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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2014–0106]

RIN 0579–AE10

#### Importation of *Phalaenopsis* Spp. Plants for Planting in Approved Growing Media From China to the Continental United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of plants for planting to authorize the importation of *Phalaenopsis* spp. plants for planting from China in approved growing media into the continental United States, subject to a systems approach. The systems approach consists of measures that are currently specified in the regulations as generally applicable to all plants for planting authorized for importation into the United States in approved growing media. This rule allows for the importation of *Phalaenopsis* spp. plants for planting from China in approved growing media, while providing protection against the introduction of quarantine plant pests.

**DATES:** Effective March 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lydia E. Colón, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2302.

#### 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 quarantine plant pests. Restricted articles are articles authorized for importation into the United States, provided that the articles are subject to mitigation 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), while paragraphs (ix) through (xii) contain additional, taxon-specific provisions.

In response to a request from the national plant protection organization (NPPO) of China, on June 1, 2015, in a proposed rule<sup>1</sup> published in the **Federal Register** (80 FR 30959–30961, Docket No. APHIS–2014–0106), we proposed to amend the introductory text of paragraph (e) of § 319.37–8 to add *Phalaenopsis* spp. plants for planting from China to the list of taxa authorized for importation into the United States in approved growing media. We also proposed to add a paragraph (e)(2)(xii) to § 319.37–8 that would specify that such plants for planting may only be imported into the continental United States.

We solicited comments concerning our proposal for 60 days ending July 31, 2015. We received eight comments by

that date. They were from the NPPO of China, two State departments of agriculture, an organization representing State departments of agriculture, an organization representing horticulture in the State of Hawaii, a plant pathologist specializing in *Phalaenopsis* spp. plants for planting, and private citizens.

One commenter suggested we finalize the rule, as written. The remaining commenters had questions and comments regarding the rule and its supporting documents. We discuss the comments that we received below, by topic.

#### Comments Regarding the Pest Risk Assessment and Risk Management Document

In response to the NPPO of China’s request, we prepared a pest risk assessment (PRA), titled “Importation of *Phalaenopsis* spp. Orchids in Growing Media from China into the Continental United States: A Pathway-Initiated Risk Assessment,” to analyze the potential pest risk associated with the importation of *Phalaenopsis* spp. plants for planting in approved growing media into the continental United States from China. We also prepared a risk management document (RMD), titled “Importation of *Phalaenopsis* spp. Orchids in Approved Growing Media from China into the Continental United States,” to identify the phytosanitary measures necessary to ensure the safe importation into the continental United States of *Phalaenopsis* spp. plants for planting in approved growing media from China.

One commenter stated that the PRA did not consider the possibility that viral pathogens of *Phalaenopsis* spp. plants for planting could be introduced into the continental United States through the importation of *Phalaenopsis* spp. plants for planting in approved growing media from China.

In developing our PRAs, we first prepare a list of pests of the commodity that we have determined to occur in the particular foreign region. We then determine whether the pests are quarantine pests, which the regulations define as plant pests that are 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. If the pests are quarantine pests, we then assess whether they

<sup>1</sup>To view the proposed rule, its supporting documents, or the comments that we received, go to <http://www.regulations.gov/#:docketDetail;D=APHIS-2014-0106>.

could be introduced into the United States through the importation of the commodity.

The PRA identified five viral pathogens of *Phalaenopsis* spp. plants for planting that we have determined to occur in China. However, none of these pathogens are quarantine pests. Accordingly, we did not assess whether they are likely to follow the pathway on *Phalaenopsis* spp. plants for planting in approved growing media from China to the continental United States.

One commenter pointed out that, in the PRA, the list of plant pests of *Phalaenopsis* spp. plants for planting that are known to occur in China did not include *Dickeya dieffenbachiae*, a bacterial pathogen, and *Colletotrichum karstii*, a pathogenic fungus. The commenter stated that these pests occur in China and could follow the pathway on *Phalaenopsis* spp. plants for planting in approved growing media from China to the continental United States. The commenter concluded that the pests therefore should be added to the PRA, and mitigation measures specific to the pests should be added to the RMD and rule.

*D. dieffenbachiae* and *C. karstii* were detected in China after the PRA and RMD were drafted, and we agree with the commenter that they could follow the pathway on *Phalaenopsis* spp. plants for planting in approved growing media from China to the continental United States. However, we do not consider it necessary to revise the RMD or rule to specify mitigation measures for these pests. We reserve pest-specific mitigation measures for quarantine pests. Neither *D. dieffenbachiae* nor *C. karstii* is a quarantine pest: Both are present in the United States, and neither pest is under official control.

Two commenters pointed out that the PRA identified four quarantine pests that could follow the pathway on *Phalaenopsis* spp. plants for planting in approved growing media from China to the continental United States: *Spodoptera litura*, *Thrips palmi*, *Cylindrosporium phalaenopsidis*, and *Lissachatina fulica*. The commenters stated that, if these pests became established throughout the United States, they could result in significant economic losses for domestic producers. For this reason, the commenters did not support the proposed rule.

We agree that, if the quarantine pests identified by the PRA were to become established throughout the United States, they could cause economic losses for domestic producers. However, for the reasons specified in the RMD and the proposed rule itself, if the provisions of this rule are adhered to,

we have determined that they will mitigate the plant pest risk associated with the importation of *Phalaenopsis* spp. plants for planting in approved growing media from China.

Because we had identified more pests that could follow the pathway on orchids from Taiwan to the United States than from China to the continental United States, one commenter surmised that we were establishing more favorable trading conditions for China than for Taiwan regarding the export of orchids to the United States.

The commenter's assumption is incorrect. There are more quarantine pests of *Oncidium* spp. known to occur in Taiwan that could follow the pathway on *Oncidium* spp. plants for planting in approved growing media from Taiwan to the United States than there are of *Phalaenopsis* spp. known to occur in China that could follow the pathway on *Phalaenopsis* spp. plants for planting in approved growing media from China to the continental United States.

Finally, one commenter asked whether we were confident that the PRA had identified all the plant pests of *Phalaenopsis* spp. plants for planting in China, given China's size.

We are confident. In the PRA, we took into consideration China's size and relied on multiple sources to identify pests of *Phalaenopsis* spp. plants for planting in China.

#### Comments Regarding Movement to Hawaii

One commenter noted that the rule only proposed to authorize the importation of *Phalaenopsis* spp. plants for planting in approved growing media from China to the continental United States, and did not propose to authorize such importation to Hawaii or the territories of the United States. The commenter asked whether, once *Phalaenopsis* spp. plants for planting in approved growing media from China enter the continental United States, they subsequently may be shipped to Hawaii or the territories. If the rule does not authorize such reshipment, the commenter asked how we intended to prevent it from occurring.

This rule expressly prohibits such reshipment, and we will use inspections to prevent it from occurring.

#### Comments Regarding the Proposed Systems Approach

We proposed that the *Phalaenopsis* spp. plants for planting 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 potable water to water the plants.

One commenter stated that plant pest population densities can vary significantly within a foreign region. The commenter expressed concern that sanitary procedures that are adequate to exclude quarantine pests from a greenhouse in one region of China may not be adequate to do so in another region.

Growers must employ sanitary procedures that are adequate to exclude quarantine pests from the *Phalaenopsis* spp. plants for planting grown at the greenhouse that are intended for export to the United States. These sanitary procedures must therefore correspond to the quarantine pest risk associated with the area in which the greenhouse is located. Accordingly, if the greenhouse is located in an area of China with particularly high population densities of a certain quarantine pest, the grower may need to employ additional safeguards to exclude that pest from affecting plants for planting at the greenhouse. The NPPO of China will make this determination regarding whether additional safeguards are necessary, and will communicate the safeguards needed to the greenhouse in an agreement with the grower. The grower must enter into such an agreement with the NPPO in order to export *Phalaenopsis* spp. plants for planting in approved growing media to the United States.

Another 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, as we mentioned above, in order to comply with the provisions of the systems approach, growers will have to employ sanitary procedures that are sufficient to exclude quarantine pests from the *Phalaenopsis* spp. 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 *Phalaenopsis* spp. plants for planting intended for export to the United States from becoming infested with *T. palmi*. The agreement that the grower enters into with the NPPO of China will specify the additional safeguards that the grower will use.

In the proposed rule, we proposed to add a condition restricting the importation of *Phalaenopsis* spp. from China in approved growing media to the continental United States to § 319.37–8 as paragraph (e)(2)(xii). In this final rule, it is added as paragraph (e)(2)(xiii).

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 change 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 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. 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) to allow the importation from China into the continental United States of orchids of the genus *Phalaenopsis* established in an approved growing medium, subject to specified growing, inspection, and certification requirements.

Prior to this rule, *Phalaenopsis* spp. imported from China were required to be bare-rooted. Eliminating this requirement is expected to increase the number and quality of orchids imported from China by U.S. producers, who then finish the plants for the retail market. This change could result in cost savings for these U.S. producers, which may or may not be passed on to U.S. buyers. The amended regulations could also result in the importation of market-ready *Phalaenopsis* spp. in approved growing media from China that would directly compete at wholesale and retail levels with U.S. finished potted orchids. The latter scenario is considered unlikely, given the technical challenges and additional marketing costs incurred when shipping finished plants in pots.

While many of the U.S. entities that will be affected by the rule such as orchid producers and importers may be small by Small Business Administration standards, we expect economic effects for these entities to be modest.

#### 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 of *Phalaenopsis* spp. plants for planting from China, subject to a required systems approach, will not have a significant impact on the quality of the human environment. 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

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 final rule, which were filed under 0579–0439, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

#### 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 final 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 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.

■ 2. Section 319.37–8 is amended as follows:

■ a. In paragraph (e) introductory text, in the entry for “*Phalaenopsis* spp. from Taiwan”, add the words “and the People’s Republic of China” after the word “Taiwan”.

■ b. Add paragraph (e)(2)(xiii).

■ c. Revise the OMB citation at the end of the section.

The addition and revision read as follows:

#### § 319.37–8 Growing media.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(xiii) Plants for planting of *Phalaenopsis* spp. from the People’s Republic of China 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.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 0579–0266, 0579–0431, and 0579–0439)

Done in Washington, DC, this 5th day of February 2015.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2016–02822 Filed 2–10–16; 8:45 am]

**BILLING CODE 3410–34–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 702

RIN 3133–AE44

#### Capital Planning and Stress Testing—Schedule Shift

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** The NCUA Board (Board) published a final rule in the **Federal Register** on August 11, 2015, regarding the capital planning and stress testing provisions in NCUA's regulations. This amendment corrects the regulations by reinstating a provision that was inadvertently removed by the August 2015 final rule.

**DATES:** This correcting amendment is effective February 11, 2016.

**FOR FURTHER INFORMATION CONTACT:** Marvin Shaw, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria VA 22314 or telephone (703) 518–6553.

**SUPPLEMENTARY INFORMATION:** NCUA is correcting a technical error in the final rule NCUA published in the **Federal Register** on August 11, 2015 (80 FR 48012). This amendment corrects § 702.504(a) of NCUA's regulations by reinstating § 702.504(a)(2) which was inadvertently removed by the August 2015 final rule.

#### List of Subjects in 12 CFR Part 702

Capital, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 5, 2016.

**Gerard Poliquin,**

*Secretary of the Board.*

For the reasons discussed above, the National Credit Union Administration amends part 702 as follows:

#### PART 702—CAPITAL ADEQUACY

■ 1. The authority citation for part 702 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1790d.

■ 2. In § 702.504, revise paragraph (a) to read as follows:

#### § 702.504 Capital planning.

(a) *Annual capital planning.* (1) A covered credit union must develop and maintain a capital plan. It must submit this plan and its capital policy to NCUA by May 31 each year, or such later date as directed by NCUA. The plan must be based on the credit union's financial data as of December 31 of the preceding calendar year, or such other date as directed by NCUA. NCUA will assess whether the capital planning and analysis process is sufficiently robust in determining whether to accept a credit union's capital plan.

(2) A covered credit union's board of directors (or a designated committee of the board) must at least annually, and prior to the submission of the capital plan under paragraph (a)(1) of this section:

(i) Review the credit union's process for assessing capital adequacy;

(ii) Ensure that any deficiencies in the credit union's process for assessing capital adequacy are appropriately remedied; and

(iii) Approve the credit union's capital plan.

\* \* \* \* \*

[FR Doc. 2016–02740 Filed 2–10–16; 8:45 am]

**BILLING CODE 7535–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA–2015–5877; Special Conditions No. 25–610–SC]

#### Special Conditions: The Boeing Company, Model 737–8 Airplanes; Design Roll-Maneuver Requirements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 737–8 airplanes. These airplanes will have a novel or unusual design feature associated with an electronic flight-control system that provides roll control of the airplane through pilot inputs to the flight computers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level

of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on the Boeing Company on February 11, 2016. We must receive your comments by March 28, 2016.

**ADDRESSES:** Send comments identified by docket no. FAA–2015–5877 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at <http://DocketsInfo.dot.gov/>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket, or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Freisthler, FAA, Airframe and Cabin Safety Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–1119; facsimile 425–227–1232.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures