

shall be at least 60 minutes and the volume shall be at least 4.25 dscm.

(c) The particulate emission rate, E, shall be computed as follows:

$$E = V \times C$$

where:

(1) E is the particulate emission rate (g/hr),

(2) V is the average volumetric flow rate (dscm/hr) as found from Method 2; and

(3) C is the average concentration (g/dscm) of particulate matter as found from Method 5.

(d) the rate of glass production, P (kg/hr) shall be determined by dividing the weight of glass pulled in kilograms (kg) from the affected facility during the performance test by the number of hours (hr) taken to perform the performance test. The glass pulled in kilograms shall be determined by direct measurement or computed from materials balance by good engineering practice.

(e) The furnace emission rate shall be computed as follows:

$$R = E/P$$

where:

(1) R is the furnace emission rate (g/kg);

(2) E is the particulate emission rate (g/hr) from (c) above; and

(3) P is the rate of glass production (kg/hr) from (d) above.

[Sec. 114 of Clean Air Act as amended (42 U.S.C. 7414).]

[FR Doc. 79-18602 Filed 6-14-79; 8:45 am]

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Federal Register

Friday
June 15, 1979

Part VII

Department of Agriculture

Animal and Plant Health Inspection
Service

Foreign Quarantine Notices; Public
Hearing and Notice of Proposed
Rulemaking

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[7 CFR Part 319]

Foreign Quarantine Notices; Public Hearing and Notice of Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and public hearing.

SUMMARY: This document proposes to revise "Subpart—Nursery Stock, Plants, and Seeds" (7 CFR 319.37 through 319.37-28a) relating to prohibitions and restrictions on the importation of certain classes of nursery stock, and certain other classes of plants, roots, bulbs, seeds, and other plant products. This appears to be necessary to update regulations and to prevent the introduction into the United States of certain injurious plant diseases, insect pests, and other plant pests. This document also gives notice of a public hearing to consider this proposal.

DATES: Written comments must be received on or before September 13, 1979.

Public hearing: August 21 and 22, 1979.

ADDRESSES: Written comments should be submitted to the Hearing Officer, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635, Federal Building, Hyattsville, MD 20782.

Public hearing location: Holiday Inn Hotel, Baltimore Washington International Airport, Templehoff Room, 6500 Elkridge Landing Road, Baltimore, MD 21240.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301-436-8247.

SUPPLEMENTARY INFORMATION:**Written Comments and Public Hearing**

Interested persons are invited to submit written comments concerning the proposal.

Comments should bear a reference to the date and page numbers of this issue of the *Federal Register*. All written comments made pursuant to this notice will be made available for public inspection in Room 635, Federal Building, Hyattsville, MD 20782, during regular hours of business.

The public hearing to consider the proposal will be held before a representative of the Animal and Plant Health Inspection Service on August 21

and 22, 1979, at 10 a.m. at the Holiday Inn Hotel, Baltimore Washington International Airport, Templehoff Room, 6500 Elkridge Landing Road, Baltimore, MD 21240. At the hearing, a representative of the Animal and Plant Health Inspection Service will present a statement explaining the purpose and basis of this proposal. Any interested person may appear and be heard either in person, by attorney, or other representative. Also, any interested person, his attorney, or other representative will be afforded an opportunity to ask relevant questions concerning the proposal.

Background

The Plant Quarantine Act and the Federal Plant Pest Act contain authority to prohibit or restrict the importation into the United States of any classes of nursery stock, and other classes of plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of certain diseases, insects, and other plant pests. Regulations promulgated in connection with this authority are contained in 7 CFR Parts 319, 321, 330, 351, and 352. This document relates only to a revision of the current subpart of Part 319 captioned "Subpart—Nursery Stock, Plants, and Seeds" (7 CFR 319.37 through 319.37-28a) which concerns the importation or offer for importation into the United States of any such classes of nursery stock, plants, roots, bulbs, seeds, or other plant products except for articles that are subject to Part 321, i.e., potatoes, or to other subparts of Part 319, e.g., fruits and vegetables, cut flowers, sugarcane, and rice.

In particular, sections 7 and 9 of the Plant Quarantine Act (7 U.S.C. 160, 162) contain authority to prohibit the importation of articles into the United States in order to prevent the entry of tree, plant, or fruit diseases, or injurious insects, new to or not widely prevalent or distributed within and throughout the United States, and sections 1, 5, and 9 of the Plant Quarantine Act (7 U.S.C. 154, 159, 162) contain authority to restrict the importation of articles into the United States in order to prevent the entry of injurious plant diseases or insect pests. However, this authority in the Plant Quarantine Act is not broad enough to cover certain other plant pests, such as nematodes and mites. One of the purposes of the Federal Plant Pest Act was to add authority to prohibit or restrict the importation of articles because of such other plant pests, and section 106 of the Federal Plant Pest Act (7 U.S.C. 106ee) is cited as authority for this purpose.

This document proposes numerous changes from the current "Subpart—Nursery Stock, Plants, and Seeds" including new concepts, much rewording in order to relate more clearly to the language of the Plant Quarantine Act and the Federal Plant Pest Act, and a general reorganization of material in order to provide a more logical arrangement.

The proposed regulations would divide the articles subject to the revised subpart into "prohibited articles" and "restricted articles." A "prohibited article" would be prohibited from being imported or offered for entry into the United States unless imported by the U.S. Department of Agriculture under specified conditions referred to below. The list of prohibited articles would represent those articles for which there does not appear to be a feasible method for inspection, treatment, or other procedures for preventing the possible introduction into the United States of any accompanying tree, plant, or fruit disease, of any injurious insects, or of any other plant pest, new to or not theretofore widely prevalent or distributed within and throughout the United States. A "restricted article" would be any article subject to the revised subpart other than a "prohibited article" and would be eligible for importation into the United States only in accordance with the restrictions contained in the revised subpart. It appears that all articles proposed to be defined as "restricted articles" from any foreign country or locality must necessarily be subject to restrictions for importation into the United States because any such articles could be the means of introducing injurious plant diseases and injurious insect pests. Further, such articles could be the means of introducing other plant pests.

Both the current subpart 319 captioned "Nursery Stock, Plants, and Seeds" and these proposed regulations relate only to articles "for or capable of propagation." Other subparts of 319 and 321 contain requirements with respect to the importation of other articles "for or capable of propagation," e.g., potatoes, sugarcane, rice, wheat, and corn, and Part 319 also contains requirements with respect to the importation of articles not "for or capable of propagation," e.g., cut flowers and fruits and vegetables.

The proposed regulations would prohibit or restrict the importation of articles "from" specified countries and localities. The term "from" as used in this context is defined to provide that an article is deemed to be "from" any country or locality in which it was grown since articles could become

affected with diseases or pests occurring in countries or localities in which grown. However, special provisions concerning the importation of certain articles "from" Canada are explained below in the discussion relating to the proposed section 319.37-14.

The term "spp." (species) as used in the current regulations and in the proposed regulations is intended to refer to "all species, clones, cultivars, strains, varieties, and hybrids" of the genus when listed with the genus name, e.g., *Actinidia* spp. Accordingly, a definition of species would be added to reflect this intent. This appears to be necessary because the risk of introducing diseases or pests would be similar for all of the species, clones, cultivars, strains, varieties, and hybrids of a genus.

One or more common names of articles are given in parentheses after most scientific names for the purpose of helping to identify the articles represented by such scientific names; however, (unless otherwise specified) a scientific name is intended to include all articles within the genus or species represented by the scientific name, regardless of whether the common name or names are as comprehensive in scope as the scientific name. It would be impossible to list common names for all of the articles included by the scientific names because some scientific names are given for which there are no known common names, and some scientific names are given for which there are clones, cultivars, strains, hybrids, or varieties without common names.

The term "disease" as used in the proposed regulations is used interchangeably to mean a "disease" or a "disease agent which incites a disease." In order to be precise, the term

"disease" would therefore be defined to reflect this intent.

The current regulations prohibit or restrict the importation of articles into the continental United States, Guam, Hawaii, Puerto Rico, and the Virgin Islands of the United States, because the provisions of the Plant Quarantine Act and the Federal Plant Pest Act have been made applicable by law to Guam, Puerto Rico, and the Virgin Islands of the United States, in addition to the States and the District of Columbia. However, pursuant to Public Law 94-241 (90 Stat. 263 *et seq.*) and Presidential Proclamation 4534, the provision of these Acts are also made applicable to the Northern Mariana Islands. It appears that the proposed regulations should be made applicable to the Northern Mariana Islands for the same reasons they would be applicable to the States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States. Accordingly, under the provisions of this proposal the definition of United States would be amended to include the Northern Mariana Islands and consequently the regulations would also apply to the Northern Mariana Islands.

Proposed § 319.37(c) provides that an article refused importation for noncompliance with the requirements of the proposed subpart shall be promptly removed from the United States or abandoned by the importer for destruction, and that pending removal or abandonment, the article shall be subject to the immediate application of such safeguards against escape of injurious plant diseases, injurious insect pests, and other plant pests as the inspector determines necessary to

prevent the introduction into the United States of such diseases or pests. Proposed § 319.37(c) also provides for seizure, destruction, or other disposal of any such article not promptly safeguarded, removed, or abandoned. These provisions are necessary to implement the provisions of 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) which authorize emergency measures against prohibited and restricted articles which are not in compliance with the provisions of this subpart.

Proposed § 319.37-2 contains a list of articles from designated countries and localities which would be classified as prohibited articles and would be prohibited from being imported or offered for entry into the United States, except as otherwise provided in proposed § 319.37-2(c).

Each article listed in the following chart from the designated countries and localities is proposed to be added to the current list of prohibited articles because there does not appear to be any feasible method for inspection, treatment, or other procedures for preventing the possible introduction into the United States of accompanying tree, plant, or fruit diseases, or injurious insects, or other plant pests (listed in the chart), new to or not theretofore widely prevalent or distributed within and throughout the United States, and thereby preventing consequent injurious effects of such diseases, insects, or other plant pests, i.e., destruction or substantial reduction of the yield or marketability of the kind of listed article or products thereof.

Article (except seeds unless specifically mentioned) proposed to be added to the list of prohibited articles	Foreign country(ies) or locality(ies)	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the article
<i>Actinidia</i> spp. (chinese gooseberry, kiwi)	Japan and Taiwan	<i>Pucciniastrum actinidiae</i> Hiratsuke (Rust).
<i>Adonia</i> spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Allagoptera arenaria</i>	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Areca</i> spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Arenga</i> spp. (sugarpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Arikuryroba</i> spp. (<i>arikury</i> palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Borassus</i> spp. (palmyra palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Caryota</i> spp. (fishtail palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Cheenomeles</i> spp. (flowering quince) not meeting the conditions for importation in proposed § 319.37-5(b).	All	<i>Monilinia fructigena</i> (Aderh. & Ruhl.) Honey (Brown rot of fruit).
<i>Chrysalidocarpus</i> spp. (butterfly palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Chrysanthemum</i> spp. (chrysanthemum)	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China, and Republic of South Africa.	<i>Puccinia horiana</i> P. Henn. (White rust of chrysanthemum).
<i>Cocos nucifera</i> (coconut) (including seeds)	All except from Jamaica if meeting the conditions for importation in proposed § 319.37-5(f) (currently listed as prohibited only if destined to Hawaii).	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Cocos</i> spp. (other than <i>Cocos nucifera</i>)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.

Article (except seeds unless specifically mentioned) proposed to be added to the list of prohibited articles	Foreign country(ies) or locality(ies)	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the article
<i>Corypha</i> spp.....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Cydonia</i> spp. (quince) not meeting the conditions for importation in proposed § 319.37-5(b).	All.....	A diversity of diseases including but not limited to items 1, 18, 19, 20, and 21 listed in proposed § 319.37-5(b)(2).
<i>Datura</i> spp.....	Colombia.....	Datura Colombian virus.
<i>Dictyosperma</i> spp. (Princess palm).....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Elaeis</i> spp. (oil palm).....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Eriarthus</i> spp. (plumegrass).....	All.....	<i>Puccinia melanocephala</i> H. Syd. & P. Syd. (Sugarcane rust).
<i>Fragaria</i> spp. (strawberry).....	Australia, Austria, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.	<i>Phytophthora fragariae</i> Hickman (Red stele disease).
<i>Gaussia</i> spp. (Ilumepalm).....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Gladiolus</i> spp. (gladiolus).....	Italy, Malta, and Portugal.....	<i>Uromyces transversalis</i> (Theum.) Wint. (Rust).
<i>Hibiscus</i> spp. (hibiscus, rosemallow).....	Nigeria.....	Okra mosaic virus.
	Africa (currently listed as prohibited only from Sudan and Nigeria).	Cotton leaf curl virus.
<i>Howea bealmoreana</i> (Sentry palm).....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Hydrangea</i> spp. (hydrangea).....	Japan.....	<i>Aecidium hydrangeae-paniculatae</i> Dietol.
<i>Ipomoea</i> spp. (sweetpotato).....	All except Canada.....	A diversity of diseases including but not limited to the sweetpotato witches broom (little leaf); sweetpotato viruses of eastern Africa.
<i>Juniperus</i> spp. (juniper).....	Austria.....	<i>Stigmata deflectans</i> (Karst) Ellis (Needlecast disease).
	Europe (currently listed as prohibited from Finland and Romania because of <i>Exosporium deflectans</i> (Karst).	<i>Phaciodycnis pseudotsuga</i> (M. Wils) Hahn (Douglas fir canker).
<i>Latania</i> spp.....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Livistonia</i> spp. (fan palm).....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Manihot</i> spp. (cassava).....	All except Canada.....	A diversity of diseases, insects, and other pests including but not limited to: <i>Mononychellus tanajoa</i> Bondar (Cassava mite); <i>Phenacoccus manihoti</i> Matile-Ferrero (Cassava mealybug); <i>Xanthomonas manihoti</i> (Arthand-Berthel) Starr (Bacterial blight); Cassava brown streak virus; Cassava latent virus; Cassava African mosaic virus; Cassava common mosaic virus.
<i>Mascarena</i> spp.....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Morus</i> spp. (mulberry).....	India, and Union of Soviet Socialist Republics.....	A diversity of diseases including but not limited to: Mulberry dwarf; Mulberry curly little leaf agent; Mulberry mosaic agent.
<i>Oryza</i> spp. (rice) (Seeds are prohibited from importation into the U.S. See 7 CFR 319.55).	All.....	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; <i>Melanomma glumarum</i> Miy. <i>Oospira oryzae</i> Sacc.; <i>Rhynchosporium oryzae</i> Hashioka & Yokogi; <i>Xanthomonas oryzae</i> (Uyeda & Ishiyama) Dowson.
<i>Philadelphus</i> spp. (mock orange).....	Europe.....	Elm mottle virus.
<i>Phoenix</i> spp. (date).....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Pritchardia</i> spp.....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Ribes nigrum</i> (black currant).....	Australia, Province of British Columbia in Canada, New Zealand, and Europe (currently listed as prohibited from British Isles and Sweden).	Black currant reversion agent.
<i>Salix</i> spp. (willow).....	Federal Republic of Germany (West), and German Democratic Republic (East).	<i>Erwinia salicis</i> (Day) Chester (Watermark disease).
<i>Solanum</i> spp. (potato) (including seeds).....	All.....	Andean potato latent virus; Andean potato mottle virus; Potato mop top virus; Dulcamara mottle virus; Tomato blacking virus; Tobacco rattle virus; Potato virus Y (Tobacco vein necrosis strain); Potato purple top wilt agent; Potato marginal flavescence agent; Potato purple top roll agent; Potato witches broom agent; Stolbar agent; Parastolbar agent; Potato leaflet stunt agent; Potato spindle tuber viroid.
<i>Syringa</i> spp. (lilac).....	Europe.....	Elm mottle virus.
<i>Trachycarpus</i> spp. (windmillpalm).....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Ulmus</i> spp. (elm) (including seeds).....	Europe (currently listed as prohibited from Europe, Dominion of Canada and other foreign areas north of the United States, including Newfoundland, Labrador, St. Pierre, Miquelon, and islands adjacent thereto if destined to California, Nevada, or Oregon).	Elm mottle virus.
<i>Vacthila</i> spp.....	All.....	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Vitis</i> spp. (grape).....	All except Canada (currently listed as prohibited from Europe because of <i>Mammot viticola</i> Holmes).	A diversity of disease agents, including but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; <i>Xanthomonas ampelina</i> Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.
<i>Zizania</i> spp. (wild rice).....	All.....	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; <i>Melanomma glumarum</i> Miy. <i>Oospira oryzae</i> Sacc.; <i>Rhynchosporium oryzae</i> Hashioka & Yokogi; <i>Xanthomonas oryzae</i> (Uyeda & Ishiyama) Dowson.

Each article listed in the following chart from the designated countries and localities is proposed to be deleted from the list of prohibited articles for the reasons specified in the chart:

Articles (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest	Reason for deletion from prohibited list
<i>Aleurites</i> spp. (tung)	China and Brazil	<i>Mycosphaerella aleuritidis</i> (Miyake) Oudemans (leaf spot).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Cactaceae</i> (cactus) cuttings (without roots or branches) of 1.22 meters or less in length.	All except Canada	A diversity of plant diseases	Stem cuttings not exceeding such size apparently can be readily inspected.
<i>Castanea</i> spp. (chestnut) destined to California, Idaho, Oregon, or Washington.	All	<i>Endothia parasitica</i> (Murr.) P. J. Ander. and H. W. Ander. (Chestnut blight disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Castanopsis</i> spp. (chinquapin) destined to California, Idaho, Oregon, or Washington.	All	<i>Endothia parasitica</i> (Murr.) P. J. Ander. and H. W. Ander. (Chestnut blight disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Corylus</i> spp. (filbert, hazel, hazel nut, cobnut) destined to California, Oregon, or Washington.	Provinces east of Manitoba in Canada	<i>Cryptosporrella anomala</i> (Pk.) Sacc. (Filbert blight).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Cocos nucifera</i> (coconut) (including seeds) destined to Hawaii and meeting the conditions for importation in proposed § 319.37-5(f).	Jamaica	Cadang-cadang disease	Disease apparently does not exist in Jamaica.
<i>Daphne</i> spp.	New Zealand	Daphne mosaic virus	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Datura</i> spp.	England	<i>Datura virus 1</i> Smith and d'Oliveira (Datura-virosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Dianthus</i> spp. (carnation, Sweet William)	England	<i>Verticillium cinerescens</i> Wr.	<i>Dianthus</i> spp. would be reclassified to be within the class of restricted articles because it appears there would not be significant risk of introducing <i>Verticillium cinerescens</i> Wr. if imported under conditions in proposed § 319.37-5(d) or § 319.37-7.
Fruit and Nut Stocks except vegetatively produced understocks.	All except Canada	A diversity of plant pests	It appears that there would be no significant risk of introducing plant pests if imported in accordance with general conditions for restricted articles and in accordance with postentry quarantine conditions in § 319.37-7.
<i>Hydrangea</i> spp. (hydrangea)	Germany	Hydrangea-virescence virus	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Ilex</i> spp. (holly)	England and France	<i>Ilex-variegation virus</i>	Disease does not appear to be in existence.
<i>Nicotiana</i> spp. (tobacco)	Australia and Great Britain	<i>Marmor lethale</i> Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Nut and fruit stocks	(See Fruit and Nut Stocks)		
<i>Pelargonium</i> spp. (geranium) (except stem cuttings).	All except Canada	<i>Marmor lethale</i> Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Pinus</i> spp. (pine) Destined to California, Idaho, Montana, Oregon, Utah, or Washington.	Canada	<i>Rhyacionia buoliana</i> (Schiff). (European pine shoot moth).	Insect appears to be widely prevalent or distributed within and throughout the U.S.
<i>Pinus</i> spp. (pine) (5-leaved) destined to Massachusetts, Michigan, New York, West Virginia, or Wisconsin.	Canada	White pine blister rust	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Planera</i> (water elm, planer) destined to California, Nevada, or Oregon.	Europe and the Dominion of Canada and other foreign areas north of the United States including Newfoundland, Labrador, St. Pierre, Miquelon and islands adjacent thereto.	<i>Ceratocystis ulmi</i> (Buisman) Moreau (Dutch elm disease).	C. Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Primula</i> spp. (primrose)	Australia and Great Britain	<i>Marmor lethale</i> Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Ribes</i> spp. (currant, gooseberry) destined to Massachusetts, New York, West Virginia, or Wisconsin.	All	(White pine blister rust)	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Seeds of all kinds in pulp	Canada	Fruit flies	It appears that fruit flies do not occur in Canada.
<i>Sorbus</i> spp. (mountain ash)	Southeastern Asia	<i>Taphrina piri Kusano</i> (leaf distortion fungus).	Disease does not appear to occur in Southeastern Asia.
Stem cuttings (without leaves, roots, sprouts, or branches) of 4 inches or less in diameter and six feet or less in length.	All except Canada	A diversity of plant diseases	Stem cuttings not exceeding such size apparently can be readily inspected.
<i>Ulmus</i> spp. (elm) destined to California, Nevada, or Oregon.	Europe and the Dominion of Canada, and other foreign areas north of the United States, including Newfoundland, Labrador, St. Pierre, Miquelon and islands adjacent thereto.	<i>Ceratocystis ulmi</i> (Buisman) Moreau (Dutch elm disease).	C. Disease appears to be widely prevalent or distributed within and throughout the U.S.
<i>Wisteria</i> (wisteria)	Australia	Mosaic disease	Disease does not appear to exist.
<i>Zelkova</i> destined to California, Nevada, or Oregon.	Europe, and the Dominion of Canada, and other foreign areas north of the United States including Newfoundland, Labrador, St. Pierre, Miquelon, and islands adjacent thereto.	<i>Ceratocystis ulmi</i> (Buisman) Moreau (Dutch elm disease).	C. Disease appears to be widely prevalent or distributed within and throughout the U.S.

Some additional tree, plant, or fruit diseases have been discovered with respect to articles that are currently prohibited from being imported or offered for entry into the United States because of other diseases, insects, or pests. These additional diseases would destroy or substantially reduce the yield or marketability of the kind of listed articles or products thereof, and therefore, would by themselves require an article to be prohibited from being imported or offered for entry into the United States. Accordingly, it is proposed to continue to prohibit the importation of these articles and also to add such additional diseases to the prohibited list as specified in the following chart:

Prohibited article (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Discovered tree, plant, or fruit disease or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
<i>Cocos nucifera</i> (coconut) (including seeds) destined to Hawaii.	All except from Jamaica if meeting the conditions for importation in § 319.37-5(f).	Lethal yellowing disease.
Conifers.....	All except Canada	A diversity of tree, plant, and fruit diseases including but not limited to: <i>Guignardia larcina</i> (Sawada) Yamamoto & K. Ito (shoot blight of larch); <i>Chrysomyxa deformans</i> (Diet.) Jacz. (Spruce needle rust); <i>Cronartium flaccidum</i> (Alb. & Schw.) Wint. (Scotch pine blister rust); <i>Chrysomyxa abietis</i> (Wallr.) Ung. (Rust); <i>Phaciopycnis pseudoleuga</i> (M. Wils.) Hahn (Douglas fir canker); <i>Stigmata defleclans</i> (Karst.) Ellis (Needlecast disease); <i>Chrysomyxa ledi</i> (Alb. & Schw.) d By var. <i>Rhododendri</i> (DC) Savile. (Rhododendron-spruce needle rust).
<i>Datura</i> spp.....	Colombia..... India.....	<i>Datura</i> Colombian virus. <i>Datura</i> distortion or anation mosaic virus.
<i>Gossypium</i> spp. (cotton).....	All.....	Cotton virescence agent; small leaf virus.
<i>Hydrangea</i> spp. (hydrangea).....	Japan.....	<i>Aecidium hydrangeae-paniculatae</i> Dietel.
<i>Juniperus</i> spp. (juniper).....	Europe.....	<i>Phaciopycnis pseudotsuga</i> (M. Wils.) Hahn (Douglas fir canker).
<i>Malus</i> spp. (apple) Not meeting the conditions for importation in proposed § 319.37-5(b).	All.....	Apple green crinkle virus; Apple chat fruit virus.
<i>Morus</i> spp. (mulberry).....	China, Japan, India, and Union of Soviet Socialist Republics.	Mulberry dwarf; Mulberry curly little leaf.
<i>Prunus</i> spp. (almond, apricot, cherry, nectarine, peach, plum, prune) not meeting the conditions for importation in proposed § 319.37-5(b).	All.....	Cherry leaf roll virus; Cherry rusty mottle (European) agent; Apricot chlorotic leaf roll; Plum bark split virus; Arabis mosaic virus and its strains; Raspberry ringspot virus and its strains; Tomato blackring virus and its strains.
<i>Pyrus</i> spp. (pear) not meeting the conditions for importation in proposed § 319.37-5(b).	All.....	Pear blister canker virus; Pear bud and drop virus.
<i>Ulmus</i> spp. (elm) (including seeds).....	Europe.....	Elm mottle virus.
<i>Vitis</i> spp. (grape).....	All except Canada	A diversity of plant disease agents including, but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; <i>Xanthomonas ampelina</i> Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.

Some tree, plant, or fruit diseases are proposed to be deleted from the prohibited list with respect to some articles from certain countries and localities that would remain on the prohibited list because of other listed diseases, insects, or plant pests. In this connection, it is proposed to delete for each of the articles listed in the following chart from the designated countries and localities, the following diseases for the reasons specified in the chart:

Prohibited articles (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit diseases, or injurious insect or other plant pest	Reason for deletion from prohibited list
<i>Datura</i> spp.....	India and England.....	<i>Datura</i> -mosaic virus..... <i>Datura</i> virus 1 Smith and d'Oliveira (Datura-virosis virus). <i>Marmor tabaci</i> var. <i>deformans</i> Holmes (Enation-mosaic strain of tobacco-mosaic virus).	Disease apparently does not exist. Disease appears to be widely prevalent or distributed within and throughout the United States. Disease appears to be widely prevalent or distributed within and throughout the United States.
<i>Hydrangea</i> spp.....	Germany.....	<i>Hydrangea</i> -virescence virus.....	Disease appears to be widely prevalent or distributed within and throughout the United States.
<i>Malus</i> spp. (apple, crabapple).....	All sources in all countries, except nurseries designated in accordance with current § 319.37-28 as producing material grown from parent plants that have been tested by the plant protection service of the country of origin and found apparently free of all disease of plant quarantine significance, including those diseases caused by viruses.	"Rosette" (Virus).....	Disease apparently does not exist.
<i>Prunus</i> spp. (almond, apricot, cherry, nectarine, peach, plum, prune).	All sources in all countries, except nurseries designated in accordance with current § 319.37-28 as producing material grown from parent plants that have been tested by the plant protection service of the country of origin and found apparently free of all disease of plant quarantine significance, including those diseases caused by viruses.	Rigi cherry disease virus.....	Disease apparently does not exist.

The current regulations specify that all forest trees (not including seeds) are prohibited from being imported into the United States except from Canada. It appears that because of the diseases referred to in proposed § 319.37-2, listed with respect to conifers, there is a valid reason for prohibiting the importation of all conifer trees from all countries and localities except Canada. Further, it appears that there is a valid reason for prohibiting the importation of all of the non-conifer trees listed in proposed § 319.37-2 from the specified foreign countries and localities because of the diseases listed with respect to these trees. However, the prohibition for importation of "all" forest trees in the current regulations appears to be overly broad in that there does not appear to be adequate reason for prohibiting the importation of all those non-conifer trees not listed in proposed § 319.37-2.

Further, proposed § 319.37-2(b)(1) and (7) would specify classes of articles which would be on the prohibited list because of specified criteria relating to age. The current regulations prohibit the importation of such articles exceeding the "normal size" of such articles of certain ages. These criteria in the current regulations would be amended to impose restrictions based solely on specified ages because the risk of introduction of diseases or pests relates substantially to age.

Proposed § 319.37-2(b)(4) and (5) would impose limitations with respect to the maximum length and diameter of certain stem cuttings and certain cacti cuttings for importation into the United States. It appears that such articles within these limitations can be readily inspected and treated if necessary. Larger articles of these types would be difficult to inspect and treat because of size and density of growth, and therefore, would be classified as prohibited articles.

The current regulations in § 319.37-18(b) in essence permit herbaceous perennials to be imported in the form of root crown or clumps not more than 1 year old. This requirement was imposed because such articles are difficult to inspect if larger than the usual size of such articles 1 year old. Proposed § 319.37-2(b)(3) would be clarified to specify that such herbaceous perennials would be on the prohibited list if exceeding 102 millimeters (approximately 4 inches) in diameter. It appears that such plants exceeding this diameter would be more likely to harbor plant pests, and would be difficult to inspect and treat because of the density of small roots and stems found in such articles.

Further, proposed § 319.37-2(c) would permit prohibited articles to be imported into the United States if imported by the U.S. Department of Agriculture for experimental or scientific purposes, and imported under conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of any tree, plant, or fruit diseases, of any injurious insects, or of any other plant pests, i.e., conditions of treatment, processing, growing, shipment, or disposal.

The Plant Quarantine Act specifically authorizes such articles to be imported for experimental or scientific purposes by the U.S. Department of Agriculture pursuant to prescribed regulations. This is also consistent with the provisions of the Federal Plant Pest Act. In addition, the conditions for importation would be required to be specified on the permit in order to help assure that they would be understood and followed.

Proposed § 319.37-3 contains requirements with respect to permits for importation of restricted articles. Pursuant to the Plant Quarantine Act, restricted articles may not be imported except under permit.

The following articles other than articles for food, analytical, medicinal or manufacturing purposes, would be required to be imported pursuant to a written permit:

(1) Articles subject to treatment and other requirements of § 319.37-6;

(2) Articles subject to postentry quarantine;

(3) Bulbs of *Allium sativum* (garlic);

(4) Articles of *Cocos nucifera* (coconut); and articles (except seeds) of *Chrysanthemum* spp. (chrysanthemum) and *Dianthus* spp. (carnation, sweet William), from any country or locality except Canada;

(5) Lots of 13 or more articles (other than seeds, bulbs, and sterile cultures of orchid plants) from any country or locality except Canada;

(6) Seeds of trees or shrubs from any country or locality except Canada;

(7) Articles (except seeds) of *Fragaria* spp. (strawberry), *Malus* spp. (apple, crabapple), *Pyrus* spp. (pear), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune), *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), and *Rubus* spp. (blackberry, boysenberry, cloudberry, dewberry, loganberry, raspberry), from Canada;

(8) Woody plants, shrubs, and trees (except seeds) grown out-of-doors in Prince Edward Island, Nova Scotia, the counties of Albert and Westmoreland in New Brunswick, the city of Richmond on

Lulu Island in British Columbia, or Vancouver Island in British Columbia;

(9) Articles (except seeds) of *Castanea* spp. (chestnut) or *Castanopsis* spp. (chinquapin) destined to California or Oregon;

(10) Articles (except seeds) of *Pinus* spp. (pine) (5-leaved) destined to Wisconsin;

(11) Articles of *Ribes* spp. (currant, gooseberry) (including seeds) destined to Massachusetts, New York, West Virginia, or Wisconsin;

(12) Articles (except seeds) of *Planera* spp. (water elm, planer) or *Zelkova* spp. from Europe, Canada, St. Pierre, or Miquelon and destined to California, Nevada, or Oregon;

(13) Seeds of *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune) from Canada and destined to Colorado, Michigan, New York, Washington, or West Virginia;

(14) Articles (except seeds) of *Vitis* spp. (grape) from Canada and destined to California, New York, Ohio, Oregon, or Washington;

(15) Articles (except seeds) of *Corylus* spp. (filbert, hazel, hazelnut, cobnut) from provinces east of Manitoba in Canada and destined to Oregon or Washington;

(16) Articles (except seeds) of *Pinus* spp. (pine) from Canada and destined to California, Idaho, Montana, Oregon, or Utah; and

(17) Articles (except seeds) of *Ulmus* spp. (elm) from Canada and destined to California, Nevada, or Oregon.

All other articles would be permitted to be imported under an oral permit.

Articles included in categories 1, 2, 3, 4, 5, 6, and 8, in accordance with proposed § 319.37-14, would be permitted to be imported only at ports of entry with special inspection and treatment facilities because these articles present a substantial risk of carrying injurious plant diseases, injurious insect pests, or other plant pests at the time of importation.

It appears that a written permit for these articles would be helpful in order to assure that the importer understands that such articles would be permitted to be imported only at a port of entry with such special inspection and treatment facilities. Consequently, this would also help eliminate an unnecessary risk of introducing such diseases or pests into the United States because of the presence of such articles at a port of entry without such facilities.

Also, articles included in categories 4 and 7, except *Fragaria* spp., would be required to be accompanied at the time of importation by special certification representing special inspection activities

provided by the country of origin. It appears that a written permit for such articles would be helpful in order to help assure that these complex requirements would be understood and met.

Further, it appears that requiring articles included in categories 1 through 8 to be imported pursuant to written permits could help assure that such articles would not have to be unnecessarily destroyed or reshipped. In addition, since it is proposed that a written permit issued by the Plant Protection and Quarantine Programs would indicate the conditions on the permit under which an article would be eligible to be imported, there would be a record that could be checked in order to assure that the requirements of this subpart are understood and followed by the importer and employees of the Plant Protection and Quarantine Programs.

Articles included in categories 9 through 17 are subject to State quarantine requirements. The affected States have requested notification from the Plant Protection and Quarantine Programs of requests to import such articles destined to such States in order to assist with the enforcement of their requirements. It appears that the written permit procedures provide the most feasible means of gathering the necessary information for such States.

It is further proposed that prior to the issuance of a written permit an application must be made to the Plant Protection and Quarantine Programs and shall include the following information which appears to be necessary in order for the Plant Protection and Quarantine Programs to make a determination as to whether an article would be eligible for a written permit under this subpart, to respond to the applicant, and to make any necessary preparation for inspection or treatment:

- (1) Name, address, and telephone number of importer;
- (2) Approximate quantity and kinds (botanical designations) of articles intended to be imported;
- (3) Country(ies) or locality(ies) where grown;
- (4) Intended United States port of entry;
- (5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and
- (6) Expected date of arrival.

The proposed regulations provide that an application for a written permit should be submitted to the Plant Protection and Quarantine Programs at least 30 days prior to the arrival of the article at the port of entry. This would benefit the importer in that the Plant

Protection and Quarantine Programs would have sufficient time to make sure the importer is aware of the requirements of this subpart and to help prevent the arrival at a port of entry of articles which are not eligible to be offered for importation at such a port of entry.

Under the proposed regulations, articles subject to the proposed subpart and not required to be imported under a written permit, would be eligible to be imported under an oral permit issued at a port of entry at the time of importation. These articles would be subject to inspection at the port of entry, and there does not appear to be a need for a written permit for these articles. In essence, requiring a written permit for these articles would appear to result in the generation of numerous additional papers and paperwork for Plant Protection and Quarantine Programs and the importer without any consequent protection with respect to preventing the introduction into the United States of injurious plant diseases, insect pests, or other plant pests.

The proposed regulations also state that restricted articles may not be imported, even if a permit has been issued unless an inspector at the port of entry determines upon inspection that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) are necessary with respect to such article. In this connection section 105 of the Federal Plant Pest Act provides, in relevant part, that:

"(a) Except as provided in paragraph (c), the Secretary 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 otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States . . . and which he has reason to believe is infested or infected by or contains any such plant pest . . . Provided, That this paragraph shall not authorize such action with respect to any product, article, means of conveyance, or plant pest subject, at the time of the proposed action, to disposal under the Plant Quarantine Act."

"(b) Except as provided in paragraph (c), the Secretary may order the owner of any product, article, means of

conveyance, or plant pest subject to disposal under paragraph (a), or his agent, to treat, apply other remedial measures to, destroy, or make other disposal of such product, article, means of conveyance, or plant pest, without cost to the Federal Government and in such manner as the Secretary deems appropriate. . . ."

"(c) No product, article, means of conveyance, or plant pest shall be destroyed, exported, or returned to shipping point of origin, or ordered to be destroyed, exported, or so returned under this section, unless in the opinion of the Secretary there is no less drastic action which would be adequate to prevent the dissemination of plant pests new to or not theretofore known to be widely prevalent or distributed within and throughout the United States. . . ."

The proposed regulations also state restricted articles may not be imported even if a permit has been issued unless all applicable requirements of the proposed subpart are met. In this connection it should also be noted that section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 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 regulations issued pursuant to such Acts.

In addition, the proposed regulations contain provisions for the withdrawal of permits by the Deputy Administrator if he determines that the holder of the permit has not complied with any conditions for the use of the permit. Due process requirements concerning such withdrawals are set forth in the proposed regulations.

Proposed § 319.37-4 contains requirements with respect to inspection and phytosanitary certificates of inspection.

The Plant Quarantine Act provides that at the time of importation all restricted articles from a country maintaining an official system of inspection for such articles must be accompanied by a phytosanitary certificate of inspection from an official of the country from which the importation is made, certifying that the article has been thoroughly inspected and is believed to be free from injurious plant diseases and insect pests. Most of the countries of the world have such a system of inspection, and therefore, most restricted articles would be required to be accompanied by such a certificate at the time of importation.

The Plant Quarantine Act, however, also provides that restricted articles imported from countries where no

official system of inspection is maintained may be imported under conditions and regulations as the Secretary may prescribe. Accordingly, in order to assure that all restricted articles would be inspected, proposed § 319.37-4 would require all restricted articles from countries where not official system of inspection if maintained to be inspected by and inspector of the Plant Protection and Quarantine Programs at the time of importation. Also, any restricted article accompanied by a phytosanitary certificate of inspection would be subject to inspection by Plant Protection and Quarantine Programs inspectors as necessary to assure that such restricted articles are free from injurious plant diseases, injurious insect pests, and other plant pests.

The proposed regulations also would require that a phytosanitary certificate of inspection be issued not more than 15 days prior to shipment of the restricted article from the country in which grown, in order for the certificate to be valid. This would help assure that restricted articles would be promptly shipped after inspection in the country in which grown, and consequently reduce the risk of such articles becoming infected or infested with injurious plant diseases, injurious insect pests, or other plant pests after inspection.

It should also be noted that the use of phytosanitary certificates of inspection was encouraged at the International Plant Protection Convention of 1951 in Rome of which the United States is a party. The proposed requirements relating to phytosanitary certificates of inspection, in addition to being in conformity with the provisions of the Plant Quarantine Act and the Federal Plant Pest Act, are in conformity with the International Plant Protection Convention.

Proposed § 319.37-5 contains special inspection and certification requirements to be performed by the plant protection service of the country in which the article was grown in order to prevent the introduction into the United States of the diseases and pests specified in proposed § 319.37-5 which could destroy or substantially reduce the yield or marketability of the kind of articles specified in proposed § 319.37-5, or products thereof.

Such inspection and certification would be performed by the foreign plant protection service because such pests and diseases which could accompany the specified articles would not be detectable at the port of entry, and there do not appear to be any other feasible methods of treatment or other procedures (except postentry conditions

for *Dianthus* spp. (carnation, sweet William), and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry)) for preventing the introduction into the United States of such diseases or pests.

The current regulations require all restricted articles (except seeds of herbaceous plants and except articles solely for food, analytical, medicinal, or manufacturing purposes) to be accompanied by a certificate of inspection from the plant protection service of the country of origin certifying that the restricted plant material covered by the certificate was grown on land on which no golden nematode is known to occur. Further, with respect to articles from a country where there golden nematode is known to occur the certificate must also state the date of the most recent inspection of the land for golden nematode.

The proposed regulations have changed the name of golden nematode to potato cyst nematodes (*Globodera rostochiensis* (Woll.) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone) because this is now the commonly accepted name for what was formerly known as golden nematode. The proposed regulations would require certain restricted articles as a condition of entry to be accompanied by a phytosanitary certificate of inspection certifying that such articles were grown on land which has been sampled and microscopically inspected by the plant protection service of the country in which grown and found free from such pests.

It appears that the only feasible means of detecting and preventing the introduction of potato cyst nematodes in addition to requiring the removal of growing media (see discussion below in connection with proposed § 319.37-8) is to require the plant protection service of the country in which grown to inspect the land on which the article is grown. It would not be feasible to permit such articles to be grown under postentry quarantine in lieu of such requirements because the nematodes could not be detected until well established on the land in which grown and it is extremely difficult to eradicate the pests once they have been introduced into the soil.

Also, the inspection and certification requirements are proposed to apply only restricted articles imported from the foreign countries or localities listed in proposed section 319.37-5 because these are the only foreign countries and localities where potato cyst nematodes are known to occur.

Further, it is proposed that seeds; unrooted cuttings; and articles solely for

food, analytical, medicinal, or manufacturing purposes be expected from these requirements. It appears that there is no significant risk of introduction potato cyst nematodes with seeds or unrooted cuttings because potato cyst nematodes are soil inhabiting, and seeds and unrooted cuttings are produced without direct contact with the soil. Also, articles solely for food, analytical, medicinal or manufacturing purposes would not appear to present a risk of introduction of potato cyst nematodes because they would not appear likely to come in contact with the soil after importation.

Also, it is proposed that the foreign land on which such articles are grown must have been sampled and microscopically tested for such nematodes within 12 months preceding issuance of the accompanying phytosanitary certificate of inspection and found free from such nematodes. This would appear to assure ongoing detection programs for such nematodes and provide a reasonable assurance of detecting the presence of any potato cyst nematodes which might otherwise accompany restricted articles imported into the United States.

It is proposed a condition of importation that any article (except seeds) of *Chaenomeles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune), and *Pyrus* spp. (pear), (1) be accompanied by a phytosanitary certificate of inspection declaring that such article was grown in a nursery in Belgium, Canada, France, Federal Republic of Germany (West), The Netherlands, or Great Britain and found by the plant protection service of the country in which grown to be free of diseases specified in proposed § 319.37-5 based on the testing of parent stock by visual examination and indexing and declaring that such article was grown in a nursery free of any specified disease, and (2) be grown under postentry quarantine conditions specified in proposed § 319.37-7, unless grown in Canada.

It is also proposed as a condition of importation that any article (except seeds) of *Dianthus* spp. (carnation, sweet William) from Great Britain, and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Ontario, Canada, be required to be grown under postentry quarantine conditions specified in proposed § 319.37-7 unless accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article

was found by the plant protection service of the country in which grown to be free of diseases specified in proposed § 319.37-5, based on visual examination and indexing of the parent stock, and, in the case of an article of *Dianthus* spp., that it was grown in a greenhouse nursery free of such specified plant diseases.

Further, it is proposed as a condition of importation that any article (except seeds) of *Chrysanthemum* spp. (chrysanthemum) from Great Britain be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was found by the plant protection service of Great Britain to be free of the disease specified in proposed § 319.37-5 based on visual examination of the parent stock, and that it was grown in a greenhouse nursery free of such disease.

The diseases specified in proposed § 319.37-5 accompanying such articles usually would not be detectable at a port of entry. These articles are imported without leaves (except for plants of *Chrysanthemum* spp. and *Dianthus* spp.), without fruit, and without flowers; and the diseases, in most cases, are not detectable without an examination of the leaves, fruit or flowers. Further, such articles are shipped in a dormant condition rather than in a condition of active growth, and in many cases the disease would not be detectable in any part of the article (even with the leaves, fruit, and flowers) unless the article were in a period of active growth.

Indexing of the parent stock of any of these articles would indicate the presence of such diseases in the parent stock and the offspring, because the offspring originate from parts of the parent stock which would be infected with such disease if the parent stock were infected. Indexing is accomplished by conducting serological testing, or transmitting the juices from plants of the parent stock to other plants known to be susceptible to a disease, by grafting or otherwise. Indexing of a parent stock would not be required with respect to *Chrysanthemum* spp. because the associated disease would be readily detectable by visual examination if present in the parent stock. With respect to the other articles, the diseases in most cases would not be detectable without indexing. Also, it would not be practical to index the articles for importation because of the large number of articles being imported.

The disease specified in proposed § 319.37-5 in connection with these articles are known to occur in the

countries from which these provisions would apply except that the diseases specified for *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp., are not known to occur in Canada, and that the disease specified for *Rubus* spp. is not known to occur in Ontario, Canada.

Articles of *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. are grown out-of-doors because of their size and because they must be grown under natural climatic conditions in order to achieve normal development or to produce typical fruit. Since the articles are grown out-of-doors in countries and localities where such diseases are known to occur, there is a risk that such articles would be infected with such diseases after separation from the parent stock. In order to minimize the risk of becoming infected with such diseases, articles of *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. as a condition of importation would be required to be grown in nurseries free of the specified diseases. This would also help assure that such articles would be grown within designated boundaries, and would be subject to ongoing programs of indexing. But because there would still be a slight risk of such articles becoming infected with such diseases after indexing and because such diseases would be detectable after a period of time, these articles also would be required to be grown under postentry quarantine conditions specified in proposed § 319.37-7.

Articles (except seeds) of *Chrysanthemum* spp. and *Dianthus* spp. would be required to be grown in greenhouse nurseries free of the specified diseases for these articles in order to provide protection against the natural spread of the specified diseases. *Rubus* spp. would not be required to be grown in a greenhouse nursery for such certification because the specified disease of concern with respect to *Rubus* spp., i.e., rubus stunt virus, is not known to occur in Ontario, Canada. However, since this disease occurs in other parts of Canada it appears that the findings and certification of the plant protection service of Canada are necessary as a precautionary measure in that the disease could spread to Ontario, Canada.

The regulations currently require as a condition of importation that trees, shrubs, and plants of *Malus* spp., *Pyrus* spp., and *Prunus* spp. originate from specified foreign nurseries which have been certified by the plant protection service of the country of origin as producing material of such genera from

parent plants that have been tested by such plant protection service and found free from diseases caused by viruses. The current regulations contain a list of such nurseries located in Belgium, Great Britain, Canada, Germany, and The Netherlands. The protection afforded against the introduction into the United States of such diseases is provided by the visual examination and indexing of parent stock and certification thereof by the plant protection service of the country of origin, and there does not appear to be a need for certifying nurseries. The certification provisions would be performed only by the listed countries because these are the only countries that provide such service.

The current regulations prohibit the entry of *Cocos nucifera* from all foreign countries into the State of Hawaii because of Cadang-cadang disease. It is proposed to permit an article of *Cocos nucifera* (coconut) to be imported into the United States, including Hawaii, if found and certified by the plant protection service of Jamaica (Coconut Industry Board) to be of Malayan dwarf variety based on visual examination of parent stock. Cadang-cadang disease apparently does not occur in Jamaica and the Malayan dwarf variety appears to be the only variety which is resistant to lethal yellowing disease (other varieties are listed as prohibited articles). Lethal yellowing disease could destroy or substantially reduce the yield or marketability of coconut or other palms if introduced into areas of the United States where it does not occur. The variety of *Cocos nucifera* cannot be determined upon inspection at the time of entry. A determination as to variety can be made based on visual examination of parent stock because of the physical characteristics of the parent stock.

Also, *Cocos nucifera* (coconut) would only be permitted to be imported if found by the plant protection service of the government of Jamaica (Coconut Industry Board) to be a Malayan dwarf variety because this is the only country or locality known to provide such certification.

Proposed § 319.37-6 would require specified restricted articles from specified countries or localities to be treated at the time of importation, or in some cases to be either defoliated before arrival at the port of entry or treated at the time of importation. These articles pose significant risks of introducing diseases or pests specified in proposed § 319.37-6 which could substantially reduce the yield or marketability of such kinds of articles or products thereof. Also, these diseases or

pests are difficult to detect upon inspection or have been consistently found upon inspection to be accompanying such articles. Further, it appears that the introduction into the United States of such diseases or pests can be feasibly prevented by the specified treatment or defoliation.

The current regulations require seeds of alfalfa (*Medicago sativa*) from Europe to be treated with 8 ounces of Arasan 50 (50 percent Thiram) per 100 pounds of seeds to prevent the spread of infection with *Verticillium albo-atrum* (a wilt disease). It is proposed that seeds of alfalfa and related plants (i.e., *Medicago falcata*, *M. gaetula*, *M. glutinosa*, *M. media*, *M. sativa*) from Europe be required to be treated with Arasan 50 (50 percent Thiram) at a rate of 8 ounces (approximately 226.8 grams) per 100 pounds (approximately 45.36 kilograms) of seeds, (same as is currently required for *M. sativa*), or with a slurry of Arasan 50 Red at a rate of 8 ounces per pint of water per 100 pounds of seeds. These treatments are equivalent in strength.

Such treatment for seeds of *Medicago sativa* appears to be necessary and adequate to prevent the spread of infection with *Verticillium albo-atrum*. Such treatment is also proposed to be required for seeds of certain plants related to *Medicago sativa* (i.e., *M. falcata*, *M. gaetula*, *M. glutinosa*, *M. media*) because it appears that these articles are also frequently infected with *Verticillium albo-atrum*.

The current regulations also require plants of specific genera from any country or locality other than Canada, Europe, Asia Minor, and the countries of Africa bordering on the Mediterranean Sea, to be imported through the ports of entry at New York or Seattle or to be defoliated before arrival at any other port of entry.

These requirements were imposed in order to prevent the introduction into the United States of the citrus blackfly (*Aleurocanthus woglumi* Ashby). This pest is found on the leaves of host plants and defoliation of such plants appears to be adequate to prevent such pests from accompanying host plants. Also, the current regulations permit host plants to be imported through the ports of New York or Seattle without defoliation because the citrus blackfly will not survive in northern climates typical of New York and Seattle. However, it is proposed to discontinue permitting such host plants to be imported at these ports without defoliation or other treatment (referred to below) because these infested host plants can be readily move to southern

areas of the United States where citrus blackfly can survive.

It is also proposed that such host plants be permitted to be imported without defoliation if treated at the port of entry with methyl bromide in accordance with the Plant Protection and Quarantine Treatment Manual (which has been incorporated by reference) because this appears to be adequate to prevent the introduction of citrus blackfly.

Also, it is proposed to make changes with respect to the scientific names for *Achras*, *Calocarpum*, and *Lucuma*, which are currently listed as hosts of citrus blackfly. The name *Achras* would be changed to *Manilkara*, and the names *Calocarpum* and *Lucuma* would collectively be changed to one name, *Pouteria*. These changes are proposed in order to conform to nomenclature currently accepted by the scientific community.

The current regulations further specify that any listed articles are subject to special requirements because of the citrus blackfly if from any foreign country or locality (other than Canada, Europe and Asia Minor, and countries in Africa bordering the Mediterranean Sea). Citrus blackfly is known to occur in countries and localities other than those specifically excepted from such requirements. In this connection, the list of areas excepted from such requirements would be clarified to more clearly describe the countries and localities in which citrus blackfly is not known to occur; i.e., Canada, Europe, and any other country or locality bordering on the Mediterranean Sea.

The proposed regulations would also require the following list of restricted seeds from the listed countries and localities to be treated at the time of importation because of the diseases or pests referred to in the proposed § 319.37-6.

Seeds	Country(ies) or locality(ies) from
<i>Hibiscus</i> spp. (hibiscus, rosemallow).	All.
<i>Lathyrus</i> spp. (sweet pea, peavine).	All except North America and Central America.
<i>Lens</i> spp. (lentil)	All except North America and Central America.
<i>Vicia</i> spp. (fava bean, vetch)...	All except North America and Central America.
<i>Glycine</i> spp. (soybean)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.

Seeds	Country(ies) or locality(ies) from
<i>Dolichos</i> spp. (lablab).....	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
<i>Pachyrhizus</i> spp. (yam bean root, jicama).	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
<i>Phaseolus</i> spp. (bean)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
<i>Pueraria</i> spp. (Chinese yam) ...	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
<i>Vigna</i> spp. (cowpea, catjang, asparagus bean, black-eyed pea, moth bean, azuki bean).	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.

The treatment proposed to be required for each of these types of seeds is specified in proposed § 319.37-6 except for seeds of *Hibiscus* spp., (hibiscus, rosemallow), *Lathyrus* spp., (sweet pea, peavine), *Lens* spp., (lentil) and *Vicia* spp., (fava bean, vetch) which would be required to be treated with methyl bromide in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual which have been incorporated by reference. These treatments appear to be adequate to prevent the introduction into the United States of the diseases or pests referred to in proposed § 319.37-6.

Proposed § 319.37-7 designates articles from specified countries and localities which would be required to be grown under postentry quarantine as a condition of importation. Except as

otherwise provided in proposed § 319.37-5 with respect to *Dianthus* spp., (carnation, sweet William), and *Rubus* spp., (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), this appears to be necessary because there do not appear to be other feasible methods of inspection, treatment, or other procedures that could be performed at the port of entry or otherwise and be sufficient for the purpose of preventing the introduction of injurious plant diseases that could destroy or substantially reduce the yield or marketability of the kinds of listed article or the products thereof. A period of observation under postentry quarantine would be necessary in order to detect such diseases which could possibly accompany such articles.

Many of those articles which are listed in proposed § 319.37-7 would be required to be grown under postentry quarantine as a condition of importation if from certain countries or localities but would be listed in proposed § 319.37-2 as prohibited articles if from other countries or localities. Such articles listed in the prohibited list are from countries or localities where the diseases associated with such articles and listed in proposed § 319.37-2 are known to occur. Other than as explained above in the discussion concerning proposed § 319.37-5, such articles that would be subject to postentry quarantine requirements are from countries or localities where such diseases are not known to occur. However, because of the international movement of such articles and the natural spread of such diseases, the diseases could be carried to countries or localities where the diseases are not known to occur without being detected. Accordingly, it appears to be necessary to require such articles to be grown under postentry quarantine as a condition of importation as a precautionary measure in order to prevent the introduction of such diseases. For these reasons each article listed in the following chart from the listed countries and localities is proposed to be added to the current list of articles required to be grown under postentry quarantine as a condition of importation:

Article	Country(ies) or locality(ies)
<i>Acacia</i> spp. (acacia).....	All except Canada, Australia, and Oceania.
<i>Anemone</i> spp. (anemone, windflower).....	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
<i>Datura</i> spp.	Great Britain.

Article	Country(ies) or locality(ies)
<i>Fragaria</i> spp. (strawberry).....	All except Australia, Austria, Canada, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.
<i>Gladiolus</i> spp.	All except Canada, Africa, Italy, Malta, and Portugal.
<i>Hydrangea</i> spp. (hydrangea)....	Federal Republic of Germany (West) and German Democratic Republic (East).
<i>Philadelphus</i> spp. (mock-orange).....	All except Canada and Europe.
<i>Sorbus</i> spp. (mountain ash)....	Southeastern Asia.
<i>Syringa</i> spp. (lilac).....	All except Canada and Europe.

Also, for reason, for reasons explained above in the discussion concerning proposed § 319.37-5, it is proposed that articles of *Chaenomeles* spp., *Cydonia* spp., *Malus Prunus* spp., and *Pyrus* spp., grown in Belgium, France, Federal Republic of Germany (West), The Netherlands, or Great Britain and otherwise meeting the conditions of proposed § 319.37-5 be required to be grown under postentry quarantine as a condition of importation.

In addition, for reasons explained above in the discussion concerning proposed § 319.37-5, it is proposed that plants of *Dianthus* spp. from Great Britain, and *Rubus* spp. from Ontario, Canada, be required to be grown under postentry quarantine as a condition of importation because of the diseases specified in proposed § 319.37-5 unless accompanied by an accurate additional declaration on the phytosanitary certificate of inspection as provided for in proposed § 319.37-5.

Seedling understocks of fruit and nut articles listed in proposed § 319.37-7(b) from all countries and localities except Canada are proposed to be added to the list of articles required to be grown under postentry quarantine as a condition of importation. It appears that the types of diseases associated with such articles would not be detectable at a port of entry but would be detectable under the postentry conditions specified in § 319.37-7(c) and that under such conditions these diseases would be prevented from being disseminated into the United States.

"Fruit and nut plants, buds, cuttings, scions, and vegetatively-produced understocks" together with "fruit and nut stocks" comprise "fruit and nut articles." The regulations currently list "fruit and nut plants, buds, cuttings, scions, and vegetatively-produced understocks" on the postentry list. Also, as noted above, it is proposed to add "fruit and nut stocks" to the postentry list. Accordingly, these items are

proposed to be collectively listed as "fruit and nut articles." Also, this term would be clarified by listing such articles which are intended to be within this class.

Articles required to be grown under postentry quarantine, as a condition of importation, would be required to be grown under the supervision and control of a person who has signed a postentry quarantine agreement to comply with the following conditions:

- (1) to grow such article or increase therefrom only on specified premises;
- (2) to permit an inspector to have access to the specified premises for inspection of such article at all reasonable hours;
- (3) to keep the article and any increase therefrom identified with a label showing the name of the article, port accession number, number of written permit, and date of importation;
- (4) to keep the article separated from any domestic plant or plant product of the same genus by no less than 3 meters (approximately 10 feet); and from other imported plant or plant products by the same distance;
- (5) to allow or apply remedial measures (including destruction) determined by an inspector to be necessary to prevent the spread of an injurious plant disease, injurious insect pest, or other plant pest; and
- (6) to notify Plant Protection and Quarantine Programs when any abnormality of the article is noticed or if the article dies.

It appears that these conditions are necessary and adequate for the Plant Protection and Quarantine Programs to keep track of such articles and to take any necessary action to prevent the possible dissemination of injurious plant diseases.

It is further proposed to require articles to be grown under postentry quarantine, as a condition of importation, to be grown under such conditions for 2 years, except for *Chrysanthemum* spp. (chrysanthemum) (6 months) and *Dianthus* spp. (carnation, sweet William) (1 year). Based on experience it appears that the diseases associated with such articles would express their symptoms within these time limits.

It is also proposed to require a completed postentry quarantine agreement to accompany the application for a written permit for articles required to be grown under postentry quarantine conditions since both of these documents would be necessary for a determination as to whether a permit for importation should be issued for such articles.

Further, articles from certain countries and localities are proposed to be deleted from the list of articles required to be grown under postentry quarantine as a condition of importation.

Articles of *Juniperus* spp., (juniper) and *Ulmus* spp., (elm) from Canada would be deleted from the postentry list because diseases associated with such articles (such diseases are specified in the proposed prohibited list) are not known to occur in Canada and because Canada prohibits the importation of such articles from all countries and localities where such diseases are known to occur.

The articles in the following chart from the listed countries and localities are proposed to be deleted from the postentry quarantine list because such articles are proposed to be added to the prohibited list in proposed § 319.37-2:

Article	Country(ies) or locality(ies)
<i>Actinidia</i> spp. (Chinese gooseberry, kiwi).	Japan and Taiwan.
<i>Cedrus</i> spp. (cedar)	All other than Canada and Europe.
<i>Chrysanthemum</i> spp. (chrysanthemum).	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, Peoples Republic of China and Republic of South Africa.
<i>Datura</i> spp.	Colombia.
<i>Hibiscus</i> spp. (hibiscus, rosemallow).	Africa (except Sudan and Nigeria).
<i>Hydrangea</i> spp. (hydrangea)	Japan.
<i>Juniperus</i> spp. (juniper)	All except Finland and Rumania.
<i>Larix</i> spp. (larch)	All other than Canada and Europe.
<i>Morus</i> spp. (mulberry)	India and Union of Soviet Socialist Republics.
<i>Picea</i> spp. (spruce)	All other than Canada, Japan, Siberia, and Europe.
<i>Pinus</i> spp. (pine) [2- or 3-leaved].	All other than Canada, Japan, and Europe.
<i>Pseudotsuga</i> spp. (Douglas fir).	All other than Canada and Europe.
<i>Ribes nigrum</i> (black currant)	Europe (except British Isles and Sweden) and Australia.
<i>Salix</i> spp. (willow)	Federal Republic of Germany (West) and German Democratic Republic (East).
<i>Vitis</i> spp. (grape)	All other than Canada and Europe.

The articles in the following chart from the listed countries and localities are proposed to be deleted from the postentry list because the plant disease or diseases which caused the article to be listed on the postentry list appear to be widely prevalent within and throughout the United States:

Article	Country(ies) or locality(ies) from	Plant disease which caused article to be listed
<i>Aleurites</i> spp. (tung).	All foreign countries except China and Brazil.	<i>Mycosphaerella</i> (Miyake) Ou <i>aleuritidis</i> (Leat spot).
<i>Daphne</i> spp.	All foreign countries except Canada and New Zealand.	Daphne-mosaic virus.

Article	Country(ies) or locality(ies) from	Plant disease which caused article to be listed
<i>Nicotiana</i> spp. (tobacco).	All foreign countries except Australia, Great Britain, and Canada.	<i>Marmor lethale</i> Holmes (Tobacco necrosis virus).

The articles in the following chart from the listed countries and localities are proposed to be deleted from the postentry list for the reasons specified in the chart:

Article	Country(ies) or locality(ies)	Reason
<i>Actinidia</i> spp. (Chinese gooseberry, kiwi).	Australia and New Zealand.	On list because of <i>Pucciniastrum actinidiae</i> <i>Hiratusuka</i> (Rust) which apparently does not exist in Australia and New Zealand, based on official reports from the governments of Australia and New Zealand.
<i>Anthurium</i> spp.	All	On list because of <i>Anthurium</i> mosaic virus which apparently no longer exist.
<i>Boltonia</i> spp.	Canada	On list because of <i>Boltonia</i> streak virus which apparently no longer exist.
<i>Chrysanthemum</i> spp. (chrysanthemum).	Great Britain if in compliance with conditions for importation in proposed § 319.37-5(c).	On list because of <i>Puccinia horiana</i> P. Henn. which apparently would not be present if conditions in proposed § 319.37-5(c) would be met.
<i>Ilex</i> spp. (holly).	All except Canada, England, and France.	On list because of <i>Ilex</i> -variegation virus which apparently does not exist.
<i>Rubus</i> spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry).	Ontario, Canada, if in compliance with conditions for importation in proposed § 319.37-5(e).	On list because of <i>Rubus</i> stunt virus which apparently would not be present if conditions in proposed § 319.37-5(e) would be met.
<i>Wistaria</i> spp. (wisteria).	All except Canada and Australia.	On list because of mosaic disease which apparently does not exist.

Proposed § 319.37-8 would provide requirements with respect to the importation of restricted articles in growing media. In general, if restricted articles were to be imported in their growing media, there would be a substantial risk of introducing any of a large number of injurious plant diseases, injurious insect pests, and other plant pests, which could not be detected by inspection and could not be eliminated without destruction of the restricted article. Accordingly, it is proposed to prohibit the importation or offer for entry into the United States of restricted articles unless free of soil, sand, earth or other growing media, except as explained below.

In addition, the terms "soil" and "earth" would be defined in the definition section of the proposed regulations in order to assure that these terms would be interpreted to include all of the "soil" and "earth" that presents such a risk of introducing such diseases and pests.

The current regulations specify that restricted articles may be imported in any growing media (sand, soil, or earth) only if imported from Canada. It is proposed to permit restricted articles to be imported from Canada in growing media except from Newfoundland or from the Land District of South Saanich on Vancouver Island in British Columbia. Restricted articles in growing media from these specified places in Canada would not be permitted to be imported because it appears that there is a substantial danger that such restricted articles, if in such growing media, would introduce a potato cyst nematode, *Globodera rostochiensis* (Woll.) Mulvey and Stone, which is not discernible by inspection at the port of entry and cannot be eliminated without destruction of the restricted article.

It is also proposed to permit any restricted article growing solely in agar to be imported in such agar medium because it appears that the presence of diseases or pests which could be detected if the restricted article were imported with bare roots, would not be less detectable if in agar because agar is transparent or translucent.

It is further proposed to permit a restricted article which is a herbaceous plant or shrub to be imported in 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, ureaformaldehyde, of in accordance with the detailed criteria in proposed § 319.37-8(d). These criteria appear to be necessary in order to allow the importation of restricted articles in the above growing media or horticultural foams and still prevent the introduction into the United States of any of a wide variety of injurious plant diseases, injurious insect pests, or other plant pests, generally associated with articles in growing media. These criteria would assure that the restricted articles and their growing media would be free of injurious plant diseases, insect pests, or other plant pests because of being grown, stored, and shipped in isolation from such diseases or pests. Since there would be a great risk of introduction of such diseases or pests if any of the criteria were not strictly adhered to,

proposed § 319.37-8(d) would not only require the country of origin to certify compliance with these criteria, but as an added measure of safety, would require a Plant Protection and Quarantine Programs inspector to determine that such articles were produced in accordance with the specified procedures, and to endorse the phytosanitary certificate relating to such articles.

Proposed § 319.37-9 would specify what packing materials could be used for importation of restricted articles into the United States. Generally, packing materials can be the means of introducing into the United States any of a large number of injurious insect pests or other plant pests. Most such pests would not be detectable by inspection and could not feasibly be eliminated from the packing material. In addition, many such pests in the packing material could be transmitted to an accompanied restricted article. Also, many packing materials would because of their nature render articles difficult or impossible to inspect. Based on experience with respect to the examination of packing materials, it appears that those materials listed in proposed § 319.37-9 would present no significant risk of causing the introduction of injurious insect pests or other pests, provided that such materials are free from sand, soil, or earth, are not intermixed, and have not been used previously as packing material or otherwise. This proposed list of materials is the same as the current list except for three additions, two deletions, and three modifications. Ground rubber, paper, and quarry gravel would be added to the list because they apparently would present no significant risk of introducing such pests. Charcoal would be deleted from the list because it appears that it is difficult to detect the presence of many injurious plant diseases, insect pests, and other plant pests on or with articles packed in such material because charcoal often discolors such articles and there is often little contrast between charcoal and such diseases and pests.

Subsoil from Japan (other than that referred to below with respect to the Ryukyu Islands in Japan) would be deleted from the list. Under the current regulations subsoil from Japan has been permitted to be used as a packing material for lily bulbs only if, among other things, it was treated with DDT. However, under the laws administered by the Environmental Protection Agency, the use of DDT may not continue to be required, and there does not appear to be another insecticide adequate to destroy *Phyllobrotica* spp.

and other insect pests, which have been found in such subsoil.

Also, under the current regulations, subsoil from the Ryukyu Islands in Japan may be used as packing material for lily bulbs only if certified by the plant protection service of Japan to have been dug from at least 2 feet below the soil surface, handled under special conditions, and treated with an insecticide. Under the laws of the Environmental Protection Agency there are no insecticides which may be feasibly used in connection with such subsoil. However, it appears, based on experience, that even without the use of an insecticide there is no significant risk of introducing undetectable diseases or pests in connection with the importation of lily bulbs in such subsoil, if such subsoil would come from at least 2 feet below the soil surface, and be sifted, dried, and stored in isolation from contamination with pests and diseases. Accordingly, such subsoil would be permitted to be used as packing material for lily bulbs if found and certified by the plant protection service of Japan to meet such conditions.

Other articles would not be permitted to be packed in such subsoil because there has not been sufficient testing to establish that this could be done without a substantial risk of introducing diseases or pests.

In addition, the current regulations specify that shavings are permitted to be used as packing material. This was intended to refer to wood shavings and cork shavings and the list would be clarified to reflect this intent.

Further, the current regulations permit coral sand from Bermuda to be used as a packing material if accompanied by a valid certificate from the plant protection service of Bermuda certifying the sand to be free from surface soil. This was intended to prohibit the use of any soil in the packing material because soil can be accompanied by any of a host of injurious plant diseases, injurious insect pests, and other plant pests which would not be detectable at the port of entry. Accordingly, the proposed regulations are clarified to provide that the coral sand for packing material must be free from soil.

Proposed § 319.37-10 would require certain marking and identification information to be plainly and correctly borne at the time of importation on the outer container of a restricted article or directly on such article if not in a container. In order to comply with specified requirements of the Plant Quarantine Act, any restricted article for importation, including any article for importation by mail, would be required

to bear at the time of importation the general nature and quantity of the contents; the country and locality where grown; the name and address of the shipper, owner, or person shipping or forwarding the article; and the name and address of the consignee (in the case of mail the consignee would be the Plant Protection and Quarantine Programs). Such restricted articles would also be required to bear the number of the written permit authorizing the importation, if one was issued. This would enable the inspector to check whether a valid permit was actually issued for the article in question. Further, a restricted article for importation other than by mail would be required to bear an identifying shipper's mark and number. This would enable an inspector to locate the restricted article at the port of entry by comparing the shipper's mark and number on available entry documents (e.g., manifest, waybill) with such information on the restricted article or container thereof.

The proposal would also require any restricted article for importation by mail to be mailed to the Plant Protection and Quarantine Programs at a port of entry designated in the list of ports of entry in proposed § 319.37-14. This appears to be necessary in order to prevent direct mailing to the intended recipient, and for the requirements of the proposed subpart to be met, e.g., inspection, treatment. The proposal would further require a package containing a restricted article for importation by mail to contain within each package a sheet of paper bearing the name, address, and telephone number of the intended recipient. This would permit the Plant Protection and quarantine Programs to be able to forward the package to the intended recipient. Also, inclusion of the telephone number of the intended recipient for mailed articles would permit Plant Protection and Quarantine Programs to contact the intended recipient for the purpose of obtaining any necessary clarifications for determining eligibility for importation of such articles. With respect to importation of articles other than by mail, this requirement is not necessary because the representative or agent of the intended recipient would be available at the port of entry to provide any necessary clarifications.

It is also proposed that shipments containing restricted articles be required to be accompanied by an invoice or packing list indicating the contents of the shipments. This appears necessary because such information on the outside of a package or on a restricted article could be rendered illegible, destroyed,

or lost because of handling during shipment. This requirement would not be an additional burden on importers since invoices and packing lists are required by the shipping industry and by the U.S. Customs Service.

Proposed § 319.37-11 would require the importer upon arrival at a port of entry of any shipment of any restricted article to promptly notify the Plant Protection and Quarantine Programs of such shipment's arrival by such means as a manifest, customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose. The current regulations require that the importer submit a completed Form PPQ-368 and an invoice or packing list at the time of arrival. The purpose of the current regulations and the proposed regulations in this regard is to assure that the Plant Protection and Quarantine Programs is advised that any restricted article has arrived at a port of entry. It appears that this can be accomplished by any document which would specify what is contained in a shipment, such as those documents specified in the proposed rule.

Proposed § 319.37-12 would prohibit a restricted article from being imported or offered for entry into the United States if packed in the same container as an article prohibited importation into the United States by Part 319 or 321. This appears necessary in order to prevent prohibited articles from transmitting to restricted articles tree, plant, or fruit diseases, injurious insect pests, or other plant pests which could not be detected by inspection and could not be eliminated without destruction of the restricted article.

Proposed § 319.37-13 relates to costs and charges in connection with the services of an inspector and costs and charges relating to inspection facilities and equipment used in connection with treatment of articles. This reflects the policy of the Plant Protection and Quarantine Programs with respect to costs and charges relating to the importation of articles subject to this subpart.

Proposed § 319.37-13 also contains provisions relating to where treatments shall be performed. Government operated special inspection facilities are located in close proximity to unloading areas for imported articles and, consequently, the use of government-operated facilities would be required in most cases for treatment of articles in order to prevent unnecessary movement. Treatment would be permitted to be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the

judgment of an inspector, such articles can be transported to such nongovernmental facility without the risk of introduction into the United States of injurious plant diseases, injurious insect pests, or other plant pests. Also, it is proposed that treatment performed under this subpart would be required to be performed by or under the direction of an inspector in order to assure that any applicable treatment requirements would be met.

Proposed § 319.37-14 would require any restricted article required to be imported under a written permit pursuant to subsection (1) through (6) or (8) of proposed section 319.37-3, to be imported only at a port of entry designated by an asterisk in paragraph (b) of proposed § 319.37-14, and would permit any other restricted articles to be imported at any port of entry listed in paragraph (b) of proposed § 319.37-14. The ports of entry listed in paragraph (b) are those ports of entry where inspectors are stationed and authorized to take action in connection with the importation or offer for importation of articles which would be subject to the proposed subpart.

Those articles which would be required to be imported only at a port of entry designated by an asterisk appear to present a substantial risk of carrying injurious plant diseases, insect pests, or other plant pests at the time of importation. Accordingly, they would be required to be imported only at a port of entry designated by an asterisk because these ports of entry are the only ports of entry with special inspection and treatment facilities adequate for taking necessary action with respect to such articles in order to prevent the introduction of accompanying injurious plant diseases, injurious insect pests, or other plant pests.

In the current regulations, certain articles for importation from Canada are exempted from certain prohibitions or restrictions which would apply if such articles were imported from certain other foreign countries and localities. It appears that the importation from Canada of most articles subject to the proposed subpart poses little or no risk of introduction of injurious plant diseases, injurious insect pests or other plant pests that are not already widely prevalent or distributed within and throughout the United States. This is because such diseases and pests do not occur in Canada because of climatic conditions adverse to many such diseases and pests, and because of an effective Canadian inspection program for articles imported into Canada. For these reasons, the proposed regulations

also contain numerous exemptions from prohibitions or restrictions with regard to articles for importation from Canada.

As noted above, in connection with the discussion concerning proposed § 319.37-4, restricted articles accompanied by a phytosanitary certificate of inspection are merely "subject" to inspection at ports of entry "as necessary" to assure the absence of injurious plant diseases, injurious insect pests, and other plant pests. Because of various risks of introducing such diseases or pests restricted articles are given various degrees of inspection at ports of entry. However, articles for importation from Canada and not requiring a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of proposed § 319.37-3, are given the least amount of inspection which is commensurate with the risk of introducing diseases or pests. Accordingly, such articles from Canada are the only articles proposed to be allowed to be imported at the port of entry on the United States-Canadian border, which provide this minimal inspection.

It appears that the risk of introduction of diseases or pests would be the same for an article grown in a foreign country or locality other than Canada if it meets each of the following conditions:

1. It is imported into the United States directly from Canada after having been grown for at least 1 year in Canada,
2. 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 or § 319.37-6,
3. It was not grown in a country or locality from which it would be subject to conditions of § 319.37-7 unless it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37-7, and
4. It was not imported into Canada in growing media.

Articles specified in items 2 through 4 appear to present a substantial risk of introducing diseases or pests and are either prohibited articles or would be required to be imported at a port of entry with special inspection and treatment facilities. Also, these articles would be required to be grown for at least 1 year in Canada in order to be considered as being solely from Canada. The added growing time would provide an opportunity for any accompanying diseases or pests to become readily detectable at the time of inspection relating to the issuance of the phytosanitary certificate of inspection. This would be an added precautionary

measure in order to allow the articles to be imported under conditions of minimal inspection at ports of entry on the United States-Canada border.

The proposed regulations would also make numerous other miscellaneous changes from the current regulations.

The proposed regulations would reflect certain changes which have occurred with respect to names or boundaries of countries. "Ceylon" is changed to "Sri Lanka," "Germany" is changed to "Federal Republic of Germany (West)" or "German Democratic Republic (East)," as appropriate, "North Ireland" is changed to "Northern Ireland," and "Trinidad" is changed to "Trinidad and Tobago."

The term "England" as used in the current regulations is proposed to be changed to "Great Britain," which includes England, Scotland, and Wales. This is because the term "England" as used in the current regulations was intended to include England, Scotland, and Wales, and because it appears that the reasons for imposing requirements with respect to England are also valid

reasons for imposing requirements with respect to Scotland and Wales.

The term "Europe" is defined in the current regulations as "the continent of Europe, the British Isles, and the other islands on the European continental shelf." The term "other islands on the continental shelf" is proposed to be changed to "Iceland, the Azores, and the islands in the Mediterranean Sea", to clarify the intent in the current regulations. Also, the reasons for imposing requirements appear to be valid reasons for imposing requirements with respect to all of these places.

The term "Oceania," although used in the current regulations, is not defined. This term is commonly understood to include the islands of Micronesia, Melanesia, and Polynesia in the central and southern Pacific Ocean. However, this term is also sometimes construed to include Australia and New Zealand which are not part of these islands. In order to avoid confusion, the term "Oceania" is defined in the proposed regulations and does not include Australia or New Zealand. Further,

Hawaii, which is part of Polynesia, is specifically excepted from the definition of "Oceania" since the term "Oceania" as used in the proposed subpart, relates only to foreign countries and localities.

Some articles which are proposed to be deleted from the prohibited list are prohibited from entering certain States because of State laws. Also, some articles which are proposed to be deleted from the postentry list are required to be grown under postentry quarantine as a condition of entry into such States. Since this information would be helpful to potential importers of these articles, it is proposed to include such information in notes at the end of the respective list of prohibited articles and postentry articles.

Some of the scientific names in the current regulations with respect to certain diseases, insects, or other pests, are proposed to be changed in order to conform to nomenclature currently accepted by the scientific community. Accordingly, the following chart explains the proposed changes and lists the article associated with the diseases or pests.

Article	Name in current regulations	Name in proposed regulations
<i>Abies</i> spp. (fir)	<i>Phomopsis pseudotsugae</i> Wilson (Douglas fir canker)	<i>Phaciopycnis pseudotsuga</i> (M. Wils.) Hahn (Douglas fir canker)
<i>Aithaea</i> spp. (althaea, hollyhock)	<i>Ruga gossypi</i> Holmes (Cotton leaf-curl virus)	Cotton leaf-curl virus
<i>Anemone</i> spp. (anemone, windflower)	<i>Galla anemones</i> Holmes (Anemone-alloioophyly virus)	Anemone-alloioophyly virus
<i>Cedrus</i> spp. (cedar)	<i>Phomopsis pseudotsugae</i> Wilson (Douglas fir canker)	<i>Phaciopycnis pseudotsuga</i> (M. Wils.) Hahn (Douglas fir canker)
<i>Datura</i> spp.	<i>Marmor tabaci</i> var. <i>deformans</i> Holmes (Enation-mosaic strain of mosaic virus)	Datura distortion or enation mosaic virus
<i>Dianthus</i> spp. (carnation, sweet William)	<i>Verticillium cinerescens</i> Wr.	<i>Phialophora cinerescens</i> (Wr.) U. Beyma (<i>Verticillium cinerescens</i> Wr.)
<i>Euonymus</i> spp. (euonymus)	<i>Marmor euonymi</i> Holmes (Euonymus mosaic virus)	Euonymus mosaic virus
<i>Hibiscus</i> spp. (hibiscus, rosemallow)	Yellow-mosaic virus of okra	Okra yellow mosaic virus
<i>Hibiscus</i> spp. (hibiscus, rosemallow)	Mosaic-disease virus of okra	Okra mosaic virus
<i>Hibiscus</i> spp. (hibiscus, rosemallow)	<i>Ruga gossypi</i> Holmes (Cotton leaf-curl virus)	Cotton leaf-curl virus
<i>Juniperus</i> spp. (juniper)	<i>Exosporium deflectans</i> Karst.	<i>Stigmia deflectans</i> (Karst.) Ellis (Needlecast disease)
<i>Larix</i> spp. (larch)	<i>Phomopsis pseudotsugae</i> Wilson (Douglas fir canker)	<i>Phaciopycnis pseudotsuga</i> (M. Wils.) Hahn (Douglas fir canker)
<i>Lens</i> spp. (lentil) seeds	A rust fungus (a form of <i>Uromyces fabae</i> (Pers.) d By)	<i>Uromyces viciae-fabae</i> (Pers.) Schroet. (rust)
<i>Ligustrum</i> spp. (privet)	<i>Marmor ligustri</i> Holmes (Ligustrum-mosaic virus)	Ligustrum mosaic virus
<i>Malus</i> spp. (apple, crabapple)	<i>Physalospora piricola</i> Nose (Leaf, branch and fruit fungus)	<i>Guignardia piricola</i> (Nose) Yamamoto (Leaf, branch and fruit disease)
<i>Malus</i> spp. (apple, crabapple)	"Proliferation" (virus)	Apple proliferation agent
<i>Mangifera</i> spp. (mango) seed	<i>Sternochelus mangiferae</i> F.	<i>Cryptorhynchus mangiferae</i> F. (mango weevil)
<i>Morus</i> spp. (mulberry)	Mulberry mosaic virus	Mulberry mosaic agent
<i>Picea</i> spp. (spruce)	<i>Chrysomyxa rhododendri</i> (DC) D By. (Rust causing a serious needle disease)	<i>Chrysomyxa ledi</i> (Alb. & Schw.) d By var. <i>rhododendri</i> (DC) Seville. (Rhododendron-spruce needle rust)
<i>Picea</i> spp. (spruce)	<i>Phomopsis pseudotsugae</i> Wilson (Douglas fir canker)	<i>Phaciopycnis pseudotsuga</i> (M. Wils.) Hahn (Douglas fir canker)
<i>Populus</i> spp. (aspen, cottonwood, poplar)	<i>Pseudomonas rimaefaciens</i> Koning (Canker)	<i>Aplanobacter populi</i> Ride (Canker)
<i>Prunus</i> spp. (almond, apricot, cherry, peach, plum and prune)	Pox-disease virus of sweet cherry	Plum pox (= Sharka)
<i>Pseudotsuga</i> spp. (Douglas fir)	<i>Phomopsis pseudotsugae</i> Wilson (Douglas fir canker)	<i>Phaciopycnis pseudotsuga</i> (M. Wils.) Hahn (Douglas fir canker)
<i>Pyrus</i> spp. (pear)	<i>Physalospora piricola</i> Nose (Leaf, branch and fruit disease)	<i>Guignardia piricola</i> (Nose) Yamamoto (Leaf, branch and fruit disease)
<i>Pyrus</i> spp. (pear)	"Proliferation" (Virus)	Apple proliferation agent
<i>Ribes nigrum</i> spp. (black currant)	<i>Acrogenus ribis</i> Burk. (Black currant reversion disease virus)	Black currant reversion virus
<i>Rosa</i> spp. (rose)	<i>Marmor flaccumfaciens</i> Holmes (Rose wilt virus)	Rose wilt virus
<i>Salix</i> spp. (willow)	<i>Bacterium salicis</i> Day (Watermark disease)	<i>Erwinia salicis</i> (Day) Chester (Watermark disease)
<i>Sorbus</i> spp. (mountain ash)	Pyrus disease virus No. 1	Mountain ash variegation virus
<i>Vitis</i> spp. (grape)	<i>Marmor viticola</i> Holmes (Vine Mosaic virus)	Grapevine fanleaf virus and its strains
Articles designated in § 319.37-5(a)	Golden nematode <i>Heterodera rostochiensis</i> Wr.	<i>Globodera rostochiensis</i> (Woll.) Mulvey and Stone and <i>G. pallida</i> (Stone) Mulvey and Stone

Accordingly, it is proposed to revise "Subpart—Nursery Stock, Plants, and Seeds" in 7 CFR Part 319 § 319.37—§ 319.37-28a) to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds and Other Plant Products

Sec.

- § 319.37 Prohibitions and restrictions on importation; disposal of articles refused importation
- § 319.37-1 Definitions
- § 319.37-2 Prohibited Articles
- § 319.37-3 Permits
- § 319.37-4 Inspection and phytosanitary certificates of inspection
- § 319.37-5 Special foreign inspection and certification requirements
- § 319.37-6 Specific treatment and other requirements
- § 319.37-7 Postentry quarantine
- § 319.37-8 Growing media
- § 319.37-9 Approved packing material
- § 319.37-10 Marking and identity
- § 319.37-11 Arrival notification
- § 319.37-12 Prohibited articles accompanying restricted articles
- § 319.37-13 Treatment and costs and charges for inspection and treatment
- § 319.37-14 Ports of entry

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products¹

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

(a) Pursuant to section 7 of the Plant Quarantine Act (7 U.S.C. 160) and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) the Secretary of Agriculture has determined that, in order to prevent the introduction into the United States from any foreign country or locality of certain tree, plant, and fruit diseases, or injurious insects, new to or not widely prevalent or distributed within and throughout the United States it is necessary to prohibit the importation into the United States of certain articles from foreign countries and localities. Accordingly, no person shall import or offer for entry into the United States any article designated in § 319.37-2(a) or (b) of this subpart from the designated foreign countries and localities, except as otherwise provided in § 319.37-2(c) of this subpart.

¹One 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 class represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name.

(b) Pursuant to sections 1 and 5 of the Plant Quarantine Act (7 U.S.C. 154, 159) and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) the Secretary of Agriculture has determined that, in order to prevent the entry into the United States of certain injurious plant diseases, injurious insect pests, and other plant pests it is necessary to restrict the importation into the United States of certain articles from foreign countries and localities. Accordingly, no person shall import or offer for importation into the United States, or grow in the United States, any restricted article from any foreign country or locality unless in conformity with all of the applicable restrictions in this subpart.

(c) Any article refused importation for noncompliance with the requirements of this subpart shall be properly removed from the United States or abandoned by the importer for destruction, and pending such action shall be subject to the immediate application of such safeguards against escape of injurious plant diseases, injurious insect pests and other plant pests as the inspector determines necessary to prevent the introduction into the United States of such diseases or pests. If such article is not promptly safeguarded by the importer, removed from the United States, or abandoned for destruction, it may be seized, destroyed, or otherwise disposed of in accordance with 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).

§ 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:

Deputy Administrator. the Deputy administrator of the Plant Protection and Quarantine Programs, animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said Service 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, 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 or 319.37-6.

(c) It was not grown in a country or locality from which it would be subject to conditions of § 319.37-7 unless it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37-7², and

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

Indexing. (a) Serological testing, or (b) transmitting the juices from an article suspected of being infected with a particular disease to another article known to be susceptible to such disease, by grafting or otherwise, in order to determine the presence or absence of the disease in the article suspected of being infected with such disease.

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 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) 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

²Currently only *Chaenomoles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple); *Prunus* spp. (almond, apricot, cherry, nectarines, peach, plum, prune) and *Pyrus* spp. (pear) are required to be grown in Canada under such equivalent conditions after importation.

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 and the Federal Plant Pest Act, and regulations promulgated thereunder.

Prohibited article. Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product designated in § 319.37-2(a) or (b).

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 articles subject to any restricted entry orders in Part 321 (i.e. potatoes) or to any foreign quarantine notice in other subparts of Part 319, e.g., fruits and vegetables, cut flowers, sugarcane, rice, and excluding any prohibited articles listed in § 319.37-2(a) or (b).

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.

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

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

§ 319.37-2 Prohibited articles.

(a) The following listed articles from the designated countries and localities are prohibited articles and are prohibited from being imported or offered for entry into the United States except as provided in § 319.37-2(c) of this subpart.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
<i>Acacia</i> spp. (acacia)	Australia and Oceania	<i>Uromycladium tepperianum</i> (Sacc.) McAlp. (Rust).
<i>Acer</i> spp. (maple)	Japan	<i>Xanthomonas acicola</i> (Ogawa) Burk. (leaf disease).
	Bulgaria, Great Britain, France, Federal Republic of Germany (West), German Democratic Republic (East), and Japan.	Maple-variegation virus.
<i>Actinidia</i> spp. (Chinese gooseberry, kiwi)	Japan and Taiwan	<i>Pucciniastrum actinidiae</i> Hiratusuka (Rust).
<i>Adonia</i> spp.	All	A diversity of diseases including, but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Aesculus</i> spp. (horsechestnut)	Czechoslovakia, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).	Horsechestnut-variegation virus.
<i>Allagoptera arsnaria</i>	All	A diversity of diseases including, but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Althaea</i> spp. (althaea, hollyhock)	India	Hollyhock yellow-vein mosaic virus.
	Africa	Cotton leaf-curl virus.
<i>Anemone</i> spp. (anemone, windflower)	Federal Republic of Germany (West) and German Democratic Republic (East).	Anemone alloioptyly virus.
<i>Areca</i> spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Arenga</i> spp. (sugar palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Arikuryoba</i> spp. (arikuryoba palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Articles listed in § 319.37-2(b)	All except Canada	A diversity of diseases, insects, and other pests, including but not limited to: <i>Cactoblastis cactorum</i> (Berg); <i>Metamasius</i> spp.; <i>Opogona sacchari</i> (Bojer); <i>Chrysomya himalensis</i> Barclay (Spruce needle rust); <i>Aecidium mori</i> Barclay (Mulberry rust); <i>Pseudomonas lignicola</i> Westerd. & Buis. (Bacterial stain); <i>Pucciniastrum areolatum</i> (Fr.) Otth. (Cherry-spruce rust).
<i>Berberis</i> spp. (barberry) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Berberis</i> spp. (barberry) destined to an eradication State listed in § 301.38-2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Berberis</i> spp. (barberry) seed	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Borassus</i> spp. (palmira palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Caryota</i> spp. (fishtail palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Chaenomeles</i> spp. (flowering quince) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of plant diseases including but not limited to items 1, 21, and 23 listed in § 319.37-5(b)(2).
<i>Chrysalidocarpus</i> spp. (butterfly palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Chrysanthemum</i> spp. (chrysanthemum) not meeting the conditions for importation in § 319.37-5(c).	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China, and Republic of South Africa.	<i>Puccinia horiana</i> P. Henn. (White rust of chrysanthemum).

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
<i>Cocos nucifera</i> (coconut) (including seeds) (Coconut seed without husks or without milk may be imported into the United States in accordance with § 319.56 of this Part).	All except from Jamaica if meeting the conditions for importation in § 319.37-5(f).	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Cocos</i> spp. (other than <i>Cocos nucifera</i>)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Conifers	All except Canada	A diversity of diseases including but not limited to: <i>Guignardia laricina</i> (Sawada) Yamamoto & K. Ito (Shoot blight of larch); <i>Chrysomyxa deformans</i> (Diet.) Jacz. (Spruce needle rust); <i>Cronartium flaccidum</i> (Alb. & Schw.) (Scotch pine blister rust); <i>Chrysomyxa abietis</i> (Walt.) Ung. (Rust); <i>Phaciopycnis pseudotsuga</i> (M. Wils.) Hahn (Douglas fir canker); <i>Stigmata defleatans</i> (Karst.) Ellis (Needlecast disease); <i>Chrysomyxa ledi</i> (Alb. & Schw.) f. var. <i>rhododendri</i> (DC) Savile. (Rhododendron-spruce needle rust).
<i>Corypha</i> spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Cydonia</i> spp. (quince) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to items 1, 2, 18, 19, 20, 21, and 23 listed in § 319.37-5(b)(2).
<i>Datura</i> spp.	Colombia	<i>Datura</i> Colombian virus.
<i>Dictyosperma</i> spp. (Princess palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Elaeis</i> spp. (oil palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Erianthus</i> spp. (plumegrass)	All	<i>Puccinia melanocephala</i> H. Syd. & P. Syd. (Sugarcane rust).
<i>Eucalyptus</i> spp.	Argentina	Leaf chlorosis virus.
<i>Euonymus</i> spp. (euonymus)	Federal Republic of Germany (West) and German Democratic Republic (East).	Euonymus mosaic virus.
<i>Fragaria</i> spp. (strawberry)	Australia, Austria, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.	<i>Phytophthora fragariae</i> Hickman (Red stele disease).
<i>Fraxinus</i> spp. (ash)	Europe	<i>Pseudomonas savastanoi</i> var. <i>fraxini</i> (Brown) Dowson (Canker and dwarfing disease of ash).
<i>Gaussia</i> spp. (Ilumepalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Gladiolus</i> spp. (gladiolus)	Africa	<i>Puccinia mcleanii</i> Doidge (Rust); <i>Uredo gladioli-buettneri</i> Bub. (Rust); <i>Uromyces gladioli</i> P. Henn. (Rust); <i>U. nykensis</i> Syd. (Rust).
<i>Gossypium</i> spp.	All	A diversity of diseases including but not limited to: cotton leaf curl virus; cotton virescence agent; small leaf virus.
<i>Hibiscus</i> spp. (hibiscus, rose mallow)	Trinidad and Tobago, and Nigeria	Okra mosaic virus.
	India	Okra yellow mosaic virus.
	Africa	Cotton leaf curl virus.
<i>Howea belmoreana</i> (Sentry palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Hydrangea</i> spp. (hydrangea)	Japan	<i>Aecidium hydrangeae-paniculatae</i> Dietel
<i>Ipomoea</i> spp. (sweetpotato)	All except Canada	A diversity of diseases including but not limited to: sweetpotato witches broom (little leaf); and sweetpotato viruses of eastern Africa.
<i>Jasminum</i> spp. (jasmine)	Belgium, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).	Jasmine-variegation virus.
<i>Lantana</i> spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Lens</i> spp. seed (lentil)	South America	<i>Uromyces viciae-fabae</i> (Pers.) Schroet. (Rust).
<i>Ligustrum</i> spp. (privet)	Federal Republic of Germany (West) and German Democratic Republic (East).	Ligustrum mosaic virus.
<i>Livistona</i> spp. (fan palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Mahoberberis</i> spp. (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Mahoberberis</i> spp. destined to an eradication state listed in § 301.38-2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Mahoberberis</i> spp. seed	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Mahonia</i> spp. (mahonia) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Mahonia</i> spp. (mahonia) destined to an eradication state listed in § 301.38-2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Mahonia</i> spp. seed	All	<i>Puccinia graminis</i> Pers. (Black stem rust).
<i>Malus</i> spp. (apple, crabapple) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to items 1, 2, 3, 6, 7, 8, and 23 listed in § 319.37-5(b)(2).
<i>Mangifera</i> spp. (mango) seed	Japan	<i>Valsa mali</i> Miyabe and Yamada ex. M. Miura (Branch canker fungus).
<i>Manihot</i> spp. (cassava)	All except North and South America	<i>Cryptorhynchus mangiferae</i> F. (Mango weevil).
	All except Canada	A diversity of diseases, insects, and other pests including but not limited to: <i>Monorychellus tanajoa</i> (Bondar) (cassava mite); <i>Phenacoccus manihoti</i> Matile-Ferrero (cassava mealybug); <i>Xanthomonas manihoti</i> (Arthand-Berthel) Starr (Bacterial blight); Cassava brown streak virus; Cassava latent virus; Cassava African mosaic virus; Cassava common mosaic virus.
<i>Mascarena</i> spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Morus</i> spp. (mulberry)	People's Republic of China, Japan, India, and Union of Soviet Socialist Republics.	A diversity of diseases including but not limited to: Mulberry dwarf; Mulberry curly little leaf agent; Mulberry mosaic agent.
<i>Nannorrhops</i> spp. (mazaripalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
<i>Oryza</i> spp. (rice) (seeds are prohibited by § 319.55)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; <i>Melanomma glumarum</i> Miy.; <i>Oospora oryzae</i> Sacc.; <i>Rhynchosporium oryzae</i> Hashioka & Yokogi; <i>Xanthomonas oryzae</i> (Uyeda & Ishiyama) Dowson.
<i>Persea</i> spp. (avocado) seed	Mexico, Central and South America	<i>Helipus lauri</i> Boh. (Avocado weevil); <i>Stenoma catenifer</i> Wals. (Avocado seed moth); <i>Conotrachelus</i> spp.
<i>Philadelphus</i> spp. (mock orange)	Europe	Elm mottle virus.
<i>Phoenix</i> spp. (date)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Populus</i> spp. (aspen, cottonwood, poplar)	Europe	<i>Aplanobacter populi</i> Ride (Canker).
<i>Pritchardia</i> spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Prunus</i> spp. (almond, apricot, cherry, nectarine, peach, plum, prune) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to items 1 and 9 through 17 listed in § 319.37-5(b)(2).
<i>Pyrus</i> spp. (pear) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to items 1 through 5, 21, and 23 listed in § 319.37-5(b)(2).
<i>Quercus</i> spp. (oak)	Japan	<i>Stereum hiugense</i> Imazeki (White rot); a gall-forming rust.
<i>Ribes nigrum</i> (black currant)	Australia, Province of British Columbia in Canada, Europe, and New Zealand.	Black currant reversion agent.
<i>Rosa</i> spp. (rose)	Australia, Italy, New Zealand, and Republic of South Africa.	Rose wilt virus.
<i>Salix</i> spp. (willow)	Great Britain, The Netherlands, Federal Republic of Germany (West), and German Democratic Republic (East).	<i>Erwinia salicis</i> (Day) Chester (Watermark disease).
Seeds of all kinds when in pulp	All except Canada	Fruit flies, or other injurious insects.
<i>Solanum</i> spp. (potato) (including seeds)	All	Andean potato latent virus; Andean potato mottle virus; Potato mop top virus; <i>Dulcamara</i> mottle virus; Tomato blackring virus; Tobacco rattle virus; Potato virus Y (tobacco vein necrosis strain); Potato purple top wilt agent; Potato marginal flavescence agent; Potato purple top roll agent; Potato witches broom agent; Stolbar agent; Parastolbar agent; Potato leaf-let stunt agent; Potato spindle tuber viroid.
<i>Sorbus</i> spp. (mountain ash)	Federal Republic of Germany (West) and German Democratic Republic (East).	Mountain ash variegation virus.
People's Republic of China, Japan, Philippine Islands, Oceania, Australia, and New Zealand.		<i>Taphrina piri</i> Kusano (Leaf distortion fungus).
<i>Syringa</i> spp. (lilac)	Europe	Elm mottle virus.
<i>Trachycarpus</i> spp. (windmillpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Ulmus</i> spp. (elm) (including seeds)	Europe	Elm mottle virus.
<i>Veitchia</i> spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
<i>Vitis</i> spp. (grape)	All except Canada	A diversity of diseases including but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; <i>Xanthomonas ampelina</i> Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.
<i>Zizania</i> spp. (wild rice)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice Black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; <i>Melanomma glumarum</i> Miy.; <i>Oospora oryzae</i> Sacc.; <i>Rhynchosporium oryzae</i> Hashioka & Yokogi; <i>Xanthomonas oryzae</i> (Uyeda & Ishiyama) Dowson.

Note.—The States listed below prohibit the entry into such States of articles (except seeds, unless specifically mentioned) of the genera listed for each State:

California: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp.; *Castanea* spp. (chestnut); *Castanopsis* spp. (chinquapin); *Pinus* spp. (pine).
 Idaho: *Pinus* spp. (pine).
 Massachusetts: *Ribes* spp. (currant, gooseberry) (including seeds).
 Montana: *Pinus* spp. (pine).
 Nevada: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp.
 New York: *Ribes* spp. (currant, gooseberry) (including seeds).
 Oregon: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp. *Castanea* spp. (chestnut); *Castanopsis* spp. (chinquapin); *Corylus* spp. (filbert, hazel, hazelnut, cobnut); *Pinus* spp. (pine).

Utah: *Pinus* spp. (pine).
 Washington: *Corylus* spp. (filbert, hazel, hazelnut, cobnut).
 West Virginia: *Ribes* spp. (currant, gooseberry) (including seeds).
 Wisconsin: *Pinus* spp. (pine) (5-leaved); *Ribes* spp. (currant, gooseberry) (including seeds).

(b) The following listed "articles" are prohibited from all foreign countries and localities except Canada:

(1) *Rhododendron* spp. (rhododendron and azalea) or other genera or species of similar slow growth habit, other than artificially dwarfed trees or shrubs—

(i) Exceeding 3 years of age if grown from seeds or cuttings; or

(ii) Exceeding 2 years of age after severance from the parent plant if produced by layers; or

(iii) Having more than 3 years' growth from the bud or graft if produced by budding or grafting.

(2) Any naturally dwarf or miniature form of tree or shrub exceeding 12 inches (approximately 305 millimeters) in height from the soil line.

(3) Herbaceous perennials imported in the form of root crowns or clumps exceeding 102 millimeters (approximately 4 inches) in diameter.

(4) Stem cuttings (without leaves, roots, sprouts, or branches) exceeding 102 millimeters (approximately 4 inches) in diameter or exceeding 1.83 meters (approximately 6 feet) in length.

(5) Cacti cuttings (without roots or branches) exceeding 153 millimeters

(approximately 6 inches) in diameter or exceeding 1.22 meters (approximately 4 feet) in length.

(6) Plants (other than stem cuttings, cacti cuttings, and artificially dwarfed plants) exceeding 305 millimeters (approximately 12 inches) in height from soil line to terminal growing point and whose growth habits simulate the woody character of trees and shrubs, including but not limited to cacti, cycads, yuccas, and dracaenas.

(7) Any tree or shrub or a type not listed above, other than an artificially dwarf tree or shrub, and—

(i) Exceeding 2 years of age if grown from seeds or cuttings; or

(ii) Exceeding 1 year of age after severance from the parent plant if produced by layers; or

(iii) Having more than 2 years' growth from the bud or graft if produced by budding or grafting.

(c) Any article listed as a prohibited article in paragraphs (a) or (b) of this section may be imported or offered for entry into the United States if:

(1) Imported by the United States Department of Agriculture for experimental or scientific purposes; and

(2) Imported under conditions found by the Deputy Administrator and specified on the permit to be adequate to prevent the introduction into the United States of tree, plant, or fruit diseases, or injurious insects, or other plant pests, i.e., conditions of treatment, processing, growing, shipment, disposal.

§ 319.37-3 Permits.

(a) The restricted articles (other than articles for food, analytical, medicinal, or manufacturing purposes) in any of the following categories may be imported or offered for importation into the United States only after issuance of a written permit by the Plant Protection and Quarantine Programs:

(1) Articles subject to treatment and other requirements of § 319.37-6;

(2) Articles subject to the postentry quarantine conditions of § 319.37-7;

(3) Bulbs of *Allium sativum* L. (garlic);

(4) Articles of *Cocos nucifera* (coconut); and articles (except seeds) of *Chrysanthemum* spp. (chrysanthemum) and *Dianthus* spp. (carnation, sweet William) from any country or locality except Canada;

(5) Lots of 13 or more articles (other than seeds, bulbs, sterile cultures of orchid plants) from any country or locality except Canada;

(6) Seeds of trees or shrubs from any country or locality except Canada;

(7) Articles (except seeds) of *Fragaria* spp. (strawberry), *Malus* spp. (apple,

crabapple), *Pyrus* spp. (pear), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune), *Cydonia* spp.

(quince), *Chaenomeles* spp. (flowering quince), and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), from Canada;

(8) Woody plants, shrubs, and trees (except seeds) grown out-of-doors in Prince Edward Island, Nova Scotia, the counties of Albert and Westmoreland in New Brunswick, the city of Richmond on Lulu Island in British Columbia, and Vancouver Island in British Columbia;

(9) Articles (except seeds) of *Castanea* spp. (chestnut) or *Castanopsis* spp. (chinquapin) destined to California or Oregon;

(10) Articles (except seeds) of *Pinus* spp. (pine), (5-leaved) destined to Wisconsin;

(11) Articles of *Ribes* spp. (currant, gooseberry), (including seeds) destined to Massachusetts, New York, West Virginia, or Wisconsin;

(12) Articles (except seeds) of *Planera* spp. (water elm, planer) or *Zelkova* spp. from Europe, Canada, St. Pierre, or Miquelon and destined to California, Nevada, or Oregon;

(13) Seeds of *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune) from Canada and destined to Colorado, Michigan, New York, Washington, or West Virginia;

(14) Articles (except seeds) of *Vitis* spp. (grape) from Canada and destined to California, New York, Ohio, Oregon, and Washington;

(15) Articles (except seeds) of *Corylus* spp. (filbert, hazel, hazelnut, cobnut) from provinces east of Manitoba in Canada and destined to Oregon or Washington;

(16) Articles (except seeds) of *Pinus* spp. (pine) from Canada and destined to California, Idaho, Montana, Oregon, or Utah; and

(17) Articles (except seeds) of *Ulmus* spp. (elm) from Canada and destined to California, Nevada, or Oregon.

(b) 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.

(c) An application for a written permit should be submitted to the Plant Protection and Quarantine Programs (Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782) at least 30 days prior to arrival of the article at the port of entry. The completed

application shall include the following information:³

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds (botanical designations) of articles intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

(d) After receipt and review of the application by Plant Protection and Quarantine Programs, a written permit indicating the applicable conditions for importation under this subpart shall be 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.⁴

(e) 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.⁴

³ Application forms are available without charge from the Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, or local offices which are listed in telephone directories.

⁴ 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 Act (7 U.S.C. 150dd, 150ff) also authorizes emergency measures against prohibited and restricted articles which are not in compliance with the provisions of this subpart.

(f) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he 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 his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

§ 319.37-4 Inspection and phytosanitary certificates of inspection.

(a) Any restricted article grown in a country maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be accompanied by a phytosanitary certificate of inspection from the plant protection service of such country at the time of importation or offer for importation into the United States.

(b) Any restricted article accompanied by a valid phytosanitary certificate of inspection is subject to inspection by an inspector at the time of importation into the United States for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests, and whether such article is otherwise eligible to be imported into the United States.

(c) Any restricted article grown in a country not maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be inspected by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of such diseases and pests and whether such article is otherwise eligible to be imported into the United States.

§ 319.37-5 Special foreign inspection and certification requirements.

(a) Any restricted article (except seeds; unrooted cuttings; and articles

solely for food, analytical, or manufacturing purposes) from a country listed below, at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown on land which has been sampled and microscopically inspected by the plant protection service of the country in which grown within 12 months preceding issuance of the certificate and found free from potato cyst nematodes, *Globodera rostochiensis* (Woll.) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone: Algeria, Argentina, Austria, Azores, Belgium, Bolivia, Canada (only that portion comprising Newfoundland, and the Land District of South Saanich on Vancouver Island in British Columbia), Channel Islands, Chile, Columbia, Czechoslovakia, Denmark (including Faeroe Islands), Ecuador, Federal Republic of Germany (West), Finland, France, German Democratic Republic (East), Great Britain, Greece, Guernsey, Iceland, India, Ireland, Israel, Italy, Japan, Jersey, Lebanon, Luxembourg, Mexico, The Netherlands, New Zealand, Northern Ireland, Norway, Panama, Peru, Poland, Portugal, South Africa, Spain (including Canary Islands), Sweden, Switzerland, Union of Soviet Socialist Republics, Venezuela, and Yugoslavia.

(b)(1) Any article (except seeds) of *Chaenomeles* spp. (flowering quince); *Cydonia* spp. (quince); *Malus* spp. (apple, crabapple); *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune); and *Pyrus* spp. (pear), at the time of importation or offer for importation into the United States, shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown in a nursery in Belgium, Canada, France, Federal Republic of Germany (West), The Netherlands, or Great Britain, and found by the plant protection service of the country in which grown to be free of injurious plant diseases (i.e., for *Chaenomeles* items 1 and 21 listed in paragraph (b)(2) of this section, for *Cydonia* items 1, 18, 19, 20, and 21 listed in paragraph (b)(2) of this section; for *Malus* items 1, 3, 6, 7, 8, and 23 listed in paragraph (b)(2) of this section; for *Prunus* items 1 and 9 through 17 listed in paragraph (b)(2) of this section; for *Pyrus* items 1, 3, 4, 5, 21, and 23 listed in paragraph (b)(2) of this section) based on the testing of parent stock by visual

examination and indexing, and that such article was grown in a nursery free of any such specified plant diseases.⁵

(2) List of diseases.

- (i) *Monilinia fructigena* (Aderh. & Ruhl.) Honey (Brown rot of fruit).
- (ii) *Guignardia piricola* (Nose) Yamamoto (Leaf, branch & fruit disease).
- (iii) Apple proliferation agent.
- (iv) Pear blister canker virus.
- (v) Pear bud drop virus.
- (vi) *Diaporthe mali* Bres. (Leaf, branch & fruit fungus).
- (vii) Apple green crinkle virus.
- (viii) Apple chat fruit virus.
- (ix) Plum pox (= Sharka) virus.
- (x) Cherry leaf roll virus.
- (xi) Cherry rusty mottle (European) agent.
- (xii) Apricot chlorotic leaf roll.
- (xiii) Plum bark split virus.
- (xiv) Arabis mosaic virus and its strains.
- (xv) Raspberry ringspot virus and its strains.
- (xvi) Tomato blackring virus and its strains.
- (xvii) Strawberry latent ringspot virus and its strains.
- (xviii) Quince sooty ringspot agent.
- (xix) Quince yellow blotch agent.
- (xx) Quince stunt agent.
- (xxi) *Gymnosporangium asiaticum* Miyabe ex. Yamada (Rust).
- (xxii) *Valsa mali* Miyabe and Yamada ex. Miura (Branch canker fungus).
- (xxiii) Apple ringspot virus.
- (c) Any article (except seeds) of *Chrysanthemum* spp. (chrysanthemum) from Great Britain shall at the time of importation or offer for importation into the United States be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free of white rust disease (caused by the rust fungus, *Puccinia horiana* P. Henn.)

⁵ In all of the listed countries, indexing of parent stock for species of *Prunus* not immune to plum pox (i.e., other than *Prunus avium*, *P. cerasus*, *P. mahaleb*, *P. padus*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. lourocerasus*, *P. virginiana*, *P. effusa*, *P. sargentii*, *P. yedoensis*) is currently done only at government operated nurseries (research stations). In France all indexing of parent stock for all *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. is currently done only at government operated nurseries (research stations).

based on visual examination of parent stock and that such article was grown in a greenhouse nursery free of such plant disease.

(d) Any article (except seeds) of *Dianthus* spp. (carnation, sweet William) from Great Britain shall be grown under postentry quarantine conditions specified in § 319.37-7(c) unless at the time of importation or offer for entry into the United States the phytosanitary certificate of inspection accompanying such article contains an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free of injurious plant diseases caused by *Phialophora cinerescens* (Wr.) U. Beyma (*Verticillium cinerescens* Wr.) and carnation etched ring, "streak" and "Fleck" viruses, based on visual examination and indexing of the parent stock and that such article was grown in a greenhouse nursery free of such plant diseases.

(e) Any article (except seeds) of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Ontario, Canada, shall be grown under postentry quarantine conditions specified in § 319.37-7(b) unless at the time of importation or offer for importation into the United States the phytosanitary certificate of inspection accompanying such article contains an accurate additional declaration that such article was found by the plant protection service of Canada to be free of rubus stunt virus based on visual examination and indexing of the parent stock.⁶

(f) Any article of *Cocos nucifera* (coconut) at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was found by the plant protection service of Jamaica to be of Malayan dwarf variety (which is resistant to lethal yellowing disease) based on the visual examination of the parent stock.

§ 319.37-6 Specific treatment and other requirements.

(a) Seeds of *Hibiscus* spp. (hibiscus, rosemallow) and seeds of *Abelmoschus* spp. (okra), from any foreign country or locality, at the time of importation into the United States, shall be treated for possible infestation with *Pectinophora gossypiella* (pink bollworm) in accordance with the applicable

provisions of the Plant Protection and Quarantine Treatment Manual.⁷

(b) Seeds of *Lathyrus* spp. (sweet pea, peavine); *Lens* spp. (lentil); and *Vicia* spp. (fava bean, vetch) from countries and localities other than those in North America and Central America, at the time of importation into the United States, shall be treated for possible infestation with insects of the family Bruchidae in accordance with the applicable provisions of the PPQ Treatment Manual.⁷

(c) Because of possible infestation with *Aleurocanthus woglumi* Ashby (citrus blackfly), any restricted article (other than seeds) of genera and species listed below from any country or locality (other than Canada, Europe, or any other country or locality bordering on the Mediterranean Sea) shall be (1) defoliated before arrival at a port of entry in the United States; or (2) treated in accordance with the applicable provisions of the PPQ Treatment Manual, at the time of importation into the United States.

Achras (see Manilkara)
Anacardium (cashew, maranon)
Annona (cherimoya, soursop, custard apple, sweetsop)
Ardisia
Bouvardia
Bumelia
Bursera
Buxus (boxwood)
Capsicum (pepper)
Cardiospermum (heartseed)
Cedrela
Cestrum
Cnidioscolus (tread-softly)
Coffea (coffee)
Crataegus (hawthorne)
Cydonia (quince)
Diospyros (persimmon)
Duranta (skyflower)
Eugenia (malay apple, Surinam Cherry)
Fraxinus (ash)
Hibiscus (hibiscus, rosemallow)
Hura (sandbox tree)
Ixora (ixora)
Jatropha (nettlespurge)
Lagerstroemia (crepe myrtle)
Magnolia (magnolia)
Mammea (mamey apple)
Mangifera (mango)
manilkara (*Achras*) (sapodilla)
Melia (chinaberry)
Myroxylon (balm tree)
Myrtus (myrtle)
Persea (avocado)
Plumeria (plumeria)
Populus (poplar, cottonwood, aspen)
Pouteria (*Calocarpum*) (sapote, mamey sapote)
Psidium (guava)

⁷The PPQ Treatment Manual was incorporated by reference on June 15, 1978, and is available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, and is on file at the Federal Register.

Punica (pomegranate)
Pyrus (pear)
Sapindus (soapberry)
Solandra (chalicevine)
Spondias (mombin, jobo plum, hog plum)
Strelitzia (bird of paradise)
Tabebuia (trumpet tree)
Vitis (grape)
Zingiber (ginger)

(d) Seeds of alfalfa and related plants (i.e., *Medicago falcata*, *M. gaetula*, *M. glutinosa*, *M. media*, *M. sativa*) from Europe, at the time of importation into the United States shall be treated for possible infection with *Verticillium albo-atrum* by dusting with Arasan 50 (50 percent Thiram) at a rate of 8 ounces (approximately 226.8 grams) per 100 pounds (approximately 45.36 kilograms) of seeds, or by treating with a slurry of Arasan 50 Red at a rate of 8 ounces (approximately 226.8 grams) per pint (approximately 473.12 cubic centimeters) of water per 100 pounds (approximately 45.36 kilograms) of seeds.

(e) Seeds of *Glycine* spp. (soybean); *Dolichos* spp. (lablab); *Pachyrhizus* spp. (yam bean root, jicama); *Phaseolus* spp. (bean), *Pueraria* spp. (Chinese yam, kudzu bean, kudzu vine); and *Vigna* spp. (cowpea, catjang, asparagus bean, black-eyed pea, moth bean, azuki bean) from Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, or the West Indies, at the time of importation into the United States shall be treated for possible infection with *Phakopsora pachyrhizi* Syd. (soybean rust) by dusting with Patterson's Multipurpose Fungicide (a Zineb-Captan formulation) at the rate of 1.05 ounces (approximately 29.77 grams) actual Zineb per bushel (approximately 35.24 liters) or by treating with a slurry of Patterson's Multipurpose Fungicide at the rate of 0.74 ounces (approximately 20.98 grams) actual Zineb per bushel (approximately 35.24 liters) of seeds.

§ 319.37-7 Postentry quarantine.

(a) The following restricted articles from the designated countries and localities (1) may be imported or offered for importation into the United States only after a completed postentry quarantine agreement, as provided in paragraph (c) of this section, has been submitted to the Plant Protection and Quarantine Programs and (2) shall be grown under postentry quarantine conditions specified in paragraph (c) of this section:

⁶Such testing is done under the Raspberry Plant Certification Program of Ontario, Canada.

Restricted article (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
<i>Acacia</i> spp. (acacia)	All except Canada, Australia, and Oceania.
<i>Acer</i> spp. (maple)	All except Bulgaria, Canada, Great Britain, France, Federal Republic of Germany (West), German Democratic Republic (East), and Japan.
<i>Actinidia</i> spp. (chinese gooseberry, kiwi)	All except Canada, Australia, Japan, New Zealand, and Taiwan.
<i>Aesculus</i> spp. (horse chestnut)	All except Canada, Czechoslovakia, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).
<i>Althaea</i> spp. (althaea, hollyhock)	All except Canada, India, and Africa.
<i>Anemone</i> spp. (anemone, windflower)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
<i>Berberis</i> spp. (barberry) destined to any State except the eradication States listed in § 301.38-2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All.
<i>Bromeliads</i> spp. (bromeliads) destined to Hawaii	All.
<i>Chaenomeles</i> spp. (flowering quince) meeting the conditions for importation in § 319.37-5(b).	Countries listed in § 319.37-5(b) except Canada.
<i>Chrysanthemum</i> spp. (chrysanthemum)	All except Argentina, Brazil, Canada, Europe, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China and Republic of South Africa.
<i>Crataegus monogyna</i> Jacq. (hawthorne, thornapple, red haw)	Europe.
<i>Cydonia</i> spp. (quince) meeting the conditions for importation in § 319.37-5(b).	Countries listed in § 319.37-5(b) except Canada.
<i>Datura</i>	All except Canada, Colombia and India.
<i>Dianthus</i> spp. (carnation, sweet William)	Great Britain, unless exempted from postentry quarantine conditions pursuant to § 319.37-5(d), and all other countries and localities except Canada.
<i>Eucalyptus</i> spp. (eucalyptus)	All except Canada, Argentina, Sri Lanka (Ceylon), Uruguay, and Europe.
<i>Euonymus</i> spp. (euonymus)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
<i>Fragaria</i> spp. (strawberry)	All except Australia, Austria, Canada, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.
<i>Fraxinus</i> spp. (ash)	All except Canada and Europe.
Fruit and nut articles listed by common name in paragraph (b) of this section.	All except Canada.
<i>Gладиолус</i> spp. (gladiolus)	All except Canada, Africa, Italy, Malta, and Portugal.
<i>Hibiscus</i> spp. (hibiscus, rosemallow)	All except Canada, Trinidad and Tobago, India, and Africa.
<i>Humulus</i> spp. (hops)	All.
<i>Hydrangea</i> spp. (hydrangea)	All except Canada and Japan.
<i>Jasminum</i> spp. (jasmine)	All except Belgium, Canada, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).
<i>Ligustrum</i> spp. (privet)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
<i>Mahoberberis</i> spp. destined to any State except the eradication States listed in § 301.38-2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All.
<i>Mahonia</i> spp. (mahonia) destined to any State except the eradication States listed in § 301.38-2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All.
<i>Malus</i> spp. (apple, crabapple) meeting the conditions for importation in § 319.37-5(b).	Countries listed in § 319.37-5(b) except Canada.
<i>Mespilus germanica</i> L.	Countries listed in § 319.37-5(b) except Canada.
<i>Morus</i> spp. (mulberry)	All except Canada, People's Republic of China, Japan, India, and Union of Soviet Socialist Republic.
Nut and fruit articles (see fruit and nut articles)	All except Canada.
<i>Passiflora</i> spp. (passion fruit)	All except Canada and Europe.
<i>Philadelphus</i> spp. (mock orange)	All except Canada and Europe.
<i>Populus</i> spp. (aspen, cottonwood, poplar)	All except Canada and Europe.
<i>Prunus</i> spp. (almond, apricot, cherry, nectarine, peach, plum, prune) meeting the conditions for importation in § 319.37-5(b).	Countries listed in § 319.37-5(b) except Canada.
<i>Pyrus</i> spp. (pear) meeting the conditions for importation in § 319.37-5(b).	Countries listed in § 319.37-5(b) except Canada.
<i>Quercus</i> spp. (oak)	All except Canada and Japan.
<i>Ribes nigrum</i> spp. (black currant)	All except Australia, Canada, Europe, and New Zealand.
<i>Rosa</i> spp. (rose)	All except Australia, Canada, Italy, New Zealand, and Republic of South Africa.
<i>Rubus</i> spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry).	All unless exempted from postentry quarantine conditions pursuant to § 319.37-5(e).
<i>Salix</i> spp. (willow)	Europe except Great Britain, The Netherlands, the Federal Republic of Germany (West), and German Democratic Republic (East).
<i>Sorbus</i> spp. (mountain ash)	All except Australia, Canada, Federal Republic of Germany (West), German Democratic Republic (East), Japan, New Zealand, People's Republic of China, Philippine Islands, and Oceania.
<i>Syringa</i> spp. (lilac)	All except Canada and Europe.
<i>Ulmus</i> spp. (elm)	All except Canada and Europe.

(b) *Fruit and Nut Articles* (common names are listed after scientific names).

Achras—(Synonym for *Manilkara*)
Annona—custard apple, cherimoya, sweetsop, sugarapple, soursop, bullock's heart, alligator apple, suncoya, ilama, guanabana, pond apple
Anacardium—cashew
Artocarpus—breadfruit, jackfruit
Averrhoa—carambola
Blighia—akee
Bouea—kundangan
Calocarpus—sapote
Carica—papaya, pawpaw
Carissa—natal plum
Carya—hickory, pecan
Castanea—chestnut
Ceratonia—St. Johnsbread
Chrysobalanus—coco plum
Chrysophyllum—starapple
Coccoloba—sea-grape, pigeon plum
Corylus—filbert, hazel, hazelnut, cobnut
Crataegus—hawthorne
Diospyros—persimmon, kaki, mabola
Durio—durian
Eriobotrya—loquat, Japanese medlar, Japanese plum
Euphoria—longan
Eugenia—roseapple, Malayapple, Curacaoapple
Feijoa—feijoa, pineapple guava
Ficus—fig
Garcinia—mangosteen, gourka
Juglans—walnut, butternut, heartnut, regranut, buartnut
Lansium—langsat
Litchi—lychee, leechie
Macadamia—macadamia nut, queensland nut
Malpighia—Barbados cherry
Mammea—mammeapple, mamey
Mangifera—mango
Manilkara—sapodilla

NOTE.—California requires trees, plants, and shrubs of *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune) and plants of *Fragaria* spp. (strawberry) to be grown under postentry quarantine as a condition of entry into such State.

Melicoccus—honeyberry, mamoncilla, spanish lime, genip
Nephelium—rambutan, pulasan
Olea—olive
Persea—avocado, alligator pear
Phoenix—date
Phyllanthus—otahete-gooseberry
Pistacia—pistachio
Pouteria—Lucuma
Psidium—guava, guayala
Punica—pomegranate, granada
Pyronia—quinpear
Rhodomyrtus—hill gooseberry, rose myrtle
Ribes (other than *Ribes nigrum*)—red currant, white currant, gooseberry
Spondias—yellow mombin, red mombin, hog plum
Syzygium—Malayapple, rose apple, java plum
Theobroma—cacao
Vaccinium—blueberry, cranberry
Ziziphus—jujube

(c) Any restricted article required to be grown under postentry quarantine conditions shall be grown under the supervision and control of a person who has signed a postentry quarantine agreement to comply with the following conditions for the period of time specified below:

- (1) To grow such article or increase therefrom only on specified premises;
- (2) To permit an inspector to have access to the specified premises for inspection of such article during regular business hours;
- (3) To keep the article and any increase therefrom identified with a label showing the name of the article, port accession number, and date of importation;
- (4) To keep the article separated from any domestic plant or plant product of the same genus by no less than 3 meters (approximately 10 feet); and from other imported plant or plant products by the same distance;
- (5) To allow or apply remedial measures (including destruction) determined by an inspector to be necessary to prevent the spread of an injurious plant disease, injurious insect pest, or other plant pest; and
- (6) To notify Plant Protection and Quarantine Programs if any abnormality of the article is found or if the article dies. The above conditions apply to any such article for a period of 2 years after importation, except that they apply to an article of *Dianthus* spp. (carnation, sweet William) for 1 year after importation and to an article of *Chrysanthemum* spp. (chrysanthemum) for 6 months after importation.

(d) A completed postentry quarantine agreement shall accompany the application for a written permit for an

article required to be grown under postentry quarantine conditions.⁹

§ 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 paragraphs (b), (c), or (d) of this section.

(b) A restricted article from Canada other than from Newfoundland or from the Land District of South Saanich on Vancouver Island in British Columbia may be imported in any growing medium.

(c) A restricted article growing solely in agar may be imported in such growing medium.

(d) A restricted article which is a herbaceous plant or shrub may be imported in 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, ureaformaldehyde.

(1) 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 was:

- (i) Grown throughout its growing period only in a greenhouse with insect-proof screening on all vents and with automatic closing doors;
- (ii) Grown in a greenhouse unit solely used for articles grown under all the criteria specified in this paragraph (d);
- (iii) Grown in a greenhouse free of sand, soil, or earth;
- (iv) Grown in a greenhouse where strict sanitary procedures are always practices, i.e., cleaning and disinfection of floors, benches and tools, the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests;

(v) Stored only in areas found by an official of the plant protection service of the country where grown to be free of injurious plant diseases, injurious insect pests, and other plant pests;

(vi) Shipped in containers found by such an official to be free of injurious plant diseases, injurious insect pests, and other plant pests; and

(vii) Inspected and found by such an official to have been grown, stored,

⁹ Postentry quarantine agreement forms are available without charge from the Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, or local offices of the Plant Protection and Quarantine Programs which are listed in the telephone directories.

packaged and shipped solely under conditions necessary to assure the absence of injurious plant diseases, injurious insect pests, and other plant pests; and

(2) If the accompanying phytosanitary certificate of inspection is endorsed by a PPQ inspector representing a finding that the conditions listed above are being met.

§ 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 such packing material is free from sand, soil, or earth (except for sand, soil, or earth designated below); has not been used previously as packing material or otherwise; is not intermixed with other approved packing material; and is listed below:

Buckwheat hulls.

Coral sand from Bermuda, if the article packed in such sand is accompanied by a valid 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.

Polymer stabilized cellulose.

Quarry gravel.

Sawdust.

Shavings—wood or cork.

Sphagnum moss.

Subsoil from Ryukyu Islands, Japan (only for lily bulbs accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of Japan that such subsoil was dug from at least 2 feet below the soil surface, was sifted and dried, and was stored in isolation from injurious plant diseases, injurious insect pests, and other plant pests).

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

§ 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 list indicating the contents of the shipment.

§ 319.37-11 Arrival notification.

Promptly upon arrival of any restricted article at a port of entry, the importer shall notify the Plant Protection and Quarantine Programs of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

§ 319.37-12 Prohibited articles accompanying restricted articles.

A restricted article for importation into the United States shall not be packed in the same container as an article prohibited importation into the United States by this part or Part 321.

§ 319.37-13 Treatment and costs and charges for inspection and treatment.

The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.⁹ No charge will be made to the importer for Government owned or controlled special inspection facilities and equipment used in treatment, but the inspector may require the importer to furnish any special labor, chemicals, packing materials, or other supplies

⁹Provisions relating to costs for other services of an inspector are contained in Part 354.

required in handling an importation under the regulations in this subpart. The Plant Protection and Quarantine Programs will not be responsible for any costs or charges, other than those indicated in this section. Any treatment performed in the United States on a restricted article shall be performed by an inspector or under an inspector's supervision at a government-operated special inspection facility, except that an importer may have such treatment performed at a nongovernmental facility if the treatment is performed at non-government expense under the supervision of an inspector and in accordance with any applicable treatment requirements of this subpart and in accordance with any treatment required by an inspector as an emergency measure in order to prevent the dissemination of any 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. However, treatment may be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, such articles can be transported to such nongovernmental facility without the risk of introduction into the United States of injurious plant diseases, injurious insect pests, or other plant pests.

§ 319.37-14 Ports of entry.

(a) Any restricted article required to be imported under a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of § 319.37-3 of this subpart, shall be imported or offered for importation only at a port of entry designated by an asterisk in paragraph (b) of this section; any other restricted article shall be imported or offered for importation at any port of entry listed in paragraph (b) of this section. Any restricted article from Canada and not required to be imported under a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of § 319.37-3 of this subpart may be imported at any port of entry listed in paragraph (b) of this section, or at any Customs designated port of entry on the United States-Canada border (Customs designated ports of entry are listed in 19 CFR Part 101).

(b) List of ports of entry
 Ports with special inspection and treatment facilities (plant inspection stations) are indicated by an asterisk (*).

Alabama

Mobile—Federal Building, Room 147, Corner St. Louis and St. Joseph Streets, P.O. Box 1413, Mobile, AL 36601.

Alaska

Anchorage—Annex P.O. Box 6191, International Airport, Anchorage, AK 99502.

Arizona

*Nogales—202 Border Inspection Station, 100 Terrace Avenue, Nogales, AZ 85621.
 Phoenix—Sky Harbor Airport, 3300 Sky Harbor Boulevard, Phoenix, AZ 85034.
 San Luis—U.S. Border Station, P.O. Box 37, San Luis, AZ 85349.
 Tucson—Tucson International Airport, Tucson, AZ 85706.

California

Calexico—Federal Inspection Building, Room 223, 200 First Street, P.O. Box 686, Calexico, CA 92231.
 *Los Angeles—9650 LaCienega Boulevard, Building D North, Inglewood, CA 90301.
 (Airport)—World Way Center Post Office, International Arrivals Area, Satellite 2, P.O. Box 90429, Los Angeles International Airport, Los Angeles, CA 90009.
 *San Diego—U.S. Border Station, P.O. Box 43L, San Ysidro, CA 92073.
 (Airport)—San Diego International Airport, San Diego, CA 92103.
 *San Francisco—San Francisco International Airport, P.O. Box 8026, Airport Station, San Francisco, CA 94128.
 101 Agriculture Building, Embarcadero at Mission Street, P.O. Box 7673, San Francisco, CA 94119.
 *San Pedro—(See Los Angeles).
 Travis AFB—P.O. Box 1448, Travis Air Force Base, Fairfield, CA 94535.

Colorado

Denver—Suite 102, 7100 West 44th Avenue, Wheat Ridge, CO 80033.

Connecticut

Wallingford—Federal Building, Room 205, P.O. Box 631, Wallingford, CT 06492.

Delaware

Dover AFB—Building 500 (USDA), Dover Air Force Base, DE 19901.
 Wilmington—Federal Building, Room 1218A, 844 King Street, Box 03, Wilmington, DE 19801

District of Columbia

Dulles—International Airport (See Virginia).

Florida

Jacksonville—Federal Office Building, Room 521, 400 West Bay Street, P.O. Box 35003, Jacksonville, FL 32206.
 Key West—Federal Building, Room 226, 301 Simonton Street, P.O. Box 1486, Key West, FL 33040.
 *Miami—Miami Inspection Station, 3500 NW, 62nd Avenue, P.O. Box 592136, Miami, FL 33159.
 Room 100F, FAA Building, 20th and Perimeter Road, Miami International Airport, Box 592647 AMF, Miami, FL 33159.

Pensacola—Federal Building, Room 312B,
P.O. Box 12561, Pensacola, FL 32573.
Mail: 100 North Palafax Street, Pensacola, FL
32502.

Cape Canaveral—Canaveral Port Authority
Building, SE Room, Intersection Avenue
B and Second Street, P.O. Box 158, Cape
Canaveral, FL 32920.

Port Everglades—Amman Building, Room
305, 611 Eisenhower Boulevard, P.O. Box
13033, Fort Lauderdale, FL 33316.

Tampa—Barnett Bank Office Building, Suite
414, 1000 N. Ashley Drive, P.O. Box 266,
Tampa, FL 33601.

West Palm Beach—149 East Port Road, P.O.
Box 10611, Riviera Beach, FL 33404.

(Airport)—Palm Beach International Airport,
Port of Entry Building, West Palm Beach,
FL 33406.

Georgia

Atlanta—Hapeville Branch Post Office,
Basement, 650 Central Avenue, P.O. Box
82369, Hapeville, GA 30354.

Savannah—U.S. Court House & Federal
Building, 125-129 Bull Street, Room 223,
P.O. Box 9268, Savannah, GA 31402.

Hawaii

Hilo—General Lyman Field, Hilo, HI 96720.

*Honolulu—3179 Koapaka Street, P.O. Box
29757, Honolulu, HI 96820.

(Airport)—Honolulu International Airport,
International Arrivals Building,
Honolulu, HI 96819.

Wailuku, Maui—Federal Post Office Building,
Room 221, Wailuku, HI 96793.

Illinois

Chicago—U.S. Custom House, Room 800, 610
South Canal Street, Chicago, IL 60607.

(Airport)—O'Hare International Arrivals
Building, P.O. Box 66192, Chicago, IL
60666.

Louisiana

*New Orleans—New Orleans International
Airport, P.O. Box 20037, Airport Mailing
Facility, New Orleans, LA 70141.

F. Edward Hebert Building, P.O. Box 2220,
New Orleans, LA 70176.

Maine

Bangor (Airport)—International Arrivals
Building, Bangor International Airport,
P.O. Box 1053, Bangor, ME 04401.

Portland—U.S. Courthouse, 156 Federal
Street, Room 301, Portland, ME 04101.

Maryland

Baltimore—Appraisers Stores Building, Room
506, 103 South Gay Street, Baltimore, MD
21202.

(Airport)—Foreign Arrivals Building,
Baltimore Washington International
Airport, Baltimore, MD 21240.

Beltsville—Plant Germplasm Quarantine
Center (for USDA shipments only),
Building 320, Beltsville Agricultural
Research Center, East, Beltsville, MD
20705.

Massachusetts

Boston—408 Atlantic Avenue, Room 710,
Boston, MA 02210.

(Airport)—Logan International Airport, East
Boston, MA 02128.

Michigan

Detroit—Federal Building, Room 924, 231
West Lafayette Street, Detroit, MI 48226.

(Airport)—Michael Berry, International
Arrivals Terminal, Detroit Metropolitan
Wayne County Airport, Detroit, MI
48242.

Minnesota

Duluth—Board of Trade Building, Room 420,
301 West First Street, Duluth, MN 55802.

St. Paul—Minneapolis-St. Paul International
Airport, P.O. Box 1690, St. Paul, MN
55111.

Missouri

Kansas City (Airport)—Kansas City
International Airport, P.O. Box 20085,
Kansas City, MO 64195.

St. Louis International Airport—P.O. Box 858,
St. Charles, MO 63301.

New Jersey

*Hoboken—209 River Street, Hoboken, NJ
07030.

McGuire AFB—Building 1706, Passenger
Terminal, Customs Area, P.O. Box 16073,
McGuire Air Force Base, NJ 08641.

New York

Albany—80 Wolf Road, Suite 503, Albany,
NY 12205.

Buffalo—Federal Building, Room 1113, 111
West Huron Street, Buffalo, NY 14202.

New York—26 Federal Plaza, Room 1747,
New York, NY 10007.

*Jamaica—John F. Kennedy International
Airport, Plant Inspection Station, Cargo
Building 80, Jamaica, NY 11430.

International Arrivals Building, Room 2315,
John F. Kennedy International Airport,
Jamaica, NY 11430.

Rouses Point—St. John's Highway Border
Station, Room 118, Route 9B, P.O. Box
278, Rouses Point, NY 12979.

North Carolina

Morehead City—North Carolina Maritime
Building, Room 216, 113 Arendell, Port
Authority Terminal, P.O. Box 272,
Morehead City, NC 28557.

Wilmington—Rural Route 6, Box 53D,
Wilmington, NC 28401.

Ohio

Cleveland—Federal Building, Room 1749,
1240 East 9th Street, Cleveland, OH
44199.

Oregon

Astoria—Port Docks, P.O. Box 354, Astoria,
OR 97103.

Coos Bay—U.S. Postal Services Building, 235
West Anderson Street, P.O. Box 454,
Coos Bay, OR 97420.

Portland—Federal Building, Room 657, 511
NW. Broadway, Portland, OR 97209.

Pennsylvania

Philadelphia—Custom House, Room 1004,
2nd and Chestnut Streets, Philadelphia,
PA 19106.

Puerto Rico

Mayaguez—P.O. Box 3269, Marina Station,
Mayaguez, PR 00708.

Ponce—P.O. Box 68, Ponce Playa Station,
Ponce, PR 00731.

Hato Rey—Federal Office Building and U.S.
Court House, Room 206, Hato Rey, PR
00918.

*San Juan—Isla Verde International Airport,
Foreign arrivals Wing, San Juan, PR
00913.

Rhode Island

Warwick—48 Quaker Lane, West Warwick,
RI 02893.

South Carolina

Charleston—Room 513 Federal Building, P.O.
Box 941, Charleston, SC 29402.

Tennessee

Memphis—Room 801 Mid Memphis Tower,
1407 Union Avenue, Memphis, TN 38104.

Texas

*Brownsville—Border Services Building,
Room 224 (Gateway Bridge), East
Elizabeth and International Boulevard,
P.O. Box 306, Brownsville, TX 78520.

Corpus Christi—Suite 218 SAB Building, 804
Mesquite, P.O. Box 245, Corpus Christi,
TX 78403.

Dallas-Fort Worth (Airport)—Dallas-Fort
Worth Airport, P.O. Box 61063, Dallas-
Fort Worth Airport, TX 75261.

Del Rio—U.S. Border Inspection Station,
Room 135, International Bridge, P.O. Box
1227, Del Rio, TX 78840.

Eagle Pass—U.S. Border Station, 160 Garrison
Street, P.O. Box P, Eagle Pass, TX 78852.

*El Paso—Cordova Border Station, Room
172-A, 3600 East Paisano, El Paso, TX
79905.

Galveston—U.S. Custom House Building,
Room 217A, 18th and Strand Streets, P.O.
Box 266, Galveston, TX 77553.

Hidalgo—U.S. Border Station, Bridge Street,
P.O. Drawer R, Hidalgo, TX 78557.

Houston—U.S. Appraisers Stores Building,
Room 210, 7300 Wingate Street, Houston,
TX 77011.

*Laredo—La Posada Motel, Rooms L8-13,
1000 Zaragoza Street, P.O. Box 277,
Laredo, TX 78040.

U.S. Border Station, 100 Convent Avenue,
Laredo, TX 78040.

Port Arthur—Federal Building, Room 201,
Fifth Street and Austin Avenue, P.O. Box
1227, Port Arthur, TX 77640.

Presidio—U.S. Border Station, International
Bridge, P.O. Box 1001, Presidio, TX 79645.

Progreso—Custom House Building, Progreso
International Bridge, Progreso, TX 78579.

Roma—International Bridge, P.O. Box 185,
Roma, TX 78584.

San Antonio—International Satellite, Room
15-S, 9700 Airport Boulevard, San
Antonio, TX 78216.

Virgin Islands of the United States

St. Thomas—U.S. Post Office Building, Room
202, P.O. Box 8119, Charlotte Amalie,
Virgin Islands of the U.S. 00801.

(Airport)—Harry S. Truman Airport, Main Terminal Building, St. Thomas, Virgin Islands of the U.S. 00801.
St. Croix—P.O. Box 1548, Kingshill, St. Croix, Virgin Islands of the U.S. 00850.

Virginia

(Airport) (Chantilly)—Dulles International Airport, International Arrivals Area, P.O. Box 17134, Washington, DC 20041.
Newport News—P.O. Box 942, Newport News, VA 23607.
Norfolk—Room 211 Bank of Virginia Building, 870 North Military Highway, Norfolk, VA 23502.

Washington

Blaine—Custom House, Room 216, P.O. Drawer C, Blaine, WA 98230.
McChord AFB—MAC Terminal, P.O. Box 4118, McChord Air Force Base, Tacoma, WA 98458.
*Seattle—Federal Office Building, Room 9014, Seattle, WA 98104.
(Airport)—Seattle-Tacoma International Airport, Seattle, WA 98158.

Wisconsin

Milwaukee—International Arrivals Terminal, 5300 South Howell Avenue, Milwaukee, WI 53207.

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been designated "significant." An approved Draft Impact Analysis is available from Plant Protection and Quarantine Programs, APHIS, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247. The alternatives considered during the analysis are listed in the Draft Impact Analysis Statement.

Done at Washington, D.C., on 11th day of June 1979.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

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Friday
June 15, 1979

Part VIII

Securities and Exchange Commission

**Uniform Net Capital Rule; Financial
Requirements For Brokers and Dealers
(Futures Commission Merchants)**

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15898]

17 CFR Part 240

Uniform Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today has adopted previously proposed amendments to its uniform net capital rule and Appendices B and D thereto. The amendments primarily affect the financial requirements for brokers and dealers that are also futures commission merchants ("fcm") registered with the Commodity Futures Trading Commission. They are designed to conform the net capital rule with the minimum financial requirements of the Commodity Futures Trading Commission for fcm's, to avoid duplication, reduce regulatory burden, and coordinate regulation through uniform requirements as much as possible.

EFFECTIVE DATE: July 23, 1979.¹

FOR FURTHER INFORMATION CONTACT: James C. Moody, Attorney Advisor, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 376-8135.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of certain amendments to Rule 15c3-1 (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934, the uniform net capital rule, and Appendices B and D thereto. The amendments, which become effective on July 23, 1979, are substantially the same as those proposed in Securities Exchange Act Release No. 15426, December 21, 1978; 44 FR 1754, January 8, 1979.

Discussion

Rule 15c3-1, the uniform net capital rule (17 CFR 240.15c3-1), in general requires a broker or dealer to maintain a certain specified minimum "net capital" depending on the nature of its securities business and its circumstances.² The amount of net capital required unless the broker or dealer computes its net capital under subsection (f) of the rule depends upon its "aggregate

indebtedness."³ Paragraph (c)(2) of the rule defines "net capital" as the net worth of a broker or dealer adjusted by certain described items. Paragraph (c)(1) of the Rule defines "aggregate indebtedness" as the total money liabilities of a broker or dealer in connection with any transaction, with limited exclusions. The rule requires brokers or dealers to have sufficient cash or liquid assets to protect the cash or securities positions carried in their customers' accounts. The thrust of the rule is to ensure that a broker or dealer has sufficient liquid assets to cover current indebtedness.

Recently, the Commodity Futures Trading Commission (the "CFTC") made substantial revisions in its minimum financial and related reporting requirements imposed upon fcm's. The CFTC stated that it was amending its rules first to eliminate duplicative financial requirements imposed upon fcm's. The CFTC gave as another purpose for the revised regulations to "correct substantial deficiencies" which had existed in the CFTC's minimum capital rules.⁴

Although the CFTC amendments apply only to fcm's, about half of all commodity customer business in the futures industry is done by fcm's that are also registered with the Commission as brokers or dealers and are, therefore, subject to the uniform net capital rule.

As the CFTC noted in its release announcing the adoption of its new minimum financial requirements, it has incorporated by reference the Commission's haircuts on securities. The CFTC believed that its rule, before being amended, required unnecessary "safety factors" for open commodities transactions and created new standards which were first proposed in 1977 and 1978.⁵ These, as well as other commodity related amendments to its rule, have been the subject of extensive study by that agency and by those who will be subject to it. After careful consideration, in the interests of minimizing duplicative regulation, the Commission is deferring to the expertise of the CFTC in the area of financial responsibility regulation and is amending its rule to conform in the main to those provisions of the CFTC's rule

³ Brokers or dealers operating under paragraph (f) of Rule 15c3-1 determine their net capital requirement upon the "aggregate debit" items computed pursuant to the "Formula for Determination Reserve Requirement of Brokers and Dealers" as set forth at Rule 15c3-3a, 17 CFR 240.15c3-3a.

⁴ 43 FR 39956, 39957, 39958 (September 8, 1978).

⁵ Id. at 39957-39958.

which deals with the commodities futures business.⁶

The amendments adopted herein are designed insofar as possible to provide uniformity and avoid duplicative requirements as well as additional reporting for fcm's which are also brokers or dealers. The Commission believes it is important to achieve uniformity in this area in the interest of fair and equitable regulation consistent with its regulatory responsibility.

Most of the amendments to the net capital rule will be found in Appendix B as amended (17 CFR 240.15c3-1b). The most significant of the adopted amendments is the substitution of the CFTC's so-called safety factors on futures for the haircut deductions currently required by Appendix B to the net capital rule.

The majority of the remaining changes to the net capital rule affect the treatment of receivables relating to commodities. For example, under the amendments the length of time margin calls are allowed to remain outstanding for under-margined customer futures accounts will be 3 business days by December 31, 1982. Margin can remain uncollected for up to 5 business days until December 31, 1980, 4 business days until December 31, 1982 and 3 business days thereafter before a charge is made to net capital. The net capital rule now allows 5 business days, a period which will remain unchanged for transactions in securities.

Another significant time differential from the way commodities are now treated involves deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts related to commodities transactions which are the subject of calls for margin or other required deposits. Under the amendments, the amount of funds required may be included in net capital for one day. In addition, the length of time margin calls pertaining to commodity transactions are allowed to

⁶ In general, the differences in the two rules will not affect broker-dealers who are fcm's. The CFTC believed that the "few differences" which might remain between the CFTC rule and the Commission rule would affect only fcm's which engage in a cash commodity, manufacturing or cooperative business/businesses "in which few, if any, FCM/broker-dealers engage." The CFTC has said that, in the case of each such difference of which it was aware, the Commission minimum financial requirements would be higher than the CFTC requirements. The CFTC said that, therefore, an fcm may be assured of compliance with the regulations of both agencies if it is in compliance with the Commission's. Some of the differences between the two rules include the treatment of certain unsecured receivables such as those in paragraph (c)(2)(ii)(A) of CFTC Rule 1.17 and certain inventories such as those in paragraphs (c)(2)(iv) (C) through (E). The CFTC will regard these as "current assets" for purposes of its rule. Appendix B requires their deduction from net worth.

¹ A broker or dealer may conform to the amendments herein before July 23, 1979 if it so wishes.

² Rule 15c3-1(a).

remain outstanding for under-margined non-customer and omnibus commodity futures accounts has been reduced from 5 business days to 2 business days.

The amendments specify that receivables from a foreign clearing organization resulting from commodities transactions as well as stock held in a commodity clearing organization may be treated as net capital. Under the current Commission rule such items would generally be treated as assets not readily convertible into cash and would be deducted from net worth.

Next, for those brokers or dealers which have elected to operate under the alternative net capital provisions, the amendments will require securities brokers or dealers which are also fcm's to maintain net capital equal to 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the rules thereunder if such amount is greater than the alternative provisions would require it to maintain.

Finally, Appendix D which governs subordination agreements has been altered in several respects to conform its provisions to reflect the CFTC's requirements that an fcm on the alternative maintain net capital of 4% of the funds required to be segregated by the Commodity Exchange Act.

Because the subordinated loan provisions of Appendix D are being changed, it will be necessary to "grandfather" existing subordination loan agreements. Otherwise, existing loans would no longer met the requirements of Appendix D. The Commission has selected 5 years as the period after which the loan must conform to the new Appendix D, the same amount of time the Commission gave in 1975 when it adopted the present Appendix D.

As adopted the amendments define the terms "customer" and "non-customer" in Appendix B by incorporating the definitions of these terms which are in the General Regulations of the CFTC.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(93) and 23(a) thereof, 15 U.S.C. 78o(c)(3) and 78w(a), the Commission amends § 240.15c3-1 in Part 240 of Chapter II of Title 17 of the code of Federal Regulations in the manner set forth below, effective July 23, 1979. The Commission finds that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the

purposes of the Act, and particularly to implement the Commission's continuing mandate under section 15(c)(3) thereof, 15 U.S.C. 78o(c)(3), to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

Text of Amendments to §240.15c3-1

1. The introductory text of paragraph (a) and paragraphs (e) and (f) of § 240.15c3-1 are revised to read as follows:

§ 240.15c3-1 Net capital requirements for brokers or dealers.

(a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 1500 percentum of his net capital, except as otherwise limited by the provisions of paragraph (a)(1), or, in the case of a broker or dealer electing to operate pursuant to paragraph (f) of this section, no broker or dealer shall permit his net capital to be less than 4 percent of aggregate debit items as computed in accordance with § 240.15c3-3a of this chapter, or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater, except as otherwise limited by paragraph (f) of this section, and every broker or dealer shall have the net capital necessary to comply with the following conditions, except as otherwise provided for in paragraph (f) of this section.

(e) *Limitation on withdrawal of equity Capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix (C) (17 CFR 240.15c3-1c) whether in the form of capital contributions by partners excluding securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in Appendix (D) (17 CFR 240.15c3-1d) under satisfactory subordination agreements which are scheduled to occur within six months following such

withdrawal, advance or loan, either aggregate indebtedness of any of the consolidated entities exceeds 1000 percentum of its net capital or its net capital would fail to equal 120 percentum of the minimum dollar amount required thereby or would be less than 7 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater or in the case of any broker or dealer included within such consolidation if the total outstanding principal amounts satisfactory subordination agreements of the broker or dealer (other than such agreements which qualify as equity under paragraph (d) of this section) would exceed 70% of the debt-equity total as defined in paragraph (d). *Provided,* That this provision shall not preclude a broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation.

(f) *Alternative net capital requirement.* (1)(i) A broker or dealer who is not exempt from the provisions of 17 CFR 240.15c3-3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(1) or (k)(2)(i) may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in paragraph (c)(1) of this section and certain deductions provided for in paragraph (c)(2) of this section. *Provided,* That in order to qualify to operate under this paragraph (f), such broker or dealer shall at all times maintain net capital equal to the greater of \$100,000 (\$25,000 in the case of a broker or dealer effecting transactions solely in municipal securities) or 4 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a), or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater, and shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a broker or dealer has determined to operate pursuant to the provisions of this paragraph (f), he shall continue to

do so unless a change is approved upon application to the Commission.

(2) In the case of a broker or dealer who has consolidated a subsidiary pursuant to Appendix C (17 CFR 240.15c3-1c), such broker's or dealer's minimum net capital requirements shall be the sum of the greater of \$100,000 or 4 percent of the parent broker's or dealer's aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if the parent is registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, and the total of each consolidated broker or dealer subsidiary's minimum net capital requirements. The minimum net capital requirements of a subsidiary electing to operate pursuant to paragraph (f) of this section shall be the greater of \$100,000 or 4 percent of its aggregate debit items computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated by the subsidiary pursuant to the Commodity Exchange Act and the regulations thereunder, if greater. Where the subsidiary which has been consolidated has not elected to operate pursuant to paragraph (f) of this section, its minimum net capital requirement is the greater of its requirements under paragraph (a) of this section or 6 3/4 percent of its aggregate indebtedness.

2. Section 240.15c3-1b is revised to read as follows:

§ 240.15c3-1b Adjustments to net worth and aggregate indebtedness for certain commodities transactions (Appendix B to 17 CFR 240.15c3-1).

(a) Every broker or dealer in computing net capital pursuant to 17 CFR 240.15c3-1 shall comply with the following:

(1) Where a broker or dealer has an asset or liability which is treated or defined in paragraph (c) of 17 CFR 240.15c3-1, the inclusion or exclusion of all or part of such asset or liability for the computation of aggregate indebtedness and net capital shall be in accordance with paragraph (c) of 17 CFR 240.15c3-1, except as specifically provided otherwise in this Appendix B. Where a commodity related asset or liability is specifically treated or defined in 17 CFR 1.17 and is not generally or specifically treated or defined in 17 CFR 240.15c3-1 or this Appendix B, the inclusion or exclusion of all or part of such asset or liability for the computation of aggregate indebtedness

and net capital shall be in accordance with 17 CFR 1.17.

Aggregate Indebtedness

(2) The term "aggregate indebtedness" as defined in paragraph (c)(1) of this section shall exclude with respect to commodity-related transactions:

(i) Indebtedness arising in connection with an advance to a non-proprietary account when such indebtedness is adequately collateralized by spot commodities eligible for delivery on a contract market and when such spot commodities are covered.

(ii) Advances received by the broker or dealer against bills of lading issued in connection with the shipment of commodities sold by the broker or dealer; and

(iii) Equity balances in the accounts of general partners.

Net Capital

(3) In computing net capital as defined in paragraph (c)(2) of this section, the net worth of a broker or dealer shall be adjusted as follows with respect to commodity-related transactions:

(i) *Unrealized profit or loss for certain commodities transactions.* (A) Unrealized profits shall be added and unrealized losses shall be deducted in the commodities accounts of the broker or dealer, including unrealized profits and losses on fixed price commitments and forward contracts; and

(B) The value attributed to any non-transferable commodity option shall be the difference between the option's striking price and the market value for the actual commodity or futures contract which is the subject of the option. In the case of a long call commodity option, if the market value for the actual commodity or futures contract which is the subject of the option is less than the striking price of the option, it shall be given no value. In the case of a long put commodity option, if the market value for the actual commodity or futures contract which is the subject of the option is more than the striking price of the option, it shall be given no value.

(ii) Deduct any unsecured commodity futures or option account containing a ledger balance and open trades the combination of which liquidates to a deficit or containing a debit ledger balance only; *Provided, however,* Deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts, which are the subject of calls for margin or other required deposits which are outstanding one business day or less need not be deducted from net worth;

(iii) Deduct all unsecured receivables, advances and loans except for:

(A) Management fees receivable from commodity pools outstanding no longer than thirty (30) days from the date they are due;

(B) Receivables from foreign clearing organizations;

(C) Receivables from registered futures commission merchants or brokers, resulting from commodity futures or option transactions, except those specifically excluded under paragraph (3)(ii) of this Appendix B.

(iv) Deduct all inventories (including work in process, finished goods, raw materials and inventories held for resale) except for readily marketable spot commodities; or spot commodities which adequately collateralize indebtedness under paragraph (c)(7) of 17 CFR 1.17;

(v) Guarantee deposits with commodities clearing organizations are not required to be deducted from net worth;

(vi) Stock in commodities clearing organizations to the extent of its margin value is not required to be deducted from net worth;

(vii) Deduct from net worth the amount by which any advances paid by the broker or dealer on cash commodity contracts and used in computing net capital exceeds 95 percent of the market value of the commodities covered by such contracts.

(viii) Do not include equity in the commodity accounts of partners in net worth.

(ix) In the case of all inventory, fixed price commitments and forward contracts, except for inventory and forward contracts in the inter-bank market in those foreign currencies which are purchased or sold for further delivery on or subject to the rules of a contract market and covered by an open futures contract for which there will be no charge, deduct the applicable percentage of the net position specified below:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract—No charge.

(B) Inventory which is covered by an open futures contract or commodity option—5% of the market value.

(C) Inventory which is not covered—20% of the market value.

(D) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option—10% of the market value.

(E) Fixed price commitments (open purchases and sales) and forward

contracts which are not covered by an open futures contract or commodity option—20% of the market value.

(x) [Reserved]

(xi) [Reserved]

(xii) Deduct for undermargined customer commodity futures accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin, or other required deposits which are outstanding five business days or less until December 31, 1980, four business days or less until December 31, 1982, and three business days or less thereafter. If there are no such maintenance margin requirements or clearing organization margin requirements on such accounts, then deduct the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding five days or less until December 31, 1980, four days or less until December 31, 1982, and three days or less thereafter to restore original margin when the original margin has been depleted by 50 percent or more.

Provided, To the extent a deficit is deducted from net worth in accordance with paragraph (3)(ii) of this Appendix B, such amount shall not also be deducted under this paragraph (3)(xii).

(xiii) Deduct for undermargined non-customer and omnibus commodity futures accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions after application of calls for margin, or other required deposits which are outstanding two business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then deduct the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding two days or less to restore original margin when the initial margin has been depleted by 50 percent or more. *Provided*, To the extent a deficit is deducted from net worth in accordance with paragraph (3)(ii) of this Appendix B, such amount shall not also be deducted under this paragraph (3)(xiii).

(xiv) In the case of open futures contracts held in proprietary accounts

carried by the broker or dealer which are not covered by a position held by the broker or dealer or which are not the result of a "changer trade" made in accordance with the rule of a contract market deduct:

(A) For a broker or dealer which is a clearing member of a contract market for the positions on such contract market cleared by such member, the applicable margin requirement of the applicable clearing organization;

(B) For a broker or dealer which is a member of a contract market, 150% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater;

(C) For all other brokers or dealers, 200% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater; or

(D) For open contracts for which there are no applicable maintenance margin requirement, 200% of the applicable initial margin requirement.

Provided, The equity in any such proprietary account shall reduce the deduction required by this paragraph (3)(xiv) if such equity is not otherwise includable in net capital.

(xv) *Options*. In the case of a broker or dealer which is a taker of a commodity option, the deduction shall be the amount of any commodity option premium which has been used to increase net capital (however, in the case of a broker or dealer which is a grantor of a commodity option, the deduction may be reduced by the amount of any commodity option premium which has not been previously recognized as income).

(xvi) In the case of a commodity option which is carried long by the broker or dealer as a taker of a commodity option which has value and such value is used to increase net capital, the deduction should be ten percent of the market value of the commodity which is the subject of such option, but in no event shall the deduction be greater than the value attributed to such option.

(xvii) Deduction 5% of all unsecured receivables includable under paragraph (3)(iii)(C) of this Appendix B used by the broker or dealer in computing "net capital" and which are not receivable from (A) a futures commission merchant registered as such with the Commodity Futures Trading Commission, or (B) a broker or dealer which is registered as such with the Securities and Exchange Commission.

(xviii) A loan or advance or any other form of receivable shall not be considered "secured" for the purposes of paragraph (3) of this Appendix B unless the following conditions exist:

(A) The receivable is secured by readily marketable collateral which is otherwise unencumbered and which can be readily converted into cash equal to or in excess of that part of the receivable which is shown in the broker's or dealer's records as secured; and

(B)(1) The readily marketable collateral is in the possession or control of the broker or dealer; or

(2) The broker or dealer has a legally enforceable, written security agreement, signed by the debtor, and has a perfected security interest in the readily marketable collateral within the meaning of the laws of the State in which the readily marketable collateral is located.

(xix) The term "cover" for purposes of this Appendix B shall mean cover as defined in 17 CFR 1.17(j).

(xx) The term "customer" for purposes of this Appendix B shall mean customer as defined in 17 CFR 1.17(b) (2). The term "non-customer" for purposes of this Appendix B shall mean non-customer as defined in 17 CFR 1.17(b) (4).

3. Paragraphs (b) (6) (iii), (7), (8), (10) (ii) (B) and (c) (2), (5), and (7) of § 240.15c3-1d are revised to read as follows:

§ 240.15c3-1d Satisfactory subordination agreements (Appendix D to 17 CFR 240.15c3-1).

(b)* * *

(6)* * *

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b) (6) (ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. *Provided*, That after giving effect to such reduction the aggregate indebtedness of the broker or dealer would not exceed 1000 per centum of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, net capital would not be less than 7% of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater. *Provided, further,*

That no single secured demand note shall be permitted to be reduced by more than 15% of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120% of the minimum dollar amount required by 17 CFR 240.15c3-1.

(7) *Permissive Prepayments.* A broker or dealer at its option but not at the option of the lender, may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c) (5) of this Appendix D. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements than outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 per centum of its net capital or its net capital would be less than 120 per centum of the minimum dollar amount required by 17 CFR 240.15c3-1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 7% of its aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or its net capital would be less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3-1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

(8) *Suspended Repayment.* (i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either (A) the aggregate indebtedness of the broker or dealer would exceed 1200% its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 6 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or (B) its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 including paragraph (f), if applicable. *Provided,* That the subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3-1 and 240.15c3-1d.

(10) * * *

(ii) * * *

(B) The aggregate indebtedness of the broker or dealer exceeding 1500% of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (f) of 17 CFR 240.15c3-1, its net capital computed in accordance therewith is less than 4% of its aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 4% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, of the Examining Authority or

the Commission first determines and notifies the broker or dealer of such fact;

(c) * * *

(2) *Notice of maturity or accelerated maturity.* Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, either the aggregate indebtedness of the broker or dealer, either the aggregate indebtedness of the broker or dealer would exceed 1200% of its net capital or its net capital would be less than 120% of the minimum dollar amount required by 17 CFR 240.15c3-1, or, in the case of a broker or dealer who is operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 6% of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3-1.

(5) *Temporary Subordinations.* For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3-1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. *Provided,* That this temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a-11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement either (i) the aggregate indebtedness of the broker or dealer exceeds 1000 per centum of its net capital or its net capital is less than 120% of the minimum dollar amount required by 17 CFR 240.15c3-1, or (ii) in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital is less than 7 percent of aggregate debits computed in accordance with 17 CFR 240.15c3-3a or,

if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of this section, or (iii) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3-1. Such temporary subordination agreement shall be subject to all the other provisions of this Appendix.

Subordination Agreements in Effect Prior to Adoption

(7) Any subordination agreement which has been entered into prior to December 20, 1978 and which has been deemed to be satisfactorily subordinated pursuant to 17 CFR 240.15c3-1 as in effect prior to December 20, 1978, shall continue to be deemed a satisfactory subordination agreement until the maturity of such agreement. *Provided*, That no renewal of an agreement which provides for automatic or optional renewal by the broker or dealer or lender shall be deemed to be a satisfactory subordination agreement unless such renewed agreement meets the requirements of this Appendix within 6 months from December 20, 1978. *Provided, further*, That all subordination agreements must meet the requirements of this Appendix within 5 years of December 20, 1978.

By the Commission,
 George A. Fitzsimmons,
 Secretary.
 June 5, 1979.
 [FR Doc. 79-18641 Filed 6-14-79; 8:45 am]
 BILLING CODE 8010-01-M

17 CFR Part 249

[Release No. 34-15899]

Forms, Securities Exchange Act of 1934

Focus Reporting System; Requirements for Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendment.

SUMMARY: The Commission today announced amendments to the financial and operational reporting requirements collectively known as the FOCUS reporting system by adopting the previously proposed Schedule of Segregation Requirements and Funds on Deposit in Segregation currently being

used by the Commodity Futures Trading Commission for its registered futures commission merchants. This schedule will apply only to those brokers or dealers that are also futures commission merchants.

EFFECTIVE DATE: July 23, 1979.

FOR FURTHER INFORMATION CONTACT: James G. Moody, Attorney Advisor, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 376-8135.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of certain amendments to Part II of Form X-17A-5, a financial and operational combined uniform single report under the Securities Exchange Act of 1934. The amendments will revise the form so as to incorporate the Schedule of Segregation Requirements and Funds on Deposit in Segregation currently being used by the Commodity Futures Trading Commission.

Discussion

On December 17, 1975 the Commission adopted Form X-17A-5 (§ 249.617), the Financial and Operational Combined Uniform Single ("FOCUS") Report, to become effective on January 1, 1976.¹ Part II of Form X-17A-5 is a general purpose financial and operational report designed to obtain essential regulatory information on a quarterly basis and to develop financial statements in a format consistent with generally accepted accounting principles.

On September 1, 1978, the Commodity Futures Trading Commission (the "CFTC") amended its rules pertaining to the minimum financial and related reporting requirements imposed upon futures commission merchants.² Although the CFTC amendments apply only to futures commission merchants, about half of all commodity customer business in the futures industry is done by futures commission merchants that are also registered with the Commission as securities broker-dealers and are therefore subject to the FOCUS reporting requirements. Accordingly, the amendments adopted herein are designed to incorporate the Schedule of

¹ Securities Exchange Act Release No. 11935, December 17, 1975; 40 FR 59706, December 30, 1975. Part IIA is an abbreviated version of Part II which is filed on a quarterly basis by brokers and dealers which neither clear transactions nor carry customer accounts. As these amendments were originally proposed, Part IIA would also have been amended to incorporate the CFTC's Schedule. However, since Part IIA is filed only by brokers and dealers which neither clear nor carry customer accounts, this additional information is unnecessary.

² 43 FR 39956 (September 8, 1978).

Segregation Requirements and Funds on Deposit in Segregation currently being used by the CFTC. This will enable brokers and dealers that are also futures commission merchants to satisfy the CFTC's reporting requirements by filing the amended Part II³ of the FOCUS Report on a quarterly basis, thereby eliminating the need to make burdensome duplicate reports.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78o(c)(3), 78q and 78w, the Commission hereby amends 17 CFR 249.617 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below. The Commission believes that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under section 15(c)(3) thereof, 15 U.S.C. 78o(c)(3), to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

§ 249.617 [Amended]

Text of Schedule

The Commission amends Part II of Form X-17A-5, a financial and operational combined uniform single report under the Securities Exchange Act of 1934, by adding the following schedule.

Financial and Operational Combined Uniform Single Report

Broker or Dealer—as of _____

Schedule of Segregation Requirements and Funds in Segregation

Customers' regulated commodity futures accounts**

Segregation requirements

1. Net ledger balance:
 - a. Cash.....\$ _____
 - b. Securities (at market)..... _____
2. Net unrealized profit (loss) in open futures contracts..... _____
3. Net equity (deficit) (Total of 1—plus or minus 2..... _____
4. Add: accounts liquidating to a deficit and accounts with debit balances with no open trades _____
5. Amount required to be segregated (Total of 3 & 4)\$ _____

³ The new Schedule will become page 10 of Part II. The current page 10 will become page 11 of Part II.

**The term "customer" shall mean "customer" as defined in 17 CFR 1.17(b)(2).