

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

(a) *Determination by the Administrator.* The importation of certain taxa of plants for planting poses a risk of introducing quarantine pests into the United States. Therefore, the importation of these taxa is not authorized pending the completion of a pest risk analysis, except as provided in §319.37-2(c). Lists of these taxa may be found on the Internet at http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37_nappra.shtml. There are two lists of taxa whose importation is not authorized pending pest risk analysis: A list of taxa of plants for planting that are quarantine pests, and a list of taxa of plants for planting that are hosts of quarantine pests. For taxa of plants for planting that have been determined to be quarantine pests, the list includes the names of the taxa. For taxa of plants for planting that are hosts of quarantine pests, the list includes the names of the taxa, the foreign places from which the taxa's importation is not authorized, and the quarantine pests of concern.

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

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

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

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

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

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

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

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

(d) *Criteria for listing a taxon of plants for planting as a host of a quarantine pest.* A taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a host of a quarantine pest. The following criteria must be fulfilled in order to make this determination:

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

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

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

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

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

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

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

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

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

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

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

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