

# Proposed Rules

Federal Register

Vol. 81, No. 156

Friday, August 12, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2015–0091]

RIN 0579–AE24

#### Importation of Orchids in Growing Media From the Republic of Korea Into the Continental United States

**AGENCY:** Animal and Plant Health Inspection Service, Department of Agriculture.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations governing the importation of plants for planting to add orchid plants of the genera *Phalaenopsis* and *Cymbidium* from the Republic of Korea to the list of plants that may be imported into the continental 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 Republic of Korea 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 October 11, 2016.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/> #!docketDetail;D=APHIS-2015-0091.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0091, 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-2015-0091 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:** Mr. William Aley, Senior Regulatory Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 851–2130.

#### 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 into the United States 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 the genera *Cymbidium* and *Phalaenopsis* may only be imported into the United States from the Republic of Korea as bare root plants, in accordance with § 319.37–2. The NPPO of the Republic of Korea 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 NPPO of the Republic of Korea 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 online on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

In the PRA, titled “Importation of *Cymbidium* spp. and *Phalaenopsis* spp. Orchid Plants in Approved Growing Media from Republic of Korea into the Continental United States,” APHIS identified that six quarantine pests present in the Republic of Korea could potentially follow the import pathway:

#### Moths

- *Spodoptera litura* (Fabricius)
- *Dichromothrips smithi* (Zimmermann)
- *Thrips palmi* (Karny)
- *Pseudococcus dendrobiorum* (Williams)

#### Slug

- *Deroceras varians* (Adams)

#### Fungi

- *Colletotrichum boninense* (Moriwaki)

The PRA identified *P. dendrobiorum* as having a medium pest risk potential of following the pathway on *Cymbidium* spp. and *Phalaenopsis* plants from the Republic of Korea. The remaining five plant pests (*S. litura*, *D. smithi*, *T. palmi*, *D. varians*, and *C. boninense*) were rated as having a high pest risk potential.

However, the PRA acknowledged that the risk presented by these plant pests is consistent with pests associated with any propagative orchid materials. Further, it is important to note that those plant pest risks are present 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 risk management document (RMD) concluded that the safeguards in § 319.37–8(e) would allow the safe importation of *Cymbidium* spp. and *Phalaenopsis* spp. plants from the Republic of Korea provided that the plants are established in an approved growing medium and meet all other applicable conditions of § 319.37–8(e). Based on the findings of the PRA and RMD, we have determined 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 *Cymbidium* spp. and *Phalaenopsis* spp. plants from the Republic of Korea 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 the Republic of Korea 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*).

Orchids are the single largest group of potted flowering plants sold in the United States, comprising about \$266 million of the \$788 million in 2014 sales for this industry. In 2014, *Phalaenopsis* spp. comprised 57 percent of orchid sales. Although *Cymbidium* spp. are popular in other parts of the world, the quantity of potted *Cymbidium* spp. sold in the United States is small when compared to other varieties of orchids.

The proposed rule would enable Korean exporters to provide higher-valued, mature potted 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 the Republic of Korea to export immature plants as bare root plants or in approved growing media to U.S. nurseries to grow and sell as finished plants.

The United States imported more than 6,760 metric tons (MT) of live orchids valued at about \$83 million in 2014, with Taiwan supplying almost 84 percent. The Republic of Korea expects to export to the United States from 2 to 5 million *Phalaenopsis* plants and about 1 million *Cymbidium* plants per year in approved growing media. This

combined number of plants, 3 to 6 million, is estimated to equal more than 2,000 MT to 4,000 MT per year. This amount seems disproportionate to the Republic of Korea's history of orchid exports worldwide, which have declined from 2,936 MT in 2010 to 806 MT in 2014. The Republic of Korea exported only 1.3 MT of bare-rooted orchid plants to the United States in 2014.

We expect the quantity of orchids in approved growing media imported from the Republic of Korea will also be limited because of the U.S. market's competitive environment. Import levels would depend on the ability of Korean producers and exporters to cover their production, transportation, and marketing costs given U.S. market prices. U.S. nurseries that purchased the Korean orchids in approved growing media would benefit from their improved quality and reduced production time in comparison to bare-rooted plants. The proposed rule would increase competition for U.S. producers and importers of immature *Phalaenopsis* spp. and *Cymbidium* spp. plants.

U.S. orchid producers numbered 158 in 2012. Of those producers, it is unknown how many are small entities. Given the relatively small quantity of orchid plants in approved growing media that we expect to be imported from the Republic of Korea, the Administrator of the Animal and Plant Health Inspection Service has determined that this action, if promulgated, will 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 *Phalaenopsis* spp. and *Cymbidium* spp. orchid varieties from the Republic of Korea into the continental United States, 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) United States Department of Agriculture (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. Comments on the environmental assessment can be submitted following the instructions under **ADDRESSES**. (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.*), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to [oira\\_submissions@omb.eop.gov](mailto:oira_submissions@omb.eop.gov), Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2015–0091. Please send a copy of your comments to the USDA using one of the methods described under **ADDRESSES** at the beginning of this document.

APHIS is proposing to amend the regulations governing the importation of plants for planting to add orchid plants of the genera *Phalaenopsis* and *Cymbidium* from the Republic of Korea to the list of plants that can be imported into the continental United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. APHIS is taking this action 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.

Adding orchid plants of the genera *Phalaenopsis* and *Cymbidium* from the Republic of Korea to the list of plants that can be imported into the continental United States in growing media will require information collection activities, such as

phytosanitary certificates, written agreements, and inspections.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning these information collection activities. APHIS needs this outside input to help accomplish the following:

(1) Evaluate whether the 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 burden of the 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 or responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.56 hours per response.

*Respondents:* Importers, shippers, and the NPPO of the Republic of Korea.

*Estimated number of respondents:* 3.

*Estimated number of responses per respondent:* 139.

*Estimated annual number of responses:* 416.

*Estimated total annual burden on respondents:* 232.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average 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

APHIS 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.

■ 2. In § 319.37–8, paragraph (e) is amended as follows:

■ a. In the introductory text, by adding a new entry for “*Cymbidium* spp. from the Republic of Korea” in alphabetical order and revising the entry for *Phalaenopsis* spp.; and

■ b. By revising paragraph (e)(2)(xiii).

The addition and revisions read as follows:

#### § 319.37–8 Growing media.

\* \* \* \* \*

(e) \* \* \*

*Cymbidium* spp. from the Republic of Korea

\* \* \* \* \*

*Phalaenopsis* spp. from Taiwan, the People's Republic of China, and the Republic of Korea.

\* \* \* \* \*

(2) \* \* \*

(xiii) Plants for planting of *Phalaenopsis* spp. from the People's Republic of China and *Phalaenopsis* spp. and *Cymbidium* spp. from the Republic of Korea may only be imported into the continental United States, and may not be imported or moved into Hawaii or the territories of the United States.

\* \* \* \* \*

Done in Washington, DC, this 9th day of August 2016.

**Jere L. Dick,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2016–19224 Filed 8–11–16; 8:45 am]

**BILLING CODE 3410–34–P**