

# Proposed Rules

Federal Register

Vol. 69, No. 83

Thursday, April 29, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 02-119-1]

RIN 0579-AB78

#### Importation of Small Lots of Seed Without Phytosanitary Certificates

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the nursery stock regulations to allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to the current phytosanitary certificate requirement. This proposed change is necessary because several entities that import small lots of seed—individual importers, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. The proposed change would make it feasible for those entities to import small lots of seed and would ensure prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing the Animal and Plant Health Inspection Service with necessary information about the quality, quantity, and diversity of the imported material.

**DATES:** We will consider all comments that we receive on or before June 28, 2004.

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

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 02-119-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 02-119-1.

- **E-mail:** Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 02-119-1” on the subject line.

- **Agency Web Site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Tschanz, Senior Staff Officer, Regulatory Coordination Staff, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737-1236, (301) 734-5306.

#### 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 into the United States. The regulations contained in “Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products” (§§ 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.

Nursery stock, plants, seeds, and other propagative plant material that cannot be feasibly inspected, treated, or handled to prevent them from introducing plant pests new to or not widely distributed in the United States are listed in the regulations as prohibited articles. Prohibited articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

All other nursery stock, plants, seeds, and other propagative plant material that can be inspected, treated, or handled to prevent them from introducing plant pests are considered restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that include a phytosanitary certificate and port of entry inspection requirement and that may include the need for a permit, treatment, or postentry quarantine.

Paragraph (a) of § 319.37-4 of the regulations requires that any restricted article offered for importation into the United States, other than certain greenhouse-grown plants from Canada, be accompanied by a phytosanitary certificate of inspection (phytosanitary certificate). Section 319.37-1 of the regulations defines a phytosanitary certificate as a document relating to a restricted article, which: (1) Is issued by a plant protection official of the country in which the restricted article was grown; (2) is issued not more than 15 days prior to shipment of the restricted article from the country in which grown; (3) is addressed to the plant protection service of the United States (*i.e.*, the Plant Protection and Quarantine program [PPQ] of the Animal and Plant Health Inspection Service [APHIS]); (4) contains a description of the restricted article intended to be imported into the United States; (5) certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States; and (6) contains any specific additional declarations required under the regulations.

A phytosanitary certificate documents the origin of the shipment and ensures inspection in the country of origin by a member of that country's national plant protection organization, thus helping to ensure the shipment of commodities free of plant pests or noxious weeds. Principles and guidelines for the preparation and issuance of phytosanitary certificates have been established under the International Plant Protection Convention (IPPC), which is acknowledged by the World Trade Organization in the Agreement on the Application of Sanitary and Phytosanitary Measures as the international standard-setting organization for phytosanitary measures affecting trade.

Phytosanitary certificates are recognized as an internationally accepted form of pest risk mitigation. Pest risk mitigation at the place of origin is often viewed as the most viable means of preventing the introduction of plant pests. Signatories to the IPPC, which include the United States and over 100 other countries, agree that pest risk mitigation is a responsibility of the exporting country, and that they are willing and able to issue phytosanitary certificates.

Prior to January 2002, APHIS had not consistently and routinely enforced the phytosanitary certificate requirement in § 319.37-4 in all instances involving the importation of restricted articles under the regulations. Our policy had been not to reject a shipment based solely on the lack of a phytosanitary certificate. We enforced the requirement that a phytosanitary certificate accompany shipments of restricted articles in those situations where our regulations require that the phytosanitary certificate include an additional declaration, proof of treatment, or both. In other cases, our policy had provided APHIS inspectors the latitude to allow entry of the shipment, even though it was not accompanied by a phytosanitary certificate.

In light of increased quantities, types, and sources of nursery stock, plants, and other propagative plant material offered for importation into the United States, coupled with the findings of a 1999 safeguarding report,<sup>1</sup> we reevaluated our policy regarding the enforcement of the phytosanitary certificate requirement in § 319.37-4(a).

<sup>1</sup> The safeguarding report, entitled "Safeguarding American Plant Resources, A Stakeholder Review of the APHIS-PPQ Safeguarding System," was prepared by the National Plant Board at APHIS's request and can be viewed on the Internet at <http://www.aphis.usda.gov/ppq/safeguarding>. The report advocates greater use of offshore mitigating measures such as phytosanitary certificates.

We decided that it was necessary for us to enforce the phytosanitary certificate requirement on a consistent, mandatory basis with respect to all restricted articles offered for importation into the United States in order to effectively mitigate the risk of those articles introducing foreign plant pests into the United States.

On July 23, 2001, we published in the **Federal Register** (66 FR 38137-38139, Docket No. 00-119-1) a policy statement advising the public of our decision to begin enforcing, on a consistent basis, the existing requirement in § 319.37-4(a) of the regulations that a phytosanitary certificate of inspection accompany restricted articles, other than certain greenhouse-grown plants from Canada, that are offered for importation into the United States under the regulations. We notified the public that we intended to begin routinely enforcing this requirement effective September 21, 2001.

On August 31, 2001, we published in the **Federal Register** (66 FR 45921, Docket No. 00-119-2) a notice advising the public of our decision to delay by 120 days the effective date of that policy statement. This delay, which had been requested by several parties, moved the effective date to January 22, 2002, thus allowing additional time for affected parties to make preparations to comply with the requirement.

Although the majority of the entities who import large shipments of plants and seeds were not affected by the more consistent, mandatory enforcement of the phytosanitary certificate requirement, some smaller entities have been adversely affected by the enforcement of this requirement. Several horticultural societies, individual importers, and small entities specializing in foreign plants have written to APHIS expressing their concerns and outlining their difficulties in complying with the regulations. Many horticultural societies import seeds of various genera from several different seed donors in consolidated shipments, which are then distributed among their members. In order to comply with the phytosanitary certificate requirement, each separate packet of seeds from each genus and from each donor within the consolidated shipment would be required to be inspected and certified. Typically, the certifying country charges a fee for these services, which varies from country to country. In many cases, these importers and exporters have been unable to obtain the necessary phytosanitary certificates because the official plant protection agency of the

exporting country did not offer inspection services, or phytosanitary certificates, for small shipments of seed because the time required to complete the inspection would have made the process cost-inefficient. In cases where inspection services and phytosanitary certificates were available for small lots of seed, the costs of the inspection and the certificate, which vary by country but can be as much as \$100 or more, were prohibitive and often equal to several times the value of the commodity itself.

### Permits

Since obtaining a phytosanitary certificate is not feasible in many cases for those entities interested in importing small lots of seed, which would consist of a maximum of 50 seeds of 1 taxon and a maximum of 50 seed packets per shipment, we are proposing to allow the importation of small lots of seed using a permit rather than a phytosanitary certificate. Paragraph (b) of § 319.37-3 of the regulations describes the information that is required on applications for permits to import certain restricted articles, which would include small lots of seed. The completed permit application must contain the following information: (1) Name, address, and telephone number of the importer; (2) approximate quantity and kinds (botanical designations) of articles intended to be imported; (3) country or locality where grown; (4) intended U.S. port of entry; (5) means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and (6) expected date of arrival. The PPQ program of APHIS will review the application and will then decide whether to issue a permit and the applicable conditions for importation. Permits would be issued at the discretion of APHIS only to residents of the United States, whether an individual or an organization.

Although some importers occasionally hand carry various commodities into the United States in baggage ("baggage" is one of the means of transportation cited in item (5) in the previous paragraph), this practice is discouraged by APHIS-PPQ. In the case of small lots of seed, this practice would not be an option because of the additional requirement that the shipments must be inspected at a PPQ plant inspection station in accordance with proposed § 319.37-4(d)(3). Permits will be denied to anyone indicating that "baggage" will be the means of transportation for importing the commodity.

As with permits for other plant material that is imported into the United

States, the permit for the small lots of seed would be sent to the importer along with written instructions, a copy of the import requirements, and a standard green and yellow shipping label. The instructions would direct the importer to have the seed sent to a PPQ plant inspection station at a port of entry for quarantine inspection and clearance. The address of the appropriate plant inspection station would appear on the standard green and yellow permit shipping label. The importer would be directed to send the green and yellow shipping label and copies of the permit and import requirements to the overseas seed supplier. The supplier would have to attach the green and yellow shipping label, clearly visible and unobstructed by other shipping labels, to the outside of the shipping container. The supplier would have to enclose an invoice and a copy of the permit in the shipping container. The supplier would be responsible for ensuring that the seed meets the import conditions specified in the permit.

The seed would be inspected after arrival at the plant inspection station to ensure that the shipment meets the conditions of the permit and import requirements. If the seed passes inspection, the shipment would be forwarded to the importer. If the seed shipment did not pass inspection, the importer would be notified and given the option to treat the shipment, if possible; to have the shipment destroyed; or to return the shipment to the supplier. The importer would be responsible for shipping costs (which are discussed under the heading "Executive Order 12866 and Regulatory Flexibility Act" later in this document) to forward the shipment and would be responsible for the shipping costs of returning the shipment to the supplier. However, there would be no cost to the importer to have the shipment destroyed. Treatment would be offered at no cost to the importer unless the shipments were not treated during normal duty hours or the treatments were conducted by private contractors. Private contractors are sometimes used for fumigation treatments of shipments that come into western ports that do not have fumigation chambers at the ports themselves.

#### Permit Requirements

In order to provide a level of protection equivalent to that provided by the phytosanitary certificate against the introduction or dissemination of plant pests through the importation of seeds, we are proposing several additional requirements that would

have to be met in order for shipments of small lots of seed to qualify for importation under a permit. These additional requirements, which we would include as permit conditions, would be as follows: (1) Each seed packet would have to be clearly labeled with the name of the collector/shipper, the country of origin, and the scientific name at least to the genus, and preferably to the species, level; (2) there could be a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet; (3) there could be a maximum of 50 seed packets per shipment; (4) the seeds would have to be free from pesticides; (5) the seed packets would have to be in gas permeable packages; (6) the shipment would have to be free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms such as parasitic plants, pathogens, insects, snails, or mites; and (7) at the time of importation, the shipment would have to be sent to either the Plant Germplasm Quarantine Center in Beltsville, MD, or a port of entry listed in § 319.37-14(b) and designated by an asterisk. These additional requirements would be necessary in order to address the safety issues that are usually covered by the phytosanitary certificate.

Upon review of the permit application, additional specific permit conditions, besides the ones listed above, may be required by PPQ in order to prevent the introduction into the United States of a plant pest or noxious weed. As stated previously, the permits would direct that the packages be sent to a plant inspection station for inspection to ensure that the seeds meet all of the additional conditions.

These proposed provisions for the importation of small lots of seed without a phytosanitary certificate apply only to seeds that are already enterable under the current regulations. Permits in lieu of phytosanitary certificates would only be available for seeds that:

- Are not of any prohibited genera as listed in § 319.37-2 of the regulations. Seeds from genera that are listed in the regulations as prohibited articles would not be affected by the proposed provisions or be allowed entry into the United States. A list of prohibited genera will accompany the permit.

- Are not of any noxious weed species listed in 7 CFR part 360. Seeds of any Federal noxious weeds species would continue to be regulated under 7 CFR part 360 and would not be affected by the proposed provisions. (The list of noxious weeds can be found in 7 CFR

360.200 or on the Internet at <http://www.aphis.usda.gov/ppq/permits>. Click on the Noxious Weeds link and then click on the link for the Federal Noxious Weed List.)

- Do not require an additional declaration on a phytosanitary certificate in accordance with § 319.37-5 of the regulations. The regulations in § 319.37-5 require seeds and other restricted articles of specified genera from the listed countries to be accompanied by a phytosanitary certificate of inspection that contains an accurate additional declaration that the article meets certain additional inspection and certification requirements. Any seeds that require an additional declaration on a phytosanitary certificate in accordance with these regulations would not be affected by the proposed provisions.

- Do not require treatment in accordance with § 319.37-6 of the regulations. Section 319.37-6 of the regulations lists specific treatments for seeds of several different genera. Any seeds that require specific treatment in accordance with these regulations would not be affected by the proposed provisions.

- Are eligible for importation under the regulations in 7 CFR parts 330 and 361. Part 330 restricts the interstate movement of plant pests and means of conveyance and certain other articles to prevent the dissemination of plant pests into the United States. Part 361 provides certain labeling and other requirements for the importation of agricultural or vegetable seeds to prevent the dissemination of noxious weeds into the United States.

#### Request for Suggestions

The changes proposed in this document are necessary to meet the needs of individuals and small entities who wish to import small lots of seed. There has been some concern that large, commercial entities might use these provisions as a means to avoid paying the costs related to phytosanitary certification by dividing their large shipments into numerous small lots and requesting permits for each lot. We encourage the submission of suggestions on specific factors we might consider in our reviews of permit applications in order to protect against any misuse of these provisions.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed

by the Office of Management and Budget.

In this document, we are proposing to amend the nursery stock regulations to allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to the phytosanitary certificate requirement. This proposed change is necessary because several entities that import small lots of seed—individual importers, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. The proposed change would make it feasible for those entities to import small lots of seed and would ensure prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing APHIS with necessary information about the quality, quantity, and diversity of the imported material.

For this proposed rule, we have prepared an economic analysis, which is set out below. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects of this proposed rule on small entities as required by the Regulatory Flexibility Act.

Seed production and trade play important roles in the U.S. economy. The total market value of seeds purchased by farmers in 2001 was about \$7.6 billion, and cash receipts from these crops were valued at about \$96 billion for the same year.<sup>2</sup> The United States is a net exporter of seeds. During the 2001–2002 seed marketing year, which runs from July through June, the United States exported 1,963 million pounds of planting seeds, valued at approximately \$823 million, and imported 653 million pounds of seeds, valued at approximately \$398 million.

Although U.S. exports of planting seeds are widely distributed among several different trading partners, there are 10 countries that together account for about 75 percent of the total U.S. seed exports (table 1). Imports of planting seed into the United States also come from several different countries. The top 10 suppliers together account for approximately 84 percent of the total U.S. imports of planting seed (table 1).

TABLE 1.—U.S. EXPORTS AND IMPORTS OF PLANTING SEEDS IN 2001–2002

U.S. exports (in million \$)	
Mexico .....	249.9
Canada .....	125.6
Japan .....	59.1

TABLE 1.—U.S. EXPORTS AND IMPORTS OF PLANTING SEEDS IN 2001–2002—Continued

Italy .....	40.6
France .....	36.6
Netherlands .....	32.2
Spain .....	24.2
China .....	16.1
Korea .....	15.4
Saudi Arabia .....	13.8
U.S. imports (in million \$)	
Chile .....	105.8
Mexico .....	105
Netherlands .....	36.5
Argentina .....	21.2
China .....	17.9
Japan .....	14
Finland .....	11.1
Australia .....	8.3
Denmark .....	7.5
India .....	7.1

Source: USDA/Foreign Agricultural Service, *Foreign Agricultural Trade of the United States*, Revised March 2003; USDA/Foreign Agricultural Service, U.S. Planting Seed Trade Archives, August 2002.

Many varieties of seed are traded between the United States and other countries. The major categories include grasses, other forages, pulses, vegetables, field crops, and miscellaneous varieties of plants (flowers, trees, and shrubs). Field crops are the largest category of seed exports and imports (table 2).

TABLE 2.—TYPES AND VALUES OF SEED TRADED BETWEEN THE UNITED STATES AND TRADING PARTNERS

Type of seed	Export (in million \$)	Import (in million \$)
Field crops .....	315	131
Vegetable .....	251	104
Grasses .....	103	35
Miscellaneous .....	67	60
Forage .....	49	21
Pulses .....	40	49

Source: USDA/Foreign Agricultural Service, *Foreign Agricultural Trade of the United States*, Revised March 2003; USDA/Foreign Agricultural Service, U.S. Planting Seed Trade Archives, August 2002.

The availability of seeds of good quality contributes to domestic production of food grains, field crops, cotton, oil crops, vegetables, herbs, flowers, trees, and shrubs. There are close to 900 seed companies in the United States that engage in certified seed trade (domestic and international). In addition, specialized groups such as horticultural societies, arboreta, and individual hobbyists collect, grow, exhibit, preserve, exchange, and donate specialty seeds and often import small lots of seed.

As an alternative to the proposed changes, we considered maintaining the status quo. The current regulations require imported seeds to be inspected and to be accompanied by a phytosanitary certificate. Importers of large quantities of seed are readily able to obtain the required phytosanitary certificates. Because the time and effort involved in inspection and certification are not directly proportional to the volume of seeds, many of the exporting countries have been reluctant to invest the necessary resources to provide

phytosanitary certificates and inspections for small lots of seed. In the countries that do offer inspection and certification services for small lots of seed, the costs of these services has been prohibitive for the seed importers. As a result, seed importers have either been unable to obtain the necessary phytosanitary certificates for small lots of seed or have had to pay fees that greatly exceeded the value of the seeds themselves. Therefore, maintaining the status quo would not be an

<sup>2</sup> USDA/National Agricultural Statistics Service, *Agricultural Statistics 2002*, June 2002.

economically feasible option for importers of small lots of seed.

### Costs and Benefits

The proposed changes might result in a slight cost increase for the Federal Government since import permits and the port of entry inspection activities are currently provided without a fee. If the proposed changes result in increased importation of small lots of seed, there could also be a slight increase in the workload for processing the permits but, since imports of small lots of seed are a very small fraction of the total domestic supply of seeds, no significant change in supply or price is expected.

The proposed changes are expected to generate several benefits without increasing costs for affected private entities. Plant specialists, gardeners, arboreta, and horticultural societies would be able to more widely acquire new kinds of seeds to expand plant diversity, such as plant species that are drought- or disease-resistant or other unique types of plants. Private gardeners would benefit from an increased availability of special seeds. Also, the entry of imported seeds through plant inspection stations would provide APHIS with a more accurate picture of seed import activity, using data generated from permit issuance and the actual importation data from U.S. ports of entry. Finally, the risk of the introduction or dissemination of plant diseases would be reduced, if seeds that are currently being imported illegally because of the costs and other difficulties associated with obtaining a phytosanitary certificate would be eligible for legal importation and subject to inspection under a permit. Compared to the costs associated with obtaining a phytosanitary certificate, shipping costs, which will be discussed in the following paragraphs, should not be a burden on importers of small lots of seed and should not be appreciably more than shipping costs importers must already pay in order to import seeds from overseas suppliers.

### Shipping Costs

As discussed earlier, the importer would be responsible for transportation costs from the overseas seed supplier to the PPQ plant inspection station and the costs of shipping the seed from the plant inspection station to the importer's address. APHIS-PPQ has estimated shipping costs for importers of small lots of seed using a worst case scenario of a shipment of 50 packets of 50 corn seeds per packet (the maximum shipment size that would be allowed under the proposed provisions), which would weigh less than 2 pounds.

Currently, this shipment would cost \$4.49 for parcel post and \$5.75 for priority mail to ship the seeds from the inspection station at Beltsville, MD, to the farthest destination within the United States. Corn seed was used in this example because it is considerably heavier than most ornamental seed, which is the type expected to be shipped. Shipping costs for smaller, lightweight seeds would be much less than those in the example.

Currently, importers who import commodities that require inspection, such as would be the case with small lots of seed, cover the costs of shipping the commodity from the plant inspection station to the importer's address, using one of two options: (1) Provide a shipping container and the estimated amount of postage necessary to the overseas supplier who would then send it along with the shipment to the plant inspection station, or (2) provide an account number for the United States Postal Service or for a commercial shipping service to be charged by the inspectors at the plant inspection station.

In general, the shipping costs incurred by importers of small lots of seed as a result of these proposed changes would be much less than the costs of obtaining a phytosanitary certificate as required under the current regulations, which, as noted previously, vary by country but can be as much as \$100 or more and can be equal to several times the value of the commodity itself. These proposed changes are expected to decrease the current economic burden on importers of small lots of seed.

### Impact on Small Entities

The Small Business Administration (SBA) has established size standards based on the North American Industry Classification System (NAICS) to determine and to classify which economic entities can be considered small entities. The SBA classifies seed companies (NAICS 422910)<sup>3</sup> as small if they employ 100 or fewer workers. There are close to 900 seed companies that are involved in certified seed trade (domestic and international) in the United States. About 97 percent of these companies would be considered small by SBA standards. In addition, groups such as horticultural societies, arboreta, and individual hobbyists collect, grow, exhibit, preserve, exchange, donate, and import small lots of seeds. The size of these entities is difficult to determine, and the exact number of seed importers is not known. The proposed rule would

primarily affect those entities who import small lots of seed. Based on information that we have received from several horticultural societies and from various individuals and small businesses that currently import small lots of seed, we expect approximately 2,000 import permit applications over the first 5 years, so approximately 400 import permit applications are expected per year.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

### 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 proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02-119-1. Please send a copy of your comments to: (1) Docket No. 02-119-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The changes proposed in this document would allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to requiring a phytosanitary certificate. Implementation of this proposed rule would require us to engage in certain information collection activities, in that entities wishing to import small lots of seed would be required to apply for a permit and to provide certain information. We are soliciting comments from the public (as

<sup>3</sup> U.S. Census Bureau, 1997 Economic Census, Wholesale Trade-Subject Series, August 2000.

well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

*Respondents:* Importers, horticultural societies, arboreta, and small businesses.

*Estimated annual number of respondents:* 400.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 400.

*Estimated total annual burden on respondents:* 64 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant

diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 450 and 7701-7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.37-3 would be amended as follows:

a. In paragraph (a)(15), by removing the word "and" at the end of the paragraph.

b. In paragraph (a)(16), by removing the period at the end of the paragraph and adding a semicolon in its place.

c. In paragraph (a)(17), by removing the period at the end of the paragraph and adding the word "; and" in its place.

d. By adding a new paragraph (a)(18) to read as set forth below.

#### § 319.37-3 Permits.

(a) \* \* \*

(18) Small lots of seed imported in accordance with § 319.37-4(d) of this subpart.

\* \* \* \* \*

3. Section 319.37-4 would be amended as follows:

a. In paragraph (a), by removing the word "Any" and adding the words "Except for small lots of seed imported in accordance with paragraph (d) of this section, any" in its place.

b. By adding a new paragraph (d) to read as set forth below.

#### § 319.37-4 Inspection, treatment, and phytosanitary certificates of inspection.

\* \* \* \* \*

(d) *Small lots of seed.* Lots of seed may be imported without a phytosanitary certificate required by paragraph (a) of this section under the following conditions:

(1) The importation of the seed is authorized by a written permit issued in accordance with § 319.37-3.

(2) The seed is not of any prohibited genera listed in § 319.37-2; is not of any noxious weed species listed in part 360 of this chapter; does not require an additional declaration on a phytosanitary certificate in accordance with § 319.37-5; does not require treatment in accordance with § 319.37-6; and is eligible for importation under the regulations listed in parts 330 and 361 of this chapter.

(3) The seed meets the following packaging and shipping requirements:

(i) Each seed packet is clearly labeled with the name of the collector/shipper, the country of origin, and the scientific name at least to the genus, and preferably to the species, level;

(ii) There are a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet;

(iii) There are a maximum of 50 seed packets per shipment;

(iv) The seeds are free from pesticides;

(v) The seed packets are in gas permeable packages;

(vi) The shipment is free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms such as parasitic plants, pathogens, insects, snails, mites; and

(vii) At the time of importation, the shipment is sent to either the Plant Germplasm Quarantine Center in Beltsville, MD, or a port of entry listed in § 319.37-14(b) and designated by an asterisk.

Done in Washington, DC, this 23rd day of April, 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04-9716 Filed 4-28-04; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2004-NM-48-AD]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-120 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-120 series airplanes. This proposal would require installing a lightning bonding jumper from the lower rotating beacon to the airframe. This action is necessary to prevent possible multiple avionics failures caused by a lightning strike, which could reduce the ability of the flightcrew to control the airplane. This action is intended to address the identified unsafe condition.