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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2016-0005]

RIN 0579-AE28

#### Importation of Orchids in Growing Media From Taiwan

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of plants for planting to add orchid plants of the genus *Dendrobium* from Taiwan to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. We are taking this action in response to a request from the Taiwanese Government and after determining that the plants could be imported, under certain conditions, without resulting in the introduction into, or the dissemination within, the United States of a quarantine plant pest or noxious weed.

**DATES:** Effective March 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lydia E. Colón, Senior Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2302.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in “Subpart—Plants for Planting,” §§ 319.37 through 319.37-14 (referred to below as the regulations) contain, among other

things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

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

free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

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

In response to a request from the NPPO of Taiwan, we prepared a pest risk assessment (PRA) in order to identify the quarantine plant pests that could follow the importation of orchid plants of the genus *Dendrobium* 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).

As a result, on October 27, 2016, we published in the **Federal Register** (81 FR 74720-74722, Docket No. APHIS-2016-0005) a proposal<sup>1</sup> to amend the regulations by adding *Dendrobium* spp. from Taiwan to the list of plants established in an approved growing medium that may be imported into the United States. The plants will have to be produced, handled, and imported in accordance with the requirements of § 319.37-8(e) and be accompanied at the time of importation by a phytosanitary certificate issued by the NPPO of Taiwan that declares that those requirements have been met.

We solicited comments concerning our proposal for 60 days ending December 27, 2016. We received 11 comments by that date. They were from a scientific group, industry

<sup>1</sup> To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0005>.

organizations, a State department of agriculture, and private citizens. They are discussed below by topic.

### General Comments

One commenter was supportive of the proposed action but requested that we also allow for the importation of carnivorous plants from Taiwan as they are grown in the same medium.

The request submitted by the NPPO of Taiwan concerned the importation of *Dendrobium* spp. orchids only. Were Taiwan to submit a request to import carnivorous plants in approved growing media we would consider and analyze that request as we would any other.

Another commenter, from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry (FDACS' DPI), stated that U.S. stakeholders from those areas potentially affected by any pest or disease outbreak from imported commodities should be invited to participate in site visits prior to the proposal of any rulemakings such as the one finalized by this document.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. To that end, we are currently considering ways to facilitate further stakeholder involvement, including site visits, during the initial stages of the development of PRAs. However, since this comment relates to the structure of APHIS' overall risk analysis process, and not to the importation of *Dendrobium* spp. orchids from Taiwan, it is outside the scope of the current rulemaking.

A commenter requested that we take into consideration the increased workload of border inspectors and the potential impact of additional imports on inspection times and treatment facilities.

APHIS has reviewed its resources and consulted with U.S. Customs and Border Protection and believes there is adequate coverage across the United States to ensure compliance with APHIS regulations, including the importation of *Dendrobium* spp. orchids in approved growing media, as established by this rule.

One commenter wanted to know how the importation of *Dendrobium* spp. orchids in approved growing media would benefit domestic orchid growers and consumers. The commenter speculated that the imported *Dendrobium* spp. orchids would be of lower quality compared to the domestic flowers. The commenter wanted to know whether APHIS was planning to implement any programs to assist

domestic orchid growers in the face of foreign competition.

It is beyond APHIS' statutory authority to prohibit importation of a commodity for any reason other than to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. Under the Plant Protection Act (PPA), APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States.

### Comments on Phytosanitary Risk

A commenter said that APHIS should further study the potential phytosanitary impacts and set out additional requirements prior to allowing for the importation of *Dendrobium* spp. orchids from Taiwan.

The PRA and RMD that accompanied the proposed rule evaluated the quarantine plant pest risk associated with the importation of *Dendrobium* spp. orchids in approved growing media from Taiwan into the United States. These documents provided scientific evidence that a prohibition on the importation of *Dendrobium* spp. orchids in approved growing media is not necessary in order to protect plant 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). We prepared the PRA and RMD in accordance with relevant International Plant Protection Convention (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)) and our own guidelines, and we are confident that they adequately evaluated the plant pest risk associated with the importation of *Dendrobium* spp. orchids in approved growing media from Taiwan into the United States.

Another commenter expressed concern that the NPPO of Taiwan or its designated representatives would not perform required inspections to a sufficiently high standard and therefore allow pests of concern to enter the United States.

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 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 plants within the United States. 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. Were pests of concern to be discovered in shipments of *Dendrobium* spp. orchids in approved growing media from Taiwan, we reserve the right to halt importation and address the issue with the NPPO of Taiwan.

Two commenters cited reports of unknown pests discovered in connection with orchids from Taiwan: microscopic mites in the flower pollen and sphagnum moss-eating insects in the growing media. These reports suggested to the commenters that the PRA and RMD prepared by APHIS might not be reliable.

After careful review of our pest interception data, we found that only 48 actionable pests were intercepted in connection with all species of orchids imported from Taiwan over the last 5 years, which is less than 10 interceptions per year. The pests intercepted specifically in connection with shipments of *Dendrobium* spp. orchids in the past 5 years were: Snails (three interceptions), mealybugs (one interception), thrips (two interceptions), and fungal plant pathogens (five interceptions). All orchid shipments containing actionable pests were fumigated, destroyed, or returned to Taiwan to ensure that no pests were able to enter the United States.

There have been no interceptions of mites on *Dendrobium* spp. orchids from Taiwan, nor have there been any interceptions of organisms in sphagnum moss. The approved growing media, including sphagnum moss, listed in paragraph (e)(1) of § 319.37–8 must be new and not have been previously used. Prior evaluation by APHIS has revealed that approved growing media not previously used for planting is unlikely to be colonized by quarantine pests. All growing media must be sourced, processed, packaged, handled and stored in a manner to ensure freedom from pests.

Another commenter argued that the potential for the presence of quarantine pests associated with approved growing media or plants is always present. The commenter said that these pests or evidence of their presence may not be

visible upon inspection or may be missed during the inspection process.

If the provisions of the proposed rule are adhered to, there will be a negligible risk that *Dendrobium* 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 *Dendrobium* 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 *Dendrobium* 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 cited a previous rule (81 FR 5881–5888, Docket No. APHIS–2014–0041) that authorized the importation of *Oncidium* spp. orchids from Taiwan in approved growing media where we provided interception data related to the importation of *Phalaenopsis* spp. orchids in approved growing media from Taiwan. The commenter disagreed with our assertion that the average interception rate for pests of concern in connection with shipments of *Phalaenopsis* spp. orchids in approved growing media from Taiwan (23 consignments determined infested per year) is statistically insignificant.

We disagree and reiterate that an average of 23 infested shipments out of the approximately 20 million *Phalaenopsis* spp. orchids in approved growing media exported from Taiwan to the United States each year is a vanishingly small number that serves as proof of the efficacy of the systems approach. There is 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. The commenter provided no evidence to support the claim of statistical significance.

Another commenter referenced a 2012 study released by the European and Mediterranean Plant Protection Organization (EPPO) titled “EPPO Study on the Risk of Imports of Plants for

Planting.”<sup>2</sup> The commenter highlighted several findings of that study which were determined by EPPO to represent high risk of plant pest introduction:

- Presence of growing medium, which could lead to the transport of many types of pests, including nematodes, fungi, insects, and invasive plants. The commenter cited the orchid snail (*Zonitoides arboreus*) in the State of Hawaii as an example, where the growth of the commercial potted orchid industry and that industry’s use of moist bark and coconut fiber media were connected to a dramatic increase in snail damage and prevalence in the 1990s;
- Size of the plants. The commenter’s assumption was that plants in growing medium would be larger than the bare root plants previously allowed importation. Larger plants are older and allow more time for pest infestation to occur and more places on the plant to infest;
- Production mode. Wild-collected plants are highest risk and easily disguised among cultivated plants when potted in identical containers and media;
- Unidentified risk. Those quarantine pests considered by the study were not known to represent a phytosanitary risk prior to their introduction, and their features would not have suggested a risk if assessed individually. The commenter cited the fungus *Ceratocystis fimbriata*, the causal agent of rapid Ohi’a death, which was previously unknown to science and was not on any list of quarantine pests, but is most similar to a disease shipped in potted plants.

The PRA contained an evaluation of the likelihood that quarantine snails, slugs, and nematodes that occur in Taiwan and are associated with *Dendrobium* spp. orchids will follow the pathway on *Dendrobium* spp. orchids in approved growing media to the United States. If the snails, slugs, or nematodes 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. Bark is not listed in § 319.37–8 as an approved growing medium and, while coconut fiber is among the approved growing media, as stated previously, all growing media must be new and not have been previously used, thus decreasing the risk that it will be infested.

<sup>2</sup> The EPPO study is located at [https://www.eppo.int/QUARANTINE/EPPO\\_Study\\_on\\_Plants\\_for\\_planting.pdf](https://www.eppo.int/QUARANTINE/EPPO_Study_on_Plants_for_planting.pdf).

Contrary to the commenter’s assumption that plants imported in growing media would be older and therefore larger than the bare root plants already allowed importation, plants in growing media are subject to the same size and age restrictions as bare root plants. In addition, as mentioned earlier in this document, lots of 13 or more *Dendrobium* spp. orchids in approved growing media from Taiwan would have to be imported to a plant inspection station for entry into the United States where they will be carefully examined by trained inspectors.

Plants in growing media pose no greater risk of commingling with wild-collected plants than other types of plant material; indeed the more numerous inspections required of plants in growing media during the production process likely makes such commingling more difficult. However, if we determine that the standard of production agreed upon by APHIS and the NPPO of Taiwan is not being met (e.g., commingling wild-collected plants with greenhouse grown plants), we reserve the right to halt importations of *Dendrobium* spp. orchids in approved growing media from Taiwan until such time that we are confident that the required systems approach will be followed.

*C. fimbriata* was originally described in connection with sweet potato in 1890. It has since been found on a wide variety of annual and perennial plants. It is not yet known whether the *C. fimbriata* causing rapid Ohi’a death in Hawaii represents a new strain imported on an as-yet unknown commodity or an existing strain that mutated in Hawaii. The PRA that accompanied the proposed rule provided a list of all pests of *Dendrobium* spp. orchids in approved growing media from Taiwan. This list was prepared using multiple data sources to ensure its completeness. For this same reason, we are confident it is accurate. If, however, a new pest is detected in connection with *Dendrobium* spp. orchids in approved growing media from Taiwan (e.g., the causal agent for rapid Ohi’a death is conclusively linked to that commodity), APHIS will conduct further risk analysis in order to evaluate that pest to determine whether it is a quarantine pest, and whether it is likely to follow the importation pathway. If we determine that the pest is a quarantine pest and is likely to follow the pathway, we will work with the NPPO of Taiwan to adjust the pest list and related phytosanitary measures to prevent its introduction into the United States.

Another commenter expressed concern that APHIS would not have

sufficient inspectors at the ports of entry into the United States, allowing for pest entry.

APHIS has reviewed its resources and believes it has adequate resources available to ensure compliance with the conditions of the final rule.

One commenter stated that there is no virus testing at U.S. ports of entry and wanted to know if such testing occurs prior to export.

We do not consider virus testing necessary given that the PRA did not identify any quarantine viruses that occur in Taiwan and are associated with *Dendrobium* spp. orchids. If that situation were to change we would work with the NPPO of Taiwan to develop requirements relating to viral testing for any quarantine viruses.

#### Comments Regarding the Pest List

As part of the PRA, we prepared a list of plant pests that are associated with *Dendrobium* spp. orchids and that we determined to occur in Taiwan. We determined that three quarantine pests present in Taiwan could potentially follow the import pathway:

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

FDACS' DPI stated that an accidental introduction of the Oriental leafworm moth would be particularly damaging to the State of Florida because it is a known pest of some of that State's most significant crops. The commenter said that Oriental leafworm moth is intercepted in connection with orchids at ports of entry on a regular basis and has been discovered at least five times in Florida nurseries since 2002; some of these finds were associated with *Dendrobium* spp.

The required systems approach will remove pests from pathway of importation of *Dendrobium* spp. orchids from Taiwan. Oriental leafworm moth eggs and larvae (the life stages of the pest associated with *Dendrobium* spp. orchids from Taiwan) are conspicuous pests that are relatively easy to detect upon visual inspection. Plants in growing media will be produced in pest exclusionary structures subject to required pest management programs. While it is true that Oriental leafworm moth has been intercepted at the ports, these interceptions have not been made in connection with orchids imported from China or Taiwan. Those Oriental leafworm moths associated with *Dendrobium* spp. orchids discovered in Florida greenhouses were likely associated with plants smuggled into

the United States and not grown using the necessary containment methods to prevent infestation.

Another commenter said that because *Heliothrips errans* and the chili thrips are very small and insert their eggs into plant material, evidence of infestation may go undetected.

In addition to the pest exclusionary structures discussed previously, the post-harvest requirement that the plants be kept dry for 7–10 days prior to packing in approved growing media will allow for the emergence of any thrips previously undetected due to their location inside the plant.

One commenter pointed out that *Fusarium* (a genus of pathogenic fungi) exists in Taiwan and can be persistent in plant populations there since full control measures require the elimination of all contaminated plants and the implementation of strict disease control measures.

While we are aware that multiple species of *Fusarium* occur in Taiwan, none of these are known to be associated with *Dendrobium* spp. orchids. Further, when we have detected *Fusarium* spp. on susceptible commodities at ports of entry into the United States, the species detected have been ones that are already widely prevalent within the United States and therefore not considered to be quarantine pests.

#### Comments Regarding Additional Phytosanitary Measures

Two commenters pointed out that APHIS data shows that the systems approach does miss quarantine pests and argued that this was proof that further study and implementation of additional phytosanitary measures are needed before additional importation is allowed.

We have stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country and, thus, zero risk is not a realistic standard. We are confident, based on our knowledge and experience, that the required phytosanitary measures laid out in this rule and in the preceding proposed rule will be sufficient to reduce risk.

One commenter stated that because the required screens can be easily removed from greenhouse ventilators and reinstalled prior to the arrival of inspectors, we should implement a required monitoring system so that the screening cannot be removed between inspections.

We reserve the right to conduct monitoring of the development and implementation of the required pest management plans. However, we do not consider it necessary for us to require APHIS to monitor the development and implementation of each pest management plan within any specific place of production. 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.

Another commenter said that a large percentage of plants imported into the State of Florida from China and Taiwan test positive for common orchid viruses. The commenter claimed that this is due to the use of large plant pieces for multiplication since, when this is done, any pathogens present on the original plant will also be present on those plants propagated from that plant's parts. The commenter argued that many pathogens, such as viruses, bacteria, and *Liberibacters* including zebra chip, citrus greening, and *Xylella fastidiosa*, may be present on plants but remain asymptomatic, thus escaping detection via visual inspection. As a result, the commenter recommended the following additional phytosanitary measures: The growing area should exclude all pests capable of vectoring pathogens and be inspected on a quarterly basis to ensure freedom from such pests; and a percentage of plants should be randomly indexed for pathogens at least biannually.

The PRA did not identify any viruses that can follow the pathway of importation of *Dendrobium* spp. orchids from Taiwan. In addition, the pathogens specifically referenced by the commenter are not orchid pests: Zebra chip is a pest of potatoes, citrus greening is a pest of citrus, and *Xylella fastidiosa* is the causal agent for diseases of olives, citrus, grapes, and landscape oleanders. Nonetheless, growers will be required to perform specific sanitary measures under the requirements of the rule and the operational workplan that APHIS enters into with the NPPO of Taiwan. The required greenhouse operating procedures will include measures designed to exclude pests from the greenhouse and implementation of a pest management plan to control disease vectors.

FDACS' DPI recommended that shipment of *Dendrobium* spp. orchids from Taiwan not be allowed into the State of Florida given that the climate in that State is particularly conducive to

the establishment of the pests associated with *Dendrobium* spp. orchids.

We have determined, for the reasons described in the RMD that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of *Dendrobium* spp. orchids from Taiwan. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenter.

#### Comments Regarding Economic Impact

One commenter stated that the increase of foreign-produced orchids in the domestic market will force most domestic orchid farmers out of business. A second commenter expressed the belief that this scenario would be driven by lower production costs, due mainly to lower labor rates in Taiwan and a climate more favorable to orchid production absent the need for artificial heating and cooling.

The importation of *Dendrobium* spp. orchids into the United States from Taiwan is already allowed; it is only their importation in approved growing media that is not currently authorized. Taiwan may shift some exports from bare-rooted *Dendrobium* spp. orchids to rooted plants in approved growing media to meet U.S. consumer demand. We note that, by value, U.S. production of *Dendrobium* spp. orchids does not represent a large portion of U.S. orchid production (4 percent of production in 2014). While orchid producers in Taiwan may benefit from lower labor costs, the quantity of *Dendrobium* spp. plants in approved growing media exported to the United States will still depend on the ability of those producers and exporters to cover their production, transportation, and marketing costs in light of U.S. market prices. APHIS expects Taiwan orchid producers to incur higher production and shipping costs as compared to those for bare-rooted plants.

A commenter classified the proposed action as a lessening of regulatory requirements and predicted that it would prove detrimental to the domestic orchid industry by setting a precedent for less stringent regulations.

The Secretary considers many factors in making a determination to allow the import of a previously prohibited article, such as potential environmental effects and the economic effects associated with the introduction of a plant pest or noxious weed. The determination to allow an import under the PPA, however, is ultimately based on the Secretary's determination that the importation of a commodity will not

result in the introduction into or dissemination within the United States of a plant pest or noxious weed. This approach is consistent with APHIS' obligations under the PPA and international trade agreements. Part of APHIS' mission is to facilitate exports, and we strive to do so. Success in this area is somewhat tied to factors out of our control, but we make every effort to assist domestic industry in securing access to export markets.

The same commenter expressed the belief that the Taiwanese orchid industry is given financial assistance by the government of that country that gives those growers an advantage over domestic producers who are not similarly assisted by the U.S. Government.

APHIS has no reason to believe that *Dendrobium* spp. producers or shippers are subsidized by Taiwan. However, even if they were, as stated elsewhere in this document, APHIS' determinations as to whether a new agricultural commodity can be safely imported are not affected by factors such as economic competitiveness.

Another commenter asked us to consider the future budgetary resources required for pest management programs and facilities given the likely increase in the prevalence of quarantine pests overall.

APHIS allocates substantial resources for the identification of invasive pests, including pest identifiers and taxonomic specialists. We also allocate resources to States through the Cooperative Agricultural Pest Survey to ensure that the risk of invasive pests entering the United States is being sufficiently addressed. As stated previously, the required systems approach will allow *Dendrobium* spp. orchids in approved growing media to be safely imported into the United States from Taiwan.

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

#### Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action will enable U.S. nurseries that purchase these orchids to benefit from their improved quality and reduced production time in comparison to bare-rooted plants.

#### Executive Order 12866 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.

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](http://Regulations.gov) website (see footnote 1 in this document for a link to [Regulations.gov](http://Regulations.gov)) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Although the importation from Taiwan of bare-rooted *Dendrobium* spp. orchids is allowed, entry of this orchid genus in growing media is not authorized. In response to requests from the Taiwan Ministry of Agriculture and Forestry, APHIS is amending the regulations to allow the importation of *Dendrobium* spp. orchids in approved growing media into the United States, subject to specified growing, inspection, and certification requirements.

Orchids are the largest single group of potted flowering plants sold in the United States, and comprised about one-third of sales (\$266 million of \$788 million) for the potted flowering plants industry in 2014 (most recent data available). Sales of U.S.-produced *Dendrobium* spp. orchids in 2014 totaled \$12.3 million. In 2016, the United States imported 5,948 metric tons (MT) of live orchids valued at \$75 million, of which Taiwan supplied 79 percent (orchids valued at over \$58.9 million).

The rule will enable Taiwanese exporters to bypass U.S. growers altogether and provide higher-valued, mature potted *Dendrobium* spp. orchids 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. More likely, Taiwan will continue to export immature plants to U.S. nurseries to grow and sell as finished plants.

Import levels will depend on the ability of Taiwanese producers and exporters to cover their production, transportation, and marketing costs given U.S. market prices. U.S. nurseries that purchase *Dendrobium* spp. orchids will benefit from their improved quality and reduced production time in comparison to bare-rooted plants. The rule will increase competition for U.S. producers and importers of immature *Dendrobium* spp. orchids.

U.S. orchid producers numbered 158 in 2012, but the number of establishments that are small entities is not known. Given that orchid plants such as *Oncidium* spp. are already being imported from Taiwan in approved growing media and all orchid species are allowed importation without growing material, we expect that allowing the importation of *Dendrobium* spp. orchids in approved growing media will not significantly change the volume or value of orchids imported by the United States from Taiwan.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service 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 of *Dendrobium* spp. from Taiwan under the conditions specified in this rule 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* website.<sup>3</sup>

<sup>3</sup> Go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2016-0005>. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

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 requirements included in this final rule, which were filed under 0579–0458, 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, in alphabetical order, an entry for “*Dendrobium* spp. from Taiwan”; and

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

The revision reads as follows:

#### § 319.37–8 Growing media.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 0579–0190, 0579–0439, 0579–0454, and 0579–0458)

Done in Washington, DC, this 24th day of January 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018–01737 Filed 1–29–18; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2017–0939; Product Identifier 2017–SW–057–AD; Amendment 39–19174; AD 2018–03–01]

RIN 2120–AA64

#### Airworthiness Directives; Agusta S.p.A. Helicopters

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB139 and AW139 helicopters. This AD requires inspecting the main rotor blade (MRB) tip cap for disbonding. This AD is prompted by a report of the in-flight loss of an MRB tip cap. The actions of this AD are intended to prevent an unsafe condition on these helicopters.

**DATES:** This AD becomes effective February 14, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of February 14, 2018.

We must receive comments on this AD by April 2, 2018.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Docket:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- **Fax:** 202–493–2251.

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

- **Hand Delivery:** Deliver to the “Mail” address between 9 a.m. and 5