

Rules and Regulations

Federal Register

Vol. 82, No. 177

Thursday, September 14, 2017

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

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, USDA.

ACTION: Final rule.

SUMMARY: We are amending 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: Effective October 16, 2017.

FOR FURTHER INFORMATION CONTACT: Mrs. Rosemarie Rodriguez-Yanes, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737, (301) 851–2313.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in “Subpart—Plants for Planting,” §§ 319.37 through

319.37–14 (referred to below as the regulations) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

Paragraph (a) of § 319.37–8 of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate plant pest risks. 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);
- Requires that the parent plants of the exported plants in growing media are produced from seed germinated in the production greenhouse or from mother plants that are grown and monitored for a specified period prior to export of the descendant plants;
- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and

- Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

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

On August 12, 2016, we published in the **Federal Register** (81 FR 53334–53336, Docket No. 15–091–1) a proposal¹ 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 took that action in response to a request from the NPPO of the Republic of Korea and after determining that the plants could be imported under certain conditions without introducing or disseminating a plant pest or noxious weed within the United States.

We solicited comments concerning our proposal for 60 days ending October 11, 2016. We received five comments by that date, from members of the public, a State floriculture council, and a State agriculture agency. The comments are discussed below.

One commenter supported the action but asked if there were regulations that provided compensation to stakeholders should the proposed safeguards be ineffective and result in losses.

The regulations do not contain such provisions for the payment of compensation.

One commenter raised concerns regarding the possible introduction of *Spodoptera litura* into a high-risk sentinel State, particularly since *S. litura* has reportedly been intercepted at ports of entry on orchids from abroad.

¹ To view the proposed rule, pest risk assessment (PRA), risk management document (RMD), environmental assessment (EA), finding of no significant impact (FONSI), and the comments we received, go to <https://www.regulations.gov/docket?D=APHIS-2015-0091>.

The commenter stated that the cost to eradicate the pest, or any pest, would severely impact the State's agricultural industry. Similarly, another commenter asked why we would approve the importation of a plant that presents even a medium risk of introducing pests that could negatively impact the U.S. floriculture industry.

We agree that, if the quarantine pests identified by the PRA were to be introduced into 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* and *Cymbidium* spp. plants for planting in approved growing media from Korea.

One commenter noted that the environmental assessment does not indicate where in Korea the orchids are produced and whether such areas are more densely populated with the associated plant pests. The commenter suggested that the pest densities could impact the effectiveness of the prescribed sanitation protocols.

We acknowledge that such densities can vary; however, the greenhouses will have to employ phytosanitary procedures that correspond to the quarantine pest risk associated with the area in which the greenhouse is located and are adequate to address this risk, as determined by the NPPO of the Republic of Korea and APHIS.

One commenter stated that inspection 30 days prior to exportation is inadequate to insure the plants are free from plant pests even if the plants are inspected and certified as pest-free.

The orchids produced under this approach will have a higher standard of pest freedom at the time of import than similar plants produced under the requirements of only removing the growing media. Under the requirements of the operational work plan, the exported plants are grown with specific mitigation measures that are a condition of entry, verified by the NPPO. Only those plants that are grown under a higher level of safeguarding may enter as plants in growing media. Any visible plant pests at the time of inspection at the port of entry will result in the consignment being rejected and prohibited from entry into the United States.

One commenter expressed concern that allowing orchids in growing media from Korea would increase competition with U.S. orchid growers and force several small business and U.S. orchid markets to close their doors. The

commenter compared this action to the importation of orchids in growing media from Taiwan, which reportedly negatively impacted orchid producers in Hawaii. Furthermore, a few commenters suggested that APHIS should do more to support the U.S. orchid industry by negotiating with foreign governments to simplify and expedite the exportation process for U.S.-produced orchids.

The Taiwan market comparison is inappropriate as there was a large established market for Taiwanese orchids prior to the rule that allowed the importation of *Phalaenopsis* spp. orchids from Taiwan, which does not exist for the Republic of Korea orchid industry. From 2008 to 2014, orchid imports from the Republic of Korea averaged less than 2 percent of U.S. orchid imports and did not exceed 4 percent in any one year over this time period. Korean producers and exporters must cover their production, transportation, and marketing costs given U.S. market prices. The U.S. market's competitive environment for orchids will limit the quantities of *Phalaenopsis* and *Cymbidium* spp. plants in approved growing media imported from the Republic of Korea.

As for the impact of the rule allowing the importation of *Phalaenopsis* spp. orchids in approved growing media from Taiwan, data for individual genera of orchids are sparse, but sufficient to determine that wholesale prices for orchids of the genus *Phalaenopsis* declined from \$8.98 to \$8.10 from 1998 to 2009, a decrease of about 10 percent over 10 years, which allowed consumers to pay less for more selection and variety. Additionally, the same small businesses that purchased bare root orchids may now purchase established orchids in growing media. The option of importing plants in growing media extends the ability for small business to take advantage of lowering their production costs to provide healthy plants to the public.

In regards to improving export conditions for U.S. orchid producers, we note that importation conditions in a particular country are established by the importing country. As exporters, we can request that the conditions for importation be more equivalent to those required by the United States; however, it is the right of the importing country to establish the requirements for importation within the scope of international agreements and treaties.

One commenter stated that they would not support the importation of orchids in growing media in general until APHIS implements testing for viruses often carried by orchids. The commenter questioned the growing

practices of Korean orchid producers based on the commenters' assumption that Taiwan is exporting infected orchids in growing media to the United States due to poor growing practices.

We agree with the commenter regarding the importance of preventing the introduction of viruses associated with these commodities. We assess all pests known to be in the country, including viruses, and mitigate accordingly. The PRA identified these pests to the best of our knowledge and proposed mitigation options for them if required. We do not have data to support the commenter's claim that orchids in growing media from Taiwan are carrying viruses.

Therefore, for the reasons given in the proposed rule and this document, we are adopting the proposed rule as a final rule without change.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final 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. Further, because this rule is not significant, it is not a regulatory action under Executive Order 13771.

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 final 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 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 EA and FONSI have been prepared for the final rule. The EA provides a basis for the conclusion that the importation into the continental

United States of *Phalaenopsis* spp. and *Cymbidium* spp. orchid varieties in approved growing media from the Republic of Korea, subject to a required systems approach, will not have a significant impact on the quality of the human environment. Based on the FONSI, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The EA and FONSI 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 EA and FONSI may be viewed on the *Regulations.gov* Web site (see footnote 1). Copies of the EA and FONSI 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 0579-0454, 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 rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

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, by adding a new entry for "*Cymbidium* spp. from the Republic of Korea" in alphabetical order and revising the entry for *Phalaenopsis* spp.;

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

■ c. By revising the OMB citation at the end of the section.

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.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579-0266, 0579-0431, 0579-0439, and 0579-0454)

Done in Washington, DC, this 8th day of September 2017.

Michael C. Gregoire,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017-19519 Filed 9-13-17; 8:45 am]

BILLING CODE 3410-34-P