

issued for the importation of articles described in the application if such articles under the conditions specified in the application appear to be eligible to be imported into the United States. Even though a written permit has been issued for the importation of an article, such article may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of entry determines that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) are necessary with respect to such article.<sup>5</sup>

(d) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he/she determines that the holder thereof has not complied with any condition for the use of the document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances permit. If there is

<sup>5</sup>Section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to provisions in section 105 (b) and (c) of the Act (7 U.S.C. 150ee (b) and (c)), any product or article, including any articles subject to this subpart, which is moving into or through the United States, and which he has reason to believe was infested or infected by or contains any plant pest at the time of such movement. Section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) also authorize emergency measures against prohibited and restricted articles which are not in compliance with the provisions of this subpart.

a conflict as to any material fact, a hearing shall be held to resolve such conflict.

(e) Any restricted article not designated in paragraph (a) of this section may be imported or offered for importation into the United States only after issuance of an oral permit for importation issued by an inspector at the port of entry.

(f) An oral permit for importation of an article shall be issued at a port of entry by an inspector only if all applicable requirements of this subpart are met, such article is eligible to be imported under an oral permit, and an inspector at the port of entry determines that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) are necessary with respect to such article.<sup>5</sup>

(Approved by the Office of Management and Budget under control number 0579-0049)

(44 U.S.C. 35)

[45 FR 31585, May 13, 1980, as amended at 48 FR 57466, Dec. 30, 1983; 57 FR 43148, Sept. 18, 1992; 59 FR 67610, Dec. 30, 1994; 60 FR 8924, Feb. 16, 1995]

**§319.37-4 Inspection, treatment, and phytosanitary certificates of inspection.**

(a) *Phytosanitary certificates of inspection.* Any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate of inspection or, in the case of greenhouse-grown plants from Canada imported in accordance with paragraph (c) of this section, a certificate of inspection in the form of a label in accordance with paragraph (c)(1)(iv) of this section attached to each carton of the articles and to an airway bill, bill of lading, or delivery ticket accompanying the articles.

(b) *Inspection and treatment.* Any restricted article may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country in which the article was grown, and must undergo any treatment contained in the Plant Protection and Quarantine

Treatment Manual<sup>6</sup> that is ordered by the inspector. Any restricted article found upon inspection to contain or be contaminated with plant pests, that cannot be eliminated by treatment, shall be denied entry at the first United States port of arrival.

(c) *Greenhouse-grown plants from Canada.* A greenhouse-grown restricted plant may be imported from Canada if the Plant Protection Division of Agriculture Canada signs a written agreement with the Animal and Plant Health Inspection Service allowing such importation if the following conditions are met:

(1) The Plant Protection Division of Agriculture Canada shall:

(i) Eliminate individual inspections and phytosanitary certification of each shipment of articles exported in accordance with this section;

(ii) Enter into written agreements with, and assign a unique identification number to, each greenhouse grower participating in the greenhouse program;

(iii) Inspect greenhouses and the plants being grown in them using inspection methods and schedules approved by Plant Protection and Quarantine to ensure that the criteria of this subsection are met;

(iv) Issue labels to each grower participating in the program. The labels issued to each grower shall bear a unique number identifying that grower, and shall bear the following statement: "This shipment of greenhouse-grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Protection Division, Agriculture Canada." The Plant Protection Division, Agriculture Canada shall also ensure that the label is placed on the outside of each container of articles exported under the agreement and that the grower's label is placed on an airway bill, bill of lading, or delivery ticket accompanying each shipment of articles; and

(v) Ensure that only plants that are not excluded shipment by the criteria of this subsection are shipped.

(2) Each greenhouse grower participating in the program shall enter into an agreement with the Plant Protection Division of Agriculture Canada in which the grower agrees to:

(i) Maintain records of the kinds and quantities of plants grown in their greenhouses, including the date of receipt and place of origin of the plants, keep the records for at least one year after the plants are shipped to the United States, and make the records available for review and copying upon request by either the Plant Protection Division of Agriculture Canada or an authorized representative of the Secretary of Agriculture.

(ii) Apply to the outside of each carton of plants grown in accordance with this subsection, so as to be readily visible to inspectors and customs officials, and to an airway bill, bill of lading, or delivery ticket for plants to be shipped to the United States, a label issued by Agriculture Canada including the identification number assigned to the grower by the Plant Protection Division of Agriculture Canada and the following certification statement: "This shipment of greenhouse grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Protection Division, Agriculture Canada."

(iii) Apply labels in accordance with paragraph (c)(2)(ii) of this section solely to cartons of plants that meet requirements of this chapter for import of these plants from Canada into the United States; and

(iv) Use pest control practices approved by Plant Protection and Quarantine and the Plant Protection Division of Agriculture Canada to exclude pests from the greenhouses.

[57 FR 43148, Sept. 18, 1992]

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

(a) Any restricted article (except seeds; unrooted cuttings; articles collected from the wild; and articles solely for food, analytical, or manufacturing purposes) from a country listed below, at the time of arrival at the

<sup>6</sup>The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the Code of Federal Regulations. For further information on the content and availability of this manual, see 7 CFR 300.1, "Materials incorporated by reference."