

decision and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. As promptly as circumstances allow, the Deputy Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Deputy Administrator.

(i) The term *inspector* means any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, who is authorized by the Deputy Administrator to enforce the regulations in this subpart.

[32 FR 7959, June 2, 1967, as amended at 36 FR 24917, Dec. 24, 1971; 37 FR 7481, Apr. 15, 1972; 37 FR 23624, Nov. 7, 1972; 43 FR 13491, Mar. 31, 1978; 52 FR 32291, Aug. 27, 1987; 53 FR 50508, Dec. 16, 1988; 59 FR 13183, Mar. 21, 1994; 60 FR 39103, 39104, Aug. 1, 1995; 65 FR 37667, June 15, 2000]

### Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products<sup>1, 2</sup>

SOURCE: 45 FR 31585, May 13, 1980, as amended at 60 FR 27674, May 25, 1995.

<sup>1</sup>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).

<sup>2</sup>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.

### § 319.37 Prohibitions and restrictions on importation; disposal of articles refused importation.

(a) No person shall import or offer for entry into the United States any prohibited article, except as otherwise provided in § 319.37-2(c) of this subpart. No person shall import or offer for entry into the United States any restricted article except in accordance with this subpart.

(b) The importer of any article denied entry for noncompliance with this subpart must, at the importer's expense and within the time specified in an emergency action notification (PPQ Form 523), destroy, ship to a point outside the United States, or apply treatments or other safeguards to the article, as prescribed by an inspector to prevent the introduction into the United States of plant pests. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest associated with the article, whether the article is a host of the pest, the types of other host materials for the pest in or near the port, the climate and season at the port in relation to the pest's survival range, and the availability of treatment facilities for the article.

(c) No person shall remove any restricted article from the port of first arrival unless and until a written notice is given to the collector of customs by the inspector that the restricted article has satisfied all requirements under this subpart.

[57 FR 43144, Sept. 18, 1992]

### § 319.37-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

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

*Clean well water.* Well water that does not contain plant pathogens or other plant pests.

*Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture for the Plant Protection and Quarantine Programs, or any other officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

*Disease.* The term in addition to its common meaning, includes a disease agent which incites a disease.

*Earth.* The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

*Europe.* The continent of Europe, the British Isles, Iceland, the Azores, and the islands in the Mediterranean Sea.

*From.* An article is considered to be "from" any country or locality in which it was grown. *Provided,* That an article imported into Canada from another country or locality shall be considered as being solely from Canada if it meets the following conditions:

(a) It is imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

(b) It has never been grown in a country from which it would be a prohibited article or grown in a country other than Canada from which it would be subject to conditions of §319.37-5 (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m) of this subpart, or subject to conditions of §319.37-6 of this subpart,

(c) It was not grown in a country or locality from which it would be subject to conditions of §319.37-7 of this subpart unless it was grown in Canada under postentry growing conditions equivalent to those specified in §319.37-7<sup>3</sup> of this subpart, and

<sup>3</sup>Currently only *Chaenomeles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple); *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) and *Pyrus* spp. (pear) are required under the laws of Canada to be grown in Canada under such equivalent conditions after importation.

(d) It was not imported into Canada in growing media.

*Indexing.* A procedure for using plant material or its extracts to determine the presence or absence of one or more pests in or on the tested plant material. For the purposes of this subpart, indexing is performed in foreign countries to test the parent stock of designated articles that must meet special foreign inspection and certification requirements in accordance with §319.37-5 to be eligible for importation into the United States. The results of indexing tests are used by the plant protection services of foreign countries to issue phytosanitary certificates declaring plant articles free of specified diseases. The following indexing procedures are authorized for use with the specified plant genera, if the procedures are performed using protocols acceptable to the plant protection service that issues phytosanitary certificates based on them: mechanical transmission of the pest to an indicator plant for *Dianthus*, *Malus*, *Prunus*, *Rubus*, and *Syringa*; graft transmission of the pest to an indicator plant for *Chaenomeles*, *Cydonia*, *Malus*, *Prunus*, *Pyrus*, *Rubus*, and *Syringa*; serology for *Dianthus*, *Malus*, *Prunus*, *Pyrus*, *Rubus*, and *Syringa*; electron microscopy for *Dianthus* and *Prunus*, and nucleic acid probes for *Chaenomeles*, *Cydonia*, *Malus*, and *Pyrus*.

*Inspector.* Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the regulations in this subpart.

*Nursery stock.* All field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

*Oceania.* The islands of Micronesia, Melanesia, and Polynesia (except Hawaii, Guam, and the Northern Mariana Islands) in the central and southern Pacific Ocean.

*Person.* An individual, corporation, company, society, or association.

*Phytosanitary certificate of inspection.* A document relating to a restricted article, which is issued by a plant protection official of the country in which the restricted article was grown, which is issued not more than 15 days prior to shipment of the restricted article from the country in which grown, which is addressed to the plant protection service of the United States (Plant Protection and Quarantine Programs), which contains a description of the restricted article intended to be imported into the United States, which certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required under this subpart.

*Plant pest.* The egg, pupal, and larval stages as well as any other living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

*Plant Protection and Quarantine Programs.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related laws, and regulations promulgated thereunder.

*Port of first arrival.* The land area (such as a seaport, airport, or land border station) where a person, or a land, water, or air vehicle, first arrives after entering the territory of the United States, and where inspection of articles is carried out by inspectors.

*Potable water.* Water which is approved for drinking purposes by the na-

tional or local health authority having jurisdiction.

*Prohibited article.* Any nursery stock, plant, root, bulb, seed, or other plant product designated in § 319.37-2 (a) or (b), except wood articles regulated under §§ 319.40-1 through 319.40-11, "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles."

*Restricted article.* Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding any prohibited articles listed in § 319.37-2 (a) or (b) of this subpart, excluding any articles subject to any restricted entry orders in 7 CFR part 321 (i.e., potatoes), and excluding any articles regulated in 7 CFR 319.8 through 319.24 or 319.41 through 319.74-7.

*Secretary.* The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his/her stead has been or may hereafter be delegated.

*Soil.* The loose surface material of the earth in which plants, trees, and shrubs grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

*Solanum spp. true seed.* Seed produced by flowers of *Solanum* capable of germinating and producing new *Solanum* plants, as distinguished from *Solanum* tubers, whole or cut, that are referred to as *Solanum* seeds or seed potatoes.

*Spp. (species).* All species, clones, cultivars, strains, varieties, and hybrids, of a genus.

*State Plant Regulatory Official.* The official authorized by the State to sign agreements with Federal agencies involving operations of the State plant protection agency.

*United States.* The States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

[45 FR 31585, May 13, 1980, as amended at 50 FR 8706, Mar. 5, 1985; 56 FR 19790, Apr. 30, 1991; 57 FR 43145, Sept. 18, 1992; 58 FR 38267, July 16, 1993; 60 FR 3077, Jan. 13, 1995; 60 FR 27674, May 25, 1995; 63 FR 13484, Mar. 20, 1998]

#### § 319.37-2 Prohibited articles.

(a) The following listed articles from the designated countries and localities