

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 319**

[Docket No. APHIS–2006–0011]

RIN 0579–AC03

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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to establish a new category of regulated articles in the regulations governing the importation of nursery stock, also known as plants for planting. This category will list taxa of plants for planting whose importation is not authorized pending pest risk analysis. If scientific evidence indicates that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest, we will publish a notice that will announce our determination that the taxon is a quarantine pest or a host of a quarantine pest, cite the scientific evidence we considered in making this determination, and give the public an opportunity to comment on our determination. If we receive no comments that change our determination, the taxon will subsequently be added to the new category. We will allow any person to petition for a pest risk analysis to be conducted to consider whether to remove a taxon that has been added to the new category. After the pest risk analysis is completed, we will remove the taxon from the category and allow its importation subject to general requirements, allow its importation subject to specific restrictions, or prohibit its importation. We will consider applications for permits to import small quantities of germplasm from taxa whose importation is not authorized pending pest risk analysis, for experimental or scientific purposes under controlled conditions. This new category will allow us to take prompt action on evidence that the importation of a taxon of plants for planting poses a risk while continuing to allow for public participation in the process.

DATES: *Effective Date:* June 27, 2011.**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Tschanz, Senior Plant Pathologist, Plants for Planting Policy, Risk Management and Plants for

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SUPPLEMENTARY INFORMATION:**Background**

Under the Plant Protection Act (PPA) (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this responsibility to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control to eradicate or contain them within the United States. The regulations in “Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,” §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting or propagation. These regulations are intended to ensure that imported nursery stock does not serve as a host for plant pests, such as insects or pathogens, that can cause damage to U.S. agricultural and environmental resources.

The regulations in 7 CFR part 360, “Noxious Weed Regulations,” contain prohibitions and restrictions on the movement of noxious weeds or plant products listed in that part into or through the United States and interstate. Plants are designated as noxious weeds when the plants themselves can cause damage to U.S. agricultural and environmental resources, meaning they can only be moved under a permit containing conditions to prevent their introduction into the environment. The importation of some plants is subject to both the nursery stock regulations and the noxious weed regulations.

On July 23, 2009, we published in the **Federal Register** (74 FR 36403–36414, Docket No. APHIS–2006–0011) a proposal¹ to amend the nursery stock regulations. We proposed to change the nursery stock regulations to refer instead to “plants for planting,” a term

¹ To view the proposed rule, its supporting documentation, and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0011>.

that is consistent with the International Plant Protection Convention’s (IPPC) Glossary of Phytosanitary Terms.² (In this document, we will use the term “plants for planting” to refer to all the articles subject to what have been called the nursery stock regulations, as we did in the proposal.)

We proposed to create a new category of plants for planting whose importation is not authorized pending the completion of a pest risk analysis. We referred to the category as the “not authorized pending pest risk analysis” (NAPPRA) category. We proposed that the NAPPRA category would include two lists: A list of taxa that we have judged, on the basis of scientific evidence, to be potential quarantine pest plants, and therefore potential noxious weeds; and a list of taxa that we have judged, on the basis of scientific evidence, to be potential hosts of quarantine pests.³ We proposed to define a *quarantine pest* as a plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

We proposed to add taxa of plants for planting to the NAPPRA category based on scientific evidence that indicates that their importation poses a risk of introducing a quarantine pest into the United States, rather than on a comprehensive pest risk analysis (PRA). Additionally, we proposed to establish the NAPPRA lists on a Web site and notify the public of our determination that taxa of plants for planting are potential quarantine pests or potential hosts of quarantine pests, and thus should be added to the NAPPRA lists, by publishing notices in the **Federal Register**.

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

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

³ We use the term “taxon” (plural: taxa) to refer to any grouping within botanical nomenclature, such as family, genus, species, or cultivar.

We also proposed to make several other changes to definitions in the plants for planting regulations and to expand the scope of the plants for planting regulations to include nonvascular green plants.

We solicited comments concerning our proposal for 90 days ending October 21, 2009. We received 256 comments by that date. They were from producers, researchers, importers, conservation societies, environmental advocacy groups, representatives of State and foreign governments, other Federal agencies, and the general public.

Based on these comments, we are making the following changes to the proposal:

- In order to make the regulations more specific and to avoid confusion, rather than using the terms “potential quarantine pest” and “potential host of a quarantine pest,” we are simply referring to taxa as quarantine pests or hosts of a quarantine pest.
- We are clarifying that seed of taxa of plants for planting whose importation is not authorized pending pest risk analysis is not eligible to be imported without a phytosanitary certificate under the small lots of seed program in § 319.37–4(d).
- We are not including the proposed provision under which we would have specified a proposed effective date in the notices announcing our determination that a taxon should be added to the NAPPRA category, as we will enforce any restrictions that must be implemented immediately through Federal import quarantine orders.
- We are requiring requests to remove a taxon from the NAPPRA lists to be made in accordance with § 319.5, which requires submission of information regarding the taxon by a foreign national plant protection organizations (NPPO), in order to ensure that we have enough information to conduct a PRA.
- We are providing for the removal of a taxon from the NAPPRA list if the scientific evidence we used as a basis for adding the taxon to the lists is shown to be in clear error. We are also making some minor editorial changes, which are discussed below.

The comments are discussed below by topic.

Support for the Proposed Rule

Two hundred and four of the commenters supported the proposed rule. They cited various reasons for their support. Many spoke of the damage that certain plants cause in the natural environment, giving dozens of examples including mile-a-minute weed, purple loosestrife, yellow starthistle, leafy spurge, Japanese stilt grass, wavyleaf

basketgrass, water hyacinth, and spotted knapweed.

The commenters stated that many of these plants, as well as many other harmful plants, have been introduced through the nursery trade, meaning that they would have been subject to evaluation and, potentially, prevented from being imported under NAPPRA. One commenter noted that the nursery trade naturally seeks to sell plants that grow vigorously, resist insect pests, and propagate easily, traits that are often associated with plants that harm agricultural and environmental resources.

Other commenters supported using the NAPPRA category to address the risk associated with plants for planting that are hosts of quarantine pests, citing previous introductions of harmful pests through the importation of plants for planting. These commenters gave many examples as well, including emerald ash borer, chestnut blight, laurel wilt, Dutch elm disease, pine pitch canker, dogwood anthracnose, Port Orford cedar root disease, white pine blister rust, and sudden oak death (*Phytophthora ramorum*).

Many commenters who supported the rule cited the costs that State and local governments and communities must bear in controlling quarantine pest plants and plant pests; in their view, the most cost-effective way to avoid additional control costs in the future is to prevent the importation of damaging quarantine pest plants and plant pests, and they supported the NAPPRA category as a means by which to do that. One commenter cited a study showing that the Australian weed risk assessment (WRA) system provides economic benefits⁴ and stated that, while the proposed rule did not go as far as the Australian screening system, the regulatory mechanisms are similar enough that creating a NAPPRA list will generate economic benefits to the United States, in addition to significant environmental and agricultural benefits. Some commenters stated that landscaping efforts should concentrate on using native species, making the importation of plants for planting unnecessary.

Some of the commenters noted that preventing the importation of certain taxa of plants for planting might lead to restrictions on taxa that ultimately prove to be safe, or that can be imported safely under certain conditions, but stated that the risk posed by importation

⁴ Keller R.P., Lodge, D.M., and Finnoff, D.C. 2007. Risk assessment for invasive species produces net bioeconomic benefits. Proceedings of the National Academy of Sciences 104:203–207.

of taxa of plants for planting that are quarantine pests or hosts of quarantine pests should be addressed immediately for the good of the wider environment. One commenter stated that maintaining strict importation standards while not impeding trade is a delicate balance, and it appears that the NAPPRA category can maintain that balance when applied judiciously.

One commenter noted that strengthening the plants for planting regulations was recommended by both the National Plant Board’s 1999 Safeguarding Review and 2006 Peer Review Reports.⁵

Comments Supporting Broad Prohibitions or Restrictions on the Importation of Plants for Planting

Under the regulations, most plants for planting may currently be imported into the United States if they are accompanied by a phytosanitary certificate and a permit and if they are inspected at a U.S. Department of Agriculture (USDA) plant inspection station listed in § 319.37–14. Responding to the NAPPRA proposal, some commenters urged us to impose broad prohibitions or restrictions on the importation of plants for planting.

Five commenters recommended that we prohibit the importation of plants that have not previously been imported until those plants are tested rigorously and found to pose no ecological threat to existing species. One of these commenters stated that, given the level of uncertainty about risks that new organisms pose and the unpleasant surprises from species thought to be benign in the past, this should result in effectively blocking importation of all new plant species. Nothing can be guaranteed to be safe, this commenter stated, so it should be banned. This commenter also recommended that testing to prove safety be paid for by industry, rather than the U.S. Government.

Another of these commenters echoed the point that new organisms pose an uncertain risk, and urged us to prohibit the importation of harmful species that are already present in the United States until they can be tested and found to be safe. This commenter stated that a recent study⁶ has shown that genotypes

⁵ The Safeguarding Review is available on the Web at <http://nationalplantboard.org/policy/safeguard.html>; the peer review report is available at <http://nationalplantboard.org/docs/PR%20Report%207-17-06.pdf>.

⁶ Rosenthal, D.M., Ramakrishnan, A.P., and Cruzan, M.B. 2008. Evidence for multiple sources of invasion and intraspecific hybridization in *Brachypodium sylvaticum* (Hudson) Beauv. in North America. Molecular Ecology 17:4657–4669.

from different regions can hybridize, forming plants of great vigor that are even more difficult to control.

One commenter recommended that we prohibit the importation of all plants that have not previously been imported until a PRA has been completed to determine what level of risk the plants pose and what means may be available to mitigate that risk.

One commenter recommended that we add all imported plants for planting to the NAPPRA category and only allow the importation of plants for planting if they were produced under conditions designed to prevent their infestation by quarantine pests (clean stock programs, growth from tissue culture or seed, pre- or post-entry quarantine, *etc.*).

Three commenters recommended prohibiting all importation of plants for planting. One commenter cited a recent research paper⁷ that examines the factors that result in the escape of plants from their original plantings and concludes that the single most important factor is propagule pressure. In other words, the longer a taxon has been held in one place and the more plants there are, the more likely it is to escape cultivation. Once taxa escape cultivation, some proportion of them are likely to be noxious weeds. The commenter concluded that we cannot make a determination that it is safe to import a taxon, as no taxon is safe.

One commenter stated that all importation of plants for planting should be prohibited because some pests associated with plants for planting may have no natural enemies. This commenter also stated that local plants are where they are due to natural selection, and interfering with this process by introducing new plants may harm the environment.

Another commenter stated that it is not possible to accurately assess the risks of introducing new pathogens on imported plants. The commenter cited three reasons for this belief:

- Native plant diseases are poorly known in most regions of the world, and many disease-causing agents have very minor effects on their native hosts. Thus, the knowledge needed to assess risk by plant species or region is not available.

- Quarantine inspections can miss the presence of a pathogen that colonizes a plant as an endophyte (a plant pathogen that is asymptomatic for at least part of its life), but when the same pathogen encounters naive hosts

or new climatic conditions the effects can be devastating. The commenter cited a research paper demonstrating this,⁸ and another providing conifer canker and needle diseases as examples.⁹ Thus, the commenter stated, even careful screening of imported plants is unlikely to prevent pathogen introductions.

- Plant pathogens are often complexes of closely related cryptic species or strains. This means that basing a determination of risk on the knowledge that a particular pathogen is already present in the United States is often erroneous, because pathogens known by the same name are often different. The commenter cited the “aggressive strain” of Dutch elm disease, which eventually was recognized as a separate species, as an example. Thus, the commenter stated, we cannot assume we will know the behavior of any pathogen once it is released into a new environment.

The commenter allowed that it may be possible to safely move small amounts of tissue-cultured plants that have been tested for the presence of endophytic organisms (*i.e.*, organisms that live at least part of their lives within plants without causing apparent disease), but stated that all other forms of plant movement present unacceptable risk.

A few commenters specifically disagreed with the comments calling for broad prohibitions and restrictions on the importation of plants for planting; these commenters instead expressed support for the approach in the proposed rule. Two of the commenters opposed automatically adding all taxa not already established in the United States to the NAPPRA category. Two stated that the benefits from importing plants for planting can outweigh the risk of unwanted pests as long as programs are in place to prevent pest introduction; that the majority of all plants for planting, including seeds, cuttings, bare roots, and bulbs, had their origins as imported materials brought into the United States each growing season; and that each year, hundreds of millions of propagules are safely imported into the United States to support the demands of the U.S. public for decorative planting materials, without harmful impact on the U.S. environment.

Another commenter stated that the NAPPRA concept, if applied with care

and discretion, strikes a balance among the competing requests to impose broad restrictions on the importation of plants for planting and to allow the importation of plants for planting subject only to the existing general restrictions.

We are making no changes to the proposed rule in response to the comments requesting that we impose broad prohibitions and restrictions on the importation of plants for planting, beyond the general requirements in the current regulations. The NAPPRA category is designed to allow us to address the risk associated with plants for planting on a taxon-by-taxon basis; adding broad prohibitions or restrictions to the regulations would be beyond the scope of the proposed rule.

We agree that there is uncertainty about the risk associated with any imported plants for planting when those plants have not been thoroughly studied. Our process for placing restrictions on the importation of a taxon of plants for planting has typically involved the preparation of a comprehensive PRA. This approach required us to evaluate the uncertainty regarding all aspects of the risk associated with the importation of the taxon before any action could be taken. The NAPPRA category that we are adding to the plants for planting regulations in this final rule gives us a streamlined, transparent means to respond to new scientific evidence indicating that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest, thus directly addressing risk while giving us the necessary time to evaluate uncertainty. We will make every effort to respond to scientific evidence as it becomes available.

It should be noted that the NAPPRA category is not the final step we plan to take to ensure that the regulations provide an appropriate level of protection against the risk associated with imported plants for planting. Rather, the NAPPRA category is part of an ongoing effort to revise the plants for planting regulations and to change the way we respond to risks. As noted in the proposed rule, establishing the NAPPRA category is just one of the changes discussed in an advanced notice of proposed rulemaking (ANPR) published in the **Federal Register** on December 10, 2004 (69 FR 71736–71744, Docket No. 03–069–1).¹⁰ We appreciate

⁷ Pysek, P., Krivanek, M., and Jarosik, V. 2009. Planting intensity, residence time and species traits determine invasion success of alien woody species. *Ecology* 90:2734–2744.

⁸ Palm, M.E. 2001. Systematics and impact of invasive fungi on agriculture in the United States. *BioScience* 51(2):141–147.

⁹ Wingfield *et al.* 2001. Worldwide movement of exotic forest fungi, especially in the tropics and the southern hemisphere. *BioScience* 51:134–140.

¹⁰ The ANPR, as well as the comments we received on the ANPR, can be viewed on Regulations.gov at <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2004-0024>. The ANPR contains a detailed discussion of the

the issues that the commenters raised and will keep them in mind as we consider future rulemaking. For example, the issues cited by one commenter regarding the lack of information that we would need to assess risk by plant species or region highlight the need to gather more and better data regarding pests that could potentially be associated with plants for planting. Once we gather such data, of course, the data could be used to add taxa to the NAPPRA category. The NAPPRA category will also allow us to respond quickly to any new information that allows us to better predict which taxa of plants for planting can damage U.S. agricultural and environmental resources.

Although we do not agree with the recommendation that we add all taxa of plants for planting to the NAPPRA category, we agree with the commenter who stated that plants for planting that are hosts of quarantine pests could be allowed to be imported if they are produced under standard conditions designed to prevent their infestation by quarantine pests, such as pest-free growth in tissue culture. We are developing a proposed rule that would provide for various measures to help facilitate the importation of taxa on the NAPPRA lists or the lists of prohibited articles in § 319.37–2. This effort is discussed in more detail later in this document under the heading “Risk-Mitigating Production Practices.”

One commenter asked how we will address uncertainty. Although the proposed rule indicated that the decision to restrict the importation of taxa of plants for planting will be made on the basis of scientific evidence indicating that the importation of the taxa poses a risk, the commenter stated that, often, that there is insufficient scientific evidence to make a conclusion as to the level of risk posed by a particular plant, a particular plant pest, or origin in a particular country. The commenter asked whether a lack of available scientific evidence will be a factor for adding plant taxa to the NAPPRA list.

One commenter stated generally that NAPPRA should address the risk of new or little-known insects and pathogens, as scientific data is not always available, especially in new environments.

Along the same lines, another commenter stated that, for many quarantine pests, there will not be sufficient scientific data to predict their impact after introduction to the United

States. In fact, the commenter stated, many quarantine pests are unknown to science until they become pests in a new environment. The commenter stated that it is important that USDA does not underestimate risk when evaluating candidate taxa to appear on the NAPPRA list as quarantine pests or hosts of quarantine pests, as there is often no way of determining the damage a pest will incur to a new ecosystem before the introduction occurs.

As stated earlier, we will only add a taxon to the NAPPRA category if there is scientific evidence indicating that the taxon is a quarantine pest or a host of a quarantine pest. Adding taxa to the NAPPRA category for which we lack scientific evidence, based on uncertainty, would result in the effective imposition of broad restrictions on the importation of all plants that are not well-known. As discussed earlier, our goal in establishing the NAPPRA category is to provide a process for imposing restrictions that directly address the risk associated with specific taxa of plants for planting, based on scientific evidence.

General Opposition to the Proposed Rule

Several commenters expressed general opposition to the proposed rule on the basis that it would impose additional restrictions that might not be justified on the importation of plants for planting. Many commenters characterized the proposed NAPPRA category as a prohibition on the importation of plants for planting, with exceptions only for plants that were assessed and determined to be safe. One commenter expressed concern that the ultimate goal of our regulatory efforts was to prohibit the importation of all plants for planting unless the plants have been screened and found to be safe.

Some commenters raised specific concerns with respect to the implications of a broad prohibition on the importation of plants for planting. One commenter stated that invasive plants have many ways of arriving in the United States and that few of them can be documented as ornamental species that were introduced through horticulture. Two commenters stated that any slowing or complication of the process of importation of seeds and plant material only encourages the illegal and undocumented shipping of that material. One commenter stated that a broad prohibition on plants for planting would affect plants that are only weeds in certain situations and are clearly valuable in others, such as many food crops. One commenter stated that

the costs associated with testing every taxon of plants for planting to determine whether each is safe would be prohibitive. One commenter stated that no specific plants were cited in the proposed rule as being invasive or as vectors of pests.

Some commenters opposed the proposed NAPPRA category on the grounds that it would hamper the conservation of plant material. One commenter stated that conservation of plant material is an extremely time-sensitive process, and any slowing of the process could result in the loss of important germplasm or even species. The commenter stated that this would be absolutely fatal for material with short viability or for emergency conservation measures. One commenter stated that seeds were essential for preservation of biodiversity in agricultural systems; another suggested that we should continue to allow the importation of organic seed and other quality seed. One commenter stated that some species may not be able to survive outside greenhouse conditions, meaning there would be no need to prohibit their importation into the United States.

As one of the commenters noted, we are not imposing any additional restrictions on specific taxa of plants for planting in this final rule. Rather, this final rule provides a process by which we can impose restrictions on specific taxa. When we determine that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest, we will publish a notice in the **Federal Register** to inform the public of our determination and make available a data sheet that details the scientific evidence that we used in making the determination. At that point, any interested party will have the opportunity to comment on the proposed addition of the taxon to one of the NAPPRA lists, supporting or opposing the addition. We will particularly welcome comments on the scientific evidence supporting our determination, which will be detailed in the data sheet accompanying the notice.

Although one commenter stated that few quarantine pest plants had been introduced through the horticultural trade, several commenters who supported the proposed rule provided examples of ornamental species imported for horticulture that had become quarantine pest plants. In any case, as discussed, we are not imposing broad prohibitions or restrictions on ornamental species imported for horticulture, or on any other taxa imported for any other use.

Because only specific taxa of plants for planting will be added to the

history of the nursery stock regulations that is helpful for understanding their original intent and current state.

NAPPRA lists, we do not expect that this final rule will result in a large increase in illegal importation of plants for planting. We have existing inspection, investigation, and enforcement processes that work to prevent the importation of plants for planting whose importation is prohibited in § 319.37–2. We will use those processes to ensure that NAPPRA taxa are not illegally imported in the same way that we currently do for taxa whose importation is prohibited. We are also providing for plants for planting listed as NAPPRA to be imported for experimental or scientific purposes under controlled conditions, so scientific research can be conducted on them.

Conservation of plant material will continue as it has under the current regulations, unless a taxon of the plant material in question is determined to be a quarantine pest or a host of a quarantine pest and the taxon is subsequently added to one of the NAPPRA lists. As one commenter noted, a taxon requiring conservation is unlikely to be added to the NAPPRA lists as a quarantine pest, since any plant that has difficulty surviving in field conditions is likely incapable of reproducing enough to cause potentially economically important damage to agricultural or environmental resources. For that reason, a taxon that could not survive outside a greenhouse would also be unlikely to be added to the NAPPRA lists.

With respect to the concerns about seed, we note that the NAPPRA list of taxa that are hosts of quarantine pests allows the importation of seed unless we specify that seed is regulated. We would only regulate the seed of hosts of a quarantine pest if the pest in question could be introduced and established in the United States through the importation of seed.

Some commenters expressed specific concerns about the impact of a prohibition on the importation of plants for planting except those that have been determined to be safe for U.S. biodiversity and the importation of plants with beneficial uses. One commenter cited the discovery of important genetic variability in *Sophora toromiro*, now extinct in the wild, in the hands of a Chilean nurseryman and other individuals outside of botanic gardens, as indicating the importance of not restricting public access to biological diversity.

In addition, the proposed rule discussed some comments we received on the May 2004 ANPR that addressed biodiversity. We summarized these comments as stating that any further

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

One commenter stated that there is no evidence that pests or invasive species reduce biodiversity; rather, in all cases, they have increased biodiversity. The commenter asked us to provide peer-reviewed scientific evidence that biodiversity has decreased at any time because of imports.

We appreciate the opportunity to clarify our statement. There are multiple types of biodiversity that ecologists and other scientists consider when evaluating biodiversity. Total biodiversity, the type to which we believe the commenter refers, involves a simple count of the number of species present in a country or in an area within a country. Site-specific biodiversity may take into account the relative distribution of taxa within a site, a larger area, or even a country.

We regulate the importation of taxa of plants for planting that are quarantine pests or that are hosts of quarantine pests based on the damage they could cause to U.S. agricultural and environmental resources. Sometimes, the damage a quarantine pest causes can reduce site-specific biodiversity. For example, if an imported quarantine pest plant damaged previously thriving species and reduced their numbers while rapidly propagating throughout their former habitat, the total number of species at that site would have increased, but the diversity of their distribution would have decreased substantially.

Similarly, the emerald ash borer may kill virtually all of the ash trees in areas in which the beetle occurs. Although the total biodiversity within the United States was increased by one species with the introduction and establishment of the emerald ash borer, the distribution of hardwood trees in U.S. forests where the emerald ash borer occurs is markedly less diverse.

We will only add a plant taxon to the NAPPRA category if it is a quarantine pest or a host of a quarantine pest. Preventing the introduction of quarantine pests or hosts of quarantine pests into the United States helps to

avert the damage that would occur if they were introduced. Sometimes, as discussed, that damage can reduce biodiversity, meaning that preserving existing biodiversity is one beneficial effect associated with preventing damage from quarantine pests.

With respect to the general concerns about restricting access to biodiversity, as we will only add specific taxa to the NAPPRA category based on our determination that the taxa are quarantine pests or hosts of quarantine pests, we do not believe that biodiversity and importation of plants with beneficial effects will be widely affected. The importation of most taxa of plants for planting will continue to be allowed.

One commenter stated that the proposed rule did not seem to be entirely in accordance with ISPM No. 1, “Phytosanitary Principles for the Protection of Plants and the Application of Phytosanitary Measures in International Trade.” (Countries that are signatories to the IPPC, including the United States, commit to promulgating regulations that are consistent with the various ISPMs, unless a country supports a deviation from the ISPMs with a technical justification.) The commenter specifically cited the principles of necessity, managed risk, minimal impact, and technical justification that are discussed in that document. The commenter stated that it would be difficult to provide specific comments on this issue, as the list of plants added to the new category is not known.

We are not adding any taxa of plants for planting to the NAPPRA category in this rulemaking; this rulemaking only sets up the NAPPRA category. Members of the public will have the opportunity to comment on all additions to the NAPPRA category.

We have reviewed the principles cited by the commenter from ISPM No. 1 and found the proposed rule to be in accordance with those principles.

Necessity: ISPM No. 1 states that contracting parties (*i.e.*, signatories to the IPPC) may apply phytosanitary measures only where such measures are necessary to prevent the introduction and/or spread of quarantine pests. We will only add taxa to the NAPPRA category when it is necessary to do so to prevent the introduction of quarantine pests, either taxa of plants for planting that are quarantine pests themselves or taxa that are hosts of quarantine pests.

Managed risk and minimal impact: ISPM No. 1 states that contracting parties should apply phytosanitary measures based on a policy of managed

risk, recognizing that risk of the spread and introduction of pests always exists when importing plants, plant products and other regulated articles. It also states that contracting parties should apply phytosanitary measures with minimal impact. However, no mitigation measures are available for taxa of plants for planting that are quarantine pests other than not authorizing their importation, or allowing their importation only under a permit with conditions designed to prevent their escape into the wider environment. We recognize that mitigation measures may be available for some taxa of plants for planting that are hosts of quarantine pests, but we would need time to develop them and present them in a comprehensive PRA; during that time, we would list such taxa as NAPPRA, to prevent the introduction of quarantine pests into the United States. This is consistent with the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), which is the document that recognizes the IPPC as a standard-setting body for plant health issues.

In Article 5 of the WTO SPS Agreement, paragraph 7 states: "In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time." The NAPPRA process allows us to act on the basis of available pertinent information and provides for review of the measure, meaning that NAPPRA is consistent with the WTO SPS Agreement and thus with the governing principles of international plant health regulation.

Technical justification. ISPM No. 1, quoting the IPPC, states that contracting parties shall technically justify phytosanitary measures " * * * on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information." A data sheet detailing the scientific evidence we use in making a determination that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest will be made available along with the

Federal Register notice announcing our determination. Commenters will be free to address the adequacy of the scientific information we use in order to make such a determination in their comments.

Definition of Quarantine Pest

We proposed to add a definition of the term *quarantine pest* to the regulations in § 319.37–1. As mentioned earlier, the proposed definition read: "A plant pest or noxious weed of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled." This definition was based on the definition of *quarantine pest* in the IPPC Glossary of Phytosanitary Terms.

In the proposal, we noted that the PPA definition of "noxious weed" includes references to the weed's impact on agriculture, natural resources, public health, and the environment, among other things, while the IPPC definition of *quarantine pest* itself refers only to economic importance. However, Appendix 2 to the IPPC Glossary explains that the term "economic importance" is to be understood as having a broad meaning encompassing potential damage to the natural environment as well.

Several commenters recommended that we explicitly include in the definition of *quarantine pest* references to the potential environmental and public health importance of the pest. While acknowledging that Appendix 2 to the Glossary contains references to these areas, these commenters stated that the definition would be more easily understood if it incorporated references to the environment and public health.

Another commenter stated that APHIS should consider revisions to the regulations that allow for protection of natural ecosystems, unless the responsibility to manage and regulate imports that could have damaging impacts to natural systems in the United States is under the jurisdiction of another agency. The commenter stated that natural ecosystems in the United States are integral to American agriculture, supporting livestock grazing and meat production and providing habitat for native pollinators, which are becoming increasingly important to agricultural crop production with the continued decline of European honeybees.

We appreciate the commenters' concerns. However, we have determined that it is not necessary to include references to the potential environmental or public health importance of a quarantine pest in the

definition of *quarantine pest*. As stated in the proposal, the term "economic importance" has a broad meaning. Clearly, a pest that caused damage to the wider environment (including natural ecosystems) would be of economic importance, and we have regulated pests as quarantine pests that pose a threat primarily to the environment rather than to agricultural resources; the Asian longhorned beetle and *P. ramorum* are two examples.

We would also consider the potential public health impacts of a pest, as such impacts would necessarily have an effect on the economy. For example, we list giant hogweed (*Heracleum mantegazzianum*) as a noxious weed in part because its leaves and stem produce a clear sap that photosensitizes the skin of humans, leading to photodermatitis, which results in painful and lasting blisters. Sap that comes into contact with the eyes can cause temporary or permanent blindness. Another noxious weed, kodomillet (*Paspalum scrobiculatum*), clogs irrigation and drainage ditches and is toxic to animals and humans. Such noxious weeds clearly affect public health, and thus have economic impacts.

The definition of *quarantine pest* incorporates the terms *plant pest*, as it has been defined in § 319.37–1, and *noxious weed*, a definition of which this final rule adds to § 319.37–1. The definition of *plant pest* refers to damage to any plant or plant product and thus encompasses damage to environmental resources as well as agricultural resources. As commenters noted, the definition of *noxious weed* refers to damage to crops (including plants for planting or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. This definition also encompasses environmental and public health concerns. By incorporating the definitions of *plant pest* and *noxious weed* into the definition of *quarantine pest*, we make clear our intentions to regulate to protect the environment and, where applicable, public health as well as agriculture.

We proposed to remove the definition of *plant pest* from the regulations in the proposed rule, as we proposed to use the term *quarantine pest* exclusively elsewhere in the regulations. However, to ensure that the meaning of the term *plant pest* within the definition of *quarantine pest* is understood, and to make it clear that damage to environmental resources as well as agricultural resources is considered in

determining whether a pest qualifies as a quarantine pest, we are retaining the definition of *plant pest* in this final rule.

We have long considered the effects of quarantine pests on the environment and on public health in making regulatory decisions. For example, we prepare our PRAs for fruits and vegetables in accordance with guidelines that consider the environmental impacts of introducing quarantine pests associated with those commodities into the United States. Environmental impacts that we consider for such quarantine pests include ecological disruptions, reduced biodiversity, effects on threatened or endangered species, and the likelihood that the introduction of the species would stimulate chemical or biological control programs. Our guidelines for preparing a WRA, which are available on the Web at http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/wra.pdf, also specifically consider the environmental impacts of the taxon that is being evaluated; the environmental impacts include several ecosystem-related considerations, including natural system processes, community composition, and community structure, as well as potential impacts on human health, such as allergies or changes in air or water quality (for example, due to toxins).

The definition of *quarantine pest* that we are adding to the regulations in this final rule thus does not represent a change from our current policy, and we will continue to consider environmental and public health consequences associated with the introduction and establishment of quarantine pests.

Definition of Official Control and Scope of the NAPPRA Category

As noted, we proposed to define a *quarantine pest* as a plant pest or noxious weed that is not yet present in the United States, or present but not widely distributed and being officially controlled. We proposed to add a definition of *official control* to the regulations in § 319.37-1 as well; it was based on the definition of that term in the IPPC Glossary. The definition we proposed read as follows: "The active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests."

Several commenters stated that taxa of plants for planting that are present in the United States should be eligible for designation as quarantine pests and thus evaluated to determine whether those

plants should be added to the NAPPRA list of quarantine pest plants.

One commenter stated that the proposal should not be limited to addressing certain species based on their history of importation; such a limitation, in the commenter's view, has no scientific basis. Another commenter stated that species already introduced into the United States are among those that pose the highest risk, both because they have already entered the United States and because many plants that establish in the United States are inherently invasive.

Some commenters stated that all plants present in the United States should be included in the scope of the NAPPRA category because the risk associated with plants already present in the United States can change unexpectedly. Another commenter stated that we do not know the potential that many plant species have for invasiveness in the face of further fragmentation and climate change. Similarly, two commenters stated that the economic importance of each plant present in the United States should be evaluated.

One commenter who supported adding plants that are present in the United States to the NAPPRA lists cited Russian olive's recent spread into ecosystems in the western United States as indicating that taxa already present in the United States are likely to cause problems.

We agree with these commenters that plant taxa that are already present in the United States may cause damage to agricultural and environmental resources within the United States. Our definition of *quarantine pest* does not prevent us from restricting the importation of taxa of plants for planting that are already in the United States, if those taxa are not widely distributed and under official control. (For simplicity, the rest of this discussion will refer to "under official control" without mentioning the distribution criterion, except where it needs to be emphasized.) However, the purpose of the NAPPRA category is to address the risk associated with the importation of taxa of plants for planting. Restrictions on the interstate movement of plants for planting (as well as other commodities) to prevent the spread of quarantine pests within the United States are found in 7 CFR parts 301, 302, 318, and 360.

It is important to note that determining that a plant taxon is invasive is not the same as determining whether it is a quarantine pest. For a plant taxon to be classified as a quarantine pest, that plant taxon must

be a noxious weed of potential economic importance to the United States, based on the damage it causes to agricultural and environmental resources, and must not be present in the United States, or present but under official control. The spread of a plant in a new habitat, which is commonly characterized as "invasiveness," would not be sufficient by itself to cause us to determine that a plant should be considered for designation as a quarantine pest.

For plants for planting that are present in the United States, we have determined that the best use of APHIS' limited resources for evaluation of taxa of plants for planting, and for ensuring that plants for planting whose importation is not authorized are not imported, is to limit the scope of the NAPPRA category to plant taxa that are under official control. There are several reasons for this. One is that if a taxon of plants for planting spreads quickly enough and causes enough damage to be a quarantine pest, and the taxon is not under official control within the United States, that taxon would likely expand its range to all suitable areas within the United States even if we were to add it to the NAPPRA list. Adding the taxon to the NAPPRA list might result in fewer introductions of the taxon to areas where the taxon is not yet present, but would not ultimately prevent its spread to those areas. Given that we have limited resources to evaluate an immense number of taxa that could potentially be imported, it is appropriate to focus our efforts where they will be most effective at preventing damage to U.S. agricultural and environmental resources.

Another reason for requiring plant taxa to be under official control before adding them to NAPPRA is that the imposition of official control on the movement of a taxon within the United States is a good indication that the taxon is of economic importance, although some taxa may be placed under official control and found not to be sufficiently economically important to continue official control upon later evaluation. If a pest is present and plant health authorities determine that it is of such economic importance that they impose official controls, the pest would become a quarantine pest. This again helps to focus our evaluation efforts.

Finally, not authorizing the importation of a plant taxon while allowing the free movement of that plant taxon within the United States would be inconsistent with APHIS' commitment to the WTO principle of nondiscrimination between domestic and import requirements, as it would

treat the importation of the plant taxon differently from its interstate movement.

It should be noted that, under this final rule, we may add to the NAPPRA category a taxon of plants for planting that is already present in the United States and not under official control if that taxon is a host of a quarantine pest that is not present in the United States, or one that is present but not widely distributed and under official control; the importation of such a taxon would pose a risk of introducing a quarantine pest.

One commenter stated that the importation of any taxon should be restricted if its harmful impacts on the United States outweigh its benefits, regardless of whether the taxon is present in the United States. This commenter stated that inclusion of such plants is supported by the proposed definition of *quarantine pest* if the definition of *official control* is interpreted to include State and local mandates aimed at eradication or containment. The commenter further stated that mandates at the State and local levels are often the most responsive to new pests inflicting damage on the ground before the pest becomes widespread.

Another commenter stated that requiring plant taxa to be under official control in order to qualify as quarantine pests strains local agencies. If a plant is infrequently present, and believed to be of concern, but the local agencies do not have the money to place the plant taxon under official control, the commenter stated, then the best response is not to exacerbate the problem by permitting the taxon's importation. The commenter expressed concern that regions with more limited financial support for official control measures will be subjected to more pests and invasions than those with the resources to designate many pests as under control. Substituting "official designation" or being "recognized risk" as a problem plant, the commenter stated, should suffice for WTO standards without requiring impossible expenditure.

We agree that State and local governments are invaluable partners in identifying and responding to new pests. We work closely with State and local governments to share information about pest problems, develop phytosanitary controls, and enforce restrictions on the intra- and interstate movement of plants for planting.

We are developing a process by which a State will be able to request that APHIS recognize its regulations and procedures as official control for the purposes of Federal regulation; we will grant recognition if an evaluation of the

regulations and procedures indicates that they are effective and justified based on the economic importance of the pest. Such regulations and procedures could include both control and eradication programs and designation of a plant taxon as subject to movement restrictions. We plan to publish a notice in the **Federal Register** to provide information about this process once its development is complete. We believe this process will address the second commenter's concerns.

With respect to the first commenter's first point, we will only add plants for planting that are present in the United States to the NAPPRA list if they are under official control, for reasons discussed earlier.

One commenter stated that the regulations should clearly state that quarantine pests: (1) Do not necessarily have to be under official control if they are already present but not yet widespread; and (2) may be later placed under official control as a condition of being listed as a quarantine pest following a PRA.

A pest already present in the United States would not be considered to be a quarantine pest unless it was not widely distributed and under official control. A pest must meet both conditions in order to be considered a quarantine pest.

In practical terms, if a pest is present in the United States but not yet widely distributed, it is much more likely to be designated as a quarantine pest than a pest that is widely distributed, as official control is more likely to be effective for a pest that is not widely distributed. Thus, while we are not taking the commenter's suggestion to make pests that are not under official control eligible to be quarantine pests, most pests that are of economic importance and whose distribution is limited would be eligible for designation as a quarantine pest, assuming that we determine that official control is justified in response to its presence.

As the commenter alludes, one means by which we might determine that a pest is of economic importance is through the completion of a PRA. If we complete a PRA that determines that a pest is of economic importance to the United States, and we determine that enforcing mandatory regulations to control or eradicate the pest is practical and justified by the importance of the pest, we would designate that pest as a quarantine pest. We could then prohibit or restrict its importation, as appropriate, under the plants for planting regulations.

One commenter asked how introductions of plants for planting that are discovered in the field would be covered under the proposed rule. The commenter expressed specific concern about the accidental introduction of taxa of plants for planting that become plant pests, such as mile-a-minute weed (*Persicaria perfoliata*) and Japanese stilt grass (*Microstegium vimineum*), and taxa of plants for planting that are plant pests and whose introduction pathway is unknown, such as wavyleaf basketgrass (*Oplismenus hirtellus* ssp. *Undulatifolius*).

If we discover an introduction of a taxon of plants for planting that may be a quarantine pest, we will evaluate it. If the taxon is under official control and is of economic importance, we will publish a notice proposing to add the taxon to the NAPPRA lists. If the taxon is not under official control, we will further evaluate whether the taxon should be under official control; if the taxon is of sufficient economic importance, we will take appropriate regulatory action, which would normally be adding it to the list of noxious weeds in 7 CFR part 360. We will also recognize State and local official control programs, if they exist, in considering whether to list a pest plant in the NAPPRA category. The NAPPRA category does not restrict our ability to take appropriate action if we find a quarantine pest within the United States; it simply provides us with a tool to address the risk associated with the importation of certain taxa of plants for planting.

One commenter encouraged APHIS to consider ways to address potentially invasive species that are present in the United States but have not yet begun to spread, through means other than the plants for planting regulations if necessary.

We consider preventing the importation of species under official control to be a powerful tool to address such species. As noted earlier, we also work with State and local governments to share information about pest problems and to develop phytosanitary controls for emerging pests. We will consider whether there are other appropriate ways to achieve this goal, and we welcome any suggestions on how to accomplish this that the public can provide.

One commenter supported using a quarantine pest list to place taxa on the NAPPRA list and asked whether the APHIS actionable pest list would be used for this purpose as well.

The APHIS actionable pest list is used at ports of entry to determine whether a pest found on imported plant material

(whether plants for planting, fruits and vegetables, or any other plant material) requires regulatory action, such as treatment or re-exportation. Pests are added to the actionable pest list based on their potential to cause damage within the United States if introduced. We will use this list as a source of taxa to be evaluated for addition to the NAPPRA category.

Several commenters addressed the issue of when a plant taxon should be considered to be “present in the United States,” as part of the proposed definition of *official control*. Several commenters recommended that APHIS collect the full taxonomic identity of all imported plants and immediately begin developing a database of those plants that have already been imported. Some commenters stated that we should make this information publicly available.

We agree that we need better data on the plants that have been imported into the United States. We are exploring many means for obtaining that data. Currently, under § 319.37–4, a phytosanitary certificate must accompany almost all imported plants for planting. Under § 319.37–4, the phytosanitary certificate must identify the genus of the article it accompanies. 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. For articles that are not required to be accompanied by a phytosanitary certificate, we require alternate means of taxonomic identification. We are using the taxonomic and volume information collected under these requirements to begin building a database of imported plants for planting. We are also exploring other potential sources of data on this topic. If we get the necessary data, we will consider making it publicly available.

Some commenters suggested specific thresholds to determine whether a taxon of plants for planting is present within the United States.

One group of commenters recommended that any taxon that does not have at least a 50-year record of cultivation outside its native range be placed automatically on the NAPPRA list. The commenters suggested that if records of historical cultivation of a taxon are not readily available through standard sources, the taxon should be placed on the NAPPRA list. The commenters recommended that we allow any party proposing to import a taxon added to the lists because no records of historical cultivation were

available to request reevaluation by supplying records of cultivation for over 50 years.

Another commenter stated that a species without a long record of cultivation outside its native range should be treated cautiously even if it has not yet become invasive, given the potential lag time between introduction and invasion.

The commenters appear to proceed from the assumption that all taxa of plants for planting are quarantine pests. As discussed earlier in this document, we have not found this to be the case. Taking the commenters’ recommendations would stop the importation of most taxa of plants for planting, including all taxa that have not previously been imported and most taxa that are currently being imported, without scientific evidence to indicate that any specific taxa among them are quarantine pests or hosts of quarantine pests. Our goal in establishing the NAPPRA category is to provide a process for imposing restrictions that directly address the risk associated with specific plants for planting, not to establish broad prohibitions or restrictions on the importation of plants for planting.

Some commenters (describing taxa already present in the United States as “precedented”) stated that taxa of which at least 1,000 propagules (any plant material used for propagation) have been imported into the United States in 1 or multiple shipments and that are still extant within the United States should be considered precedented.

We would generally consider taxa of plants for planting that meet the threshold suggested by the commenters to be present in the United States. However, there may be cases in which fewer than 1,000 propagules of a taxon have been imported, but the propagules that have been planted have resulted in the taxon’s widespread distribution. Such a taxon would be considered to be present in the United States for the purpose of determining whether it is a quarantine pest. In addition, we currently lack data that would allow us to determine whether 1,000 propagules of a taxon have been imported into the United States, or whether those propagules still existed in the United States, if the taxon has not entered wider cultivation. When we publish a notice in the **Federal Register** indicating that we have determined that a taxon of plants for planting is a quarantine pest, we will welcome any data on previous importation of the taxon that the public can provide.

Two commenters recommended that we add to the regulations a definition of

“in cultivation,” apparently as a proxy for determining whether a plant taxon is present in the United States and not under official control. These commenters recommended that we define taxa as “in cultivation” if they currently are, or have in the past been, grown intentionally by one or more persons in the United States. The commenters stated that previously grown taxa should be defined as “in cultivation” because it is common for a species to be brought into cultivation by a specialist gardener, die out, and then be re-imported while the gardener learns how to grow it. The commenters noted that the fact that a species died out despite being grown carefully by a specialist is extremely strong evidence that the species is not invasive.

The commenters recommended that, when a taxon is selected for potential inclusion in the NAPPRA lists, the public should be given the opportunity to state whether or not that taxon is in cultivation. If after inclusion in the NAPPRA list it is discovered that a taxon was already in cultivation in the United States, the commenters recommended that such information, if verified by APHIS, should be grounds for removal of the taxon from the NAPPRA list. The commenters noted that APHIS could then conduct a PRA on that taxon if there are concerns that it might be invasive.

We have determined that it is not necessary to add a definition of “in cultivation” to the regulations. The definitions of *quarantine pest* and *official control* more precisely indicate that, when determining whether a taxon of plants for planting is a quarantine pest, we consider whether the taxon is present in the United States, regardless of whether it is in cultivation or in the wild. However, we agree with the commenters that the fact that a taxon died out in cultivation would be useful evidence in evaluating whether that taxon could qualify as a quarantine pest. Every time we make a determination that a taxon of plants for planting is a quarantine pest, we will publish a notice in the **Federal Register** informing the public of our determination and requesting public comments. Commenters will have an opportunity to provide information indicating that the taxon is in cultivation, which would indicate that the taxon is present in the United States, and thus not eligible for addition to the NAPPRA category unless it is under official control. If commenters indicate that the taxon was at one point in cultivation but died out, that would indicate that the taxon would be unlikely to cause economically significant damage, and

we would consider that to be evidence against adding the taxon to the NAPPRA category.

We will typically consult several sources in determining whether a plant is present in the United States, including the PLANTS database (at <http://plants.usda.gov/>) and the GRIN database (at <http://www.ars-grin.gov/cgi-bin/npgs/html/index.pl>) and various flora and plant catalogues. These resources indicate whether there is a known, active presence of a plant in the United States, both in cultivation and in the wild.

Another commenter stated that the presence of a plant in a limited number of places does not mean that a particular importation is safe from carrying pests, or being a pest. The presence in the United States of a specimen brought through one pathway, or present in a botanic garden, for example, provides minimal evidence that the same species, imported in quantity from a different country, is safe from carrying pests or becoming a pest. The commenter stated that evidence from such individual specimens tells us very little about the risk of importing them in quantity since they may not have both sexes, sufficient self-incompatibility alleles, or time and habitat to show whether breeding and invasion would occur.

This commenter also stated that, if any presence is sufficient to exclude a taxon from designation as a quarantine pest, it would encourage poor taxonomy to circumvent the rules. An importer could search the catalog of botanic gardens to see if any close relatives are present and classify the importation under that taxon. Unless an expert could recognize the difference during the permitting process or importation, this commenter stated, another species could be allowed for importation based upon the evidence of a single specimen or just a few.

We agree with this commenter that the presence of a plant taxon in the United States does not necessarily provide information about whether it is a pest. Unless the plant is also under official control, though, it would not be eligible for consideration as a quarantine pest. However, as noted earlier, we could still add the taxon to NAPPRA if it was a host of a quarantine pest.

It is worth noting that we typically would not have a record of a plant's cultivation if only a single specimen or very few plants of that taxon were present in the United States, and if a plant was imported under a false taxonomic designation, we would almost certainly have no record at all of its importation and cultivation. Thus, if

evidence indicated that such a plant taxon was a pest of potential economic importance to the United States, we would publish a notice in the **Federal Register** announcing our determination that the taxon was a quarantine pest.

Also, our regulations require the phytosanitary certificate accompanying imported plants for planting to contain correct taxonomic information. If we determine that the phytosanitary certificate under which the plants for planting were imported had included incorrect information, we would refuse entry for the consignment of plants for planting, the importer would be subject to civil or criminal penalties under the PPA for violating the regulations, and we would notify the NPPO of the exporting country of this non-conformance with our regulations and the IPPC.

This commenter went on to state that it is worrisome that the simple presence of a few plants in the United States could prevent APHIS from conducting a PRA or WRA, which would strongly incentivize questionable behavior to allow importations. The commenter stated that there have been rumors for years of environmentalists arranging to find endangered species near a project they wish to block, or developers happening to have endangered species disappear before officially noticed. The commenter expressed concern that a similar problem would arise with respect to plants for planting: To allow for a potentially lucrative import pathway, one would merely need to find a presence of the species in the United States not under official control. This could be due to an illegal importation or other release. Upon identifying the minimum standard of some individuals reproducing in the wild, the commenter stated, the whole risk assessment is at risk of collapse.

The existence of some individuals of a plant taxon in the United States does not make it impossible for APHIS to conduct a PRA and WRA on the taxon; APHIS still has the option of conducting a PRA and WRA and determining that the plant taxon should be placed under official control, either as a noxious weed or as a host of a quarantine pest. With respect to adding taxa to the NAPPRA category, which the commenter may have been concerned about as well, the existence of a few individuals of a taxon within the United States would not prevent us from adding that taxon to the NAPPRA category if we also determine that the taxon poses such a risk that it must be placed under official control.

One commenter stated that we should evaluate for addition to the NAPPRA lists all taxa that do not have a long

history of being imported pest-free from a specific country and that are not characterized by stable production conditions. The commenter stated that such criteria will allow APHIS to better predict risk when considering plants that have a history of importation.

We will take the information the commenter suggests into account when deciding which taxa to evaluate for inclusion in the NAPPRA category, as such taxa are more likely to be quarantine pests than taxa that have long histories of safe importation and stable production conditions. We will also take such information into account as we continue the process of revising our plants for planting regulations.

As noted earlier, we based the proposed definition of *official control* on the definition of that term in the IPPC Glossary. The only change we made to the IPPC definition was to omit the provisions relating to regulated non-quarantine pests, because the plants for planting regulations do not presently include provisions for regulating non-quarantine pests.

One commenter stated that, while the concept of regulated non-quarantine pest has not yet been formally applied in the United States, the National Plant Board's 1999 Safeguarding Review urged implementation of the concept and provided specific phytosanitary issues for which the concept could be relevant. Indeed, the commenter stated, the use of provisions for regulated non-quarantine pests is being actively discussed as an alternative regulatory approach to full deregulation of plant pathogens that are now classified as quarantine pests. The commenter urged APHIS to take the proactive step of defining "regulated non-quarantine pest" at this time, consistent with the IPPC definition.

We believe it would be confusing to include in our definition of *official control* a reference to a type of pest that would not otherwise be referred to in the regulations. If, in the future, we propose to amend the plants for planting regulations to address regulated non-quarantine pests, we would amend this definition to include regulated non-quarantine pests, consistent with the IPPC Glossary definition.

We will continue to consider regulating non-quarantine pests as a potential means to manage the risk associated with plants for planting and other plant products. Our decision not to include this language in the definition of *official control* in this final rule should not be construed to indicate that we have decided against using the

regulated non-quarantine pest regulatory approach in the future.

Definition of Plants for Planting

We proposed to add a definition of *plants for planting* to the regulations in § 319.37–1. The proposed definition read as follows: “Plants intended to remain planted, to be planted or replanted.”

Several commenters stated that the proposed definition is less clear than the definition of *plant* in the PPA, which reads as follows: “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.” These commenters asked that we use this definition in § 319.37–1.

We already define *plant* in § 319.37–1 using the definition of *plant* in the PPA. We proposed to define *plants for planting* in § 319.37–1 to make the plants for planting regulations consistent with the IPPC Glossary of Phytosanitary Terms. The definition of *plants for planting* refers to the definition of *plant*; any plant for planting is by definition a plant. Thus, all the information in the PPA definition of *plant* is already in the regulations. We are making no changes in response to these comments.

Definition of Noxious Weed

We proposed to add a definition of *noxious weed* to the regulations in § 319.37–1. The proposed definition read as follows: “Any plant or plant product that can directly or indirectly injure or cause damage to crops (including plants for planting or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.”

One commenter stated that every species can be considered to “indirectly injure the environment” by some criterion and noted that some invasion biologists consider the mere presence of any plant deemed “non-native” to be “harm” to the environment. The commenter asked how economic harm and economic benefit would be evaluated and balanced. The commenter also asked how ecological harm would be defined and what scientific basis there would be for the definition. As examples of potentially problematic cases, the commenter stated that wheat and maize “harm” the environment because their cultivation destroys thousands of square miles of formerly diverse prairie ecosystem and replaces them with monotypic “crop deserts”

with increased erosion and high loads of toxins. The commenter also noted that hydrilla harms navigation by interfering with small boats, but benefits fisheries and birds.

The proposed definition of *noxious weed* is almost identical to the definition of *noxious weed* in the PPA, except that a reference to “nursery stock” in the PPA definition was changed to “plants for planting,” to be consistent with our other proposed changes to the regulations. The proposed definition thus reflects our statutory authority.

We proposed to use the term *noxious weed* in the plants for planting regulations only with respect to the NAPPRA category; the regulations for plants that we regulate as noxious weeds are in 7 CFR part 360. The regulations governing the NAPPRA category, as established in this final rule, allow us to ensure that the importation of plant taxa that are quarantine pests (and thus noxious weeds) is not authorized. We will only list in the NAPPRA category quarantine pest plants that are of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled. Wheat and maize are thus not problematic with respect to the NAPPRA category, as they are widely distributed in the United States and not under official control. Hydrilla (*Hydrilla verticillata*) is listed as a Federal noxious weed in 7 CFR part 360 and may only be imported under a permit containing conditions to prevent its dissemination in the United States.

With respect to the commenter’s concern about defining “ecological harm,” when evaluating plant taxa for inclusion on the NAPPRA list of quarantine pest plants, we would evaluate whether the taxon has the potential to cause the injury or damage described in the proposed definition of *noxious weed*, based on scientific evidence. If we determine that the damage is of potential economic importance, thus making the taxon a quarantine pest, we will publish a notice in the **Federal Register** announcing our determination and making a data sheet detailing the scientific evidence that we evaluated in making that determination available for public comment. At that point, the public will have the opportunity to comment on our determination.

After a taxon is listed in the NAPPRA category as a quarantine pest, a WRA would be conducted. If the WRA found that the taxon itself did not need to be listed as a noxious weed, a PRA would

be conducted in order to fully analyze the potential of the taxon to serve as a host of a quarantine pest. (A WRA is a type of PRA that focuses on the risk associated with the plant itself. When we refer to a PRA in this document and in the regulations, we mean an analysis of both whether the taxon should be regulated as a noxious weed under the regulations in 7 CFR part 360 and whether it should be regulated as a host of a quarantine pest, as appropriate.) Any subsequent rulemaking to prohibit the importation of the taxon, or to allow its importation subject to restrictions, would include a detailed evaluation of the costs and benefits of importing the taxon.

Definition of Taxon (Taxa)

We proposed to add a definition of *taxon (taxa)* to the regulations in § 319.37–1; it was based on the definition of that term in the IPPC Glossary. The proposed definition read as follows: “Any grouping within botanical nomenclature, such as family, genus, species, or cultivar.” The proposed rule referred to adding taxa of plants for planting to the NAPPRA category.

One commenter recommended that we use scientifically valid taxonomic levels for evaluating quarantine pests. For pests, the commenter stated, this could include sub-species designations such as pathogen genotypes that can vary highly in impacts and can also hybridize with established non-native or native microorganisms. For pest hosts, the commenter stated, some pests can impact many species above the generic classification. For example, a pathogenic disease strain was introduced to Hawaii that infects 23 different plant species present in Hawaii, including 5 native species, one of which is critically endangered. These species are spread over 12 genera within the myrtle family. Because the pest is not under official control, the commenter stated, it does not qualify as a quarantine pest, although there are likely other genotypes not yet present in the United States that could increase the threat to Hawaii and further jeopardize trade with other Pacific Rim countries.

Several commenters expressed concern that we might add large groups of plants for planting to the NAPPRA category without adequate scientific justification. One stated that the level of rigor required to regulate should increase with each increasing level of nomenclature. Two stated that we should add new taxa to the NAPPRA category at the species level rather than at the genus level, as plant genera are far too variable for broad bans to be

meaningful, and regulation at the genus or higher level will discredit the system in the eyes of plant enthusiasts.

One commenter asked what would prevent us from including an entire family in the NAPPRA category, such as the Solanaceae. The commenter stated that such an action could easily be justified on the basis that doing so will "help prevent [the introduction of] a quarantine pest." The commenter stated that banning large groups of plants would lead to a situation in which the importation of most plants for planting is banned in practice.

One commenter stated that we should not base determinations of invasiveness on relatives of a species. The commenter gave the example of the genus *Lonicera*, in which *Lonicera japonica*, *L. maackii*, *L. tatarica*, and *L. xylosteum* (in decreasing order of invasiveness) might be weedy, but their weediness would not be evidence sufficient to designate the other 180–200 species in the genus as weedy.

We agree with the first commenter that we should regulate at the appropriate taxonomic level, and we will take the considerations the commenter mentioned into account.

We will provide scientific evidence that supports our determination that it is necessary to add a taxon of plants for planting to the NAPPRA category, including providing evidence that the taxonomic grouping we are adding to the NAPPRA category is appropriate. As with the rest of our scientific evidence, the public will be able to comment on whether the taxonomic level at which we have determined it is necessary to regulate is appropriate. If public comments lead us to determine that the taxonomic grouping specified in the initial **Federal Register** notice is not appropriate, we will not add the taxon to the NAPPRA category. (In that case, we might publish a second notice in which we address a different taxonomic grouping.)

In adding plants that are quarantine pests and plants that are hosts of quarantine pests to the NAPPRA category, we expect to continue our current practices with respect to regulating at different taxonomic levels. Most noxious weeds are regulated at the species level, although higher and lower taxonomic levels have been regulated as noxious weeds based on scientific evidence. For example, *Striga* spp. are all listed as parasitic weeds in 7 CFR part 360, while only the Mediterranean clone of the species *Caulerpa taxifolia* is listed as an aquatic weed. We would only add taxa higher than the species level to the NAPPRA category as quarantine pests if most of the species

in a genus had been shown to be quarantine pests; we would not regulate the entire *Lonicera* genus in the example given by one commenter.

Most hosts of quarantine pests are regulated at the genus level, given the wider range of species within a genus that can be hosts of quarantine pests; again, we have regulated both higher and lower taxonomic levels as hosts of quarantine pests based on scientific evidence.

We would not typically add families of plants for planting to the NAPPRA category, although some families have been regulated as hosts of quarantine pathogens. (For example, the importation of Rutaceae is prohibited due to various citrus pathogens.) If we did determine that it was necessary to add an entire family to the NAPPRA category, we would provide scientific evidence supporting our determination.

Initiating an Evaluation of a Plant Taxon for Addition to the NAPPRA Category; Public Requests

In the proposal, we did not describe the conditions under which we would begin an evaluation of a plant taxon to determine whether it should be added to the NAPPRA category, stating only that the addition of a taxon would be based on scientific evidence.

One commenter asked what the triggering mechanism would be for adding a taxon. The commenter asked whether a taxon would be considered for listing any time an exporting country, or a U.S. importer of plants for planting, notified APHIS that it wanted to import those plants for planting. The commenter also asked how the NAPPRA category would apply to plant explorers bringing in small numbers of plants for planting from globally dispersed locations in order to propagate them on a trial basis. Other commenters asked generally for more information on the Plant Protection and Quarantine (PPQ) program's process for initiating an evaluation.

We appreciate the opportunity to provide more information on the NAPPRA listing process. We would initiate an evaluation of a taxon of plants for planting for addition to the NAPPRA category whenever we become aware of a quarantine pest risk associated with the importation of a taxon of plants for planting. This could include interceptions of imported plants for planting that are infested with quarantine pests, literature reviews and scientific references, and results from scientific screening systems and predictive models. We would not automatically initiate an evaluation upon receiving a request for an import

permit or upon becoming aware that plant explorers want to import small quantities of a taxon.

Several commenters stated that members of the public should be allowed to suggest that species be added to the NAPPRA category. Some commenters asked that we accept recommendations from specific groups of people, including ecologists who study invasive plant species, scientists in general, and local natural resource managers. One commenter stated that we should allow the public to suggest species to add to the NAPPRA category in the absence of an immediate importation request, since local weed management areas and invasive plant councils may elect to prevent movement of species that they expect will be problematic into their areas.

We agree with these commenters that the public should be allowed to suggest species to be evaluated for addition to the NAPPRA category. To facilitate public input, we have established an e-mail drop box on our plants for planting Web site, http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37_nappra.shtml, that will allow the public to submit taxa for evaluation. We will also accept suggestions that are mailed to APHIS at Risk Management and Plants for Planting Policy, ATTN: NAPPRA List Candidates, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236. (This address will also be available on the plants for planting Web site.)

The Web site also recommends that members of the public who suggest taxa to be evaluated for addition to the NAPPRA category include certain information, if available, with their suggestion, to facilitate evaluation of the taxon. The basic information we would need to evaluate a taxon is the taxon's scientific name and author and its common name(s). If the taxon was to be evaluated to determine whether it is a host of a quarantine pest, the scientific name and author and the common name(s) of the pest would also be necessary.

Beyond that, helpful information for a taxon to be evaluated as a quarantine pest plant would include:

- Whether the taxon is present in the United States, and if so, where;
- If the taxon is present in the United States, information regarding any official control efforts;
- The taxon's habitat suitability in the United States (predicted ecological range);
- Dispersal potential (biological characteristics associated with invasiveness);

- Potential economic impacts (e.g., potential to reduce crop yields, lower commodity values, or cause loss of markets for U.S. goods);
- Potential environmental impacts (e.g., impacts on ecosystem processes, natural community composition or structure, human health, recreation patterns, property values, or use of chemicals to control the taxon);
- Potential pathways for the taxon's movement into and within the United States; and
- The likelihood of survival and spread of the taxon within each pathway.

Helpful information for a taxon to be evaluated as a host of a quarantine pest would include:

- If the pest is a pathogen, whether it could be introduced and established in the United States through the importation of seed or other types of propagative material;
- The pest's habitat suitability in the United States (predicted ecological range);
- Whether the pest is present in the United States, and if so, where;
- If the pest is present in the United States, information regarding any official control efforts,
 - Means by which the pest infests plants;
 - The host range of the pest;
 - The plant parts the pest infests;
- Potential economic impacts (e.g., potential to reduce crop yields, lower commodity values, or cause loss of markets for U.S. goods);
- Potential environmental impacts (e.g., impacts on ecosystem processes, natural community composition or structure, human health, recreation patterns, property values, or use of chemicals to control the pest);
- Other potential pathways for the pest's movement into and within the United States; and
- The likelihood of survival and spread of the pest within each pathway.

For each type of suggestion, we would need references to support any information supplied, and the contact information of the person who made the suggestion, so we could follow up if necessary.

Information To Be Made Available on the Internet

Several commenters encouraged us to make various information and documents from the NAPPRA process available on the Internet. One commenter generally stated that making NAPPRA information available in public media such as Web sites would help disseminate information and could be used to encourage input from other

stakeholders. Another stated that we should make available documentation that includes the justification for placing a plant in the NAPPRA category for every item.

We agree with these commenters. We will provide public notice of every determination we make that a plant taxon should be added to the NAPPRA category, along with a data sheet that details the scientific evidence that we evaluated in making our determination, including references for that scientific evidence. The plants for planting Web site mentioned earlier has a great deal of background information on our regulation of plants for planting. We also make the Plants for Planting Manual, which summarizes all of APHIS' prohibitions and restrictions on the importation of plants for planting, available on the Web at http://www.aphis.usda.gov/import_export/plants/manuals/online_manuals.shtml. (This manual was known as the Nursery Stock Manual; its name has been changed to reflect the changes we are making to the regulations in this final rule.)

In addition to the information available on the Internet, we suggest that anyone interested in receiving notifications on NAPPRA-related issues join the PPQ Stakeholder Registry, at <https://web01.aphis.usda.gov/PPQStakeWeb2.nsf>. People who sign up for the Stakeholder Registry and select the category "PI—Plants" will receive e-mail notifications whenever we publish a notice adding a taxon to the NAPPRA category, as well as notifications regarding other aspects of the plants for planting regulations. We encourage interested parties to sign up for the Stakeholder Registry.

Specific types of information that commenters requested that we make publicly available are addressed below.

Several commenters asked that we publicly disclose the taxa that we evaluate for addition to the NAPPRA category and that we provide details on all assessments completed, whether a taxon is added to the NAPPRA category or not.

As discussed, we will publish notices in the **Federal Register** for each taxon that we evaluate and determine to be a quarantine pest or a host of a quarantine pest, meaning that publicly disclosing through other means the fact that those taxa are being evaluated is unnecessary. Similarly, when we determine that we should add a plant taxon to the NAPPRA list, we will provide a data sheet that details the scientific evidence we evaluated in making our determination. Thus, public disclosure of evaluated taxa and the details of our

evaluation is part of the process for taxa that are evaluated and found to be quarantine pests or hosts of quarantine pests.

Publicly listing taxa that have been evaluated for addition to the NAPPRA category and found not to be quarantine pests or hosts of quarantine pests, and providing details regarding those evaluations, could create an incorrect impression that APHIS has conducted a comprehensive evaluation of the risk posed by these taxa and found that they can be safely imported under the general restrictions of the plants for planting regulations. Rather, we would have evaluated as little as one item of scientific evidence and found that it did not indicate that the importation of the taxon poses a risk of introducing a quarantine pest. Such evaluations are contingent on the data available when the analysis is conducted. New scientific evidence might lead us to add to the NAPPRA category a taxon that we had previously evaluated and found not to be a NAPPRA candidate, which could create public confusion if we had recorded our earlier evaluation on a Web site and members of the public had interpreted that to mean that importation of the taxon was safe. We would only make the statement that a plant taxon's importation is safe after completion of a PRA in order to comprehensively examine the risk associated with that taxon.

Listing taxa that we have evaluated and determined not to be hosts of quarantine pests, in particular, would be cumbersome. Because a single taxon of plants for planting can potentially be a host for multiple plant pests, some of which may be quarantine pests, a list showing which plants have been evaluated for various pests would quickly become difficult both to update and to read. A list showing that a taxon was evaluated as a host of several quarantine pests would give an even stronger impression that APHIS had completed an overall evaluation of the risk posed by the taxon, which would not be true unless we had completed a PRA; in that case, the importation of the taxon would be addressed through the rulemaking process, if necessary, rather than through the NAPPRA process.

In addition, documenting our evaluation process and making the details of our evaluations publicly available would be resource-intensive. The evaluation of a taxon that we decide not to list could consist of (for example) reading a report on a pest's damage overseas and then finding that the pest is also present in the United States and not under official control, meaning that it would not be a quarantine pest and

thus not a candidate for addition to the NAPPRA category. Another example would be noting the inclusion of a taxon on a State or local weed list and then not finding any further references to substantiate the damage it causes, or finding that the taxon is not under official control. This process is somewhat fluid and not amenable to documentation in the way that a comprehensive, systematic PRA is. Documenting this process would also require resources that would be better spent evaluating taxa of plants for planting to determine whether they are NAPPRA candidates.

In addition, the list of taxa that could be evaluated for inclusion in the NAPPRA category is enormous, particularly as we are explicitly welcoming public suggestions for additions to the NAPPRA category. It would take a great deal of resources to document our evaluations of taxa that we determine are not NAPPRA candidates at a particular time.

For these reasons, we do not plan to make publicly available the taxa that we evaluate and the details of our evaluations when those evaluations do not result in a determination that the taxon should be added to the NAPPRA category.

Five commenters asked that we provide a public timetable for completion of evaluations. Four commenters stated that members of the public should be guaranteed a timely response when submitting suggestions for taxa to evaluate for the NAPPRA category.

We will respond to public suggestions to confirm that we have received them. We will strive to complete all evaluations of taxa identified as NAPPRA candidates in a timely manner. However, providing a specific timetable for completion of evaluations would be difficult. As discussed earlier, we are accepting public suggestions for NAPPRA candidates. Our evaluation of those suggestions will be dependent to some extent on the quality and quantity of scientific evidence submitted by the public. In addition, the evaluation of any taxon may take more or less time depending on the availability of scientific information and whether any questions about the scientific information need to be resolved.

Scientific Evidence To Be Used To Add Taxa to the NAPPRA Category

In the Background section of the proposed rule, we stated that we planned to use scientific evidence to determine whether to add a taxon of plants for planting to the NAPPRA category.

One commenter stated that taxa should be determined to be quarantine pest plants only on the basis of scientific evidence, not guessing or anecdotal evidence. One commenter asked generally whether we would base our decisionmaking on more than one scientific source. One commenter stated that data on invasiveness should be based upon more than one source or data from more than one country, and those countries should have corresponding climatic patterns in large regions of the United States. One commenter recommended that reports from professional societies be tested by means of a high scientific standard.

It is important to note that we will not automatically determine that a taxon should be added to the NAPPRA category simply because some scientific evidence indicates that the taxon is a quarantine pest or a host of a quarantine pest. In each individual case, we will evaluate the evidence in order to ensure that it provides sound scientific evidence that a taxon should be added to the NAPPRA category. In some cases, we might consult multiple sources in an effort to determine whether scientific evidence we have received is valid; for example, when presented with an anecdotal report that a pest damages agricultural or environmental resources, we would seek corroboration in other scientific literature. However, some single sources of evidence would be sufficient—for example, reports published in peer-reviewed journals of a quarantine pest infesting a taxon of plants for planting in field conditions.

With regard to taxa of plants for planting that are quarantine pests, we would be certain to consider data from one source and one country if the data were rigorous and published in a peer-reviewed journal. We would not consider such data if they were obtained in a climatic region that did not correspond to one of the climatic regions in the United States, although it is worth noting that the United States has a wide range of climate and ecological zones, including some found only in Hawaii.

In general, with regard to the scientific evidence we would use to determine that a taxon is a quarantine pest or a host of a quarantine pest, it is important to remember that, for each taxon to be added to NAPPRA, we will publish a notice in the **Federal Register** that makes available a data sheet that details the scientific evidence that we evaluated in making our determination, including references for that scientific evidence. We will also solicit public comment on our determination. Members of the public will have this

opportunity to comment on the scientific evidence we used. If comments present information that leads us to determine that importation of the taxon does not pose a risk of introducing a quarantine pest into the United States, APHIS will not add the taxon to the NAPPRA list.

Scientific Evidence To Be Used To Make the Determination That a Taxon of Plants for Planting Is a Quarantine Pest

In the proposed rule, we described several specific sources of scientific evidence that we anticipate using to make the determination that a taxon of plants for planting is a potential quarantine pest that should be added to the NAPPRA list.

Three commenters recommended that we use a taxon's history of invasiveness as evidence for placing a taxon on the NAPPRA list. One commenter stated that, consistently, one of the best predictors of invasiveness (weediness) has been invasiveness in other countries of similar habitats. Although it is true that what is invasive in one country is not guaranteed to invade another, this is an excellent source of early warning. From reading the proposed rule, the commenter stated, it was not clear whether this would carry much weight in implying risk. The commenter encouraged us to use other countries' lists of invaders as scientific evidence.

One commenter cited several studies supporting the assertion that the invasiveness of a species anywhere outside its native range is the most accurate predictor of likely invasion in a new range. The third commenter stated that statistical analysis has shown that, if a species has caused damage in one region it is more likely to cause damage in another region than species not known to have caused damage.

A fourth commenter stated that the NAPPRA category should be restricted to plants that have already demonstrated the capacity to invade stable natural environments. The commenter stated that when the habitats of native plants are eradicated by human intervention, even as we do not expect the native plants to adapt to the radically changed environment, neither should we expect a blank vacuum to remain.

It is important to mention again that the spread of a plant in a new habitat, which is commonly characterized as "invasiveness" (or "weediness"), would not be sufficient by itself to cause us to determine that a plant is a quarantine pest; we would need evidence of the potential economic importance of a taxon of plants for planting, from the damage it has caused to agricultural and

environmental resources, in order to determine that it could qualify as a quarantine pest.

Because of that, evidence of the damage a taxon of plants for planting has caused in other habitats would be the best evidence for determining that the taxon could be a quarantine pest for the United States. Therefore, to the extent that they discuss damage caused by plant taxa, we agree with the first three of these commenters. The sources of information described in the proposal are intended to provide us with evidence regarding taxa of plants for planting that have caused damage in other areas and that would be potentially economically important within the United States.

We also agree that evidence of damage caused in a relatively undisturbed natural environment could carry more weight in determining that a taxon is a quarantine pest than damage caused in previously disturbed environments. However, we might consider the latter in the absence of the former, depending on the details of the damage caused. In addition, it is important to note that agricultural environments are disturbed from their natural state, but if a taxon of plants for planting causes damage to agricultural resources, it could be designated as a quarantine pest.

In response to the first commenter, the proposed rule listed national and international pest alerts, reports, and quarantine lists among the sources of scientific evidence we would use in evaluating taxa for addition to the NAPPRA category, and we still plan to use those sources. We also listed as potential sources of scientific evidence reports from regional plant protection organizations, such as the North American Plant Protection Organization and the European and Mediterranean Plant Protection Organization, and from professional societies such as the Weed Science Society of America (WSSA).

Two commenters recommended that we use information from State and local invasive species councils as scientific evidence. Another commenter stated that each State has prominent native plant organizations that may prove useful in providing information on various imported plant taxa.

A fourth commenter stated that the standard of evidence used for invasive plant species lists is apparently that "someone, somewhere, claims that the species is present outside its 'natural' range." The commenter stated that such lists are based entirely on anecdote and that not one of the lists includes an objective definition of "invasive" or objective criteria for determining that a plant is "invasive." The commenter

stated that such lists include many species that are actually endangered in their home ranges, calling into question the accuracy of the designation of a plant on such a list as invasive. The commenter also stated that invasive plant councils are corrupted by herbicide industry representatives, funding, and advertising. The commenter stated that such lists have no place in any assessment of invasiveness.

We will evaluate each type of evidence we have available to us regarding the potential a taxon has to become a quarantine pest in order to ensure that it provides sound scientific evidence that a taxon should be added to the NAPPRA category. We will certainly take into account information from State and local invasive species councils and from native plant organizations about the damage caused by various taxa. At the same time, given such information, we would likely seek to corroborate it with other scientific evidence describing the damage the taxon causes before adding it to the NAPPRA category. (It is also worth noting that many taxa of concern for those groups may not be under official control and thus would not be considered quarantine pests.) If a list of invasive plants includes a plant that is endangered in its home range, that might indicate that the list was not very rigorous, and we would likely conclude that it is not useful as a source for information about potential quarantine pest plants.

On the other hand, if a list of plant taxa that could cause damage of economic importance to the United States was constructed with sufficient rigor, we would use it as a source of NAPPRA candidates. The WSSA list is a good example.¹¹

In the proposed rule, we stated that we anticipate using published international weed references as sources of scientific evidence to make the determination that a taxon of plants for planting is a quarantine pest. We cited two examples: *Invasive Plant Species of the World: A Reference Guide to Environmental Weeds* (Weber, Ewald, 2003; CABI Publishing, Cambridge, MA) and *Noxious Weeds of Australia* (W.T. Parsons and E.G. Cuthbertson, 1992; Inkata Press, Melbourne and Sydney, Australia).

One commenter stated that weed references are of notoriously poor scientific quality and primarily based on

anecdote; many species are included on the basis of a single person's say-so. This commenter stated that these lists are produced by persons with economic self-interest in weed control and are padded with many species included simply to create the impression of a large problem. The commenter stated that, in these lists, there is no rigorous operational definition of terms and no objective criteria for measuring "weediness." The commenter also stated that in no case do these weed lists give any consideration to the underlying causes of the weed infestation; disturbance, poor agricultural practices, and environmental degradation are most often the cause of "infestation," yet these are ignored. For example, the commenter stated, one may overgraze a meadow until the only species left is one that is unpalatable to livestock, after which that species is classified as a "weed."

We will not add taxa of plants for planting to NAPPRA based on whether they are perceived to be weeds, but based on their status as a quarantine pest. This requires scientific evidence that the plants could cause economically important harm to U.S. agricultural and environmental resources, as well as requiring that the taxa are either not present in the United States or present but under official control.

Whenever we would use any weed reference as a source of scientific evidence, we would check the original references cited to substantiate the claim and consider the circumstances in which the taxon caused damage. If the reference was anecdotal, we would seek additional data for corroboration before making a determination that a taxon is a quarantine pest. As noted, evidence that a taxon causes damage in relatively undisturbed natural environments could carry more weight than evidence that a taxon causes damage in disturbed environments.

We also stated in the proposed rule that we anticipate using scientific screening systems and predictive models, such as the WSSA's prioritization model, that seek to identify weeds of global significance that pose a threat to the United States, as sources of scientific evidence to make the determination that a taxon of plants for planting is a quarantine pest.

One commenter asked us to accept the Hawaii-Pacific Weed Risk Assessment¹² screening system as a legitimate source of evidence for potential quarantine

¹¹ Parker, C., Caton, B.P., and Fowler, L. 2007. Ranking non-indigenous weed species by their potential to invade the United States: The Parker model. *Weed Science* 55:386-397.

¹² For more information about the Hawaii-Pacific Weed Risk Assessment, go to <http://www.botany.hawaii.edu/faculty/daehler/wra/>.

pests. The commenter stated that this science-based tool has been used successfully in Hawaii for evaluating potential invasiveness of alien plant species for many years.

We agree that the Hawaii-Pacific Weed Risk Assessment can serve as a useful source of NAPPRA candidate taxa. In addition to considering the invasiveness of a taxon, the system considers whether a taxon will have "significant ecological or economic impacts," and can thus help identify quarantine pest plants. We will consider taxa that system identifies as high risk in the same way we will consider taxa from other screening systems.

A few commenters questioned the possibility of predicting whether a plant taxon will be invasive in a new habitat.

Three commenters stated that there is no possible risk assessment tool that can be developed to test plant invasiveness in every habitat in every ecological region of the country. Under this rule, one of these commenters stated, we would be without many major horticultural crops, such as impatiens and lantana, because they would not pass a screening exam. Another of these commenters stated that it is very easy to predict that a species will not become a weed, and there are numerous horticultural societies that devote large amounts of personal time to discussing methods of cultivation and propagation of numerous genera.

As discussed earlier in this document, we will not add plants to NAPPRA solely because those plants are not in cultivation within the United States. When we begin implementing the NAPPRA category by adding taxa to it, the importation of most plants for planting will still be subject only to the general requirements for a phytosanitary certificate, a permit, and inspection at a plant inspection station. We will only restrict the importation of a taxon when scientific evidence indicates that the taxon is a quarantine pest or a host of a quarantine pest. As noted, for quarantine pests, the primary evidence necessary to make that determination for taxa not present in the United States would be documentation of damage caused by the taxon. When we publish a notice in the **Federal Register** announcing our determination that a taxon of plants for planting is a quarantine pest, commenters will have an opportunity to comment on the scientific evidence we used as a basis for our determination.

It is not necessary for a model to determine whether a taxon of plants for planting would be a quarantine pest in every area of the United States in order for us to add that taxon to the NAPPRA

category. Evidence that the taxon would be a quarantine pest in one area would be sufficient to take action to address the risk associated with the taxon's importation. Any restrictions on movement within the United States that could prevent the taxon from being a quarantine pest would be addressed in the PRA conducted to remove the taxon from the NAPPRA list.

One commenter provided a detailed examination of the potential problems associated with predicting invasiveness using a model. The commenter stated:

- Modeling the natural environment is difficult, given our limited knowledge about the species present in the world, the ecology of these species, and how they interact.

- The intrinsic properties of individual species are not predictive, and adaptive evolution means that species change over time.

- History of invasiveness is not useful as a predictor, since some species that are invasive in one place are not invasive in others, and the success of an invasion is dependent on extrinsic forces as well as the intrinsic characteristics of a species.

- Time lags between introduction and establishment or spread make it difficult to establish how invasion has occurred, and the time lag often obscures climatic or anthropogenic disturbances that enabled the invasion.

- Predictive models for assessing introduced species have data problems; fail to factor in anthropogenic disturbance, introduction effort, adequate lag time, and suitability of habitat; and fail to operationally define "invasion."

The commenter stated that the use of models predicting invasiveness to add taxa to the NAPPRA category will hamstring scientific research and valuable conservation efforts.

As noted earlier, determining that a plant taxon is invasive is not the same as determining whether it is a quarantine pest. The spread of a plant in a new habitat, which is commonly characterized as "invasiveness," would not be sufficient by itself to cause us to determine that a plant is a quarantine pest; we would need evidence of its potential economic importance, from the damage it has caused.

We agree with the commenter that uncertainty still exists regarding whether a species that causes damage in one area will cause damage in another. However, as demonstrated in the risk document, "Foundation Document Demonstrating the Risk Basis for Establishing the Regulatory Category 'Not Authorized Pending Pest Risk Analysis' (NAPPRA) Associated with

the Importation of Plants for Planting," that accompanied the proposed rule,¹³ the risk associated with the importation of plants for planting is higher than that of other articles whose importation is regulated by APHIS. Accordingly, we proposed to implement the NAPPRA category as part of an effort to provide a more appropriate level of protection against the risks associated with the importation of plants for planting. Although the level of risk associated with any individual plant taxon that has demonstrated the ability to cause damage outside its native range may be more or less uncertain, such plants are more likely to be quarantine pests than plants that do not have such a history. Therefore, we will use the NAPPRA category to prevent the importation of plants with a history of damaging agricultural and environmental resources until a PRA can be completed.

It should be noted that the WSSA model that we plan to use incorporates the damage done by the taxon in its evaluation.

Several commenters urged us to go further in our use of scientific screening systems and predictive models and screen all taxa of plants for planting imported into the United States for their damaging characteristics. Some of these commenters stated that screening of all unprecedented non-native taxa proposed for importation into the United States should be USDA's responsibility and ultimate goal. Some commenters stated that USDA should declare an explicit timetable for implementation of a screening model. One commenter stated that, in the long term, all new species imported to the U.S. should undergo a screening process rather than just the NAPPRA-listed species. This commenter stated that, as the vast majority of introduced species are not invasive, this approach would safeguard U.S. resources with negligible economic impacts.

Many of these commenters mentioned the Australian weed risk assessment (AWRA) system as a model. This system starts from a baseline of prohibiting importation of plants for planting. Plants for planting are rated via a scoring system based on the characteristics of the plants. Importation is allowed if the AWRA system shows the taxa to be safe to import, and prohibited if the AWRA system indicates that they should be rejected. The AWRA can also result in a rating of "evaluate," in which case further

¹³ The foundation document is available on the Regulations.gov Web site at the address listed in footnote 1.

evaluation must be conducted before importation may be allowed.

Another commenter supported the use of the WSSA system to identify noxious weed threats, but noted that the proposed rule referred to various weed screening systems used for various purposes. This commenter asked that APHIS clarify that the NAPPRA proposal does not, and is not intended to, establish mandatory pre-importation screening for weediness. The commenter also recommended that APHIS clarify that, while APHIS may consider information presented as a result of screening or prioritization models developed elsewhere for various purposes, the NAPPRA rule does not constitute establishment of a weediness screening methodology or a *de facto* acceptance of information resulting from models developed and implemented elsewhere for various purposes.

The last commenter is correct. The plants for planting regulations currently allow the importation of all taxa of plants for planting subject to general restrictions, unless specifically restricted or prohibited. We did not propose to change this. Rather, the NAPPRA category will allow us to restrict the importation of plants for planting that are quarantine pests or hosts of quarantine pests in a timely manner. We plan to use the information from the WSSA screening system to identify taxa for evaluation as quarantine pests, not to determine which taxa are safe to import and to exclude all other taxa from importation.

The AWRA proceeds from the Australian regulatory system, under which all importation of plants for planting is prohibited unless specifically authorized. Thus, it is not directly applicable to the U.S. regulatory situation.

Some commenters stated that there is a full WRA approach under development by the Plant Epidemiology and Risk Analysis Laboratory of PPQ's Center for Plant Health Science and Technology. The commenters stated that this approach is based on the AWRA and is being compared for accuracy against that standard. As long as the methodology developed is as or more accurate than the Australian methodology, the commenters expressed support for the use of this system to determine whether species placed in the NAPPRA category will be rejected and placed on the noxious weed list or permitted for import (possibly with conditions), assuming that the tool is consistently applied under the conditions that generated the accuracy assessment.

The commenters are correct that we are developing a new WRA methodology. The new methodology is based on the style and general approach of the AWRA, but the structure of the assessment and the means used to evaluate risk are not based on those in the AWRA. The new methodology also takes into account lessons learned from other systems like the one in use in New Zealand and the Hawaii-Pacific Weed Risk Assessment tool mentioned earlier.

It is also important to clarify that we do not plan to employ our WRA methodology in the same way Australia does; as the commenters describe, the WRA methodology we are developing would initially be used to determine whether taxa that have been added to the NAPPRA list can be imported safely, or whether they need to be added to the list of noxious weeds in 7 CFR part 360. (If the WRA performed on a taxon of plants for planting that was added to the NAPPRA category as quarantine pests determines that it does not need to be added to the noxious weed list, we would conduct a PRA to determine whether there are any quarantine pests for which it could serve as a host.)

When we have finished our development work on this new WRA methodology, we plan to have the methodology published in a peer-reviewed journal, taking into account the opinions of the peer reviewers. We will make the methodology available to interested parties as well.

One commenter stated that, in developing and applying the risk analysis, it is critical that a lack of evidence of risk is not interpreted as evidence of a lack of risk. In other words, the commenter stated, if not enough is known to evaluate the answers to several of the risk analysis questions, the default assumption should be that the risk exists in this taxon. The Australian and some other assessment systems have this built in by requiring a minimum number of questions be answered for an assessment to be valid. If the default assumption in the absence of evidence is that a species does not possess the risk trait in question, a serious problem will result. This would perversely encourage the importation of the species about which we know the least and are the least prepared to evaluate and respond to the risks. The commenter stated that if the default is to assume safety (as is the current case in what the commenter characterized as the lax regulatory environment), it creates incentives for plant importers to seek out species that are too little known to be properly evaluated and the risk to the

stakeholders is not abated by these rules.

By "the risk analysis," we assume the commenter means the new WRA methodology we are developing. (The current WRA guidelines do not have a series of questions, but rather assess various aspects of a plant taxon's potential impact in the United States.) If this assumption is correct, we will take the commenter's advice into account as we develop our new WRA methodology. If we determine that we do not have enough evidence to assess certain characteristics of a taxon, that would factor into the uncertainty of the results of the WRA; high levels of uncertainty would likely result in keeping a taxon on the NAPPRA list.

In the proposed rule, we stated that we would consider using other work that is being done in the area of scientific screening systems and predictive models as scientific evidence in determining whether a taxon of plants for planting is a quarantine pest. We mentioned that several university scientists are also studying invasiveness prediction, and some have published articles on various models. In a footnote, we cited "Predicting Invasions of Woody Plants in North America" (Reichard and Hamilton, 1997)¹⁴ as an example.

One commenter stated that the method described in Reichard and Hamilton (1997) yields an unacceptable rate of false positives and considers mere establishment to be "invasion."

We cited the article in question as an example of work being done in the area, in the context of stating that we would consider using other scientific screening systems and predictive models. The commenter's concerns provide useful information in determining whether and how to use the results of the method presented in Reichard and Hamilton (1997), and we will consider it as we implement the NAPPRA category.

The risk document that accompanied the proposed rule analyzed current trends in the importation of plants for planting and the general risks associated with plants for planting. In this document, Appendix 3 listed imported plants that are invasive in the United States.

One commenter expressed concern regarding this list, indicating that it should not be representative of the level of stringency to be applied to criteria for inclusion in the NAPPRA category. The commenter stated that Appendix 3

¹⁴ Reichard, S.H., and Hamilton, W.H. 1997. Predicting invasions of woody plants introduced into North America. *Conservation Biology* 11:193-203.

appears to be a careless compilation of wish lists from organizational Web sites and unscientific agenda-pushers with far too much reliance on anecdotal material. The commenter stated that Appendix 3 includes plants that have merely escaped cultivation and occur only occasionally in niches opened by human intervention. The commenter stated that Appendix 3 also contains plants that are included in the APHIS Nursery Stock Manual for plant imports, indicating that they are either not already present here or present and not being controlled, and therefore are not invasive in the United States.

We did not intend the list in Appendix 3 to be read as a list of taxa that would potentially be added to the NAPPRA list. The list was simply one piece of evidence illustrating the potential damage associated with the pathway of imported plants for planting; it was intended to be taken in the context of assessing the overall risk associated with the pathway, which was the goal of the foundation document. We would need to verify that the damage a taxon causes is economically important and that the plant taxon is either not present in or under official control within the United States before we would add a taxon to the NAPPRA category.

Scientific Evidence To Be Used To Make the Determination That a Taxon of Plants for Planting Is a Host of a Quarantine Pest

We stated in the proposed rule that, in order to determine that a taxon of plants for planting is a potential host of a quarantine pest, the following criteria would need to be fulfilled:

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

One commenter stated that the phrase "potential host of a quarantine pest" is vague and overly broad, stating that virtually any plant could be included.

The phrase "potential host of a quarantine pest" was intended to indicate that we have not conducted a comprehensive PRA reviewing the available evidence regarding the risk

associated with a taxon of plants for planting, but rather have acted on evidence indicating a risk. However, we agree that the term "potential host of a quarantine pest," as well as the term "potential quarantine pest," is unnecessarily vague. The action we are taking in the NAPPRA category—not authorizing the importation of taxa of plants for planting due to the risk they pose—is commensurate with a determination that these taxa are quarantine pests or hosts of quarantine pests; as the commenter states, most plants are technically "potential" hosts of quarantine pests. Therefore, we have changed the proposed regulatory text to refer to determining that taxa are quarantine pests or hosts of quarantine pests, rather than potential quarantine pests or potential hosts of quarantine pests, and to refer to taxa that pose a risk rather than to taxa that may pose a risk or pose a potential risk.

One commenter made several recommendations with regard to the determination of host status. The commenter asked that we clarify, or at least provide examples of, the conditions we consider to be relevant versus those we consider not to be relevant to the actual conditions under which the taxon would be grown and imported. The commenter stated that these will not be simple questions to answer in practical terms. For example, it seems evident that a pathogen known to be root-borne but not to infect other portions of the plant would not pose a threat if imports are limited to unrooted cuttings, but many pathogens are poorly known, which makes it difficult to evaluate whether they are truly limited to particular plant parts. The commenter stated that, in the case of *P. ramorum*, knowledge of the plant parts infected has grown slowly and often as the result of experience with nursery infestations—that is, too late for effective prevention. The commenter suggested that, at a minimum, we include in NAPPRA those laboratory hosts that co-occur with natural hosts in areas suspected of harboring the pathogen, including nurseries.

We consider laboratory conditions to be relevant if they are similar in pest density and environmental conditions to the natural conditions under which a taxon would be exposed to a pest. Often, laboratory experiments to determine host status use excessive amounts of inoculum or numbers of pests that a plant would rarely encounter in natural conditions. Laboratory experiments sometimes also hold environmental conditions at levels conducive to infection or infestation for long periods of time in order to see whether infection

or infestation is theoretically possible, when those conditions would not prevail for such a long time in nature. A taxon of plants for planting that was shown to be a host in such conditions, or other conditions that depart substantially from what could be expected to occur in the conditions under which the taxon would be grown and imported, would not be considered to be a host of a quarantine pest for the purposes of the NAPPRA category.

The example of *P. ramorum* is an instructive one. If the NAPPRA category had been available to us when initial scientific evidence was being developed regarding *P. ramorum*, we would likely have added all plant parts, except seed, of any host of *P. ramorum* to the NAPPRA category, given the fact that *Phytophthora* spp. cause disease in stems, roots, and leaves, depending on the infected plant species and their inoculum, and given the fact that its inoculum is soil- and water-borne, and possibly airborne. These facts indicate that *P. ramorum* would infect host species in the natural environment. (It should be noted that adding any plant to NAPPRA as a host of a quarantine pest would prevent the importation of the entire plant, except seed, unless seed is specified as not authorized.)

The commenter also asked about the level of proof that APHIS will require in determining that a plant taxon is a "natural" host. Again in the case of *P. ramorum*, APHIS initially insisted that Koch's postulates be completed and accepted by the agency before recognizing a plant taxon to be a host of that pathogen. This approach resulted in continued movement of *P. ramorum* on hosts that had been identified by symptoms or other methods but for which this often-difficult test had not yet been completed. The commenter suggested that APHIS recognize such suspected hosts, perhaps calling them "associated" hosts as it does with *P. ramorum*; and include them in the NAPPRA category at least until further study can clarify their relationship to the pathogen under consideration.

Our intention is to recognize plant taxa as hosts if they are observed and determined to be hosts in the environment in which they are growing. The "associated hosts" listed in our domestic regulations to prevent the spread of *P. ramorum* within the United States (in 7 CFR 301.92–2) have not been confirmed as hosts through completion of Koch's postulates, but they are all taxa that have been observed and determined to be hosts of *P. ramorum* in the environment in which they are growing. Therefore, we would add such taxa to the NAPPRA category.

In general, we will not require confirmatory tests such as Koch's postulates to be performed before adding a taxon to the NAPPRA category as a host of a quarantine pest if the taxon has been observed to be a host of a quarantine pathogen.

In the proposed rule, we also described several sources of scientific evidence that we anticipated using to make the determination that a taxon of plants for planting is a host of a quarantine pest that should be added to the NAPPRA category.

One commenter encouraged us to use other countries' lists of pests and pest hosts in this evaluation.

We agree with this commenter. In the proposed rule, we stated that we would use national and international pest alerts, reports, and quarantine lists as sources.

Another commenter, noting that we proposed to use national and international pest alerts, reports, and quarantine lists as scientific evidence, asked how such reports will be substantiated prior to adding plant taxa to the NAPPRA list. The commenter also asked whether the foreign country that is implicated will be notified by the USDA and given an opportunity to verify a report before a plant taxon is added to the NAPPRA list.

If we receive a report of pest presence from a foreign NPPO, we would consider that report to be sufficient to add a taxon to the NAPPRA list, assuming the pest met the criteria for being designated as a quarantine pest. If the report came from another source, we would check on who made the report, who reviewed the report, and the data underlying the report before making a determination on whether to add a taxon to the NAPPRA list. We would reserve the option to contact the affected country to get further information, but if the data provided sufficient certainty, we would not need to do so. Affected countries, like other interested parties, will have an opportunity to comment on the notices we publish announcing our determination that a taxon is a host of a quarantine pest.

This commenter also noted we proposed to use reports and quarantine lists from State and local governments as sources. The commenter stated that State and local governments are not required to meet international standards for pest reporting and are not subject to the same level of scrutiny as an NPPO.

We will use reports from State and local governments as data on emerging quarantine pests; we will make the final determination with regard to whether a pest is a quarantine pest. In making the final determination, we will review the

standards used to compile the report or quarantine list and, if necessary, seek additional data for corroboration of the damage the pest could cause and whether the pest is under official control in the United States.

One commenter encouraged us to use information from State exotic plant pest councils.

We agree with the commenter's recommendation. As with reports and quarantine lists from State and local governments, we would use them as potential sources of information on potentially damaging pests. However, as with other such sources of evidence, we would likely seek additional data for corroboration of the damage the pest could cause and whether the pest is under official control in the United States.

General Level of Protection

We stated in the proposed rule that we were proposing to establish the NAPPRA category in order to provide a more appropriate level of phytosanitary protection against the introduction of quarantine pests through the importation of plants for planting.

Several commenters asked that we articulate a general level of protection against the risk of introduction of quarantine pests that we would seek to achieve through use of the NAPPRA category. One commenter also asked that we specify the level of uncertainty associated with various levels of risk that would lead us to action. Another asked that we make public our criteria for determining that the importation of a taxon should be prohibited, allowed subject to special restrictions, or allowed subject to general requirements, and that we take comment on those criteria.

The ultimate standard by which we will evaluate taxa for addition to the NAPPRA category is whether they are quarantine pests or hosts of quarantine pests, based on the definition of *quarantine pest* that we are adding to the regulations. We will evaluate each individual taxon that comes to our attention to determine whether it meets this criterion. The unique biological characteristics of each evaluated taxon and, if applicable, the quarantine pests associated with it will inform our decisions. Therefore, it is not possible for us to specify an overall level of protection or general criteria that would apply to all our decisionmaking.

Availability of Information Used as a Basis for Adding Taxa to the NAPPRA Category

Along with publishing a notice in the **Federal Register** announcing our

determination that a plant taxon should be added to the NAPPRA category, we proposed to make available a data sheet that would detail the scientific evidence that we evaluated in making our determination, including references for that scientific evidence.

Two commenters addressed the issue of the availability of the scientific evidence detailed in the data sheet. One stated that all the information used to make these decisions must be readily available to anyone interested in evaluating it. The quality of the scientific evidence that supports the inclusion of a species into the NAPPRA category, and any other category restricting importation for that matter, is critical. Unfortunately, in the commenter's experience, such evidence is often flawed or incomplete. The commenter commended the use of international databases and peer-reviewed articles but cautioned that even these should be studied carefully; details should not be omitted or simplified. Sometimes, the commenter noted, the information comes from documents that are not readily accessible to the public (*e.g.*, in other languages, in restricted databases, *etc.*). The commenter stated that being able to locate this information easily should help maintain transparency in the process.

Another commenter stated that, in order for financial stakeholders, such as nurseries, greenhouses, retailers, forestry operations, seed exchanges, *etc.*, to review and comment on the scientific evidence regarding a quarantine pest plant placed in the NAPPRA category, they must have access to the scientific evidence referred to in the data sheet. The commenter stated that several problems arise when trying to review evidence in academic journals. Academic journals are not free, and it can be expensive to access paper copies or Web archives. University libraries do not always have paper copies of a given journal available for review, or complete collections of a given journal, and sometimes interlibrary loan services are not available to allow access. The commenter stated that without access to academic journals, any academic journal evidence used to place a plant on the NAPPRA category as a quarantine pest plant is effectively withheld from the public.

This commenter stated that electronic access to academic journals should be granted to financial stakeholders in order to provide a review and comment process that is fair and open to all parties. For example, the USDA could provide free electronic access to

journals for use by financial stakeholders at its Web site.

The commenter further stated that access to electronic journals should not be biased in any way toward only those journals which emphasize the negative aspects of a plant but should also include those which show positive aspects as well. For instance, journals which deal with other aspects of plants besides their potential harm, such as their use in food, medicinal, culinary, utilitarian, ethno-botanical, fiber, bio-fuel, ornamental horticulture, bioremediation, species preservation, and other contexts, should be made available to stakeholders. The ready availability of such information, the commenter stated, would ensure that some plants are not unduly labeled as plant pests when in reality they may hold enormous beneficial gains for the United States that outweigh their negative aspects.

We agree with the general principle that as much information as possible regarding plants for planting should be freely available. Our data sheets will provide specific citations so that members of the public can review the evidence we use in making our determinations. We agree with the first commenter that all evidence we use should be reviewed carefully, and we will take all details of the evidence into account. We will welcome comments on our interpretation of the scientific evidence we use.

However, we will not be able to provide free access to all the evidence we use in making the determination that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest. Many journals (and many other sources of scientific evidence) have copyright restrictions that make it illegal for us to simply post the documents from which we draw evidence. In such cases, we will add taxa to the NAPPRA lists based this scientific evidence, even though we cannot make that evidence available. Not doing so, and thus allowing a risk of introducing a quarantine pest into the United States to go unaddressed, would be contrary to our mission to protect U.S. agricultural and environmental resources from damage caused by quarantine pests.

We note that there are several factors that may mitigate this burden. Most journals make abstracts of their articles freely available on the Web. In addition, while a university may not have paper copies of all relevant journals, most have access to electronic repositories of journal information. Persons with access to a university library can sometimes access these repositories from their homes.

Finally, it should be noted that we will evaluate taxa to determine whether they should be added to the NAPPRA category based on whether they are quarantine pests or hosts of quarantine pests, not based on the benefits that may be gained by their importation. The purpose of establishing the NAPPRA category is to allow us to respond more quickly to evidence indicating that there is a risk associated with the importation of specific taxa of plants for planting. Evaluating the benefits of importing a taxon of plants for planting before adding it to the NAPPRA list would make it difficult to respond to scientific evidence in a timely manner, as it would require a comprehensive review of the literature of the type described by the second commenter. If we conduct a PRA and determine that it is appropriate to remove a taxon from the NAPPRA category, we will consider the taxon's potential benefits as part of any subsequent rulemaking to prohibit the importation of the taxon, or to allow its importation subject to restrictions.

Restrictions Within the United States

We proposed that plants for planting in the NAPPRA category would not be authorized for importation into any part of the United States.

One commenter asked how we would handle a taxon of plants that could be a weed in one part of the United States yet would not be invasive in another part, thereby being a potentially valuable ornamental plant.

We will use the NAPPRA category to prevent the importation of a taxon of plants for planting when scientific evidence indicates that the importation of that taxon poses a risk of introducing a quarantine pest anywhere in the United States. The potential benefits of the taxon, and any areas within the United States where the taxon would not be a quarantine pest, would be addressed in any subsequent rulemaking to remove the taxon from the NAPPRA list and prohibit its importation or allow its importation subject to restrictions.

Three commenters specifically asked about how the NAPPRA category would protect Hawaii. One commenter stated that Hawaii's location and extreme geography combine to create a large variety of ecosystems not found on the mainland United States. These ecosystems include many species found nowhere else on earth, many of which are threatened or endangered.

One commenter specifically stated that, in Hawaii, imported plants for planting have driven many native species to extinction or endangerment, leaving the State with the highest

number of extinctions and highest number of listings of endangered species among the 50 States. Two commenters stated that plants that do no harm in the rest of the United States may have devastating effects in Hawaii, citing as an example the fact that several species in the *Melastomataceae* family have become severe pests in Hawaii's forests, requiring millions of dollars annually in control costs, but do not cause problems in other parts of the United States.

One of the commenters recommended that we take Hawaii's diverse ecosystems into account in evaluating whether a taxon should be added to the NAPPRA category.

Another commenter suggested that we develop a "NAPPRA Hawaii" category in which certain plants would not be authorized for importation into Hawaii or for interstate movement from the mainland United States based on the risk they pose to Hawaii's ecosystems and agriculture. The commenter stated that APHIS' restrictions on the interstate movement of fresh fruit and flowers from Hawaii to the United States provide a precedent for such a category.

We plan to take Hawaii's unique circumstances into account when evaluating taxa for addition to the NAPPRA category. A plant that would be a quarantine pest in Hawaii, but might not be a quarantine pest elsewhere in the United States, would be a candidate for addition to the NAPPRA category. As discussed earlier, we would base any determination to add such a plant to the NAPPRA category on scientific evidence indicating that the plant was a quarantine pest, and we would take public comment on our determination.

With regard to the second commenter's suggestion, while the importation of plants that pose a threat to Hawaii will be not authorized through the NAPPRA category, restricting the movement of plants for planting within the United States is outside the scope of the proposed rule. The primary means for regulating the interstate movement of plants for planting that are quarantine pests is the noxious weed regulations in 7 CFR part 360; any plant designated as a noxious weed may be moved interstate only with a permit. The public is free to petition APHIS to designate plants that may be quarantine pests in Hawaii as noxious weeds; more information on the petition process is available at http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/index.shtml. The interstate movement of some nursery stock is also restricted in our domestic quarantine programs in 7 CFR part 301.

We will consider the commenter's suggestion when we develop a regulatory mechanism to restrict the interstate movement of plants and plant products that are not harmful in the continental United States but that could be harmful in Hawaii's unique environments.

Notifications

Several commenters addressed notifying the public when we publish notices to add taxa to the NAPPRA category. One commenter stated that PPQ must continue to involve both the private and public sectors in evaluations. This commenter recommended that notifications on the PPQ Web site be extremely timely and transparent for private industry and State and local governmental agencies alike. Another commenter recommended that PPQ also notify its established stakeholder registry of proposals to add a plant to the NAPPRA list, or to remove a plant based on completion of a risk analysis that demonstrates that the plant can be imported safely. A third asked that every means be used to ensure that members of the plant industry are well-informed to ensure proper engagement from those directly affected.

We agree with these commenters. We will continue to involve all the governmental agencies and groups mentioned by commenters, as well as the rest of the general public, in the addition of taxa to the NAPPRA category and in the revision of the plants for planting regulations in general. We will link to the **Federal Register** notices that we publish to add taxa to the NAPPRA category on our plants for planting Web site, as well as any PRAs and rules published to remove taxa from the NAPPRA category. We will also notify subscribers to the PPQ Stakeholder Registry regarding actions related to the plants for planting regulations.

One commenter, a representative of a foreign NPPO, asked how we will provide notification of a proposed addition to the NAPPRA category, *e.g.*, through the WTO notification process or through another mechanism.

When we publish a notice that is relevant to international trade in the **Federal Register**, we always notify the WTO through the formal notification process. We will continue to do this for NAPPRA-related notices.

Importation of Taxa During Evaluation and During the Comment Period; Restricting the Importation of Taxa That Have Already Been Imported Into the United States

To add taxa to the NAPPRA category, we proposed to publish in the **Federal Register** a notice announcing our determination that a taxon of plants for planting is either a quarantine pest or a host of a quarantine pest. This notice would make available a data sheet that would detail the scientific evidence that we evaluated in making our determination, including references for that scientific evidence. We proposed to provide for a public comment period of a minimum of 60 days on our proposed addition to the list and specify a proposed effective date for the addition of the taxon to the NAPPRA category.

Proposed paragraph (b)(2) of § 319.37-2a described how we proposed to respond to comments on the notices. We proposed to issue a notice after the close of the public comment period indicating that the taxon will be added to the list of taxa not authorized for importation pending pest risk analysis if:

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

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

Four commenters stated that we should prevent the importation of taxa of plants for planting that are under consideration for addition to the NAPPRA category.

Several commenters stated that importation of any taxon considered for addition to the NAPPRA category should be prohibited during the 60-day public comment period and subsequently until we publish the notice announcing a final decision regarding whether to add the taxon to the NAPPRA category.

One commenter recommended that we prohibit the importation of plants for planting at the time the notice is published, or earlier if possible. In the

absence of clear language indicating their status, the commenter assumed that APHIS will continue to allow importation until rulemaking is completed that adds these species to the NAPPRA category. The commenter stated that this seems unwise and continues to subject the United States to unnecessary risk of pest introduction and potential harm from establishment. After all, the commenter asked, if the agency has scientific evidence indicating potential harm, why continue to let unrestricted importation while the rulemaking process proceeds for several months? Without the authority to suspend importation of suspect species as soon as APHIS obtains credible scientific evidence, the commenter stated, the United States will be subjected to months, perhaps years, of unnecessary risk awaiting the initiation and conclusion of rulemaking.

One commenter expressed support for continued opportunities for stakeholder and public input during the comment period.

We appreciate the opportunity to clarify this aspect of how the NAPPRA process will work. When we find evidence that the importation of plants for planting that are currently being imported poses a risk of introducing a quarantine pest, we stop their importation through the issuance of a Federal import quarantine order, also referred to as a Federal order.

An example of a Federal order used to restrict the importation of plants for planting is our Federal order prohibiting the importation of citrus seed from certain countries to prevent the introduction of citrus greening (Huanglongbing disease of citrus) and citrus variegated chlorosis. This Federal order was effective January 29, 2008, and was superseded by an interim rule published in the **Federal Register** and effective on April 6, 2010 (75 FR 17289-17295, Docket No. APHIS-2008-0052). The Federal order can be viewed at http://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/hlb_cvc.pdf.

After this final rule becomes effective, if a taxon of plants for planting is currently being imported and we determine that the taxon should be added to the NAPPRA category because it is a host of a quarantine pest, we will issue a Federal order to stop its importation. We will also publish a notice announcing our determination that the taxon is a host of a quarantine pest and making available a data sheet that details the scientific evidence that we evaluated in making our determination, including references for that scientific evidence. We will solicit

comments from the public. If comments present information that leads us to determine that the importation of the taxon does not pose a risk of introducing a quarantine pest into the United States, APHIS would rescind the Federal order and not add the taxon to the NAPPRA list.

For example, if this final rule had been effective when we determined that we needed to prevent the importation of citrus seed from countries where citrus greening and citrus variegated chlorosis are present, we would have issued a Federal order and prepared a data sheet summarizing the scientific evidence that led us to make the determination that citrus seed from those countries is a host of a quarantine pest. We would then have published a notice in the **Federal Register** announcing our determination that such seed is a host of a quarantine pest and giving the public an opportunity to comment. Because the process for publishing a notice is simpler and less time-consuming than the process for publishing an interim rule, the NAPPRA process would likely have allowed for earlier public input on the risk posed by the importation of citrus seed from countries where citrus greening or citrus variegated chlorosis exists. Meanwhile, the Federal order would have continued to protect the United States from the risk associated with the importation of citrus seed from those countries while we evaluated the public comments we received and determined whether to confirm the addition of the taxon to the NAPPRA category. (If we determined, based on evidence submitted by commenters, that we should not add the taxon to the NAPPRA category, we would rescind the Federal order.)

An example of a Federal order used to stop the importation of a taxon of plants for planting that is a quarantine pest is the Federal order prohibiting the importation of *Lygodium microphyllum* and *L. flexuosum*. This Federal order was effective May 30, 2008, and was superseded by an interim rule published in the **Federal Register** and effective on October 19, 2009 (74 FR 53397–53400, Docket No. APHIS–2008–0097) that added these two species to the noxious weed list in 7 CFR part 360. The Federal order can be viewed at http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/federalorder-lygodiums.pdf.

We published a Federal order to stop the importation of those *Lygodium* species because we became aware of commercial interest in importing *L. microphyllum*, at the same time that the State of Florida requested that we restrict the importation of both species

to support its official control efforts. We do not anticipate that we will often issue Federal orders preventing the importation of taxa of plants for planting that are quarantine pests. If taxa of plants for planting have been or are being imported into the United States, they are present in the United States and thus not eligible for designation as quarantine pests unless they are under official control, as *L. microphyllum* was.

We will continue to authorize the importation of taxa of plants for planting if they are being considered for NAPPRA. If we have not yet made a determination that the importation of a taxon poses a risk of introducing a quarantine pest, we would not have a solid reason to prevent its importation.

In this final rule, we are not including the provision that we will specify a proposed effective date for the addition of the taxon to the NAPPRA category; our ability to use a Federal order to impose import restrictions immediately, if appropriate, makes this provision unnecessary.

If we do not use a Federal order to enforce restrictions on the importation of a taxon immediately, and the comments we receive on the initial notice do not cause us to change our determination that the taxon should be added to the NAPPRA category, the taxon will be added to the NAPPRA category when we publish the notice after the comment period confirming the taxon's addition.

With respect to the concerns one commenter expressed about the length of the rulemaking process, the process of adding taxa to the NAPPRA lists, which involves publishing **Federal Register** notices supported by data sheets, is expected to be more timely than the current process, which typically involves proposed rules and final rules supported by a comprehensive PRA. A similar process has resulted in much-expedited approval for authorizing the importation of fruits and vegetables under the regulations in § 319.56–4, and we expect that the NAPPRA process will work in a similarly expedited fashion to address the risk associated with specific taxa of plants for planting.

Three commenters stated that the proposed NAPPRA category would allow APHIS to take action not only when evidence indicates that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest, but also when conditions under which imported plants are produced have changed in ways that make those plants pose a higher pest risk. The commenters stated that such situations may include:

- Plants are being imported from new sources;
- Plants are being produced using unexpected horticultural methods that may pose additional risk (such as, being collected from the wild rather than grown in a confined area); and
- New pests are discovered in a production area.

The commenters are correct in stating that the NAPPRA category will allow us to address the third situation. However, we will only add taxa imported from a new source to the NAPPRA category if there is scientific evidence that indicates that the importation of the taxon from that new source poses a risk of introducing a quarantine pest. This would normally be due to the presence of a quarantine pest for which the taxon is a host in the new area of production. In the case of the second situation, normally we would restrict the importation of a taxon if a quarantine pest of that taxon is present in the area of export, regardless of whether commercial production practices mitigated the risk that the taxon would be infested by the quarantine pest. Consideration of appropriate means to mitigate risk associated with a quarantine pest is part of the PRA, not part of the evaluation process for adding a taxon to the NAPPRA category.

Two commenters stated that a 6-month “investigative period” for removal from the NAPPRA list or for a listing decision one way or another, to ensure the rigor of the process, perhaps would make the effort more amenable to small businesses or individual collectors and growers.

We assume the commenters are referring to the comment period on the notice announcing our determination that a taxon of plants for planting is either a quarantine pest or a host of a quarantine pest or to the comment period on any proposed rule we might publish following a PRA conducted for a NAPPRA-listed taxon. In the past, we have found 60 days to be an adequate period for soliciting comments. However, if members of the public find that they need more time, they may request an extension of the comment period to allow for more investigation on their part.

One commenter asked whether APHIS would delay publication of notices to amass a group of taxa to be added to the NAPPRA category or would instead publish a notice every time an individual species comes to the agency's attention. The commenter stated that, given current resource allocations to the agency, it seems unlikely and cost-inefficient to publish a notice to add species to NAPPRA every time a

deleterious species comes to the agency's attention.

We will publish notices whenever we determine that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest. In some cases this would result in a group of taxa being added to the NAPPRA category at once, as several taxa may be the subject of determinations at one time. We will not delay publication of a notice in order to include some minimum number of taxa in the notice.

Two commenters recommended that we not add taxa that are in trade (i.e., currently being imported) to the NAPPRA lists unless or until such action is justified based on a PRA. The commenters expressed concern that adding taxa that are currently being imported to the NAPPRA lists without first conducting a PRA would be economically disruptive to companies importing these taxa and could even prompt retaliatory reactions among trading partners.

Another commenter stated that taxa should be eligible for addition to the NAPPRA list even if they are currently being imported; USDA should not allow "grandfathering" in of a plant taxon (e.g., *Rhododendron*) if that plant has since proven to be a host of quarantine pests or a quarantine pest itself.

One commenter asked how we would address emerging quarantine pests for currently admissible taxa.

We appreciate that imposing restrictions on current trade causes economic impacts on companies importing the affected taxa. However, we agree with the second commenter; when scientific evidence indicates that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest, we need to act promptly to prevent the importation of that taxon, to protect U.S. agricultural and environmental resources. It should be noted again that taking such actions is consistent with our commitments under the WTO and IPPC; therefore, trading partners should not take retaliatory action in response to restrictions placed on the trade of plants for planting through the NAPPRA category.

Conducting a PRA on a taxon after the taxon has been added to the NAPPRA list will allow us to consider all the evidence related to a taxon (including all the quarantine pests for which it can serve as a host), as well as any conditions under which the taxon can be imported safely. However, promptly addressing the risk associated with importation of a taxon that is a quarantine pest or a host of a quarantine pest is essential to achieving a more appropriate level of protection against

the risk posed by the importation of plants for planting.

For taxa that are hosts of quarantine pests and that have been imported previously, there may be conditions under which the taxa could be imported that would mitigate the risk associated with the quarantine pest. In such a case, our Federal order could establish mitigations for those countries exporting significant amounts, assuming the pest was well-understood and appropriate mitigations were readily available.¹⁵ We would not authorize pending pest risk analysis the importation of the taxon from countries that are currently not exporting the taxon to the United States and in which the quarantine pest is present. We would follow this action with a **Federal Register** notice announcing our determination that the taxon is a host of a quarantine pest.

In the summary of our initial regulatory flexibility analysis in the Background section of the proposed rule, we stated that the "NAPPRA regulations would initially list taxa of plants for planting that, to our knowledge, have not yet been imported into the United States but present a potential risk."

One commenter stated that the word "initially" in the quote is disturbing. The commenter asked whether this meant that APHIS may in the future choose to include in the NAPPRA list other plants that are already in the United States and whether APHIS may in the future choose to include in the NAPPRA list other plants that do not present a risk. The commenter also asked what assurance the public has that APHIS will not in the future "reinterpret" this as giving APHIS the authority to establish a list of taxa whose importation is authorized while prohibiting the importation of all other taxa.

We appreciate the opportunity to clarify. As this discussion has indicated, when necessary, we do plan to use the NAPPRA category to restrict the importation of taxa of plants for planting that have previously been imported into the United States; the quote in the initial regulatory flexibility analysis was in error.

With regard to the commenter's other concerns, we will only add a taxon of plants for planting that is already in the United States to the NAPPRA category

¹⁵ An example of a Federal order that provides such mitigations is our Federal order to restrict the importation of various taxa in order to prevent the introduction of Asian longhorned beetle and citrus longhorned beetle. This order can be found on the Internet at http://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/citrus_alb_2009_16_1.pdf.

if scientific evidence indicates that it is a quarantine pest (i.e., that it causes damage and is not present in the United States or is present but under official control) or a host of a quarantine pest. In addition, we will only add taxa to the NAPPRA list based on scientific evidence, which we will detail in a data sheet that we will make available to the public for comment. As the regulations specify both of these points in detail—the NAPPRA category can be used only for quarantine pests or hosts of quarantine pests, and we must make a data sheet available that details the scientific evidence that we evaluated in making our determination that a taxon of plants for planting is a quarantine pest or a host of a quarantine pest, including references for that scientific evidence—we would need to change the regulations themselves in order to follow the hypothetical policy about which the commenter is concerned. We are committed to following the process set out in this final rule.

One commenter asked what procedure a prospective importer will have to follow for taxa not currently being imported but not on a NAPPRA list. The commenter assumed that such taxa will be allowed to be imported under current APHIS protocols and procedures.

The commenter is correct. We did not propose any changes to the general restrictions on the importation of plants for planting, and we are not making any in this final rule.

Clarification of What Imports Are Not Authorized

Several commenters stated that we should clarify that the importation of any number of propagules of taxa in the NAPPRA category, not only imports of more than 12 propagules, are not authorized unless otherwise determined through a PRA. One commenter noted that some single releases are sufficient to cause significant harm, as infestations by gypsy moth, *Caulerpa taxifolia*, and other plant pests are believed to have arisen from single releases in the United States.

The commenters appear to be referring to the regulations in § 319.37–3, which do not require an import permit for most lots of 12 or fewer articles. However, the importation of any taxon in the NAPPRA category is not authorized. We would not allow any importation of a taxon listed in the NAPPRA category, regardless of the size of the lot of articles intended for importation, subject to the general restrictions of the plants for planting regulations; we would only allow their importation under a Departmental

permit in accordance with § 319.37–2(c).

Based on these comments, we reviewed the regulations to determine whether any further clarification was necessary with regard to the fact that the importation of articles in the NAPPRA category is not authorized. While we did not determine that any changes to the permit regulations are necessary, we did find one area that needs to be clarified.

Paragraph (d) of § 319.37–4 authorizes the importation of small lots of seed without a phytosanitary certificate provided that the shipment meets certain conditions. One of these conditions, found in paragraph (d)(2), is that the seed is not of any prohibited genera listed in § 319.37–2; is not of any noxious weed species listed in part 360; does not require an additional declaration on a phytosanitary certificate in accordance with § 319.37–5; does not require treatment in accordance with § 319.37–6; is not restricted under the regulations in 7 CFR parts 330 and 340; and meets the requirements of 7 CFR part 361. This requirement is intended to ensure that seed imported under the small lots of seed program is free of quarantine pests. As the importation of some seed will not be authorized under the NAPPRA category, paragraph (d)(2) of § 319.37–4 should indicate that seed imported without a phytosanitary certificate under the small lots of seed program must not be listed in the NAPPRA category in § 319.37–2a. Accordingly, in this final rule, we are amending paragraph (d)(2) of § 319.37–4 to indicate that small lots of seed imported under that paragraph must not be listed as not authorized for importation pending pest risk analysis, as provided in § 319.37–2a.

Process for Removing a Taxon From the NAPPRA Lists

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

One commenter asked whether “any person” included foreign governments or foreign exporters.

Several commenters stated that we should only allow requests for PRAs for taxa listed in NAPPRA to come from an exporting country, rather than from any person. These commenters stated that such an approach would be consistent with the process of requesting PRAs for the importation of fruits and vegetables and that such an approach would allow APHIS to focus attention on PRAs for the highest-priority taxa.

One commenter stated that the process to remove a taxon from the NAPPRA list should be sensible and not out of reach, financially and materially, for the common plant collector or small nursery owner.

We have determined that it is necessary to limit requests for PRAs to remove taxa from the NAPPRA category to taxa for which the NPPOs of exporting countries are willing to supply information. Although we will allow any person (including common plant collectors and small nursery owners) to make requests to conduct a PRA to remove a taxon from the NAPPRA category, we will still need information from exporting NPPOs in order to complete a PRA.

Accordingly, we are changing proposed paragraph (e) in § 319.37–2a to indicate that requests to remove a taxon from the NAPPRA list must be made in accordance with § 319.5. This section, headed “Requirements for submitting requests to change the regulations in 7 CFR part 319,” allows anyone to submit a request to change the regulations in 7 CFR part 319, but requires the submission of information from an NPPO before a PRA will be prepared.

Section 319.5 requires the NPPO to submit various information that only an NPPO could verify, including:

- A description and/or map of the specific location(s) of the areas in the exporting country where the plants, plant parts, or plant products are produced;
- Scientific name (including genus, species, and author names) and taxonomic classification of arthropods, fungi, bacteria, nematodes, virus, viroids, mollusks, phytoplasmas, spiroplasmas, *etc.*, attacking the crop; and
- Plant part attacked by each pest, pest life stages associated with each plant part attacked, and location of pest (in, on, or with commodity).

We need this information in order to evaluate all the pests that could be associated with a taxon. While a plant taxon may be added to the NAPPRA category based on evidence that it is a host of a quarantine pest, there may be additional quarantine pests for which the taxon can serve as a host, and it may

also be a quarantine pest itself. Similarly, a taxon that is added to the NAPPRA category as a quarantine pest may itself also be a host of a quarantine pest. The PRA process will examine all of these possibilities in determining whether there exist conditions under which the taxon in question may be imported safely.

We recognize that an NPPO with little interest in exporting the taxon would likely consider providing such information to be a low priority. We encourage importers who submit requests to remove a taxon from the NAPPRA category to work with foreign NPPOs in determining whether to submit a request. Although we recognize that requiring the involvement of a foreign NPPO may make it difficult to prepare a PRA for some taxa that we add to the NAPPRA list, we have no other way to obtain and verify the information we will need to conduct the PRA. In addition, if the PRA finds that the importation of the taxon can be allowed subject to certain restrictions, the NPPO would need to be involved in order to monitor and certify that producers were complying with the restrictions.

One commenter recommended that we encourage persons who request that we prepare a PRA to provide any relevant information regarding how the taxon is grown and potential safeguards that may mitigate any risk, and recommended that we take such practices into full account in our decisionmaking.

The regulations in § 319.5 require the submission of such information by the foreign NPPO. Accordingly, the change discussed earlier addresses this comment.

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

One commenter asked whether there are any fees associated with making a request to remove a taxon from the NAPPRA list.

There are no fees charged for such requests.

Five commenters asked us to provide a timetable for completion of a PRA once a request has been submitted to

remove a taxon from the NAPPRA list. Four commenters stated that we should complete PRAs in a timely manner. One of these commenters stated that, ideally, PRAs should be completed in no more than 1 to 2 years. One commenter stated that the proposed new category may create serious barriers to trade, in particular if the procedure for conducting a PRA is heavy and the capacity to deal with the issue limited.

We strive to complete all PRAs in a timely manner. However, the length of time it takes to complete a PRA is dependent on several factors, some of which are not in APHIS' control:

- The availability of data on the taxon;
- The timeliness with which the foreign NPPO responds to our requests for information; and
- Competition for APHIS' limited resources available for developing PRAs.

These factors mean that we cannot provide a timetable for preparation of a PRA in response to a request to remove a taxon from the NAPPRA category. However, if a foreign country wishes to be able to conduct trade in a taxon with the United States, we would expect that its NPPO would provide information to APHIS in a timely manner, thus helping to reduce any barriers to trade imposed by the PRA process.

One commenter stated that seeking to complete a PRA in a timely manner will likely lead to situations when a determination is required in the absence of adequate information. In these cases, the commenter recommended that we be cautious in our decisionmaking. The commenter also recommended that we require the importing firm to prepare an economic environmental impact statement that considers the possible economic and environmental impacts of the proposed importation.

Once a plant taxon has been added to the NAPPRA category, its importation is no longer authorized, meaning that we can wait for data necessary to complete a PRA to become available, if necessary, without endangering U.S. agricultural and environmental resources.

At this point, only APHIS prepares environmental documents for proposed importations under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and only APHIS conducts economic analyses of the potential costs and benefits of allowing the importation of a taxon. We may consider allowing petitioners to fund the preparation of environmental documents in the future.

One commenter, noting that the proposed rule stated that it has been a challenge for us to follow up on the

available scientific evidence by initiating PRAs, questioned whether we would be able to adequately handle the tasks of data sheet and PRA preparation that are associated with the NAPPRA category.

We expect that we will be able to prepare data sheets in response to evidence that a plant taxon is a quarantine pest or a host of a quarantine pest much more quickly than PRAs, as data sheets do not require a comprehensive examination of the available information about a taxon. As discussed earlier, challenges remain in completing PRAs, although we strive to complete them as quickly as possible. However, implementing this final rule will allow us to address risk associated with the importation of plants for planting much more quickly than we were able to when we used a comprehensive PRAs as the basis for imposing restrictions on the importation of taxa of plants for planting.

Several commenters requested that we provide links to PRAs conducted on taxa that we have added to the NAPPRA category.

We will include those PRAs as part of the rulemaking docket on Regulations.gov (<http://www.regulations.gov>) when we conduct rulemaking based on the conclusions of the PRAs. In addition, interested parties can sign up for the PPQ Stakeholder Registry to receive e-mail notification when we make a PRA on a taxon listed in NAPPRA publicly available.

One commenter, a representative of a seed industry organization, stated that basing importations of plants and seeds for planting on PRAs and formal rulemaking procedures will likely result in lengthy timeframes for decisionmaking by APHIS unless proper procedures are established and adequate resources are devoted to implement the proposed rule. The commenter stated that the same problems and constraints currently being experienced by APHIS in authorizing the importation of fruits and vegetables could easily occur with plants for planting once this rule becomes effective. The commenter stated that the seed industry fears that the capacity for APHIS to conduct additional PRAs will not be adequate; disagreements over pest lists (in particular for the hosts of quarantine pests) will cause delays; and PRAs and needs for rulemaking may not receive fair consideration for proper priority in a system already severely clogged with backlogs and high-priority trade agendas.

The commenter recommended that APHIS address the resource issues and priority-setting processes that will be

necessary for the effective administration of this rule. In addition, to avoid unnecessary formal notice-and-comment rulemaking, the commenter recommended that APHIS develop and implement a procedure for issuing permits rather than developing formal rules for taxa for which the risk can be managed using mitigations that have already been approved for similar purposes. This approach is now in use in the fruits and vegetables regulations for low-risk commodities in which risk can be appropriately reduced with measures that have already been approved for the same pest(s). Under this approach, if the PRA determines that approved risk mitigation measures will adequately reduce the risk, APHIS would publish a notice in the **Federal Register** that it will issue a permit rather than go through formal notice-and-comment rulemaking. The commenter stated that this approach would reduce the decisionmaking process from 1 to 2 years down to 6 months or less.

It should be noted again that the importation of most plants for planting will not be affected by the implementation of the NAPPRA category, which will only list specific taxa as quarantine pests or hosts of quarantine pests, based on scientific evidence.

As noted earlier, the timetable for completion of a PRA depends on many factors, some of which are outside APHIS' control. However, it is important to note that continuing to allow the entry of taxa that are quarantine pests or hosts of quarantine pests would expose the agricultural and environmental resources of the United States to continued risk while a PRA is developed. Adding such taxa to the NAPPRA category provides a more appropriate balance between managing risk and allowing trade.

We agree with the commenter's suggestion to develop a streamlined approach to mitigate the risk associated with taxa listed as NAPPRA and to authorize their importation. We plan to propose such an approach in the future. This is further discussed later in this document under the heading "Risk-Mitigating Production Practices." However, such a streamlined approach will not necessarily affect the amount of time it takes to conduct a PRA, but rather the amount of time it takes to authorize importation of a taxon under certain conditions once a PRA has been completed.

One commenter stated that we should consider waiving the requirement to conduct a PRA if the agency has determined that clear scientific evidence exists to counter the earlier

evidence that supported listing the taxon, without proceeding through the full PRA process.

We would not remove a taxon from the NAPPRA category simply because some scientific evidence exists that indicates that the importation of a taxon may be safe. The NAPPRA category is designed to allow us to quickly address risk; the PRA process is designed to take into account all the evidence regarding the risk associated with the importation of a particular taxon. That said, if we receive information indicating that the evidence we used to place a taxon on the NAPPRA list was in error (for example, involving a taxonomic misidentification), we would remove the taxon from the NAPPRA list.

To accommodate such removals, we are adding to the proposed regulations in § 319.37–2a a new paragraph (e)(4). This paragraph indicates that APHIS may also remove a taxon from the NAPPRA list when APHIS determines that the evidence used to add the taxon to the list was erroneous. We are giving the example of a taxonomic misidentification to ensure that the nature of the error is clear to readers of the regulations—the error would need to be a clear error, and not simply a disputable data point in the original evidence.

One commenter stated that any rule regarding the prohibition or restriction of a species should not be considered “final,” and, as long as new information becomes available, there should be room to continue the process of refining any list. Another commenter stated that, because relevant information about a taxon that we add to the NAPPRA category may arise after the comment period on the initial **Federal Register** notice has closed, we should devise a mechanism to acquire and post comments in perpetuity.

We agree that the public should have a means to send us additional information about any taxon that we have added to the NAPPRA category. We will provide an e-mail address for submitting such information on the plants for planting Web site at http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37_nappra.shtml. Any comments on the scientific information made available in the initial **Federal Register** notice would be helpful in preparing any subsequent PRA we may conduct. It is important to note, however, that unless the scientific evidence on which we based our determination was shown to be in error, we would need to conduct a PRA to remove a taxon from the NAPPRA category.

Importation of NAPPRA Taxa Under Departmental Permits

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

To allow for the same research to be done on NAPPRA-listed plants for planting, we proposed to amend § 319.37–2(c) to indicate that it would also apply to articles whose importation is not authorized pending pest risk analysis, as listed in accordance with proposed § 319.37–2a.

One commenter stated that small quantities of germplasm of NAPPRA-listed taxa should be allowed for import with minimal pre-import restrictions, though post-entry restrictions, utilizing a limited quarantine period with demonstrated tests for major pathogens before release for breeding, trialing, or commercialization, would be practical. The commenter suggested that evaluation of NAPPRA-listed taxa be performed by the companies wishing to import novel materials. This process would be under the guidance of APHIS and would take place in an environment with a minimal chance of escape.

Another commenter stated that a permit system should also encompass taxon trialing for breeding and development, with the possibility of eventual commercialization subject to appropriate review, limitations, or safeguards. The commenter stated that this exception should apply to USDA, as proposed, as well as to other permittees specifically approved to import, for specific purposes, taxa on the NAPPRA lists.

This commenter also urged us to expedite review and finalization of its Departmental permit revisions, which the commenter stated will form an integral part of the overall

implementation of the proposed NAPPRA category.

Although allowing such importation is outside the scope of this final rule, we do plan to publish a proposed rule that would revise the Departmental permit provisions. This proposal would give us the authority to allow private companies and individuals to import both prohibited taxa and taxa whose importation is not authorized pending pest risk analysis for analytical, experimental, therapeutic, or developmental purposes, if the results of growth and testing of the taxon in controlled conditions support doing so. We agree with the second commenter that this revision is important to the implementation of NAPPRA.

One commenter stated that, after testing of taxa that have already been imported into the United States, plants should be exempted at the species level, where appropriate, rather than at the cultivar level; once a species has been tested and found to pose little risk of being an invasive pest or harboring a quarantine pest, no further screening is needed. Taxa already safely imported in significant commercial quantities should be exempt from further screening. Botanical gardens, universities, and private companies are all capable of screening. Such screening should be modeled after post-entry quarantine conditions developed to intercept pests. Part of the restriction imposed could include a requirement to monitor for signs of invasiveness before wide-scale commercial introduction could occur.

We will only restrict importation through the NAPPRA category of taxa that are quarantine pests or hosts of quarantine pests; other taxa, including those that have already been imported into the United States, will continue to be subject only to the general importation restrictions for plants for planting. Thus, taxa that are safely imported in commercial quantities would not be added to the NAPPRA category, unless new scientific evidence indicated that they are quarantine pests or hosts of quarantine pests. Nevertheless, we will take the commenter's advice about research into account as we develop our revision of the Departmental permit regulations.

We are making one change related to importation under Departmental permit in this final rule. In § 319.37–2, paragraphs (a) and (b) specifically indicate that the taxa listed there may not be imported except in accordance with paragraph (c) of that section. To ensure that readers of the NAPPRA regulations are aware that importation under Departmental permit is an option

for NAPPRA taxa, we are changing the introductory text of proposed paragraph (a) of § 319.37–2a to indicate that importation of NAPPRA taxa is not authorized pending the completion of a PRA, except as provided in § 319.37–2(c).

Seed

Some commenters specifically addressed seed-related issues.

One commenter requested that we not impose all-encompassing restrictions on the importation of plants for planting, especially seeds. The commenter stated that seeds are essential for preservation of diversity within our agricultural systems, and that major companies benefit from further restrictions on seeds.

The NAPPRA category will only be used to prevent the importation of taxa of plants for planting that we determine to be quarantine pests or hosts of quarantine pests, based on scientific evidence. The importation of seed from taxa that are quarantine pests will not be authorized under NAPPRA, as such importation could introduce a quarantine pest. For taxa that are hosts of quarantine pests, the importation of seed will be permitted unless specifically restricted by APHIS based on scientific evidence that the associated pest can be introduced and established in the United States through the importation of seed. Even when a taxon is determined to be a host of a quarantine pest, its seed can often be imported safely, depending on the biology of the pest. As discussed earlier, preventing the importation of quarantine pests will help to prevent damage to U.S. agricultural and environmental resources.

One commenter, expecting that the largest impact of the NAPPRA category will be on seeds that are a potential pathway for introduction of plant pathogens, recommended that APHIS develop criteria to objectively assess the risk of seeds as a pathway for introduction of plant pathogens. The commenter stated that extreme care needs to be taken in regard to what hosts of seed-transmitted pathogens are placed on this list. Many plant pathogens, for example, have broad host ranges; a pathogen might transmit through its principal hosts but not through secondary hosts. The commenter stated that literature review must be thorough and research results must be verified and reported in additional papers in peer-reviewed journals to qualify to be listed as hosts.

The commenter also stated that there are also many reports in the scientific literature of seeds as vectors of certain

pathogens, and pathogen spores found as contaminants on seed; however, very little analysis has occurred to assess the risk such seeds pose. Some reports of seed transmission have been based on laboratory experiments and not on actual field or environmental observations, or have documented seed transmission at very low levels without commenting on the resultant probabilities for inciting an infection in a new environment. Such reports, once in the literature, are very difficult to refute or put into proper context, and many NPPOs justify actions to prohibit or severely restrict imports of seed based on these faulty or incomplete scientific reports. The commenter concluded that careful analysis needs to be done on the pathogen in question, its relationship to the seed (is the seed a pathway), and under what conditions could there be enough viable inoculum associated with seed to pose a risk of disease expression and establishment.

The NAPPRA category is intended to allow us to respond in a timely manner to scientific evidence indicating that a taxon of plants for planting is (in this case) a host of a quarantine pest. We will use the best information we have available to determine whether the importation of seed from a taxon could result in the introduction and establishment of a quarantine pest pathogen.

The Background section of the proposed rule stated that we would not authorize the importation of certain seed based on evidence that the quarantine pest is seedborne. In this document, we are clarifying that evidence that the presence of a pathogen on or in seed would not necessarily cause us to determine that the importation of that seed should not be authorized pending pest risk analysis. Depending on the biology of a pathogen, contamination of seed may not be sufficient to introduce and establish the pathogen in the United States. For example, a pathogen may be present in seed from an infected plant, but plants grown from that seed may not be infected with the pathogen. We would need specific evidence that the importation of the seed is a viable pathway for the introduction and establishment of a quarantine pest in order to add seed from a taxon to the NAPPRA category.

If we become aware of such evidence, we will publish a notice announcing our determination that the importation of seed from the taxon could result in the introduction and establishment of a quarantine pest, and we will solicit public comment on that determination.

Commenters will have the opportunity to offer additional information.

Requiring evidence that the importation of seed could result in the introduction of a quarantine pest to be verified and reported in additional papers in peer-reviewed journals would expose the United States to risk from such pests while this research is conducted. If we took the commenter's recommendation, we would not restrict the importation of seed from a taxon unless there was a peer-reviewed publication to confirm our evidence, even if the initial publication was in a peer-reviewed journal or an authoritative reference and even if no additional evidence was available for years or decades afterward, which is not rare in research on plants for planting.

We stated in the proposed rule that reports of the host status of a taxon of plants for planting that are based on the taxon's role as a laboratory or experimental host may be discounted if we determine that they are not relevant to the actual conditions under which the taxon would be grown and imported. Laboratory results alone may thus be discounted. However, if we did have evidence of environmental transmission of a pathogen, or laboratory results that are relevant to the conditions under which the taxon would be grown or imported, we would add the taxon to NAPPRA to address the risk of importing a quarantine pest. When a PRA is done to comprehensively assess the risk posed by the importation of seed from the taxon, it will take into account all available evidence.

We disagree with the commenter's prediction that the largest impact of the NAPPRA category is likely to be on the importation of seed. The importation of seed from most taxa listed as hosts of quarantine pests will continue to be allowed—for example, seed from hosts of insect quarantine pests.

One commenter stated that some hand-pollinated commercial F1 hybrid vegetable seed production is located in certain parts of the world where quarantine pathogens may be present. ("F1" refers to the seed (and subsequent plant) produced by fertilizing one taxon with pollen from another taxon, the offspring of which produce a new, uniform seed variety with specific characteristics from both parents.) The commenter stated that, unless supported by careful risk analysis, seed of some species could be improperly listed, which would result in potentially severe economic impacts.

We are establishing the NAPPRA category to prevent the importation of plants for planting that could introduce

quarantine pests. Accordingly, we will add to the NAPPRA list seeds that are hosts of a seed-transmitted pathogen and that are from an area where the pathogen is located. Depending on the mechanism of transmission for the quarantine pathogen, standard production practices might not mitigate the risk of transmission in hand-pollinated commercial F1 hybrid vegetable seed. We would take into account local production practices when preparing a PRA to determine the conditions under which such seed could be imported.

As mentioned earlier, paragraph (d) of § 319.37-4 authorizes the importation of small lots of seed without a phytosanitary certificate provided that the shipment meets certain conditions. Three commenters stated that the importation of seed in small lots under § 319.37-4(d) should continue to be authorized even for taxa listed as NAPPRA, and that the activities of seed societies should not be further regulated.

Both commenters stated that specialist gardening societies and other plant collectors who use the small lots of seed program can provide information to APHIS about the potential invasiveness of newly imported plants and plants that are already in the United States, given their knowledge of plants and cultivation and their hands-on experience in and equipment for cultivating rare and unusual plants.

One of the commenters stated that exempting seed from NAPPRA restrictions would protect plant societies from financial harm and would help ensure the cooperation of plant collectors, which would make the United States more safe from invasive pests. This commenter stated that, for members of plant societies, much of the enjoyment comes from growing something unusual and challenging. One of the main incentives for paying to join a plant society is to participate in rare seed exchanges among members, many of whom are located outside the United States. The most unusual, difficult-to-grow plants are by definition things that are not already established in the United States, either because they have not been seen before or because they are difficult to maintain in cultivation. Without those seed exchanges, the commenter stated, many of the societies would lose membership and could easily become financially unviable (most of them barely break even as it is). The commenter expressed concern that careless application of new plant import regulations could cripple

the plant societies by interfering in the seed exchanges that help to fund them.

Both of these commenters stated that small quantities of seed are much less likely to carry diseases or pests than live plants, and the private collectors who use the small lots of seed program generally grow their plants in conditions that minimize the chance of them escaping into the wild. They are also very aggressive about eliminating plants that show signs of disease, because they do not want trouble spreading to the rest of their collections.

We appreciate the commenters' suggestions. We acknowledge that seed societies practice responsible cultivation of unfamiliar taxa, and we value their efforts to gain additional information about those taxa. However, it is important to note that only seed that is subject to the general requirements in the plants for planting regulations, with no additional restrictions, is currently eligible for importation under the small lots of seed program in § 319.37-4(d). Seed may be imported under the small lots of seed program only if it is not of any prohibited genera listed in § 319.37-2; is not of any noxious weed species listed in part 360; does not require an additional declaration on a phytosanitary certificate in accordance with § 319.37-5; does not require treatment in accordance with § 319.37-6; is not restricted under the regulations in 7 CFR parts 330 and 340; and meets the requirements of 7 CFR part 361. Because seed whose importation is not authorized pending pest risk analysis would be restricted due to the risk of introduction of a quarantine pest via the seed, we need to include seed whose importation is restricted under the NAPPRA category in this list as well. Even a small number of seeds could introduce a quarantine pest into the United States, and depending on the biology of the quarantine pest it could spread quickly once introduced. (The importation of seed from taxa that are quarantine pests also would not be authorized, though we believe that responsible plant societies would not be interested in importing such seed.)

It is important to remember that seed of most taxa will continue to be allowed to be imported after the implementation of the NAPPRA category. (For example, taxa of plants for planting that are difficult to maintain in cultivation, and thus prized by members of plant societies, would not likely be added to the NAPPRA category unless their importation could result in the introduction and establishment of a quarantine pest.) The importation of seed will be restricted under NAPPRA

only if scientific evidence leads us to determine that the taxon is itself a quarantine pest or that its seed is a host of a quarantine pest. As noted earlier, seed from most hosts of quarantine pests will not be restricted under NAPPRA. The importation of most taxa will continue to be allowed subject to general restrictions, and the importation of small quantities of most seed taxa will continue to be allowed under the small lots of seed program.

We agree that it is important to be careful in implementing the NAPPRA category. We also agree that plant collectors and other such enthusiasts are valuable sources of information on the behavior of imported plants for planting, and we hope that they will provide us with any information they have about taxa on which we solicit comments.

One of these commenters stated that, if APHIS is concerned about leakage from the small lots of seed program into the general nursery trade, it could put restrictions on the types of commercial use allowed for seeds imported through that program.

The use of such seed is not the concern; the risk of introducing a quarantine pest is the concern, which needs to be addressed by ensuring that the importation of seed from a taxon that is a quarantine pest or whose seed can introduce and establish a quarantine pest is not authorized.

These commenters also emphasized the fact that plant societies have information that is useful for our regulatory efforts. One commenter stated that, given that private plant collectors are the people most likely to notice potential invasiveness from a newly imported species, or one that has been in cultivation in the United States for some time, the Government can, and should, partner with them as an early warning system for assessing the potential invasiveness of both newly imported plants and those that are already in the United States. The commenter also suggested that APHIS create a Web site for collecting invasiveness reports from private gardeners and plant societies. APHIS could then use this information to prioritize its plant risk evaluations.

We agree that plant societies can be valuable partners in gathering data on risks associated with plants for planting. We will discuss with any interested plant societies the best way to share information about the potential damage caused by plants for planting. We are open to creating a Web site but want to ensure that any collaboration mechanism we develop will be as

effective as possible for the greatest number of interested parties.

If we finalize our forthcoming proposed rule that would revise our Departmental permit regulations to allow nongovernmental entities to import NAPPRA taxa under permit, we will be able to work with plant societies interested in importing NAPPRA taxa to study these taxa and gain more information about their risk. We look forward to working closely with plant societies to gather information about and address the risk associated with the importation of plants for planting.

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

The definition of *regulated plant* in § 319.37-1 reads: “Any gymnosperm, angiosperm, fern, or fern ally. Gymnosperms include cycads, conifers, and ginkgo. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts.” Based on comments we received at a May 2005 meeting, we proposed to amend the definition of *regulated plant* to include nonvascular green plants, such as mosses and green algae. The proposed definition read: “A vascular or nonvascular plant. Vascular plants include gymnosperms, angiosperms, ferns, and fern allies. Gymnosperms include cycads, conifers, and ginkgo. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts. Nonvascular plants include mosses, liverworts, hornworts, and green algae.”

Several commenters stated that all macroalgae and colonial microalgae, rather than just green algae, should be included under the definition of *regulated plant*. These commenters stated that red (Rhodophyta) and brown algae (Phaeophyceae; kelps, *Fucus* spp., etc.) need the same level of evaluation as green algae, as evidenced by the recent spread and discovery of the brown alga wakame, *Undaria pinnatifida*, in San Francisco Bay, as well as the continuing spread and damage caused by the colonial microalga *Didymosphenia geminata* (Didymo or “rock snot”).

In most classification systems red and brown algae, other macroalgae, and colonial microalgae are not included in the plant kingdom. Therefore, at this time, we do not believe it would be appropriate to add them to the definition of *regulated plant*.

Relationship of the Current Regulations to the NAPPRA Category

Taxa of plants for planting whose importation is prohibited are listed in the regulations in § 319.37-2. Specific restrictions on the importation of various taxa of plants for planting are found elsewhere in the regulations, mostly in §§ 319.37-5, 319.37-6, 319.37-7, and 319.37-8. We proposed to establish the process for adding taxa of plants for planting to the NAPPRA lists in a new § 319.37-2a.

A few commenters asked about the relationship between the list of prohibited taxa in § 319.37-2 and the proposed lists of taxa whose importation is not authorized pending pest risk analysis (i.e., the NAPPRA lists). One asked us to clarify that the NAPPRA lists are not replacing the lists of prohibited and restricted taxa. This commenter also suggested that we move any taxa that are prohibited but for which a PRA has not been conducted to the NAPPRA list. Another commenter asked whether the prohibited taxa will automatically be placed on the NAPPRA lists and whether the prohibited taxa would then remain on NAPPRA until a PRA has been conducted. A third commenter asked whether an importer could request a taxon to be moved from the list of prohibited taxa to the NAPPRA list, saying that doing so would give importers a means to comment on the designation of a taxon as prohibited.

The NAPPRA lists are not replacing the list of prohibited taxa, or the separate lists of taxa for which there are specific requirements for importation. While the NAPPRA lists exist to prevent the importation of taxa of plants for planting that pose a risk but for which a PRA has not been conducted, the risks associated with all the prohibited taxa in § 319.37-2 were analyzed when the taxa were added to the list. We may decide to reevaluate some of these taxa in light of current scientific evidence; in order to remove any taxon from the list of prohibited taxa, we would need to conduct a PRA and subsequent rulemaking.

In response to the third commenter's concern, we have in the past conducted PRAs for taxa that are listed on the prohibited list based on public requests, and we will continue to do so. Members of the public are free to contact us and request a PRA for any taxon on the prohibited list. Requests must be made in accordance with § 319.5.

Prohibited taxa will not automatically be added to the NAPPRA lists. However, we may decide to list some taxa as both prohibited and NAPPRA to make it

easier for readers to determine whether the taxa can be imported. For example, the importation of *Cedrus* spp. from Europe is prohibited because Douglas fir canker and seedling disease, both quarantine pathogens, are present in Europe, and *Cedrus* spp. is a host of those pathogens. If we receive evidence that one of those pathogens has spread to Asia, we would add *Cedrus* spp. to the NAPPRA list for Asia and for other countries not exporting *Cedrus* spp. to the United States, because there is a risk that the pathogen could spread to those countries before they decide in the future to export *Cedrus* spp. However, if someone reading the NAPPRA list on the plants for planting Web site saw that the importation of *Cedrus* spp. from Asia was not authorized pending pest risk analysis, that person might not think to check the list of prohibited articles in § 319.37-2 in order to determine that the importation of *Cedrus* spp. is prohibited from Europe, and thus might apply for an import permit for *Cedrus* spp. grown in Denmark. For ease of reading, we would add *Cedrus* spp. from Europe to the NAPPRA list as well. In general, taxa that are listed as prohibited taxa from certain countries would also be listed as NAPPRA from those countries when their importation from new countries is not authorized under NAPPRA.

We are planning a proposed rule to completely reorganize the plants for planting regulations. As currently planned, one goal of this proposal would be to make it much easier to determine at a glance what restrictions and prohibitions apply to the importation of a taxon.

We stated in the economic analysis accompanying the proposed rule that, under the new NAPPRA program, we would prohibit the importation of a plant taxon that has been scientifically shown to be a quarantine pest or a host of a quarantine pest prior to its importation.

One commenter stated that if a taxon has already been scientifically shown to be a pest or host of a pest, it should already have been assessed and appropriate action should be taken. The commenter stated that the NAPPRA program does nothing new and does not “increase protection” at all—it only increases bureaucratic workload, as the USDA already has the power (as well as emergency powers) to restrict the entry of organisms that are known to be pests. The commenter stated that the NAPPRA category was thus duplicative of existing powers and regulations, going against the instruction in Executive Order 12866 to avoid duplicative regulations.

The commenter is correct that, in situations that we judge to pose an emergency, we can take action immediately to stop the importation into the United States of a taxon whose importation poses a risk of introducing a quarantine pest. However, in the past, we have relied on the comprehensive PRA and rulemaking processes for reviewing the scientific literature and inviting the public to comment on restrictions we are contemplating for specific taxa of plants for planting. The NAPPRA category allows us to be transparent and engage the public by publishing notices, making available the scientific justification for our decisions, and requesting comments, while avoiding the burden of conducting a comprehensive PRA and completing rulemaking before putting restrictions in place, which previously had been our common practice. The NAPPRA category thus does not duplicate current efforts but provides us with a way to more efficiently utilize our limited resources, to employ transparent processes in reaching and communicating our decisions, and to allow for public participation in the process.

We proposed to use the NAPPRA process to list as not authorized for importation both taxa of plants for planting that are quarantine pest plants (*i.e.*, noxious weeds) and taxa that are hosts of quarantine pests.

Four commenters asked about the relationship of the NAPPRA list of taxa of plants for planting that are quarantine pest plants and the list of noxious weeds. One recommended that we add plants for planting that are not approved for importation to the noxious weed list.

We appreciate the opportunity to clarify our plans with regard to taxa of plants for planting listed in the NAPPRA category as quarantine pests. If we conduct a WRA for a taxon listed in NAPPRA as a quarantine pest, and the WRA concludes that the importation or interstate movement of a taxon of plants for planting should only be allowed under a permit specifying controlled conditions intended to prevent its escape, we would propose to add the taxon to the list of noxious weeds in 7 CFR part 360. If the WRA does not conclude that the taxon should be added to the noxious weed list, we would also conduct a PRA for the taxon; if the PRA indicates that the importation of the taxon should be prohibited or only allowed subject to specific restrictions because the taxon is a host for a quarantine pest or pests, we would amend the plants for planting regulations accordingly. We would not add taxa of plants for planting on the

NAPPRA lists to the noxious weed list unless the results of our WRA supported a decision to do so.

One commenter asked how APHIS would ensure that taxa listed in NAPPRA as quarantine pests are not imported as pure lots of seed or as contaminants of seed lots.

With respect to pure lots of seed, such importation will not be authorized under the final rule. We will add the NAPPRA list of quarantine pest plants and hosts of quarantine pests, including regulated plant parts, to the Plants for Planting Manual (previously known as the Nursery Stock Manual) for the benefit of our port inspectors and the public.

With regard to contaminants of other seed lots, it could be operationally difficult to exclude such contamination until we provide adequate identification criteria to our inspectors. Seeds of taxa listed in NAPPRA as quarantine pest plants may be difficult to distinguish from seed of taxa that are not subject to any specific importation restrictions, meaning that it would be difficult to determine which contaminated lots of seed could nevertheless be imported and which would need to be destroyed or reexported. As noted earlier, this final rule is part of an ongoing, broader effort to revise the plants for planting regulations and other procedures to better address the risks associated with plants for planting. After we have implemented the final rule, we will continue to examine the potential pathway for importation of nonauthorized taxa represented by contamination of seed lots and determine the best way to mitigate the risk associated with it.

Economic Issues

One commenter stated that the costs of implementation of the proposed rule must be reasonable, since they are most likely going to be transferred to the retail sector and ultimately the consumer.

There are no direct costs associated with the implementation of the rule. Initially, we will use current resources to inspect shipments of taxa to determine whether any NAPPRA-listed plant for planting are present and to conduct PRAs and WRAs. Listing taxa as NAPPRA would, in the worst case, only cause retailers to be unable to earn revenues associated with risky plants that they will not be able to import. However, this impact will likely be minuscule as the plants propagated and grown in the United States will remain available. There is some burden associated with requesting removal of a taxon from the NAPPRA list. However,

as it is optional to request removal of a taxon from the NAPPRA category, we do not anticipate that a retailer or other importer would make such a request unless the benefits outweighed the costs, given that most taxa in the world would be allowed to be imported subject to the general restrictions in the plants for planting regulations.

One commenter stated that, in discussions of the costs of invasive species, costs and risks are generally inflated, and unnecessary controls are instituted on the basis of these inflated risks and costs. The commenter also stated that most "invasive species" are not economically harmful or environmentally harmful, meaning that control costs are unnecessary.

Using the NAPPRA category will not involve us making a determination that a taxon of plants for planting is invasive, but rather that it is a quarantine pest or a host of a quarantine pest. As the definition of *quarantine pest* requires that the pest be of potential economic importance, part of what we will consider in making the determination that a taxon is a quarantine pest or a host of a quarantine pest will be the specific damage the taxon, or the quarantine pest for which it is a host, causes to U.S. agricultural and environmental resources. In the absence of such damage, a taxon would not be designated as a quarantine pest. We believe this addresses the commenter's concern.

In the Background section of the proposed rule, we stated that the increased diversity and volume of plants currently being imported was what led us to determine that the current regulations need to be enhanced to provide a level of phytosanitary protection commensurate with the risks posed by the importation of plants for planting.

One commenter stated that, in fact there is an increased diversity and volume of plants currently being imported, this is a clear indication of the will of the American people, and that the people have determined by their actions that our nation's economic interests and environmental well-being are served by increased imports. The commenter stated that the American people would not import plants if this were not in their best interest to do so.

Importing a taxon of plants for planting that is a quarantine pest or that is a host of a quarantine pest may provide revenues to the importer and a desired ornamental plant for the consumer (for example), but the plant may also end up causing widespread damage to U.S. agricultural or environmental resources, or the plant

may be infested with a pest that causes such damage. As individual importers and consumers may not be aware of the risks associated with the importation of such plants for planting, and often do not bear the cost and burden of remedying the resulting negative impacts to the community as a whole, we regulate the importation of plants for planting to help avert such damage and its associated costs.

One commenter stated that the economic analysis prepared for the proposed rule considered the costs associated with the introduction of quarantine pests but not the potential economic benefits from importing new species. The commenter stated that many multimillion-dollar crops such as amaranth, milk thistle (*Silybum marianum*), and St. John's wort were formerly considered weeds, meaning their importation would not have been authorized under NAPPRA. The commenter stated that many countries now forbid the export of living organisms because they recognize the economic value of such species and claim sovereignty over their biodiversity. The commenter recommended that we consider potential benefits as well as potential costs associated with species added to the NAPPRA lists.

We appreciate the commenter's suggestion. As we are not adding any specific taxa to the NAPPRA lists in this final rule, any discussion of the economic benefits associated with importing taxa that we add to the NAPPRA in the future would be speculative. On the other hand, the examples of damage caused by the introduction of pests into the United States via the importation of plants for planting can be easily quantified, which is why we included that discussion.

If we receive a request to remove a taxon of plants for planting from the NAPPRA list, we would conduct a PRA to more fully examine the risks associated with the importation of the taxon. If the PRA indicates that the importation of the taxon should be prohibited or allowed subject to restrictions, we will initiate rulemaking to amend the regulations accordingly. We will include with the proposed rule an economic analysis that takes into account both the potential benefits associated with the importation of the taxon and the costs of control actions that may become necessary if it is imported. (If the PRA indicates that the taxon can be safely imported subject to the general restrictions in the plants for planting regulations, we will publish a notice indicating that we have determined that the taxon can be

removed from the NAPPRA list and making the PRA available for comment.)

As discussed earlier, the fact that a plant taxon is called a weed would not be enough of a reason to add it to the NAPPRA list. We would need evidence of its economic importance, based on the damage it causes. It would also need to be either not present in the United States or present but not widely distributed and under official control. Amaranth is a common food crop in Latin America and has been grown in the United States for decades without record of causing economically important damage. Milk thistle is listed as a noxious weed by three States, so we would likely have considered restricting its importation had the NAPPRA category been in place when milk thistle was first imported. St. John's wort is native to the United States and so would not have been eligible for consideration as a quarantine pest. Of the three plant taxa the commenter cites, then, only one would have actually been considered for listing in NAPPRA, consistent with the fact that the importation of most taxa will continue to be allowed when we implement the NAPPRA category.

In discussing the expected benefits of implementing the proposed NAPPRA category, the economic analysis accompanying the proposed rule discussed the costs associated with control of invasive species in the United States. One publication cited in this discussion was Pimentel *et al.* (2000),¹⁶ which estimates that nonindigenous plant pathogens cause \$21 billion in U.S. crop losses each year and that growers spend approximately \$500 million annually on fungicides to combat these pathogens.

One commenter stated that Pimentel *et al.* (2000) has been shown to be pseudoscientific and an example of serious misrepresentation, as many of the costs are grossly overinflated and have no actual economic basis whatsoever. The commenter cited as an example the methodology that Pimentel *et al.* (2000) used to determine economic losses associated with cats. While, as the commenter noted, cats are not plants, the commenter stated that it is important to note this as an example of the poor quality of Pimentel *et al.*'s data and reasoning.

We have found no evidence from reliable sources that would suggest that Pimentel *et al.* (2000), as well as the subsequent updated publication

¹⁶ Pimentel, D., Lach, L., Zuniga, R., and Morrison, D. 2000. Environmental and economic costs of nonindigenous species in the United States. *BioScience* 50:53–65.

Pimentel *et al.* (2005),¹⁷ has been shown to be “pseudoscientific” or “an example of a serious misrepresentation” of the costs. The updated Pimentel *et al.* (2005) study has been cited in more than 500 scientific journal articles and research reports. Pimentel *et al.* (2000) and (2005) are comprehensive studies of the annual costs associated with the presence of invasive species in the United States. The costs are compiled from more than 140 various studies, publications, journal articles, and agency reports. The costs associated with invasive species, as reported in Pimentel *et al.* (2000) and (2005), include plants, mammals, fish, birds, reptiles, arthropods, mollusks, weeds, and plant pathogens, to name a few. Pimentel *et al.* (2005) estimated the cost of environmental damages associated with invasive alien pests into the United States at \$120 billion annually; however, only the costs associated with invasive plant pests were considered pertinent to the NAPPRA proposal. An Ecological Society of America report (Lodge *et al.* (2006)¹⁸) finds that the Pimentel *et al.* (2005) may actually underestimate the net costs of invasive species to society by examining “only a small subset of harmful species,” and contends that the net costs are actually much higher than they appear in Pimentel *et al.* (2005).

The commenter provided no comments specific to the Pimentel *et al.* (2000) estimate of the damage associated with invasive species. APHIS finds no basis for the assertion that Pimentel *et al.* (2000) displays poor quality in its data and reasoning.

One commenter specifically addressed the estimate Pimentel *et al.* (2000) provide for damage from invasive species. Pimentel *et al.* (2000) state that weeds (both native and non-native) cause an overall crop reduction of 12 percent per year out of the more than \$267 billion potential value of all U.S. crops, which leads to a \$32 billion figure. Following this, Pimentel *et al.* (2000) asserts, based on the results of a single survey, that 73 percent of weeds in crop fields are nonindigenous, yielding an estimate of \$23.4 billion lost to non-native weeds. (Another

¹⁷ Pimentel, D., Zuniga, R., and Morrison, D. 2005. Update on the environmental and economic costs associated with non-indigenous species in the United States. *Ecological Economics* 52:273–288. The economic analysis accompanying this final rule uses the updated estimates of damage from invasive species in Pimentel *et al.* (2005).

¹⁸ Lodge, D. M., Williams, S., MacIsaac, H. J., Hayes, K. R., Leung, B., Reichard, S., Mack, R. N., Moyle, P. B., Smith, M., Andow, D. A., Carlton, J. T., McMichael, A. 2006. Biological invasions: Recommendations for U.S. policy and management. *Ecological Applications* 16:2035–2054.

commenter stated that costs of crop reductions from pests include native pests, and so overstate the impact from introduced pests; the first commenter's summary of Pimentel *et al.* (2000) is correct.)

The commenter stated that, in the interest of good science, more representative of reality, a number of statistical surveys should be done multiple times within the year, in many different regions of the country, on different crops, and in different years. Data collection of this nature would better elucidate the actual influence of both native and non-native weeds by including: Different weed life cycles which influence crop growth at different times, different climates and conditions in the United States, certain crops which may naturally compete with weeds better than others, and the distribution of weeds under different climatic conditions.

We agree with the commenter that it would be preferable to have more data available regarding the cost of the damage associated with non-native weeds in general. However, Pimentel *et al.* (2000) and the updated Pimentel *et al.* (2005) nevertheless provide a general estimate of the scope of the problem. As discussed earlier, this final rule does not impose broad restrictions or prohibitions on the importation of taxa of plants for planting, but rather allows us to impose restrictions on specific taxa based on scientific evidence that they can damage U.S. agricultural and environmental resources. The Pimentel *et al.* (2000) estimate indicates the magnitude of the costs incurred due to damage from plant species, even though it may not be an exact figure.

The commenter went on to note that Pimentel *et al.* (2000) then add \$3 billion spent on weed controls to the earlier estimate of \$23.4 billion in lost crop yields, for a total of \$26.4 billion. However, the commenter stated, the study does not take into account the costs that native weeds inflict by replacing non-native weeds; thus still contributing to crop losses and requiring associated control methods. To their credit, Pimentel *et al.* (2000) acknowledge the fact that native weeds would replace non-native varieties. On the other hand, Pimentel *et al.* (2000) state that any potential overestimation of the impact of non-native weeds would be canceled out by other potential losses such as environmental and public health damages resulting from herbicide and pesticide application. The environmental and public health damages due to herbicide and pesticide application are certainly valid concerns. Nevertheless, the

commenter stated, it is not logical to imply that the risks of pesticides and herbicides would be much less or not exist if native weeds only were found within crop fields. Crop fields with only native weeds present would still require the application of herbicide and pesticides to control non-crop plants and other pests. Thus, the \$26.4 billion figure reported by Pimentel *et al.* (2000) attributed to non-native weeds may still be incurred anyway, even if native weeds only were found in crop fields. The commenter added that this point was made in the study by Costello and McAusland (2003),¹⁹ who criticized Pimentel *et al.* (2000) for overestimating the true marginal cost of the noninvasive species surveyed.

Costello and McAusland (2003) indeed contend that the estimates found in Pimentel *et al.* (2000) tend to overstate the marginal costs of non-native species with respect to agricultural activity, in that costs of the spread of native species are not deducted from the estimated monetary costs associated with biological invasions in the United States. However, Costello and McAusland (2003) also argue that the estimates found in Pimentel *et al.* (2000), as well as the estimates from the U.S. Congress' Office of Technology Assessment on which much of Pimentel *et al.* (2000)'s analysis is based, may be viewed as underestimates, as they "tend to overlook damage to nonmonetized assets such as functioning ecosystems; these estimates may be viewed as lower bounds on the total costs associated with invasives." Costello and McAusland (2003) argue that the practice of determining measures based solely on agricultural damage can produce "misleading indicators of how restrictions to trade affect total losses arising from exotic species introductions." In their view, treating damages arising in agriculture as a proxy for overall costs related to invasive species may also mislead us with regard to not only the magnitude of these costs but other qualitative effects that trade policy has on the problem of invasive species. As discussed earlier, preventing damage to U.S. environmental resources is a goal of the NAPRA category, along with preventing damage to U.S. agricultural resources. In this context, Costello and McAusland (2003) indicate that Pimentel *et al.* (2000) underestimate the

total costs associated with invasive species.

The economic analysis also cited the National Plant Board's 1999 estimate of the cost of damage caused by invasive plant pests, which was \$41 billion annually in lost production and in prevention and control expenses. The two commenters who addressed Pimentel *et al.* (2000) did not provide any comments with respect to this other estimate. It remains clear to us that the invasive plant pests cause large-scale damage to U.S. agricultural and environmental resources, meaning the actions taken to prevent the introduction of quarantine pests via the importation of individual taxa of plants for planting into the United States will provide substantial economic benefits.

Other Measures To Address the Risk of Importing Plants for Planting

Commenters also suggested several measures to address the risk associated with imported plants for planting that are beyond the scope of the proposed rule. We will consider these comments as we continue our ongoing revision of the plants for planting regulations. The measures suggested by commenters are discussed below.

Mandatory Treatment

Four commenters recommended that we require treatment of plants upon arrival. Two of these commenters stated that mandatory disinfection should be considered. One stated that the invasiveness of plant pests and pathogens is a problem that could be handled by the application of a general fungicide or insecticide upon entry or from the deliverer. Another recommended treatment of high-risk horticultural plants or plant products.

Another commenter recommended that we consider requiring all imported plants to undergo a disinfestation treatment regardless of whether pests have been detected in the shipment, but added that research into effective and environmentally safe treatments is greatly needed.

When the plants for planting regulations were established, we required fumigation with methyl bromide for all shipments of imported plants. While this addressed the risk associated with insect pests that infested plants for planting, it had no effect on pathogens that infected plants for planting; no disinfectant treatment for plants for planting is available. Treatment does not address plants that are quarantine pests, either, since any plant that survived the treatment would still be a quarantine pest.

¹⁹ Costello, C. and McAusland, C. 2003. Protectionism, trade, and measures of damage from exotic species introductions. *Am. J. Agricult. Econ.* 85:964-975.

In part due to the fact that plants for planting are now imported in large quantities for immediate sale to U.S. consumers, imported plants for planting are no longer routinely fumigated with methyl bromide or otherwise treated as a condition of entry; the adverse effects of fumigating plants for planting with methyl bromide are quite severe, which means that importing plants for planting for immediate sale to U.S. consumers would be impractical if fumigation were required.

We will not resume routine fumigation with methyl bromide. Under the Montreal Protocol and Subchapter VI of the Clean Air Act (42 U.S.C. 7671–7671p), the United States is obligated to minimize its use of substances such as methyl bromide that deplete stratospheric ozone. In addition, Article 2 of the WTO SPS Agreement requires that any restrictions APHIS imposes on the importation of plants for planting to be based on scientific principles and not maintained without sufficient scientific evidence; as mentioned previously, routine fumigation was conducted regardless of whether there was evidence that the plants for planting offered for importation could serve as a pathway for the introduction of a quarantine pest.

We would consider imposing a routine disinfection requirement in the future if a treatment becomes available that is effective and does not have the potential for significant impacts on the human environment, and if we determine that such a requirement is necessary to achieve a more appropriate level of protection against the risk posed by the importation of plants for planting.

Inspections

We received several comments on the inspection of imported plants for planting at ports of entry before they are allowed to enter the United States.

Two commenters expressed support for additional staffing of inspection stations and plant pathology laboratories that, in their view, would be required to implement the proposed rule.

Implementing the proposed rule will not require increased resources for inspection; it will simply require current inspectors to be able to identify the taxa that we list as NAPPRA and ensure that they are not imported into the United States. We will communicate changes in the list of NAPPRA taxa in the same manner we currently communicate changes in the restrictions or prohibitions that are in the regulations governing the importation of plants for planting, by developing

identification aids and updating our manuals.

Two commenters stated generally that increasing the intensity of inspections should be considered; one added that plant inspection stations should be upgraded.

A third commenter opposed the proposed rule and stated that, instead of implementing it, we should implement several measures to increase the intensity and effectiveness of inspection. The commenter stated that there simply must be more actual inspections of imported plants and plant products, which is the best way to stop imported pests is at the port of entry. The commenter stated that inspectors must be trained in plant identification, entomology, plant pathology, and nematology.

The commenter stated that an inspection must consist of more than just checking paperwork. The commenter stated that, in the USDA export certification manual, nursery stock for export is to be inspected at a 100-percent rate if practical; the commenter stated that 100 percent of imported nursery stock should also be inspected upon arrival, not just a small percentage as is being presently done by USDA. For example, the commenter stated, Costello and McAusland (2003) referred to a joint report from APHIS and the U.S. Forest Service that states: “Containerized cargo is usually packed tightly in the trailer and often stacked to the roof, preventing inspection of all but a small percentage of the shipment visible at the tailgate (i.e. open doors).” The commenter stated that incomplete inspections, at ports of entry, open the United States to risks which could otherwise be curtailed. The commenter stated that if a complete inspection cannot be done at the port, a complete inspection of all imported plants should be done as they are unloaded at their final destination (and not just the small portion visible at a tailgate). This, the commenter stated, will not only screen for quarantine pests but will also catch illegal taxa.

The commenter also suggested performing laboratory tests on high-risk plants, requiring post-entry quarantines to be conducted in covered greenhouses, and performing followup checks on imported plants not in post-entry quarantine.

We appreciate the commenters’ suggestions. However, several factors limit our ability to increase the intensity of our inspections. Limited resources play a role, as the importation of plants for planting continues to increase while our resources for inspecting imported plants for planting are expected to

remain steady or decrease in the coming years. In addition, as discussed in the foundation document that accompanied the proposed rule, inspection is approaching, or may have reached, the limits of its operational efficacy due to the increased volume and diversity of importations. If more resources become available for inspection of imported plants for planting, we will certainly consider means by which we can make inspections more intense and effective. The NAPPRA category will allow us to direct inspectors’ attention to taxa of plants for planting that are quarantine pests or hosts of quarantine pests and thus maximize the effectiveness of the current inspection process.

Several factors make the third commenter’s suggestions impractical. Inspecting 100 percent of imported nursery stock would delay release of perishable commodities, especially if resources to conduct inspections were not increased, thus potentially making many shipments of imported plants for planting worthless. In addition, past a certain point, inspecting additional plants does little to increase the probability of detecting a pest; to maximize the effectiveness of our limited resources, we inspect according to statistical plans that are designed to find pests at low levels of infestation with a high level of confidence. If a quarantine pest that can be detected through inspection is present in a shipment of plants for planting, it is likely to have infested plants in the shipment at a high rate, meaning that these inspections are highly likely to find any available visual evidence of infestation by quarantine pests.

These statistical plans demand that the sampling we take is truly random, meaning that we inspect plants from all areas in a container or box, not just those at the top or on the sides. The quote the commenter cited from Costello and McAusland (2003) was drawn in turn from a PRA that discussed the importation of solid wood packing material (SWPM). That PRA is specific to challenges in inspecting SWPM, and in this context discusses the challenge of removing or devanning cargo in order to facilitate inspection of SWPM. This challenge does not apply to inspection of plants for planting. Inspectors select random samples of plants for planting from all areas within containerized shipments of plants for planting in order to ensure that our inspections are effective. Removing individual plants from various areas within a container is easier than removing the SWPM, since the SWPM typically fills the container and

provides a structure for the contents of the container.

As the commenter noted, the nursery stock export manual states that the inspection level should be as close to 100 percent as practical; in practice, with plants for planting shipments containing thousands of articles, 100 percent inspection is rarely practical for either import or export of plants for planting. The nursery stock export manual also provides a minimum level of sampling and statistical plans for conducting sampling of fewer than 100 percent of the articles in a shipment of plants for planting, consistent with the inspections we conduct for imported plants for planting.

Laboratory tests, requirements for post-entry quarantine in covered greenhouses, and followup checks on imported plants not in post-entry quarantine, if implemented as general restrictions as the commenter suggests, would vastly increase the difficulties and potentially the cost associated with the importation of plants for planting. Requiring laboratory tests of high-risk plants would further delay the importation of perishable commodities. In addition, without having identified quarantine pathogens that might be associated with the plants, it would be impossible to test for them. For most taxa, there is no easy-to-administer test or suite of tests that encompasses all major known pathogens, and even such a test or suite of tests would miss emerging pathogens for which reliable, cost-effective diagnostic methods have not yet been developed but that have been observed on plants for planting.

Our inspectors are well-trained in plant identification, entomology, plant pathology, and nematology. In addition, if they find any plant pests that are beyond their expertise, they have additional resources to call upon in order to make a final determination regarding whether to allow a shipment of plants for planting to enter the United States. If our inspectors find a pest in a shipment, we will hold the shipment back from entering U.S. commerce until and unless we can verify that the damage or symptoms are not caused by a quarantine pest.

Moreover, the increased inspections the commenter recommends would not address all the problems that will be addressed by implementation of the NAPPRA category. As discussed in the proposed rule, inspection as a sole mitigation measure may not always provide an adequate level of protection against quarantine pests, particularly if a pest is rare, small in size, borne within the plant, or an asymptomatic plant pathogen.

Requiring that post-entry quarantine occur in covered greenhouses would greatly increase the cost of importing any plants in post-entry quarantine and would only reduce the risk associated with plants that are already required to be imported into post-entry quarantine, not any other plants that pose a risk of introducing quarantine pests into the United States. Followup checks on plants for planting imported into the United States would be virtually impossible to conduct given the lack of a traceability infrastructure for plants and the diversity of destinations for imported plants for planting.

In summary, the commenter's suggestions would not adequately address the risk associated with the importation of plants for planting, and we continue to find the implementation of the NAPPRA category to be necessary to provide a more appropriate level of protection. This strategy is consistent with the National Plant Board's Safeguarding Review, referred to earlier in this document, which stated: "While port of entry inspection must continue to play an important role in the exclusion of invasive plant pests, the historic view that this activity can function as the focal point for exclusion must be abandoned. A new risk based management strategy that requires compliance and mitigation of pest risk at origin can both reduce risk and enable expedited entry."

One commenter, noting our discussion in the proposed rule of the limits of inspection, stated that the ineffectiveness of inspection in the cases cited above indicated that USDA is failing to do its job, and that the proposal constituted a plan to divert manpower and resources from inspection to a completely spurious risk assessment program.

Inspection will continue to be a key component of our efforts to prevent the introduction of quarantine pests via imported plants for planting. One way we will gain information about quarantine pest threats is when inspectors find quarantine pests infesting shipments of plants for planting offered for importation at a port of entry. Acknowledging the limitations of visual inspection does not constitute a failure of visual inspection; rather, it indicates that safeguards in addition to visual inspection are necessary to protect U.S. agricultural and environmental resources against the introduction of quarantine pests. The NAPPRA category is one additional safeguard in this effort.

In addition, we are not diverting resources from inspection to risk assessment as part of this proposal; our

inspections will continue at the same level as they have in the past.

With regard to the term "asymptomatic plant pathogen," this commenter also asked how an organism can be considered pathogenic if there are no symptoms associated with infection.

Many plant pathogens are asymptomatic at various points in their life cycles. *Phytophthora* spp. pathogens are one example. We would not expect a visual inspection to be effective at detecting a pathogen if the pathogen is at an asymptomatic stage of its life cycle.

Identification

One commenter was unable to determine whether specific and positive species identification is required for all imported plants for planting. The commenter stated that a challenge to all APHIS inspectors is that many importations are currently not required to be properly labeled. As such, determining which ones are risky based only upon a generic designation, or the designation of the primary species but not those used as packing, decoration, or additional materials, becomes impossible for a responsible inspector. Rather than put such an unfair burden on the hard-working inspectors, the commenter stated, the regulations should require that all species be properly identified. It is true that some species are hard to properly identify even by experts, the commenter stated, but certainly proper identity to the best general consensus would be acceptable and still allow for the variability that occurs in taxonomy.

We appreciate the commenter's concerns. In the regulations, the introductory text of § 319.37-4(a) sets out the identification requirements for imported plants for planting. The identification requirements are as follows:

The phytosanitary certificate must identify the genus of the article it accompanies. When the regulations in [the plants for planting 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. 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.

Thus, we require identification to the species or cultivar level when such identification is necessary for the

inspector to make a decision. Because species are listed as NAPPRA in accordance with the plants for planting regulations, the phytosanitary certificate accompanying any shipment containing plants from genera in which species are listed as NAPPRA will be required to identify the species or cultivars of the plants in that shipment.

Any taxon of plants for planting included in a shipment, including packing, decoration, or additional material, must be accounted for in its accompanying documentation, and our inspectors inspect them all for the presence of quarantine pests.

One commenter asked whether identification problems could be a weakness in the proposal. The commenter proposed a hypothetical situation in which, if the commenter wished to bring a plant into the country that was or might be considered a risk, he would label it with the name of a plant on APHIS' safe list with similar characteristics. Secondly, the commenter would send through plant inspections only small seedlings or cuttings. The commenter would assume that the quality of APHIS taxonomists was such that they might well not be able to tell the difference between the high-risk plant he was trying to import and the safe plant whose name he used. If caught, the commenter stated, such a hypothetical miscreant could blame his taxonomist.

With a few, limited exceptions, all imported plants for planting must be accompanied by a phytosanitary certificate with the identification information given above. It is important to note that the phytosanitary certificate is not issued by the exporter or importer but by the NPPO of the exporting country, which is responsible under the IPPC for ensuring that the phytosanitary certificate is accurate, complete, and current with respect to its description of the articles it accompanies. Although the exporter may supply identification information, the NPPO of the exporting country must verify it.

Nevertheless, we do receive phytosanitary certificates with incorrect identification information. In those cases, we would hold the NPPO of the exporting country responsible, along with the exporter and importer. Both civil and criminal penalties are available should we discover such a violation.

We should also note that the NAPPRA category does not establish a "safe list." Taxa of plants for planting will be listed as NAPPRA when we make the determination that they are quarantine pests or hosts of quarantine pests, based on scientific evidence. Most taxa will

continue to be allowed to be imported subject to general restrictions, one of which is the phytosanitary certificate requirement mentioned here.

Postentry Quarantine

One commenter recommended, as an action to take beyond the implementation of the NAPPRA category, that we require additional plant types to be cleared through postentry quarantine facilities that have been upgraded to ensure that pests cannot escape during the quarantine period.

In general, postentry quarantine, as provided for in § 319.37–7, is an important tool in mitigating the risk associated with the importation of certain plants for planting. It is not clear whether the commenter is referring to additional plant types as in cuttings, whole plants, etc., or additional plant taxa. That said, postentry quarantine will be a mitigation that is available to us when we determine, as part of a comprehensive PRA, what mitigations may be necessary in order to allow the importation of taxa on the NAPPRA lists. We will consider the commenter's suggestion to require postentry quarantine more broadly as we continue our ongoing revision of the plants for planting regulations.

Risk-Mitigating Production Practices

Several commenters suggested that we consider working with industry to develop and implement production practices that mitigate the overall risk associated with the importation of plants for planting. Many referred to such practices as "best management practices" (BMPs), consistent with our discussion in the December 2004 ANPR mentioned earlier in this document. Commenters cited mitigations including:

- Using lower-risk plant materials such as seeds, cuttings, and tissue culture;
- Pest detection, testing, and tracking mechanisms;
- Growing plants in greenhouses or laboratory settings;
- Certifying plants as clean before shipment; and
- Micropropagation *in vitro*.

Commenters cited differing means by which APHIS could use BMPs as a regulatory tool. Many stated that importation of taxa that are listed as NAPPRA or that are prohibited could be allowed to be imported if produced in accordance with certain BMPs. One stated that the regulations should embrace novel approaches such as industry codes of conduct, self-regulating programs operating under

APHIS-established guidelines, and certification or accreditation of commercial operations or institutions that can demonstrate both capacity and commitment to compliance. Another recommended that we allow exceptions to the ban on the importation of vegetative material from taxa listed as hosts of quarantine pests if the nature of the pest(s) of concern meant that the pest could be mitigated by production practices—for example, by production *in vitro*. Similarly, a third commenter recommended that we conduct PRAs for low-risk types of plants for planting, such as seed, tissue culture, and cuttings, and apply less stringent import restrictions for them, to encourage the importation of these types of plants for planting. A fourth recommended that we proceed with the development of a regulatory systems approach as the second phase of the revision of the plants for planting regulations.

We agree with these commenters. While adding such provisions to the regulations would be beyond the scope of the proposed rule, we are working to develop provisions for the use of various risk-mitigating measures in combination that would help facilitate the importation of taxa on the NAPPRA lists and of prohibited and other restricted taxa. We have been working with industry to develop risk-mitigating measures that, if followed, would ensure that plants for planting produced in accordance with them are free of quarantine pests.

In order to determine that plants for planting that were produced in accordance with certain practices or certain types of plants for planting are low risk, we would need to conduct a risk evaluation. This would not necessarily be a full PRA; it may be a pest list and a risk management document, to determine that the risk-mitigating measures are generally effective against the quarantine pests that could infest or infect the plants for planting. We would make the risk evaluation available to the public.

Other Strategies

One commenter recommended that the United States develop a National Weed Strategy Act, the key provisions of which would include:

- An electronic system to determine the provenance of exotic species that are introduced into the United States and into the individual States;
- A list of species whose importation into the United States is not allowed;
- Protocols for purposeful importation and introduction of exotic species, including a quarantine insurance bond, paid by the importer,

which would cover the cost of control efforts in case any become necessary;

- A national biosecurity fund, from the proceeds associated with quarantine insurance bonds, that would fund risk assessment, control and eradication, outreach, and other activities;
- Protocols for accidental introductions, including a negligence scale to assess accidental introductions and liability standards for assessing appropriate fines; and
- Model State-level biosecurity laws to allow for Federal-State cooperation.

Another commenter also stated that the importer of plants for planting should become a property owner who must compensate and remove any introduction of an invasive plant species, pathogen, or insect.

As recognized by the commenter, the recommendations with respect to a National Weed Strategy Act would require new legislation. The implementation of many of these recommendations would be highly disruptive to current commerce in plants for planting. Implementing the NAPPRA category is a crucial part of our broader effort to achieve a more appropriate level of protection against the risk posed by the importation of plants for planting within existing statutory authority.

We do have a list of taxa whose importation is prohibited; we are establishing in this final rule a process to list taxa whose importation is not authorized pending pest risk analysis.

Miscellaneous Changes

The first sentence of paragraph (a) in § 319.37 states that no person shall import or offer for entry into the United States any prohibited article, except as otherwise provided in § 319.37–2(c). To ensure that the regulations clearly indicate that NAPPRA taxa are not allowed to be imported, we are amending this sentence so that it also indicates that no person shall import or offer for entry into the United States any article whose importation is not authorized pending pest risk analysis, except as otherwise provided in § 319.37–2(c).

We proposed to change the definition of *restricted article* in § 319.37–1 to refer to plants for planting and to the NAPPRA category. That definition indicates that any articles regulated in §§ 319.8 through 319.24 or 319.41 through 319.74–4 and any articles regulated in 7 CFR part 360 are not restricted articles. However, citrus fruit, whose importation is regulated in § 319.28, are also not restricted articles. Therefore, we are making an additional change to the definition of *restricted*

articles by indicating that articles regulated in § 319.28 are also not restricted articles.

We are also changing proposed paragraph (e)(2)(i)(C) of § 319.37–2a to clearly indicate that, if we publish a notice indicating that importation of a taxon on the NAPPRA list should be allowed subject to the general restrictions in the regulations, the PRA published along with the notice would have determined that the importation of the taxon does not pose a risk of introducing a quarantine pest into the United States.

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

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess the costs and benefits of available regulatory alternatives and to select regulatory approaches that maximize benefits, reduce costs, harmonize rules across agencies, and promote flexibility. The economic analysis also analyzes the potential economic effects of this action on small entities, as required by the Regulatory Flexibility Act.

The final rule will amend the importation of plants for planting regulations to establish a new category of regulated articles. This category will list taxa of plants for planting whose importation is not authorized pending pest risk analysis. This action is necessary to increase our safeguards against the risk of introduction of plant pests or pest plants (noxious weeds) that are associated with the importation of plants for planting and protect domestic agriculture and environmental resources. The final rule will establish the NAPPRA regulatory category and process. The rule will not establish any broad restrictions or prohibitions but will only target specific taxa; most taxa of plants for planting will continue to be allowed to be imported subject to the current general restrictions. The expected benefits of using the NAPPRA process to respond to risks far outweigh any expected costs of implementing the regulation.

Under these circumstances, the Administrator of the Animal and Plant

Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Paperwork Reduction Act

The proposed rule did not propose to add any information collection or recordkeeping requirements. However, this final rule adds a requirement that requests to remove a taxon from the NAPPRA category be made in accordance with § 319.5. This section requires the submission of information that is necessary for us to conduct a PRA. We estimate that this information collection will require approximately 5.6 hours per response. We made this change based on requests from commenters to allow only NPPOs to request that taxa be removed from the NAPPRA list; § 319.5 requires the submission of information available only from an NPPO. We also determined that we need all the information in § 319.5 in order to successfully conduct a PRA for the importation of taxa of plants for planting, just as we need such information to conduct a PRA for the importation of fruits and vegetables.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we published a notice in the **Federal Register** on May 3, 2011 (76 FR 24848–24850, Docket No. APHIS–2006–0011), announcing our intention to initiate this information collection and soliciting comments on it. We are asking the Office of Management and Budget (OMB) to approve our use of this information collection for 3 years. When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if

approval is denied, providing notice of what action we plan to take.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 319

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

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

Subpart—Plants for Planting^{1 2}

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

§ 319.37 [Amended]

■ 3. Section 319.37 is amended as follows:

- a. In paragraph (a), in the first sentence, by adding the words “or any article whose importation is not authorized pending pest risk analysis in accordance with § 319.37-2a” after the word “article”.
- b. In paragraph (b), by removing the words “plant pests” and adding the words “quarantine pests” in their place; and by removing the words “plant pest”

¹ The Plant Protection and Quarantine Programs also enforces regulations promulgated under the Endangered Species Act of 1973 (Pub. L. 93-205, as amended) which contain additional prohibitions and restrictions on importation into the United States of articles subject to this subpart (See 50 CFR parts 17 and 23).

² One or more common names of articles are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the articles represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all articles within the category represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name.

and adding the words “quarantine pest” in their place.

- 4. Section 319.37-1 is amended as follows:
 - a. By adding, in alphabetical order, new definitions of *noxious weed*, *official control*, *planting*, *plants for planting*, *quarantine pest*, and *taxon (taxa)*.
 - b. By removing the definition of *nursery stock*.
 - c. In the definition of *clean well water*, by removing the words “plant pathogens or other plant pests” and adding the words “quarantine pests” in their place.
 - d. In the definition of *phytosanitary certificate of inspection*, by removing the words “injurious plant diseases, injurious insect pests, and other plant pests” and adding the words “quarantine pests” in their place.
 - e. In the definition of *prohibited article*, by removing the words “nursery stock, plant, root, bulb, seed, or other plant product” and adding the words “plant for planting” in their place.
 - f. By revising the definitions of *regulated plant* and *restricted article* to read as set forth below.

§ 319.37-1 Definitions.

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

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

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

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

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

Regulated plant. A vascular or nonvascular plant. Vascular plants

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

Restricted article. Any plant for planting, excluding any prohibited articles listed in § 319.37-2(a) or (b) of this subpart, any articles whose importation is not authorized pending pest risk analysis under § 319.37-2a of this subpart, and excluding any articles regulated in §§ 319.8 through 319.28 or 319.41 through 319.74-4 of this part and any articles regulated in part 360 of this chapter.

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

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§ 319.37-2 [Amended]

■ 5. Section 319.37-2 is amended as follows:

- a. In paragraph (a), in the third column of the heading of the table, by removing the words “Plant pests” and adding the words “Quarantine pests” in their place.
- b. In paragraph (c) introductory text, by adding the words “, and any article listed in accordance with § 319.37-2a of this subpart as an article whose importation is not authorized pending pest risk analysis,” after the word “section”.
- 6. A new § 319.37-2a is added to read as follows:

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

(a) *Determination by the Administrator.* The importation of certain taxa of plants for planting poses a risk of introducing quarantine pests into the United States. Therefore, the importation of these taxa is not authorized pending the completion of a pest risk analysis, except as provided in § 319.37-2(c). Lists of these taxa may be found on the Internet at http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37_nappr.shtml. There are two lists of taxa whose importation is not authorized pending pest risk analysis: A list of taxa of plants for planting that are quarantine pests, and a list of taxa of plants for planting that are hosts of quarantine pests. For taxa of plants for planting that have been determined to be quarantine pests, the list includes the

names of the taxa. For taxa of plants for planting that are hosts of quarantine pests, the list includes the names of the taxa, the foreign places from which the taxa's importation is not authorized, and the quarantine pests of concern.

(b) *Addition of taxa.* A taxon of plants for planting may be added to one of the lists of taxa not authorized for importation pending pest risk analysis under this section as follows:

(1) *Data sheet.* APHIS will publish in the **Federal Register** a notice that announces our determination that a taxon of plants for planting is either a quarantine pest or a host of a quarantine pest. This notice will make available a data sheet that details the scientific evidence APHIS evaluated in making the determination that the taxon is a quarantine pest or a host of a quarantine pest. The data sheet will include references to the scientific evidence that APHIS used in making the determination. In our notice, we will provide for a public comment period of a minimum of 60 days on our addition to the list.

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

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

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

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

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

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

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

APHIS to determine that the taxon is a host of a quarantine pest. The following criteria must be fulfilled in order to make this determination:

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

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

(e) *Removing a taxon from the list of taxa not authorized pending pest risk analysis.* (1) Requests to remove a taxon from the list of taxa not authorized pending pest risk analysis must be made in accordance with § 319.5 of this part. APHIS will conduct a pest risk analysis in response to such a request. The pest risk analysis will examine the risk associated with the importation of that taxon.

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

(3) If the pest risk analysis supports a determination that importation of the taxon be allowed subject to the general restrictions of this subpart, APHIS will publish a notice announcing our intent to remove the taxon from the list of taxa whose importation is not authorized pending pest risk analysis and making the pest risk analysis supporting the taxon's removal available for public review.

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

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

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

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

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

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

(4) APHIS may also remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis when APHIS determines that the evidence used to add the taxon to the list was erroneous (for example, involving a taxonomic misidentification).

§ 319.37–4 [Amended]

■ 7. In § 319.37–4, paragraph (d)(2) is amended by adding the words “; is not listed as not authorized pending pest risk analysis, as provided in § 319.37–2a” after the citation “§ 319.37–2”.

§ 319.37–5 [Amended]

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

§ 319.37–7 [Amended]

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

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

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

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

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

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

§ 319.37–8 [Amended]

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

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

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

- c. In paragraph (e)(2)(iv)(B), by adding the word “quarantine” before the word “pests”.
- d. In paragraph (e)(2)(vii),” by removing the words “plant pests” and adding the words “quarantine pests” in their place.
- e. In paragraph (e)(2)(viii), by removing the words “plant pests and diseases” and adding the words “quarantine pests” in their place.
- f. In paragraph (e)(2)(xi)(B), by removing the words “plant pests” and adding the words “quarantine pests” in their place.
- g. In paragraphs (f)(3)(i), (f)(3)(vii), (f)(3)(viii), and (f)(4), by removing the words “injurious plant diseases, injurious insect pests, and other plant pests” each time they occur and adding the words “quarantine pests” in their place.

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

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

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

§ 319.37–13 [Amended]

- 12. Section 319.37–13 is amended as follows:
 - a. In paragraph (b), by removing the words “injurious plant disease,

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

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

Done in Washington, DC, this 18th day of May 2011.

Ann Wright,

Deputy Under Secretary for Marketing and Regulatory Programs.

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