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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:** Final rule.

**SUMMARY:** We are amending 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 quarantine plant pest.

**DATES:** Effective March 7, 2016.

**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 of certain plants and plant products into the United States to prevent the introduction of quarantine plant pests. The regulations contained in “Subpart—Plants for Planting,” §§ 319.37 through 319.37–14 (referred to below as the

regulations), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation or planting.

The regulations differentiate between prohibited articles and restricted articles. Prohibited articles are plants for planting whose importation into the United States is not authorized due to the risk the articles present of introducing or disseminating plant pests. Restricted articles are articles authorized for importation into the United States, provided that the articles are subject to measures to address such risk.

Conditions for the importation into the United States of restricted articles in growing media are found in § 319.37–8. Within that section, the introductory text of paragraph (e) lists taxa of restricted articles that may be imported into the United States in approved growing media, subject to the provisions of a systems approach. Paragraph (e)(1) of § 319.37–8 lists the approved growing media, while paragraph (e)(2) contains the provisions of the systems approach. Within paragraph (e)(2), paragraphs (i) through (viii) contain provisions that are generally applicable to all the taxa listed in the introductory text of paragraph (e). Paragraphs (i) through (viii) collectively:

- Require the 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;
- Require the plants to be rooted and grown in a greenhouse that meets certain requirements for quarantine pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);
- Restrict the source of the seeds or parent plants used to produce the plants, and require grow-out or treatment of parent plants imported into the exporting country from another country;
- Specify 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
- Require that the plants be inspected in the greenhouse and found free of evidence of quarantine plant pests no

more than 30 days prior to the exportation of the plants to the United States.

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 quarantine pest introduction associated with the importation into the United States of approved plants established in growing media.

In response to a request from the NPPO of Taiwan, we prepared a pest risk analysis (PRA) in order to identify the quarantine plant pests that could follow the importation of orchid plants of the genus *Oncidium* in approved growing media from Taiwan into the United States. (Under § 319.37–1 of the regulations, a quarantine plant pest is a plant pest that is 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.)

Based on the findings of the PRA, we prepared a risk management document (RMD) to determine whether phytosanitary measures exist that would address this quarantine plant pest risk. The RMD suggested that the risk would be addressed if the plants met the general conditions of § 319.37–8(e)(2).

As a result, on December 3, 2014, we published in the **Federal Register** (79 FR 71703–71705, Docket No. APHIS–2014–0041) a proposal<sup>1</sup> to amend the regulations by adding *Oncidium* spp. orchids from Taiwan to the list of plants for planting in approved growing media that may be imported into the United States.

We solicited comments concerning our proposal for 60 days ending February 2, 2015. We reopened and extended the deadline for comments until March 18, 2015, in a document published in the **Federal Register** on March 12, 2015 (80 FR 12954, Docket No. APHIS–2014–0041). We received 50 comments on the proposed rule by that date. They were from members of Congress, representatives of State governments, industry organizations, and private citizens. Seven comments

<sup>1</sup> To view the proposed rule, its supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0041>.

were supportive. Two commenters were generally opposed to the proposal but included no detailed objections to the action. The remainder of the comments are discussed below by topic.

### General Comments

A number of commenters stated that the specific orchid species that fall into the *Oncidium* genus, and that would therefore be authorized for importation from Taiwan under the proposed rule, were not clear. They pointed out that the *Oncidium* genus was recently rearranged based on an analysis of the boundaries of that genus. The commenters said that we must clarify which orchids are considered to be part of the genus *Oncidium* for purposes of the proposed rule, and that such clarification must be reflected in all supporting documents.

We agree with the commenters that the genus *Oncidium* has been subject to revision, and some taxa previously classified as *Oncidium* spp. have been relocated into different genera. For purposes of this rule, *Oncidium* species are those species currently agreed upon by the international taxonomic community to belong to the genus *Oncidium*, as well as interspecies hybrids within that genus. However, since the supporting documents that accompanied the proposed rule considered all the species that remain in the genus after the revision, as well as interspecies hybrids, we do not consider it necessary to revise the supporting documents as the commenters requested.

Several commenters stated that, because bare-rooted *Oncidium* spp. orchids from Taiwan are already authorized for importation into the United States, it is not necessary to authorize the importation of *Oncidium* spp. orchids in growing media.

Under the regulations in 7 CFR 319.5, the NPPO of a foreign country may request that APHIS authorize the importation of a plant or plant product that is not allowed importation into the United States, and APHIS will consider the request if it includes all the categories of information specified in § 319.5 for such requests. The NPPO of Taiwan made such a request for *Oncidium* spp. orchids in approved growing media.

Several commenters stated that the rule appears to be the byproduct of bilateral negotiations between the United States and Taiwan, and that the rule was linked to agreements authorizing the export of certain U.S. commodities to Taiwan. Because of this, the commenters expressed concern that APHIS did not adequately consider the

risk associated with the importation of *Oncidium* spp. orchids from Taiwan in growing media. Similarly, other commenters stated that we issued the proposed rule solely because large-scale U.S. importers of orchids requested it.

While political and economic interests may stimulate consideration of the expansion of trade of agricultural commodities between countries, these did not lead us to issue the proposed rule. The United States is a member of the World Trade Organization (WTO), and a signatory to the WTO's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) and the International Plant Protection Convention (IPPC). In these capacities, the United States has agreed that any prohibitions it places on the importation of plants for planting will be based on scientific evidence, and will not be maintained without sufficient scientific evidence indicating that the prohibitions are necessary to protect plant life and health within the United States.

The PRA and RMD that accompanied the proposed rule evaluated the quarantine plant risk associated with the importation of *Oncidium* spp. orchids in approved growing media from Taiwan into the United States. These documents provided scientific evidence that a prohibition on the importation of *Oncidium* spp. orchids in approved growing media is not necessary in order to protect plant life and health in the United States, and the risk associated with such importation could be addressed by requiring the orchids and growing media to be produced in accordance with § 319.37–8(e). This led us to issue the proposed rule.

We prepared the PRA and RMD in accordance with IPPC standards<sup>2</sup> and our own guidelines, and we are confident that they adequately evaluated the plant pest risk associated with the importation of *Oncidium* spp. orchids in approved growing media from Taiwan into the United States.

One commenter stated that certain life stages of quarantine plant pests can be difficult to detect at ports of entry into the United States, as can quarantine plant pests with unique feeding habits. For this reason, the commenter stated that we should prohibit the importation of *Oncidium* spp. orchids in approved growing media into the United States.

If the provisions of the proposed rule are adhered to, there will be a negligible risk that *Oncidium* spp. orchids in

approved growing media from Taiwan that are imported into the United States will harbor quarantine plant pests.

That being said, pursuant to §§ 319.37–3 and 319.37–11 of the regulations, lots of *Oncidium* spp. orchids in approved growing media from Taiwan that consist of 13 or more plants must be imported to a United States Department of Agriculture plant inspection station for entry into the United States—we anticipate that almost all lots of *Oncidium* spp. orchids in approved growing media from Taiwan that are exported to the United States will consist of more than 13 plants. Personnel at plant inspection stations are trained to detect plant pests and signs and symptoms of plant pests, including those that are difficult to detect, and have access to personnel with scientific expertise in identifying plant pests.

One commenter stated that Taiwan cannot be trusted to adhere to the provisions of the proposed rule.

Like the United States, Taiwan is a signatory to the SPS Agreement. As such, it has agreed to respect the phytosanitary measures the United States imposes on the importation of plants and plant products from Taiwan when the United States demonstrates the need to impose these measures in order to protect plant health within the United States. The PRA that accompanied the proposed rule provided evidence of such a need.

One commenter stated that the NPPO of Taiwan should have to demonstrate adherence to the proposed systems approach with small shipments of orchids before we allow more widespread export of *Oncidium* spp. orchids from Taiwan under the provisions of the systems approach.

We do not consider this sort of provisional authorization necessary. We authorize the importation of many plants and plant products from Taiwan into the United States, and have not encountered any issues to suggest the NPPO of Taiwan will not or cannot adhere to the requirements of our export programs for such commodities.

### Comments Regarding the Pest Risk Analysis

#### General Comment

As we mentioned above, we prepared a PRA in support of the proposed rule. The purpose of the PRA was to identify the quarantine plant pests that could follow the importation of *Oncidium* spp. orchid plants in approved growing media from Taiwan to the United States.

One commenter pointed out that the PRA was completed in May of 2012.

<sup>2</sup> For the relevant IPPC standards, see International Standards for Phytosanitary Measures (ISPM) No. 11, found at [http://www.acfs.go.th/sps/downloads/34163\\_ISPM\\_11\\_E.pdf](http://www.acfs.go.th/sps/downloads/34163_ISPM_11_E.pdf).

The commenter asked whether there have been any additional quarantine pests associated with *Oncidium* spp. orchids detected in Taiwan since it was completed.

There have not been any such detections.

#### Comments Regarding the Pest List

As part of the PRA, we prepared a list of plant pests that are associated with *Oncidium* spp. orchids and that we determined to occur in Taiwan.

One commenter asked why we limited the list to plant pests. The commenter asked whether APHIS had considered whether zoonotic diseases could follow the pathway on *Oncidium* spp. orchids in growing media, and, more generally, whether APHIS had considered the potential risks to human and animal health associated with such importation.

We limit our PRAs to evaluating plant pest risk; this is consistent with our PRA guidelines related to this specific class of plant commodity and also with IPPC standards. However, the environmental assessment that accompanied the proposed rule evaluated the potential environmental consequences associated with authorizing the importation of *Oncidium* spp. orchids in approved growing media. This includes potential human or animal health risks.

Several commenters pointed out that, while some plant pests on the list were identified to the species level, others were identified only to the genus level. The commenters stated that certain species within a genus of plant pests can be significantly more destructive than other species within that genus, and asked us to revise the pest list to identify all plant pests of *Oncidium* spp. orchids that we believe to occur in Taiwan to the species level.

The commenters are correct that certain plant pest species within a particular genus can be significantly more destructive than other species in the same genus. For this reason, as we stated in the PRA, the taxonomic level for organisms listed in our PRAs is usually the species. This is consistent with both our standards as well as with the IPPC standards for PRAs, which suggest that, within PRAs, the identity of the organism should be clearly defined to ensure that the assessment is being conducted on distinct organisms.<sup>3</sup>

Accordingly, within the PRA, all plant pests that we determined to be associated with *Oncidium* spp. orchids in growing media and to occur in Taiwan were identified to the species

level. If we listed the genus or family level of the pest in the PRA, this is because a pest in that genus or family was intercepted on bare-rooted *Oncidium* spp. orchids from Taiwan, but we could not identify the genus or family as occurring in Taiwan or being associated with *Oncidium* spp. orchids. We included entries for these genera and families in the PRA for the sake of transparency and completeness, but do not consider further classification of the intercepted pests to be necessary.

One commenter pointed out that our PRA included not only a pest list, but also a list of plant pests that have been intercepted on bare-rooted *Oncidium* spp. orchids at ports of entry into the United States between 1985 and 2010. The commenter asked why the pest list did not include all pests listed on this latter list.

If the pest list did not include a particular plant pest for which we have pest interception records, it was because we could either find no evidence that the pest occurs in Taiwan, or could find no additional evidence suggesting the pest is associated with *Oncidium* spp. orchids.

Several commenters expressed concern that the pest list may be incomplete, and that unidentified quarantine pests could be introduced into the United States through the importation of *Oncidium* spp. orchids from Taiwan in approved growing media.

We compiled the pest list in the PRA from multiple sources, including information provided by the NPPO of Taiwan, pest detection records, and our own review of scientific literature. We are confident that the list has identified all quarantine pests associated with *Oncidium* spp. orchids in approved growing media that occur in Taiwan.

A commenter expressed concern that, if quarantine pests of *Oncidium* spp. orchids that were not listed in the PRA are subsequently detected in Taiwan, the systems approach in the proposed rule may not contain measures that mitigate these plant pest risks.

If this occurs, we will take appropriate measures to address such risk. This could include additional restrictions on the importation of *Oncidium* spp. orchids in growing media from Taiwan and/or suspension of the export program for *Oncidium* spp. orchids in growing media from Taiwan until APHIS and the NPPO of Taiwan jointly agree that the risk has been addressed.

One commenter pointed out that no nematodes were included in the pest list. The commenter asked us to explain their omission.

As we mentioned above, the list was of plant pests that are associated with *Oncidium* spp. and that we determined to occur in Taiwan. There are no species of nematodes that meet these two criteria.

A commenter pointed out that the pest list had only included one species of *Fusarium* (a genus of pathogenic fungi), *Fusarium oxysporum*. The commenter stated that APHIS had previously indicated that multiple species of *Fusarium* occur in Taiwan, but that we lack diagnostic tools to identify all of these species conclusively. The commenter questioned this discrepancy.

At this time, we are aware that multiple species of *Fusarium* occur in Taiwan. However, only one of these *Fusarium* species—*F. oxysporum*—is known to be associated with *Oncidium* spp. orchids.

The same commenter stated that we had also previously indicated that we take no action at ports of entry to the United States on commodities determined to be affected with *Fusarium* spp., and questioned this policy.

Under the Plant Protection Act (PPA, 7 U.S.C. 7711 *et seq.*), with limited exceptions, we may apply remedial measures to plants or plant products that are in the process of being imported into the United States only in order to prevent the dissemination of a plant pest that is new or not known to be widely prevalent or distributed within and throughout the United States. When we have detected *Fusarium* spp. on commodities at ports of entry into the United States, the species detected have been ones that are widely prevalent within the United States.

One commenter pointed out that the PRA stated that we have intercepted springtails of the family Sminthuridae on bare-rooted *Oncidium* spp. orchids from Taiwan. The commenter asked whether we had intercepted *Sminthurus viridis*, the Lucerne earth flea. If so, the commenter suggested that we should add *S. viridis* to the pest list.

We have not intercepted *S. viridis*. Moreover, there is no evidence that *S. viridis* exists in Taiwan or is associated with *Oncidium* spp. orchids.

Several commenters pointed out that biting midges (*Ceratopoginidae* = *Culicoides* spp., *Forcipomyia* spp.) were not included on the pest list in the PRA. The commenters stated that biting midges occur in Taiwan, and could be imported in sphagnum moss, which is listed in § 319.37–8 as an approved growing medium. The commenters stated that midges can vector arboviruses, filarial worms, other

<sup>3</sup> See ISPM No. 11.

parasites, and, while prevalent in the United States, are not established throughout their geographical range. The commenters stated that immature midges could enter greenhouses where *Oncidium* spp. orchids intended for export to the United States are produced and develop in sphagnum moss, and would be able to survive transit from Taiwan to the United States in moist sphagnum. The commenters asked that the pest list be revised to include biting midges, and biting midge-specific mitigations be added to the systems approach of the proposed rule.

We disagree that sphagnum moss is a hospitable host for biting midges, and that biting midges are likely to follow the pathway on such moss when it is used as a growing medium for plants for planting. We approved the use of sphagnum moss as a growing medium for plants for planting in 1980 (45 FR 31572–31597). Given the worldwide prevalence of biting midges, we would expect to have detected biting midges during port-of-entry inspections of orchids and other plants for planting in sphagnum moss by this time. We have had no such detections.

Additionally, we note that there is no evidence that biting midges are plant pests.

Similarly, a commenter stated that sphagnum moss and organic fibers, which are also listed as an approved growing medium, can harbor nematodes and species of fire ants of quarantine significance, and that these pests could therefore follow the pathway on *Oncidium* spp. orchids imported from Taiwan in such material and become established in the United States. The same commenter also stated that sphagnum moss can harbor microorganisms that cause significant disease in plants. The commenter asked us to revise the pest list accordingly.

We have no evidence that sphagnum moss or organic fibers are a pathway for the pests mentioned by the commenter, nor did the commenter supply any such evidence. Since sphagnum moss and organic fibers were approved as growing media for plants for planting in 1980, there have been no detections of quarantine plant pests on these growing media that would suggest these growing media are a pathway for the introduction of quarantine plant pests.

Several commenters stated that many quarantine plant pests that are not associated with *Oncidium* spp. orchids are associated with bark, which is often used as a growing medium for *Oncidium* spp. orchids, and the pest list should be revised to take this into consideration.

Bark is not listed in § 319.37–8 as an approved growing medium.

Finally, several commenters stated that we should revise the pest list to indicate that several of the plant pests listed, while not quarantine plant pests, are not known to occur in Hawaii.

This practice would be inconsistent with IPPC standards for PRAs, which suggest that pests should be classified based on whether or not they are quarantine pests.<sup>4</sup> It would also be inconsistent with our own PRA guidelines and regulatory practices.

#### Comments Regarding the List of Quarantine Pests

Based on the pest list, the PRA identified 14 quarantine pests as occurring in Taiwan and potentially following the pathway on *Oncidium* spp. orchids in approved growing media:

- *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.

One commenter stated that *L. fulica* is a high-risk pest, and could cause significant damage to domestic agriculture if it became established throughout the United States. The commenter opined we should therefore not authorize the importation of *Oncidium* spp. orchids in approved growing media because of this plant pest risk.

We agree that *L. fulica* is a high risk pest. However, if the provisions of the proposed rule are adhered to, there is a negligible risk that *L. fulica* will be introduced into the United States

through the importation of *Oncidium* spp. orchids in approved growing media from Taiwan.

One commenter stated that several of the pests that were listed on the pest list, but not identified as quarantine pests, are known to occur in Hawaii. The commenter pointed out that APHIS' regulations in 7 CFR 318.13–1 impose a general prohibition on the interstate movement of plants for planting from Hawaii in order to prevent the introduction or further dissemination of plant pests within the United States. The commenter further pointed out that § 318.13–1 refers to this prohibition as a quarantine. The commenter concluded that, because of this quarantine, all plant pests of *Oncidium* spp. orchids that occur in Hawaii are quarantine pests. The commenter asked us to reevaluate the pest list in light of this consideration, and to revise the list of quarantine pests of *Oncidium* spp. orchids that occur in Taiwan and potentially could follow the pathway on *Oncidium* spp. orchids in approved growing media accordingly.

While we agree with the commenter that § 318.13–1 imposes a general quarantine on the interstate movement of plants for planting from Hawaii, including the interstate movement of *Oncidium* spp. orchids, we disagree that this means that all plant pests of *Oncidium* spp. orchids that occur in Hawaii are therefore quarantine plant pests. As we mentioned above, in order to meet our definition of a quarantine plant pest, a plant pest that is present in the United States must not be widely distributed and must be officially controlled. The general quarantine in § 318.13–1 does not constitute an official control program of all plant pests that occur in Hawaii.

#### Comments Regarding the Analysis of Quarantine Pests

The PRA also analyzed the likelihood that each of the 14 quarantine pests listed above would be introduced into the United States through the importation of *Oncidium* spp. orchids in approved growing media from Taiwan, as well as the consequences of such introduction.

One commenter stated that the PRA should be revised to evaluate the likelihood that snails and slugs in the families of Achatinidae, Succineidae, Philomycidae, Subulinidae, Veronicellidae, Camanidae, Helicarionidae, and Ariophantidae that occur in Taiwan will follow the pathway on *Oncidium* spp. orchids in approved growing media into the United States, as well as the consequences of such introduction.

<sup>4</sup> See ISPM No. 11.

The PRA contained an evaluation of the likelihood that quarantine snails and slugs that occur in Taiwan and are associated with *Oncidium* spp. orchids will follow the pathway on *Oncidium* spp. orchids in approved growing media to the United States. If the snails or slugs were considered to potentially follow the pathway, the PRA evaluated the likelihood of their introduction into the United States through this pathway, and the consequences of this introduction. However, evaluating the likelihood and consequences of the introduction into the United States of snails and slugs that occur in Taiwan and are associated with *Oncidium* spp. orchids, but are not of quarantine significance, is inconsistent with IPPC standards, as well as our own PRA guidelines. Moreover, evaluating the likelihood and consequences of introduction of quarantine snails and slugs that occur in Taiwan but are not associated with *Oncidium* spp. orchids is unnecessary. Such snails and slugs will not follow the pathway on *Oncidium* spp. orchids in approved growing media to the United States.

Several commenters stated that the PRA should have evaluated the likelihood of introduction and establishment in Hawaii of all plant pests on the pest list that could potentially follow the pathway on *Oncidium* spp. orchids and are not known to occur in Hawaii, regardless of whether the plant pests are of quarantine significance.

The PRA evaluated the likelihood of introduction and establishment in Hawaii of all quarantine plant pests that could potentially follow the pathway on *Oncidium* spp. orchids in approved growing media to the United States, as well as the consequences of such establishment. Evaluating the likelihood and consequences of establishment in Hawaii of plant pests that could potentially follow the pathway on *Oncidium* spp. into the United States but are not quarantine plant pests is inconsistent with IPPC standards, as well as our own PRA guidelines.

One commenter assumed that it was incumbent on the State of Hawaii to conduct an evaluation of the likelihood and consequences of establishment in Hawaii of plant pests that could potentially follow the pathway on *Oncidium* spp. into the United States but are not quarantine plant pests, but stated that, if the State were to conduct such an evaluation and identify potentially significant adverse consequences, the State had no recourse under the PPA to request Federal restrictions on the movement of *Oncidium* spp. orchids in approved

growing media from Taiwan into Hawaii.

We disagree with the commenter. Pursuant to section 7711 of the PPA, APHIS has established the Federally Recognized State Managed Phytosanitary Program (FRSMP). Under the program, States may petition APHIS to recognize State-managed phytosanitary programs that are developed to eradicate, exclude, or contain plant pests that are of limited distribution within that State and that APHIS does not consider to be of quarantine significance.<sup>5</sup> If APHIS grants a State's FRSMP petition, when we determine that an article imported into the United States is infested with a FRSMP pest and destined for the State that submitted the petition, we will take appropriate remedial measures to address this plant pest risk.

Finally, a commenter who co-authored an article<sup>6</sup> referred to in this section of the PRA stated that we had cited the article in an erroneous manner. Whereas we suggested that the article indicates that approved growing media are not a conducive host for snails, the commenter stated that *Hollingsworth and Sewake* only evaluated the growing media in and of themselves, and not when they are used in association with plants for planting. The commenter stated that *Hollingsworth and Sewake* in fact included evidence suggesting that snail eggs can remain viable on coir, which is listed in § 319.37–8 as an approved growing medium, when the coir is used as a growing medium for orchids.

We agree that we should not have cited the article as evidence that approved growing media are not a conducive host for snails. We also agree that *Hollingsworth and Sewake* provides evidence that snail eggs can remain viable on coir, when coir is used as a growing medium for orchids. For these reasons, we will not cite the article in future PRAs as evidence that approved growing media are not a conducive host for snails.

However, *Hollingsworth and Sewake* did not evaluate growing media used in connection with the importation of plants for planting in accordance with § 319.37–8(e), but rather growing media that are either located in the natural environment of Hawaii or commercially

<sup>5</sup> Criteria for a FRSMP petition are located here: [https://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/frsmp/downloads/petition\\_guidelines.pdf](https://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/downloads/petition_guidelines.pdf).

<sup>6</sup> Hollingsworth, R.G., and K.T. Sewake. 2002. The Orchid Snail as a Pest of Orchids in Hawaii. Cooperative Extension Service, College of Tropical Agriculture and Human Resources, University of Hawaii at Manoa. Referred to in this preamble as *Hollingsworth and Sewake*.

produced in Hawaii and available to Hawaiian producers. There is no evidence that growing media used in connection with the importation of plants for planting in accordance with § 319.37–8(e) is a conducive host for snail eggs, or that immature snails could follow the pathway on approved growing media imported to the United States in accordance with § 319.37–8(e).

#### *Comments Regarding the Proposed Systems Approach*

We proposed that the *Oncidium* spp. orchids would have to be grown in a greenhouse in which sanitary procedures adequate to exclude quarantine pests are always employed. We proposed that, at a minimum, the greenhouse would have to be free from sand and soil, have screenings with openings of not more than 0.6 mm on all vents and openings except entryways, have entryways equipped with automatic closing doors, regularly clean and disinfect floors, benches, and tools, and use only rainwater that has been boiled or pasteurized, clean well water, or with potable water to water the plants.

One commenter expressed concern that screenings with openings of 0.6 mm would not preclude *T. palmi* from entering the greenhouses. The commenter cited studies indicating that 40 to 50 percent of *T. palmi* that attempt to pass through such an opening can do so.

We agree that screenings with openings of 0.6 mm may not preclude all *T. palmi* from entering the greenhouse. However, in order to comply with the provisions of the systems approach, growers will have to employ sanitary procedures that are jointly sufficient to exclude quarantine pests from the *Oncidium* spp. orchids intended for export to the United States. Accordingly, growers in areas where *T. palmi* are present will be expected to develop a pest management plan for *T. palmi* to address incursions of this pest into the greenhouse; the plan must have sufficient safeguards to prevent *Oncidium* spp. orchids intended for export to the United States from becoming infested with *T. palmi*.

One commenter assumed that certain growers would have to implement such pest management plans in order for their greenhouses to always employ sanitary procedures adequate to exclude quarantine pests from the *Oncidium* spp. orchids grown in the greenhouses. However, the commenter expressed concern that growers may not be able to implement or maintain mitigations specified in the plans, or may not be able to identify equivalent mitigations if

the initial mitigations prove insufficient, without guidance or oversight from individuals with phytosanitary training.

Under paragraph (e)(2) of § 319.37–8, the NPPO of Taiwan must enter into an agreement with APHIS to enforce the export program for *Oncidium* spp. orchids in approved growing media to the United States, and each grower who wishes to export *Oncidium* spp. orchids must enter into an agreement with the NPPO of Taiwan. In this latter agreement, the NPPO of Taiwan will specify how the producer may meet the requirements of § 319.37–8, and will require the grower to agree to allow the NPPO of Taiwan access to greenhouses at any time to monitor compliance with the agreement and the provisions of § 319.37–8. Because of these requirements, growers will have the oversight and guidance of the NPPO of Taiwan to assess the efficacy of their pest management plans.

One commenter stated that APHIS should conduct monitoring of the development and implementation of these pest management plans, in addition to the NPPO of Taiwan.

We reserve the right to conduct such monitoring. Additionally, as we discuss below, APHIS inspectors may inspect the orchids prior to export. However, we do not consider it necessary for us to require APHIS to monitor the development and implementation of each pest management plan. For other export programs for plants and plant products from Taiwan to the United States, we have exercised joint monitoring responsibilities with the NPPO of Taiwan, and we have not encountered any issues that suggest we should modify this practice.

Several commenters surmised that most pest management plans would include the application of pesticides. They stated that Taiwan authorizes the use of pesticides that are prohibited for use within the United States, and that are significantly more potent than pesticides used within the United States. The commenters expressed concern that certain quarantine plant pests of *Oncidium* spp. orchids that occur in Taiwan may have developed tolerances to U.S. pesticides.

The commenter assumes that quarantine plant pests will be introduced into the United States through the importation of *Oncidium* spp. orchids in approved growing media from Taiwan. As we stated previously in this document, if the provisions of the systems approach are adhered to, there is a negligible risk that this will occur.

Additionally, we have no evidence that any of the quarantine plant pests of *Oncidium* spp. that are known to occur

in Taiwan and may follow the pathway on *Oncidium* spp. orchids in approved growing media to the United States are resistant to U.S. pesticides.

We proposed that the orchids would have to be inspected in the greenhouse and found free from evidence of quarantine pests by an APHIS inspector or an inspector of the NPPO of Taiwan no more than 30 days prior to the date of export to the United States.

Several commenters stated that visual inspections, in and of themselves, are not sufficient to address the quarantine plant pest risk associated with the importation of *Oncidium* spp. orchids from Taiwan.

We agree. This is why we proposed to require the orchids to be produced in accordance with the systems approach of § 319.37–8(e).

Several commenters stated visual inspections are not always able to detect signs of bacterial or viral infection. The commenters suggested that the orchids should have to be tested for bacterial and viral pathogens prior to export to the United States.

We do not consider viral testing to be necessary. The PRA did not identify any quarantine viruses that occur in Taiwan and are associated with *Oncidium* spp. orchids.

Although we did identify one quarantine bacterium, *P. cyripedii*, to exist in Taiwan and potentially follow the pathway on *Oncidium* spp. orchids to the United States, inspection is not the sole mitigation for *P. cyripedii* within the systems approach. We also require the orchids to be grown on benches raised at least 46 centimeters off the ground; to be watered only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water; to be rooted and grown in approved media; and to be grown in greenhouses that are free from sand and soil. Because *P. cyripedii* is primarily spread through compost or soil admixed with plant debris, as well as water contaminated with soil, these mitigations are jointly sufficient to preclude *P. cyripedii* from being introduced to the orchids, and we do not consider testing for *P. cyripedii* to be necessary.

One commenter pointed out that the RMD that accompanied the proposed rule appeared to require growers to employ bactericides for *Oncidium* spp. orchids that are determined to be infected with *P. cyripedii*. The commenter stated that bactericides are not effective mitigations for plants that are visibly infected with *P. cyripedii*. The commenter suggested that plants at a greenhouse that are visibly infected

with *P. cyripedii* should be removed from the greenhouse and destroyed.

We agree with the commenter. In the event that *Oncidium* spp. orchids infected with *P. cyripedii* are detected at the greenhouse, these plants must be removed from the greenhouse and destroyed. We note, however, that we consider it unlikely that *Oncidium* spp. orchids at these greenhouses will become infected with *P. cyripedii*, for the reasons specified immediately above.

As we mentioned earlier in this document, we noted that lots of 13 or more *Oncidium* spp. orchids in approved growing media from Taiwan would have to be imported to a U.S. Department of Agriculture (USDA) plant inspection station for entry into the United States.

Several commenters asked that we explain the inspection protocol at plant inspection stations.

At least 2 percent of the plants in each consignment of *Oncidium* spp. orchids in growing media will be inspected for plant pests, as well as signs and symptoms of such pests. Inspecting 2 percent of the plants will detect plant pest infestation in 5 percent of the lot with 95 percent confidence. We note, moreover, that we may set a higher inspection rate, as warranted.

If there are any pests detected, or any signs or symptoms of pests, inspectors at the stations will have recourse to pest identifiers and diagnostic testing to positively identify the pests. APHIS will take appropriate remedial measures if any consignments are determined to be infested with quarantine pests.

Finally, one commenter stated that the provisions of the proposed rule did not comply with the intent of Executive Order 13112, which instructs Federal agencies not to carry out actions that the agencies believe are likely to result in the introduction of invasive species.

The commenter's stated assumptions were that the provisions of the rule would not mitigate for *T. palmi*, that quarantine viral pathogens would follow the pathway on *Oncidium* spp. orchids in approved growing media from Taiwan, and that visual inspection would be the sole mitigation for the quarantine pests identified by the PRA as potentially following the pathway on *Oncidium* spp. orchids in approved growing media from Taiwan.

For the reasons discussed previously in this document, we regard these assumptions to be incorrect.

#### *Comments Regarding Phalaenopsis Spp. Orchids*

A number of commenters drew parallels between this proposed rule

and a previous rule (69 FR 24916–24936, Docket No. 98–038–5) that authorized the importation of *Phalaenopsis* spp. orchids in approved growing media from Taiwan. The commenters stated that, for that rule, APHIS had grossly underestimated the number of *Phalaenopsis* spp. orchids in approved growing media that would be imported into the United States annually. Several of the commenters stated that the volume of imports had overwhelmed APHIS' capacity to inspect the *Phalaenopsis* spp. orchid shipments. Several of the commenters also stated that a disproportionate amount of the *Phalaenopsis* spp. orchids in approved growing media exported to the United States have been infested with quarantine plant pests, including a number of quarantine plant pests that we had not considered likely to follow the pathway on *Phalaenopsis* spp. orchids to the United States. Similarly, several commenters stated that the importation of *Phalaenopsis* spp. orchids in growing media had resulted in the introduction of plant pests into the United States. Given these considerations, the commenters stated that the systems approach in § 319.37–8 appears to be ineffective for orchids from Taiwan, and inquired on what basis we assumed that the number of *Oncidium* spp. orchids from Taiwan in approved growing media imported annually to the United States would be significantly fewer than the number of *Phalaenopsis* spp. orchids from Taiwan imported annually; on what basis we assumed that we have sufficient resources to inspect shipments of *Oncidium* spp. orchids in approved growing media at plant inspection stations; and on what basis we concluded that the importation of *Oncidium* spp. orchids in approved growing media from Taiwan into the United States would not result in the introduction of plant pests into the United States.

We consider the export market for *Phalaenopsis* spp. orchids from Taiwan to be significantly different from the export market for *Oncidium* spp. orchids from Taiwan. For the latter genus, Taiwan has a large and established market in Japan, and would have to divert a significant amount of their current exports from Japan to the United States for the number of *Oncidium* spp. orchids in approved growing media exported to the United States annually to be commensurate with the number of *Phalaenopsis* spp. orchids exported to the United States annually. We do not consider such diversion likely, and discuss the matter

at greater length in the economic analysis that accompanies this final rule.

We disagree with the commenters who stated that we have lacked sufficient resources to inspect *Phalaenopsis* spp. orchids in approved growing media from Taiwan. Since we authorized their importation into the United States, we have inspected all shipments of *Phalaenopsis* spp. orchids in approved growing media in accordance with the inspection protocol discussed earlier in this document. Accordingly, even if import levels of *Oncidium* spp. in approved growing media from Taiwan were to be equivalent to those of *Phalaenopsis* spp. in approved growing media—a scenario that, again, we regard to be unlikely—we would have sufficient resources to inspect all consignments of *Oncidium* spp. in approved growing media exported to the United States.

We also disagree with the commenters who stated that the number of *Phalaenopsis* spp. orchids in approved growing media that have been determined to be infested with quarantine pests has been disproportionately high. Since we authorized the importation of *Phalaenopsis* spp. orchids in approved growing media from Taiwan, an average of 23 consignments have been determined to be infested annually. Insofar as an estimated 20 million *Phalaenopsis* spp. orchids in approved growing media are exported from Taiwan to the United States each year, we do not consider this number to be statistically significant or disproportionate, or to provide a basis for questioning the efficacy of the systems approach in § 319.37–8 with regard to the importation of orchids from Taiwan.

Finally, we have no evidence that any plant pests have been introduced into the United States through the importation of *Phalaenopsis* spp. orchids in growing media from Taiwan.

One commenter stated that a 2007 survey of *Phalaenopsis* growers in Taiwan found that more than 50 percent had orchids that were determined to be infected with viral or bacterial pathogens. The commenter asked us why we considered *Oncidium* spp. orchids produced for the export program to the United States to be unlikely to become infected with bacterial or viral plant pathogens.

We have confidence that the list of viral and bacterial pathogens of *Oncidium* spp. orchids in the PRA is complete, and thus that we have correctly identified the likelihood that *Oncidium* spp. orchids from Taiwan

could become infected with viral or bacterial plant pests. If the conclusions of our PRA are accurate, then the provisions of the proposed rule, which were based on these conclusions, adequately address the viral and bacterial plant pest risk associated with the importation into the United States of *Oncidium* spp. orchids in approved growing media from Taiwan.

We do not consider the survey referenced by the commenter to call into question the accuracy of our PRA; only *Phalaenopsis* spp. orchid growers in Taiwan were surveyed. Nor do we consider it to call into question the efficacy of the systems approach in § 319.37–8(e). The survey appears to have surveyed all *Phalaenopsis* spp. orchid growers in Taiwan, and not merely those associated with the export program for *Phalaenopsis* spp. orchids in approved growing media to the United States.

Finally, one commenter requested that “all of the pleadings and comments from the 2007 HOGA (Hawai'i Orchid Growers Association) versus USDA legal challenge on the importation of Taiwan *Phalaenopsis*” be included in the administrative record for the proposed rule.

In the lawsuit referenced by the commenter, which was commenced in 2005, HOGA challenged actions related to our consultation with the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) regarding our 2004 final rule authorizing the importation of *Phalaenopsis* spp. orchids in approved growing media from Taiwan into the United States. The U.S. District Court for the District of Columbia granted summary judgment in favor of USDA and FWS, and dismissed the HOGA case in 2006. That decision was affirmed by the U.S. Circuit Court of Appeals for the District of Columbia Circuit in 2007.

The pleadings and comments from the HOGA lawsuit predate, and do not address, the proposed rule regarding the importation into the United States of *Oncidium* spp. orchids in approved growing media from Taiwan. Moreover, it is premature and unnecessary to determine the scope of the documents that should be included in an administrative record for this rule that may be compiled in the future.

#### *Comments Regarding the Economic Analysis and Environmental Assessment*

In support of the proposed rule, we prepared an initial economic analysis and draft environmental assessment. We received several comments regarding both documents. These are discussed in

the final economic analysis and environmental assessment that accompany this rule.

#### Miscellaneous

In preparing this final rule, we noticed an error in § 319.7–4, which contains general conditions regarding the withdrawal, cancellation, and revocation of various permits for plants and plant products.

Paragraph (b) of that section deals with cancellation of a permit that has been issued to a permittee, at the permittee's request. However, the section had erroneously stated that, upon receipt of such a request, APHIS will withdraw the individual's application, rather than cancel his or her permit. We have corrected this error.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### Executive Order 12866 and Regulatory Flexibility Act

This 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 on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS is amending the regulations in 7 CFR 319.37–8(e), which restrict the importation of orchids of the genus *Oncidium* to those plants that are free of sand, soil, earth, and other growing media. This rule amends 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 an unknown but small portion of the orchid market and orchid trade. 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 (SBA) standards, we expect any impact to be minimal, given *Oncidium* spp. having a small share of the U.S. orchid market and a 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. The variety's range of unusual appearances appeals to collectors and other niche markets, but could also result in mass market demand.

Under these circumstances, the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation into the United States of *Oncidium* spp. orchids in approved growing media from Taiwan, subject to a required systems approach, will not have a significant impact on the quality of the human environment in the United States. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were 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 and finding of no significant impact may be

viewed on the Regulations.gov Web site. Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### Paperwork Reduction Act

This final 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 are amending 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.

#### § 319.7–4 [Amended]

■ 2. In § 319.7–4, in paragraph (b), the words “withdrawal of the application” are removed, and the words “cancellation of the permit” are added in their place.

#### § 319.37–8 [Amended]

■ 3. Section 319.37–8 (e), introductory text, is amended as follows:

- a. By adding, in alphabetical order, an entry for “*Oncidium* spp. from Taiwan”.
- b. In footnotes 9 and 10, by removing the words “footnote 9” and adding the words “footnote 8” in their place.

Done in Washington, DC, this 29th day of January 2016.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2016–02141 Filed 2–3–16; 8:45 am]

**BILLING CODE 3410–34–P**