We believe that the various species within each genus have sufficient similarities in terms of pest host potential to make this a reasonable approach. We believe the analyses did address the pests posing the greatest risk, and we are not aware of a statistical model that demonstrates otherwise. We believe rating quality, depth, and coverage of available information on a given genus is best done by professional judgment of qualified plant scientists, not by a formula, and this is the approach we used.

Preemption and Other Concerns of States

One commenter expressed concern about the preemption clause that would prevent Hawaii from enforcing its statutes to protect Hawaiian agriculture. This commenter stated that Hawaii is unique in having a higher probability of pests becoming established, due to its climate. The commenter believes APHIS should clarify at what point foreign commerce ceases, especially as to whether affected States will be able to participate in the decisionmaking or whether States will simply be notified of the final decision.

Response: The extent to which this regulation would preempt State or local requirements is no more or less than with our other regulations. Federal regulations would preempt State or local requirements only when they are inconsistent with the Federal requirement. Federal requirements preempt State or local requirements while the articles are in foreign commerce, which generally lasts at least until the article is purchased by the ultimate user and taken to its final destination.

Several commenters stated that the proposed changes would increase pressure on the California Department of Food and Agriculture for subsequent detection of pests after release by APHIS.

Response: The rule was designed to prevent the introduction of pests, not to discover them after importation. We believe that articles imported in accordance with the requirements of the regulations will contain few or no significant plant pests, and should therefore require little increase in the workload for the plant protection services of California or other States.

Economic Concerns

A number of commenters raised concerns about the preliminary economic analysis and suggested ways to improve it. The analysis has been revised to address impacts on both wholesale and retail firms, to utilize up-

to-date data, and to address other concerns of commenters. See the "Executive Order 12866 and Regulatory Flexibility Act" section of this document.

Some commenters thought that the economic analysis should take into account the potential cost should dangerous pests be introduced and cause major infestations.

Response: We think the economic analysis should focus on the expected effects of the proposed action, and should rely as far as possible on data that are known or can be reasonably extrapolated. Although it is possible to assume that a pest introduction will occur despite strict regulatory requirements, and to endow the introduced pest with the capability to cause any degree of harm to U.S. plants, this type of speculation does not seem to us to have much value in the absence of any real data. We based the economic analysis on what we believe to be the effects of the regulations, based on past experience and study of the proposed action. The expected effects include importation of a modest amount of plant material, without the introduction and establishment of serious plant pests.

Other Policy Issues

One commenter stated that the APHIS mandate is to protect our environment and not to foster foreign trade.

Response: Regulatory actions by APHIS may have positive or negative effects on foreign trade, and we are required to analyze those likely effects and make the analysis available to the public. However, we do not base our import regulations on their possible effect on trade, but on analysis of whether articles may be imported with an insignificant risk of the introduction of plant pests.

Several commenters stated that this proposal sets a precedent that will allow many other, more dangerous plants to be imported in media.

Response: The precedent for importing plants in growing media from other than Canada was set in 1980, when five kinds of plants were allowed importation in accordance with § 319.37–8(e). APHIS intends to propose allowing the importation of additional requested plants when it finds the plants can be imported without significant risk of introducing exotic plant pests. APHIS also intends to prohibit (or continue prohibiting) those plants it finds can not be imported without a significant risk of introducing exotic plant pests.

One commenter stated that APHIS must endeavor to ensure that no pest of any plant is introduced; only after doing

this can APHIS make adjustments to promote free trade.

Response: APHIS has no authority to prohibit the importation of plants in order to "ensure that no pest of any plant is introduced". Rather, the Plant Quarantine Act gives us authority to prohibit the importation of plants into the United States "in order to prevent the introduction into the United States of any tree, plant, or fruit disease or of any injurious insect, new to or not theretofore widely prevalent or distributed within and throughout the United States" (emphasis added).

Endangered Species Concerns

Several commenters noted that an endangered *Rhododendron* species in the United States might be damaged by alien pests introduced on imported *Rhododendron*. Some commenters further argued that other plant and tree species that are currently listed, or that are candidates for listing, could be harmed by pests brought in with the five genera proposed for importation.

Response: We will consult with the Fish and Wildlife Service under the Endangered Species Act prior to taking final action on the proposal for Rhododendron. Regarding the other genera, no commenter provided information linking their importation to any specific risk to a domestic species that is listed or a formal candidate for listing under the Endangered Species Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be economically significant, and was reviewed by OMB under Executive Order 12866.

The composite effect of this rulemaking and several anticipated related rulemakings over the next several years, which could result in allowing importation of over 60 genera of plants in growing media that are currently prohibited, could have effects on U.S.-foreign competition that are within the scope of the definition of economically significant in Executive Order 12866.

We have prepared a final Regulatory Impact Analysis (RIA) and a final Regulatory Flexibility Analysis (RFA) concerning the current final rule and future rules allowing the importation of additional plants in growing media. The exact content of future rules to be proposed in this area, including the final list of plants to be allowed entry established in growing media, will not be known until APHIS completes pest risk analysis and decision-making processes necessary for the development