

postentry quarantine growing agreement is being grown contrary to the provisions of this section, including in numbers greater than the number approved by the postentry quarantine growing agreement, or in a manner that otherwise presents a risk of introducing plant pests into the United States, the inspector shall issue an emergency action notification (PPQ form 523) to the person who signed the postentry quarantine growing agreement. That person shall be responsible for carrying out all actions specified in the emergency action notification. The emergency action notification may extend the time for which the articles and the increase therefrom must be grown under the postentry quarantine conditions specified in the authorized postentry quarantine growing agreement, or may require that the person named in the notification must destroy, ship to a point outside the United States, or apply treatments or other safeguards to the article, the increase therefrom, or any portion of the article or the increase therefrom, within the time specified in the emergency action notification. 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(s) associated with the kind of article (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(3) *Costs and charges.* All costs pursuant to any action ordered by an inspector in accordance with this section shall be borne by the person who signed the postentry quarantine growing agreement covering the site where the articles were grown, or if no such agreement was signed, by the owner of the articles at the growing site.

(4) *Civil and criminal liabilities.* Any person who moves an article subject to postentry quarantine growing requirements from the site specified for that article in an authorized postentry quarantine growing agreement, or who otherwise handles such an article contrary to the requirements of this section, shall be subject to such civil pen-

alties and such criminal liabilities as are provided by 18 U.S.C. 1001, 7 U.S.C. 7734, or other applicable Federal statutes.

(g) *State.* As used in this section, "State" means each of the 50 States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

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#### § 319.37-8 Growing media.

(a) Any restricted article at the time of importation or offer for importation into the United States shall be free of sand, soil, earth, and other growing media, except as provided in paragraph (b), (c), (d) or (e) of this section.

(b) A restricted article from Canada, other than from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road, may be imported in any growing medium.

(c) A restricted article growing solely in agar or in other transparent or translucent tissue culture medium may be imported established in such growing media.

(d) Epiphytic plants (including orchid plants) established solely on tree fern slabs, coconut husks, or coconut fiber may be imported on such growing media.

(e) A restricted article of any of the following groups of plants may be imported established in an approved growing medium listed in this paragraph, if the article meets the conditions of this paragraph, and is accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the article was grown that declares that the article meets the conditions of this paragraph:

*Alstroemeria*, *Ananas*,<sup>10</sup> *Anthurium*, *Begonia*, *Gloxinia* (= *Sinningia*), *Nidularium*,<sup>11</sup> *Peperomia*, Polypodiophyta (=Filicales) (ferns), *Rhododendron* from Europe, and *Saintpaulia*.

(1) Approved growing media are baked expanded clay pellets, cork, glass wool, organic and inorganic fibers, peat, perlite, polymer stabilized starch, plastic particles, phenol formaldehyde, polyethylene, polystyrene, polyurethane, rock wool, sphagnum moss, ureaformaldehyde, vermiculite, or volcanic rock, or any combination of these media. Growing media must not have been previously used.

(2) Articles imported under this paragraph must be grown in compliance with a written agreement for enforcement of this section signed by the plant protection service of the country where grown and Plant Protection and Quarantine, must be developed from mother stock that was inspected and found free from evidence of disease and pests by an APHIS inspector or foreign plant protection service inspector no more than 60 days prior to the time the article is established in the greenhouse (except for articles developed from seeds germinated in the greenhouse), and must be:

(i) Grown in compliance with a written agreement between the grower and the plant protection service of the country where the article is grown, in which the grower agrees to comply with the provisions of this section and to allow inspectors, and representatives of the plant protection service of the country where the article is grown, access to the growing facility as necessary to monitor compliance with the provisions of this section;

(ii) Grown solely in a greenhouse in which sanitary procedures adequate to exclude plant pests and diseases are always employed, including cleaning and disinfection of floors, benches and tools, and the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests. The greenhouse must

be free from sand and soil and must have screening with openings of not more than 0.6 mm (0.2 mm for greenhouses growing *Rhododendron* spp.) on all vents and openings except entryways. All entryways must be equipped with automatic closing doors;

(iii) Rooted and grown in an active state of foliar growth for at least four consecutive months immediately prior to importation into the United States, in a greenhouse unit that is used solely for articles grown in compliance with this paragraph;

(iv) Grown from seeds germinated in the greenhouse unit; or descended from a mother plant that was grown for at least 9 months in the exporting country prior to importation into the United States of the descendent plants, *provided* that if the mother plant was imported into the exporting country from another country, it must be:

(A) Grown for at least 12 months in the exporting country prior to importation of the descendent plants into the United States, or

(B) Treated at the time of importation into the exporting country with a treatment prescribed for pests of that plant by the plant protection service of the exporting country and then grown for at least 9 months in the exporting country prior to importation of the descendent plants into the United States;

(v) Watered only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water;

(vi) Rooted and grown in approved growing media listed in § 319.37-8(e)(1) on benches supported by legs and raised at least 46 cm above the floor;

(vii) Stored and packaged only in areas free of sand, soil, earth, and plant pests;

(viii) Inspected in the greenhouse and found free from evidence of plant pests and diseases by an APHIS inspector or an inspector of the plant protection service of the exporting country, no more than 30 days prior to the date of export to the United States;

(ix) For *Rhododendron* species only, the plants must be propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the plant protection service of the exporting country and found

<sup>10</sup>These articles are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.37-7.

free of evidence of diseases caused by the following pathogens: *Chrysomyxa ledi* var. *rhododendri*, *Erysiphe cruciferarum*, *Erysiphe rhododendri*, *Exobasidium vaccinum* and *vaccinum* var. *japonicum*, and *Phomopsis theae*; and

(x) For *Rhododendron* species only, the plants must be grown solely in a greenhouse equipped with automatic closing double doors of an airlock type, so that whenever one of the doors in an entryway is open the other is closed, and the plants must be introduced into the greenhouse as tissue cultures or as rootless stem cuttings from mother plants that:

(A) Have received a pesticide dip prescribed by the plant protection service of the exporting country for mites, scale insects, and whitefly; and

(B) Have been grown for at least the previous 6 months in a greenhouse that meets the requirements of § 319.37-8(e)(2)(ii).

(f) A restricted article of *Hyacinthus* spp. (hyacinth) may be imported established in unused peat, sphagnum moss, or vermiculite growing media, or in synthetic growing media or synthetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, or ureaformaldehyde:

(1) If there is a written agreement between Plant Protection and Quarantine and the plant protection service of the country where the article is grown in which the plant protection service of the country where the article is grown agrees to implement a program in compliance with the provisions of this section;

(2) If there is a written agreement between the grower of the article and the plant protection service of the country in which the article is grown wherein the grower agrees to comply with the provisions of this section, wherein the grower agrees to allow an inspector access to the growing facility as necessary to monitor compliance with the provisions of this section, and wherein the grower agrees to allow representatives of the plant protection service of the country in which the article is grown access to the growing facility as necessary to make determinations con-

cerning compliance with the provisions of this section;

(3) If: (i) Inspected immediately prior to the growing period by the plant protection service of the country in which the article is to be grown and found to be free of injurious plant diseases, injurious insect pests, and other plant pests;

(ii) Grown throughout its growing period only in a coldroom (with temperatures not exceeding 9 °C. (48 °F.)) within an enclosed building;

(iii) Grown only in a coldroom unit solely used for articles grown under all the criteria specified in this paragraph (f);

(iv) Grown only in unused peat, sphagnum moss, or vermiculite growing media; or grown only in synthetic growing media or synthetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, ureaformaldehyde;

(v) Watered only with clean rainwater that has been pasteurized, with clean well water, or with potable water;

(vi) Grown in a coldroom free of sand, soil, or earth;

(vii) Grown only in a coldroom where strict sanitary procedures are always practiced, i.e., cleaning and disinfection of floors and tools and the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests; and

(viii) Stored only in areas found free of sand, soil, earth, injurious plant diseases, injurious insect pests, and other plant pests;

(4) If appropriate measures have been taken to assure that the article is to be stored, packaged, and shipped free of injurious plant diseases, injurious insect pests, and other plant pests;

(5) If accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of the country in which grown that the article meets conditions of growing, storing, and shipping in compliance with 7 CFR 319.37-8(f); and

(6) If the accompanying phytosanitary certificate of inspection is endorsed by a Plant Protection and

Quarantine inspector in the country of origin or at the time of offer for importation, representing a finding based on monitoring inspections that the conditions listed above are being met.

(g) *Pest risk evaluation standards for plants established in growing media.* When evaluating a request to allow importation of additional taxa of plants established in growing media, the Animal and Plant Health Inspection Service will conduct the following analysis in determining the pest risks associated with each requested plant article and in determining whether or not to propose allowing importation into the United States of the requested plant article.

(1) *Collect commodity information.* (i) Determine the kind of growing medium, origin and taxon of the regulated article.

(ii) Collect information on the method of preparing the regulated article for importation.

(iii) Evaluate history of past plant pest interceptions or introductions (including data from plant protection services of foreign countries) associated with each regulated article.

(2) *Catalog quarantine pests.* For the regulated article specified in an application, determine what plant pests or potential plant pests are associated with the type of plant from which the regulated article was derived, in the country and locality of origin. A plant pest that meets one of the following criteria is a quarantine pest and will be further evaluated in accordance with paragraph (g)(3) of this section:

(i) Non-indigenous plant pest not present in the United States;

(ii) Non-indigenous plant pest, present in the United States and capable of further dissemination in the United States;

(iii) Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

(iv) Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the

United States in a way that demonstrates a potential for greater damage potential in the United States; or

(v) Non-indigenous or native plant pest that may be able to vector another plant pest that meets one of the criteria in (g)(2)(i) through (iv) of this section.

(3) *Conduct individual pest risk assessments.* Each of the quarantine pests identified by application of the criteria in paragraph (g)(2) of this section will be evaluated based on the following estimates:

(i) Estimate the probability the quarantine pest will be on, with, or in the regulated article at the time of importation;

(ii) Estimate the probability the quarantine pest will survive in transit on the regulated article and enter the United States undetected;

(iii) Estimate the probability of the quarantine pest colonizing once entered into the United States;

(iv) Estimate the probability of the quarantine pest spreading beyond the colonized area; and

(v) Estimate the actual and perceived economic, environmental and social damage that would occur if the quarantine pest is introduced, colonizes, and spreads.

(4) *Determine overall estimation of risk based on compilation of component estimates.* This step will evaluate whether the pest risk of importing a regulated article established in growing media, as developed through the estimates of paragraph (g)(3) of this section, is greater than the pest risk of importing the regulated article with bare roots as allowed by §319.37-8(a).

(i) If the pest risk is determined to be the same or less, the regulated article established in growing media will be allowed importation under the same conditions as the same regulated article with bare roots.

(ii) If the pest risk is determined to be greater for the regulated article established in growing media, APHIS will evaluate available mitigation measures to determine whether they would allow safe importation of the regulated article. Mitigation measures currently in use as requirements of this subsection, and any other mitigation methods relevant to the regulated article and

plant pests involved, will be compared with the individual pest risk assessments in order to determine whether requiring particular mitigation measures in connection with importation of the regulated article would reduce the pest risk to a level equal to or less than the risk associated with importing the regulated article with bare roots as allowed by §319.37-8(a). If APHIS determines that use of particular mitigation measures could reduce the pest risk to this level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the appropriate mitigation measures, APHIS will propose to allow importation into the United States of the requested regulated article if the appropriate mitigation measures are employed.

[45 FR 31585, May 13, 1980, and 47 FR 3087, Jan. 22, 1982, as amended at 57 FR 43151, Sept. 18, 1992; 60 FR 3077, Jan. 13, 1995; 61 FR 51210, Oct. 1, 1996; 64 FR 66716, Nov. 30, 1999]

#### § 319.37-9 Approved packing material.

Any restricted article at the time of importation or offer for importation into the United States shall not be packed in a packing material unless the plants were packed in the packing material immediately prior to shipment; such packing material is free from sand, soil, or earth (except for sand designated below); has not been used previously as packing material or otherwise; and is listed below:

Baked or expanded clay pellets.

Buckwheat hulls.

Coral sand from Bermuda, if the article packed in such sand is accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of Bermuda that such sand was free from soil.

Excelsior.

Exfoliated vermiculite.

Ground cork.

Ground peat.

Ground rubber.

Paper.

Perlite.

Polymer stabilized cellulose.

Quarry gravel.

Rock wool.

Sawdust.

Shavings—wood or cork.

Sphagnum moss.

Vegetable fiber when free of pulp, including coconut fiber and Osmunda fiber, but excluding sugarcane fiber and cotton fiber.

Volcanic rock.

[45 FR 31585, May 13, 1980, as amended at 57 FR 43151, Sept. 18, 1992; 60 FR 3078, Jan. 13, 1995]

#### § 319.37-10 Marking and identity.

(a) Any restricted article for importation other than by mail, at the time of importation or offer for importation into the United States shall plainly and correctly bear on the outer container (if in a container) or the restricted article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee,

(5) Identifying shipper's mark and number, and

(6) Number of written permit authorizing the importation if one was issued.

(b) Any restricted article for importation by mail shall be plainly and correctly addressed and mailed to the Plant Protection and Quarantine Programs at a port of entry listed in §319.37-14, shall be accompanied by a separate sheet of paper within the package plainly and correctly bearing the name, address, and telephone number of the intended recipient, and shall plainly and correctly bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the article, and

(4) Number of written permit authorizing the importation, if one was issued.

(c) Any restricted article for importation (by mail or otherwise), at the time of importation or offer for importation into the United States shall be accompanied by an invoice or packing