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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2016-0005]

RIN 0579-AE28

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 for planting to add orchid plants of the genus Dendrobium 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-2016-0005>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2016-0005, 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-2016-0005> 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. Lydia E. Colón, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2302.

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 for a specified period 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);
- Requires that the parent plants of the exported plants in growing media are produced from seed germinated in the production greenhouse or from mother plants that are grown and monitored for a specified period prior to export of the descendant plants;
- 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 to successfully 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 Dendrobium spp. may only be imported into the United States from Taiwan as bare root plants, in accordance with § 319.37-2. The NPPO of Taiwan has requested that importation into the United States of those plants in growing media 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 a pest risk assessment (PRA) that uses specific pest risk evaluation standards that are based on pest risk analysis 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.¹

In the PRA, titled "Importation of Dendrobium spp. plants in Approved Growing Media From Taiwan into the United States," APHIS determined that three quarantine pests present in Taiwan could potentially follow the import pathway:

¹ 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.

- Heliothrips errans (Williams), a thrips.
- Scirtothrips dorsalis Hood, the chili thrips.
- Spodoptera litura (Fabricius), the Oriental leafworm moth.

A quarantine pest is defined in § 319.37-1 of the regulations as a plant pest of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled. Potential plant pest risks associated with the importation of Dendrobium spp. from Taiwan in growing media 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 one of these three pests -- S. dorsalis -- poses a high pest risk potential. The remaining pests -- H. errans and S. litura -- were rated as having a medium pest risk potential. Further, it is important to note that those plant pest risks were analyzed 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. The risk management document (RMD) concluded that the safeguards in § 319.37-8(e) would allow the safe importation of Dendrobium 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, RMD, 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 Dendrobium 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.

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).

The proposed rule would enable Taiwanese exporters to provide higher-valued, mature Dendrobium spp. plants directly to wholesalers and retailers. However, such a scenario is considered unlikely, given the technical challenges and marketing costs incurred when shipping finished plants in pots. A more likely scenario is for Taiwan to continue to export immature Dendrobium spp. plants as bare root plants or in approved growing media to U.S. nurseries to grow and sell as finished plants.

Taiwan is the world's largest orchid exporter, with international sales in 2013 totaling \$166.3 million. That year, Dendrobium spp. orchids comprised less than 0.1 percent (that is, less than \$166,000) of the value of Taiwan's orchid exports worldwide.

The United States imported more than 6,400 metric tons of live orchids valued at \$79.4 million in 2015. Orchid imports from Taiwan comprised almost 77 percent of this value, at

\$61.4 million. In comparison, the value of orchid plants produced in the United States in 2014 was \$300 million, with Dendrobium spp. production totaling \$12.3 million. Given Dendrobium spp. making up such a small share of Taiwan's orchid sales worldwide, this proposed rule is not expected to have a significant impact on the U.S. orchid industry.

U.S. Dendrobium spp. producers numbered 216 in 2014, but the number of these establishments that are small entities is not known. Given Dendrobium spp. making up such an insignificant share of Taiwan's exports worldwide and the fact that Phalaenopsis and Oncidium spp. orchids are already being imported from Taiwan in approved growing media, we expect the proposed rule would not significantly change the volume or value of orchids imported into the continental United States from Taiwan.

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 Dendrobium 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

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2016-0005. Please send a copy of your comments to: (1) Please send a copy of your comments to: (1) APHIS, using one of the methods described under ADDRESSES at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

APHIS is proposing to amend the regulations governing the importation of plants and plant products to add orchid plants of the genus Dendrobium from Taiwan to the list of plants that may be imported into the United States in an approved growing medium, subject to specified

growing requirements. Respondents will complete activities such as phytosanitary certificates, written agreements, and inspections.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.166 hours per response.

Respondents: Foreign government and businesses.

Estimated annual number of respondents: 16.

Estimated annual number of responses per respondent: 17.

Estimated annual number of responses: 271.

Estimated total annual burden on respondents: 316 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection 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.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

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.

§ 319.37-8 [Amended]

2. In §319.37-8(e) introductory text, amend the list of plants by adding, in alphabetical order, an entry for “Dendrobium spp. from Taiwan”.

Done in Washington, DC, this 24th day of October 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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