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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0041]

RIN 0579-AE01

Importation of Orchids in Growing Media From Taiwan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of plants and plant products to add orchid plants of the genus Oncidium from Taiwan to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. We are taking this action in response to a request from the Taiwanese Government and after determining that the plants could be imported, under certain conditions, without resulting in the introduction into, or the dissemination within, the United States of a plant pest or noxious weed.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to

<http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0041>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0041, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0041> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Coady, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2076.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in “Subpart—Plants for Planting,” §§ 319.37 through 319.37-14 (referred to below as the regulations) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

Paragraph (a) of § 319.37-8 of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account

factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37-8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

Paragraph (e) of § 319.37-8 provides conditions under which certain plants established in growing media may be imported into the United States. In addition to specifying the types of plants that may be imported § 319.37-8(e) also:

- Specifies the types of growing media that may be used;
- Requires plants to be grown in accordance with written agreements between the Animal and Plant Health Inspection Service (APHIS) and the national plant protection organization (NPPO) of the country where the plants are grown and between the foreign NPPO and the grower;
- Requires the plants to be rooted and grown in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37-8(e);
- Restricts the source of the seeds or parent plants used to produce the plants, and requires grow-out or treatment of parent plants imported into the exporting country from another country;
- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and
- Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the NPPO of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used successfully to mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in growing media.

Currently, orchid plants of genus Oncidium spp. may only be imported into the United States as bare root plants, in accordance with § 319.37-2. The Government of Taiwan has requested that importation into the United States of those plants be allowed under the provisions of § 319.37-8.

The regulations in § 319.37-8(g) provide that requests such as the one made by the Government of Taiwan be evaluated by APHIS using specific pest risk evaluation standards that are based on pest risk analysis (PRA) guidelines established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization. Such analyses are conducted to determine the plant pest risks associated with each requested plant article and to determine whether or not APHIS should propose to allow the requested plant article established in growing media to be imported into the United States. In accordance with § 319.37-8(g), APHIS has conducted the required PRA, which can be viewed on the Internet on the Regulations.gov Web site or in our reading room.<sup>1</sup>

In the PRA, titled "Importation of Oncidium spp. in growing media from Taiwan into the United States," APHIS determined that 14 quarantine pests present in Taiwan could potentially follow the import pathway:

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<sup>1</sup> Instructions on accessing Regulations.gov and information on the location and hours of the reading room may be found at the beginning of this document under ADDRESSES. You may also request paper copies of the risk analysis by calling or writing the person listed under FOR FURTHER INFORMATION CONTACT.

- Tetranychus kanzawai Kishida, a spider mite.
- Amsacta lactinea Cramer, a tiger moth.
- Spodoptera litura (Fabricius), the Oriental leafworm moth.
- Scirtothrips dorsalis Hood, the chili thrips.
- Thrips palmi Karny, the melon thrips.
- Lissachatina fulica (Bowdich), a snail.
- Deroceras laeve (Muller), the marsh slug.
- Parmarion martensi Simroth, a semislug.
- Petalochlamys vesta (Pfeiffer), a snail.
- Meghimatium bilineatus (Benson), a slug.
- Meghimatium pictum Stoliczka, a slug.
- Laevicaulis alte (Férussac), the tropical leatherleaf.
- Pectobacterium cypripedii (Hori) Brenner et al., a bacterial leaf-disease of orchids.
- Bipolaris zizaniae (Y. Nisik.) Shoemaker, a fungus.

A quarantine pest is defined in § 319.37-1 of the regulations as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Plant pest risk potentials associated with the importation of Oncidium spp. from Taiwan into the United States were derived by estimating the consequences and likelihood of introduction of each quarantine pest into the United States and ranking the risk potential as high, medium, or low. The PRA determined that 12 of these 14 pests -- T. kanzawai, A. lactinea, S. litura, S. dorsalis, T. palmi, L. fulica, D. laeve, P. martensi, P. vesta, M. bilineatus, M. pictum, and L. alte -- pose a high risk of following the pathway. The remaining pests -- P. cypripedii and B. zizaniae -- were rated as having a medium risk potential.

However, the PRA acknowledged that the risk presented by these plant pests is consistent with any propagative epiphytic orchid materials and pest associations. Further, it is important to note that those plant pest risks were identified in the absence of the mitigative effects of the requirements in §319.37-8(e), which are designed to establish and maintain a pest-free production environment and ensure the use of pest-free seeds or parent plants. Given that, the PRA concluded that the safeguards in § 319.37-8(e) would allow the safe importation of Oncidium spp. from Taiwan provided that the plants are established in an approved growing medium and meet all other applicable conditions of § 319.37-8(e). This determination is based on the findings of the PRA and the Secretary’s judgment that the application of the measures required under § 319.37-8(e) will prevent the introduction or dissemination of plant pests into the United States.

Accordingly, we are proposing to amend the regulations in § 319.37-8(e) by adding Oncidium spp. from Taiwan to the list of plants established in an approved growing medium that may be imported into the United States. The plants would have to be produced, handled, and imported in accordance with the requirements of § 319.37-8(e) and be accompanied at the time of importation by a phytosanitary certificate issued by the NPPO of Taiwan that declares that those requirements have been met.

#### Miscellaneous

In “Subpart—Plants for Planting,” there is an incorrect reference in footnotes 9 and 10. Currently, both footnotes 9 and 10 refer the reader to footnote 9 when they should refer instead to footnote 8. In a previous action we redesignated some of the footnotes in “Subpart—Plants for Planting” and neglected to update the references to other footnotes. We are therefore proposing to revise footnotes 9 and 10 to refer the reader to footnote 8.

## Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

This proposed rule would amend the regulations to include Oncidium spp. from Taiwan on the list of plants that may enter the United States established in approved growing media, subject to specified growing, inspection, and certification requirements. Eliminating the requirement that Oncidium spp. from Taiwan must be bare-rooted is expected to increase the number and quality of these plants imported by U.S. growers, who then finish the plants for the retail market. It is also expected to reduce the production time for growers. However, gains due to improved product quality and reduced production time are likely to lead to compensating price adjustments, assuming a competitive market.

Oncidium spp. represent a relatively small portion of the orchid market and orchid trade, with a market share of between 15 and 25 percent. While many of the entities that may be affected by the final rule, such as importers of orchids for the potted plant market, are small by Small Business Administration standards, we expect any impact to be minimal, given Oncidium spp.'s small share of the U.S. orchid market and their small share of total orchid imports from Taiwan. Allowing importation of Oncidium spp. from Taiwan in growing media could also lead

to an expanded market for this genus, but any increase is likely to be limited given the flower's unusual appearance.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed importation of Oncidium spp. from Taiwan, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading ADDRESSES at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

#### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.37-8 (e) introductory text is amended as follows:

- a. By adding a new entry in alphabetical order.
- b. In footnotes 9 and 10, by removing the words “footnote 9” and adding the words “footnote 8” in their place.

The addition reads as follows:

§319.37-8 Growing media.

\* \* \* \* \*

(e) \* \* \*

Oncidium spp. from Taiwan

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Done in Washington, DC, this 1<sup>st</sup> day of December 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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