grower may be reinstated, and the grower's production sites may regain approved status, by requesting

reapproval and submitting a detailed report describing the corrective actions taken by the grower. Reapproval will only be granted upon concurrence from the national plant protection organization of Spain and APHIS.

(6) *Termination*. APHIS may terminate the entire program if there are repeated violations of procedural or biological requirements.

(7) *Trust fund*. The government of Spain must enter into a trust fund agreement with APHIS before each growing season. The government of Spain or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (u) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (u) of this section 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 these services. The government of Spain or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of Spain or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of Spain or its designated representative or held on account until needed.

(v) *Special foreign inspection and certification requirements for plants from Israel*. Plants from Israel, except bulbs, dormant perennials, and seeds, may only be imported into the United States in accordance with the regulations in this section, to prevent *Spodoptera littoralis* and other quarantine pests found in Israel from entering the United States.

(1) *Phytosanitary certificate*. The phytosanitary certificate of inspection required by § 319.37–4 that accompanies plants from Israel at the time of arrival at the port of first arrival in the United States must contain additional declarations that the plants were produced in an approved Israeli production site, that the production site is operated by a grower participating in the export program for plants established by the national plant

protection organization of Israel, and that the plants were grown under conditions specified by APHIS as described in this paragraph § 319.37–5(v) to prevent infestation or contamination with *Spodoptera littoralis* or other quarantine pests.

(2) *Grower registration and agreement*. Persons in Israel who produce plants for export to the United States must:

(i) Be registered and approved by the national plant protection organization of Israel; and

(ii) Enter into an agreement with the national plant protection organization of Israel whereby the producer agrees to participate in and follow the export program for plants established by the national plant protection organization of Israel.

(3) *Growing requirements*. Growers in Israel who produce plants for export to the United States must meet the following requirements for inclusion in the export program for plants established by the national plant protection organization of Israel:

(i) Plants destined for export to the United States must come from a production site devoted solely to production of such plants.

(ii) The production sites in which such plants are produced must be registered with the national plant protection organization of Israel. These production sites must employ safeguards agreed on by APHIS and the national plant protection organization of Israel to prevent the entry of *S. littoralis*, including, but not limited to, insect-proof screening over openings and double or airlock-type doors. Any rips or tears in the insect-proof screening must be repaired immediately.

(iii) Each production site in which plants destined for export to the United States are grown must have at least one blacklight trap for 1 year following any of the following events:

(A) The construction of the production site;

(B) The entry of the production site into the approved plants export program;

(C) The replacement of the covering of the production site; or

(D) The detection and repair of a break or tear in the plastic or screening in the production site.

(4) *Inspections*. Inspections undertaken in the export program for plants established by the national plant protection organization of Israel will include, but may not be limited to, the following:

(i) The national plant protection organization of Israel will inspect the plants and the production site weekly to

ensure that no quarantine pests are present.

(ii) Plants must be inspected to ensure that they are free of quarantine pests before being allowed into the screened area of the production site.

(iii) The national plant protection organization of Israel will inspect the plants to ensure that no quarantine pests are present prior to export.

(iv) Packing materials and shipping containers for the plants must be inspected and approved by APHIS to ensure that they do not introduce pests of concern to the plants.

(v) Either APHIS or the national plant protection organization of Israel will inspect the production site of the plants to ensure that they meet standards of sanitation approved by APHIS.

(vi) Inspectors from both APHIS and the national plant protection organization of Israel will have access to the production site as necessary to ensure that growers are employing the safeguards and procedures prescribed by the program and that those safeguards and procedures are correctly implemented.

(vii) The national plant protection organization of Israel will provide APHIS with access to the list of registered and approved growers at least annually.

(5) *Ineligibility for participation*.

(i) Growers will be ineligible for participation in the export program for plants established by the national plant protection organization of Israel and their production sites will lose approved status if:

(A) Live *Spodoptera littoralis* are found in a production site;

(B) Live *Spodoptera littoralis* are found at port inspection two times during the shipping season in shipments from the same grower; or

(C) Growers violate the requirements set out in this section and by the export program established by the national plant protection organization of Israel.

(ii) A grower may be reinstated, and the grower's production sites may regain approved status, by requesting reapproval and submitting a detailed report describing the corrective actions taken by the grower. Reapproval will only be granted upon concurrence from the national plant protection organization of Israel and APHIS.

(6) *Termination*. APHIS may terminate the entire program if there are repeated violations of procedural or biological requirements.

(7) *Trust fund*. The government of Israel must enter into a trust fund agreement with APHIS before each growing season. The government of Israel or its designated representative is

required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (v) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (v) of this section 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 these services. The government of Israel or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by

APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of Israel or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of Israel or its designated representative or held on account until needed.

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0176, 0579-0221, 0579-0246, 0579-0257, and 0579-0279)

■ 8. Section 319.37-6 is revised to read as follows.

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

(a) The following seeds and bulbs may be imported into the United States from designated countries and localities only if they have been treated for the specified pests in accordance with part 305 of this chapter. Seeds and bulbs treated prior to importation outside the United States must be treated in accordance with § 319.37-13(c). An inspector may require treatment within the United States of articles that have been treated prior to importation outside the United States if such treatment is determined to be necessary:

Seed/bulb	Country/locality	Pest(s) for which treatment is required
<i>Abelmoschus</i> spp. (okra) seeds.	All .....	<i>Pectinophora gossypiella</i> (Saunders) (pink bollworm).
<i>Allium sativum</i> (garlic) bulbs	Algeria, Armenia, Austria, Azerbaijan, Belarus, Croatia, Czech Republic, Egypt, France, Georgia, Germany, Greece, Hungary, Iran, Israel, Italy, Kazakhstan, Kyrgyzstan, Republic of Moldova, Morocco, Portugal, Serbia and Montenegro, Slovakia, Slovenia, Republic of South Africa, Spain, Switzerland, Syria, Russian Federation, Tajikistan, Turkey, Turkmenistan, Ukraine, and Uzbekistan.	<i>Brachycerus</i> spp. and <i>Dyspessa ulula</i> (Bkh.).
<i>Castanea</i> seeds .....	All except Canada and Mexico .....	<i>Curculio elephas</i> (Cyllenhal), <i>C. nucum</i> L., <i>Cydia</i> ( <i>Laspeyresia</i> ) <i>splendana</i> Hubner, <i>Pammene fusciana</i> L. ( <i>Hemimene juliana</i> (Curtis)) and other insect pests of chestnut and acorn.
<i>Guizotia abyssinica</i> (niger) seeds.	All (see paragraph (c) of this section) .....	<i>Cuscuta</i> spp., and other noxious weeds listed in 7 CFR 360.200.
<i>Hibiscus</i> spp. (hibiscus, rose mallow) seeds.	All, with the exception of kenaf seed ( <i>Hibiscus cannabinus</i> ) from Mexico that is to be imported into pink bollworm generally infested areas listed in § 301.52-2a of this chapter.	<i>Pectinophora gossypiella</i> (Saunders) (pink bollworm).
<i>Lathyrus</i> spp. (sweet pea, peavine) seeds.	All except North America and Central America .....	Insects of the family Bruchidae.
<i>Lens</i> spp. (lentil) seeds .....	All except North America and Central America .....	Insects of the family Bruchidae.
<i>Quercus</i> seeds .....	All except Canada and Mexico .....	<i>Curculio elephas</i> (Cyllenhal), <i>C. nucum</i> L., <i>Cydia</i> ( <i>Laspeyresia</i> ) <i>splendana</i> Hubner, <i>Pammene fusciana</i> L. ( <i>Hemimene juliana</i> (Curtis)) and other insect pests of chestnut and acorn.
Rutaceae, seeds of all species in the family.	Afghanistan, Andaman Islands, Argentina, Bangladesh, Brazil, Caroline Islands, Comoro Islands, Fiji Islands, Home Island in Cocos (Keeling) Islands, Hong Kong, India, Indonesia, Ivory Coast, Japan, Kampuchea, Korea, Madagascar, Malaysia, Mauritius, Mozambique, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea, Paraguay, People's Republic of China, Philippines, Reunion Island, Rodriguez Islands, Ryukyu Islands, Saudi Arabia, Seychelles, Sri Lanka, Taiwan, Thailand, Thursday Island, United Arab Emirates, Uruguay, Vietnam, Yemen (Sanaa), and Zaire.	<i>Xanthomonas axonopodis</i> , pv. <i>citri</i> (citrus canker).
<i>Vicia</i> spp. (fava bean, vetch) seeds.	All except North America and Central America .....	Insects of the family Bruchidae.

(b) Seeds and bulbs that are treated within the United States must be treated at the time of importation into the United States.

(c) Seeds of *Guizotia abyssinica* (niger seed) that are treated prior to shipment to the United States at a facility that is

approved by APHIS<sup>8</sup> and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to

<sup>8</sup> Criteria for the approval of heat treatment facilities are contained in part 305 of this chapter.

comply with the provisions of this section and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be

certified in accordance with the conditions described in § 319.37–13(c).  
(d) Shipments of kenaf (*Hibiscus cannabinus*) seed from Mexico that are imported into pink bollworm generally infested areas listed in § 301.52–2a shall be subject to inspection, and shall immediately, upon release, be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, “Subpart—Pink Bollworm,” of this chapter.

- 9. Section 319.37–7 is amended as follows:
  - a. In the table in paragraph (a)(3), in the entries for *Chrysanthemum* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum*, by adding the word “Canada,” after the word “Brunei,”.
  - b. In the table in paragraph (a)(3), by removing the entry for “*Fragaria* spp.”.
  - c. In the table in paragraph (a)(3), by revising the entries for “*Jasminum* spp.”

- and “*Sorbus* spp.” to read as set forth below.
- d. By revising paragraph (d)(7)(ii) to read as set forth below.
  - e. By removing paragraph (g).

§ 319.37–7 Postentry quarantine.

- (a) \* \* \*
- (3) \* \* \*

Restricted article (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* * * * *	
<i>Jasminum</i> spp. (jasmine) .....	All except Canada, Belgium, Germany, Great Britain, India, and the Philippines.
* * * * *	
<i>Sorbus</i> spp. (mountain ash) .....	All except Canada, Czech Republic, Denmark, Germany, and Slovakia.
* * * * *	

\* \* \* \* \*  
(d) \* \* \*  
(7) \* \* \*  
(ii) To grow the article or increase therefrom only in a greenhouse or other enclosed building, and to comply with the above conditions for a period of 6 months after importation for an article of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum*, for a period of 1 year after importation for an article of *Dianthus* spp. (carnation, sweet-william), and for a period of 9 months after importation for an article of *Hydrangea* spp.  
\* \* \* \* \*

- 10. Section 319.37–8 is amended as follows:
  - a. By revising paragraph (b) to read as set forth below.
  - b. In paragraph (c), by removing the words “transparent or translucent”.
  - c. By revising paragraph (d) to read as set forth below.

§ 319.37–8 Growing media.

(b)(1) A restricted article from Canada may be imported in any growing medium, except as restricted in paragraph (b)(2) of this section.

(2) A restricted article from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road may only be imported in an approved growing medium if the phytosanitary certificate accompanying it contains an additional declaration that that the plants were grown in a manner to prevent infestation by potato cyst nematodes (*Globodera rostochiensis* and *G. pallida*).  
\* \* \* \* \*

(d) Epiphytic plants (including orchid plants) established solely on tree fern slabs, coconut husks, coconut fiber, new clay pots, or new wooden baskets may be imported on such growing media. New wooden baskets must meet all applicable requirements in §§ 319.40–1 through 319.40–11.  
\* \* \* \* \*

§ 319.37–10 [Amended]

- 11. In § 319.37–10, the introductory text of paragraph (b) is amended by removing the word “listed” and adding the word “identified” in its place.

§ 319.37–12 [Amended]

- 12. Section 319.37–12 is amended by removing the words “or part 321”.

- 13. Section 319.37–14 is revised to read as follows.

§ 319.37–14 Ports of entry.

Any restricted article required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (6) of this subpart, if not precleared, may be imported or offered for importation only at a USDA plant inspection station listed below. Ports of entry through which restricted articles must pass before arriving at these USDA plant inspection stations are listed in the second column. Any other restricted article that is not required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (6) of this subpart may be imported or offered for importation at any Customs designated port of entry indicated in 19 CFR 101.3(b)(1). Exceptions may be listed in § 330.104 of this chapter. Articles that are required to be imported under a written permit that are also precleared in the country of export are not required to enter at an inspection station and may enter through any Customs port of entry. Exceptions may be listed in § 330.104 of this chapter.

## LIST OF USDA PLANT INSPECTION STATIONS

State	Port of entry	Federal plant inspection station
Arizona .....	Nogales .....	Plant Inspection Station, 9 North Grand Avenue, Room 120, Nogales, AZ 85621.
California .....	Long Beach, Los Angeles, San Pedro	Los Angeles Inspection Station, 11840 S. La Cienega Blvd., Hawthorne, CA 90250.
	San Diego, San Ysidro .....	Plant Inspection Station, 9777 Via de la Amistad, Room 140, San Diego, CA 92154.
	Oakland, San Francisco .....	Plant Inspection Station, 389 Oyster Point Blvd., Suite 2, South San Francisco, CA 94080.
Florida .....	Miami, (Note: Restricted articles may be moved from Fort Lauderdale to Miami under U.S. Customs bond). Orlando .....	Plant Inspection Station, 3500 NW., 62nd Avenue, Miami, FL 33122. Mailing address: P.O. Box 660520, Miami, FL 33266.
Georgia .....	Atlanta .....	Plant Inspection Station, 9317 Tradeport Drive, Orlando, FL 32827.
Guam .....	Agana .....	Hartsfield Perishable Complex, 1270 Woolman Place, Atlanta, GA 30354.
Hawaii .....	Honolulu (Airport) .....	905 East Sunset Blvd., Tiyan, Barrigada, GU 96913. Mailing address: P.O. Box 8769, Tamuning, GU 96931.
		Honolulu Inspection Station, Honolulu International Airport, 300 Rodgers Blvd., #57, Honolulu, HI 96819-1897.
Louisiana .....	New Orleans .....	Plant Inspection Station, 900 East Airline Service Road A, Kenner, LA 70063.
Maryland .....	Baltimore .....	(Only niger seed may be imported into the Port of Baltimore, after which it may be moved for treatment at a local treatment facility).
New Jersey .....	Elizabeth, New York (Maritime), New-ark.	Frances Krim Memorial Inspection Station, 2500 Brunswick Avenue, Building G, Linden, NJ 07036.
New York .....	Jamaica (JFK) .....	Plant Inspection Station, 230-59 International Airport Centers Boulevard, Building C, Suite 100, Room 109, Jamaica, NY 11413.
Puerto Rico .....	San Juan .....	Plant Inspection Station, 150 Central Sector, Building C-2, Warehouse 3, Carolina, PR 00979.
Texas .....	Houston .....	Plant Inspection Station, 19581 Lee Road, Humble, TX 77338.
	Los Indios .....	Plant Inspection Station, P.O. Drawer Box 393, 100 Los Indios Boulevard, Los Indios, TX 78567.
Washington .....	Seattle .....	835 S. 192nd Street, Suite 1600, Sea-Tac, WA 98148.

**§ 319.59-2 [Amended]**

■ 14. Section 319.59-2 is amended as follows:

■ a. In paragraph (b)(1), by removing the words “Plant Germplasm Quarantine Center, Building 320” and adding the words “National Plant Germplasm Inspection Station, Building 580” in their place; and by removing the words “at any port of entry with an asterisk listed in § 319.37-14(b)” and adding the words “through any USDA plant inspection station listed in § 319.37-14” in their place.

■ b. In paragraph (b)(2), by removing the words “Plant Germplasm Quarantine Center” and adding the words “National Plant Germplasm Inspection Station” in their place.

**§ 319.75 [Amended]**

■ 15. In § 319.75, paragraph (c)(2) is amended by removing the words “Plant Germplasm Quarantine Center, Building 320” and adding the words “National Plant Germplasm Inspection Station, Building 580” in their place; and by removing the words “at a port of entry designated by an asterisk in § 319.37-14(b);” and adding the words “through any USDA plant inspection station listed in § 319.37-14;” in their place.

**§ 319.75-8 [Amended]**

■ 16. § 319.75-8 is amended by removing the word “listed” and adding the word “identified” in its place.

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

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

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

■ 18. Section 330.104 is amended by revising all of the text after the first sentence to read as follows:

**§ 330.104 Ports of entry.**

\* \* \* The ports of entry shall be those named in 19 CFR 101.3(b)(1), except as otherwise provided by administrative instructions or by permits issued in accordance with this part, and except those ports of entry listed below.

**LIST OF EXCEPTIONS TO CUSTOMS DESIGNATED PORTS OF ENTRY**

State	Port of entry
[Reserved] .....	[Reserved]

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

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

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

**§ 340.4 [Amended]**

■ 20. In § 340.4, paragraph (f)(11)(i) is amended by removing the words “at a port of entry which is designated by an asterisk in 7 CFR 319.37-14(b);” and adding the words “through any USDA plant inspection station listed in § 319.37-14 of this chapter;” in their place.

**§ 340.7 [Amended]**

■ 21. In § 340.7, the introductory text of paragraph (b) is amended by removing the words “at a port of entry designated

by an asterisk in 7 CFR 319.37–14(b)” and adding the words “through any USDA plant inspection station listed in § 319.37–14 of this chapter” in their place.

Done in Washington, DC, this 30th day of July 2007.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7–15124 Filed 8–3–07; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 95

[Docket No. 30564; Amdt. No. 469]

#### IFR Altitudes; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**DATES:** *Effective Date:* 0901 UTC, August 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs

Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

#### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the

amendment effective in less than 30 days.

#### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on July 30, 2007.

**James J. Ballough,**

*Director, Flight Standards Service.*

#### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 30, 2007.

#### PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

**BILLING CODE 4910–13–P**