

# Proposed Rules

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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 Parts 353 and 354

[Docket No. 90-117-1]

RIN 0579-AA54

#### Export Certificates

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to revise completely the "Phytosanitary Export Certification" regulations, which concern inspection and phytosanitary certification of plants and plant products offered for export.

We propose to: Revise the requirements for qualifying as an inspector; allow persons other than inspectors, to be known as "agents," to perform phytosanitary field inspections; provide for use of a form specifically for certification of processed plant products offered for export; provide for phytosanitary certification of plants and plant products that are offered for reexport from the United States after having been legally imported into the United States; provide for industry-issued certification of certain plant products under terms of an agreement between the industry and the Animal and Plant Health Inspection Service; and specify that we will issue only one certificate for any export consignment.

These actions would facilitate the export of American agricultural products by ensuring that a sufficient number of qualified individuals are available to carry out Federal certification activities and by providing for additional types of certifications.

We also propose to make minor editorial changes in our user fee regulations for consistency with the proposed changes to the "Phytosanitary Export Certification" regulations.

**DATES:** Consideration will be given only to comments received on or before September 15, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 90-117-1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1228. Please state that your comments refer to Docket No. 90-117-1.

Comments received may be inspected 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 comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leonard M. Crawford, Senior Operations Officer, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, Maryland 20737-1228; (301) 734-8537.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Phytosanitary Export Certification regulations, contained in 7 CFR part 353 (referred to below as the regulations), set forth procedures for obtaining phytosanitary certificates for domestic plants and plant products offered for export. We are proposing to amend these regulations to: (1) Revise the requirements for qualifying as an inspector; (2) allow persons other than inspectors to perform phytosanitary field inspections; (3) provide for use of a form specifically for certification of processed plant products offered for export; (4) provide for phytosanitary certification of plants and plant products that are offered for reexport from the United States after having been legally imported into the United States; (5) provide for industry-issued certification of certain plant products under terms of an agreement between the industry and the Animal and Plant Health Inspection Service; and (6) specify that we will issue only one certificate for any export consignment.

##### Inspectors

Under section 102(e) of the Organic Act of 1944 (7 U.S.C. 147a(e)), the

Animal and Plant Health Inspection Service (APHIS) provides phytosanitary certification of plants and plant products other than manufactured or processed products as a service to exporters. After assessing the phytosanitary condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector issues an internationally recognized phytosanitary certificate (PPQ Form 577), if warranted.

Since 1975, APHIS has participated with State governments in a Cooperative Phytosanitary Export Certification Program (the program), which allows certain State officials, as well as APHIS officials, to issue phytosanitary certificates. Because the number of Federal inspectors is limited, the use of State inspectors is a considerable service to exporters of plants and plant products, in terms of both time and convenience.

To ensure that all inspectors meet certain minimum qualifications, our regulations contain requirements that must be met by State plant regulatory officials before they can be designated by the Secretary of Agriculture to issue phytosanitary certificates under the program. Currently, the regulations at § 353.1(b)(4) require that a State plant regulatory official, to be eligible for designation as an inspector, must have a bachelor's degree in the biological sciences, a minimum of 2 years' experience in State plant regulatory activities, and a minimum of 2 years' experience in recognizing and identifying domestic plant pests known to occur within the cooperating State. Six years' experience in State plant regulatory activities may be substituted for the degree requirement.

The National Plant Board, an organization made up of State plant regulatory officials, suggested that APHIS requirements for a State official to be designated as an inspector are too stringent. A joint Federal-State committee was formed to study the issue. The committee agreed that the above requirements may be unnecessarily stringent, and that a modification of these requirements would assist State plant regulatory agencies in recruiting adequate numbers of individuals for the position of inspector while still ensuring that the individuals selected for the position had

the necessary skills. It was also suggested that the regulations should be amended to allow county officials to be eligible for designation as an inspector as well. Leaving the requirements unchanged could eventually result in a shortage of qualified inspectors, which would in turn impair APHIS's ability to provide competent, expeditious phytosanitary certification of American agricultural products.

We are therefore proposing to revise the definition of "Inspector" at current § 353.1(b)(4) to allow a county plant regulatory official to be eligible for designation as an inspector under the program. We are proposing to amend current § 353.6 by adding eligibility requirements. We would require that State or county plant regulatory officials, to be eligible for designation as an inspector, must have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in State or county plant regulatory activities, or a combination of higher education in the biological sciences and experience in State plant regulatory activities, as follows:

- 0 years education and 5 years experience;
- 1 year education and 4 years experience;
- 2 years education and 3 years experience;
- 3 years education and 2 years experience; or
- 4 years education and 1 year experience.

The years of education and experience do not have to be acquired consecutively. In addition, candidates would be required to successfully complete the APHIS training course on phytosanitary certification prior to their designation as inspectors. Successful completion would be indicated by receipt of a passing grade. The training course would have the same content as the course required of new APHIS Plant Protection and Quarantine officers.

Based on our experience with administering the program, we believe that the above combination of education and experience would be adequate to ensure that inspectors are fully qualified to ascertain the phytosanitary condition of plants or plant products they certify for export. No inspectors would inspect any plants or plant products in which they or a member of their family are directly or indirectly financially interested. In this instance, a family consists of the spouse of the inspector or agent, and their parents, their children, and first cousins.

We are also proposing to revise the description of the certification process in current § 353.7(d) by adding a reference to county agencies. Persons

authorized to conduct field inspections of seed crops

The regulations at current § 353.7(d) allow inspectors to issue phytosanitary certificates based on inspections made by cooperating Federal and State agencies. We are proposing to authorize certain other persons to perform phytosanitary inspections of seed crops in the field that will serve as the basis for an inspector to issue a phytosanitary certificate.

Increasingly stringent foreign regulations and shrinking Federal and State budgets have placed increasing demands on a dwindling pool of available inspection personnel, thus making it very difficult to perform necessary phytosanitary field inspections. APHIS and its cooperating State plant regulatory agencies have been searching for alternative ways of satisfying the demand for phytosanitary field inspections to meet the requirements of foreign importers. It was suggested by the National Plant Board that it would be extremely helpful, subject of course to appropriate conditions, to be able to draw on the services of other qualified individuals, such as members of an official seed certifying agency like the Association of Official Seed Certifying Agencies (AOSCA), to perform the field inspections of seed crops as a component of the phytosanitary certification process in the United States. The authorization of such qualified individuals to conduct phytosanitary field inspections of seed crops would help ensure that sufficient personnel are available to conduct these inspections.

We are, therefore, proposing to authorize individuals who possess specified qualifications to conduct field inspections of seed crops that are required for phytosanitary certification. These persons would be designated by APHIS as authorized "agents." Agents would conduct phytosanitary field inspections of seed crops in cooperation with and on behalf of those State plant regulatory agencies which elect to use agents and which maintain an appropriate Memorandum of Understanding (MOU) with APHIS. The MOU would provide that the State plant regulatory agencies would use agents to conduct inspections in accordance with the regulations. Field inspections conducted by agents would be monitored by State plant regulatory and/or APHIS personnel through on-site observation of the agents' activities and review of agents' records relating to these activities. Agents would not be authorized to issue phytosanitary certificates, but would only be

authorized to conduct the actual field inspections of seed crops necessary for determining phytosanitary condition prior to the issuance of a phytosanitary certificate for the crops.

The regulations at current § 353.1(b) would be amended by adding a definition for "agent," as follows: "An individual who meets the eligibility requirements set forth in § 353.6, and who is designated by the Animal and Plant Health Inspection Service to conduct phytosanitary field inspections of seed crops to serve as a basis for the issuance of phytosanitary certificates."

Current § 353.6 would be amended by adding eligibility requirements for agents. To be eligible for the designation as agents, individuals must have the ability to recognize, in the crops they are responsible for inspecting, plant pests, including symptoms and/or signs of disease-causing organisms of concern to importing countries. An individual, in order to be designated as an agent, also would be required to have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in identifying plant pests endemic to crops of commercial importance within the cooperating State, or a combination of higher education in the biological sciences and experience in identifying such plant pests, as follows:

- 0 years education and 5 years experience;
- 1 year education and 4 years experience;
- 2 years education and 3 years experience;
- 3 years education and 2 years experience; or
- 4 years education and 1 year experience.

The years of education and experience do not have to be acquired consecutively. In addition, agents would be required to receive annual training provided by the State plant regulatory agency. This required training would include instruction in inspection procedures, identification of plant pests of quarantine importance to importing countries, methods of collection and submission of specimens (organisms and/or plants or plant parts) for identification, and preparation and submission of inspection report forms approved by the State plant regulatory agency. Agents would have to have access to Federal or State laboratories for the positive identification of plant pests detected.

Based on our experience with administering the Cooperative Phytosanitary Export Certification Program, we believe that the above combination of education and experience would be adequate to ensure

that individuals meeting the described qualifications would be fully qualified to provide phytosanitary field inspection of seed crops. No agents would inspect any plants or plant products in which they or a member of their family are directly or indirectly financially interested.

#### **Export Certificate for Processed Plant Products**

Foreign government agencies and foreign buyers frequently require a "certificate" for processed or manufactured plant products, such as wooden furniture parts, plywood, or veneer, stating they are free from injurious plant pests before permitting entry into their country. We are proposing to provide for use of a certificate (PPQ Form 578, Export Certificate for Processed Plant Products) specifically for the certification of processed plant products offered for export. Processed products are not eligible for a phytosanitary certificate. This export certificate would be issued by an inspector, and would affirm that, based on inspection of submitted samples and/or by virtue of the processing received, the processed plant products described on the form are believed to be free from injurious plant pests. The original certificate would, immediately upon its issuance, be delivered or mailed to the applicant or a person designated by the applicant. One copy of each certificate would be filed in the office of inspection at the port of certification. (As in the current regulations at 7 CFR Part 353, we would issue a phytosanitary certificate (PPQ Form 577) only for unprocessed domestic plants and plant products.) This new certificate for processed plant products is proposed in order to facilitate trade.

#### **Phytosanitary Certificate for Reexport**

Foreign origin plants and plant products that are legally imported into the United States and subsequently offered for reexport may require Federal certification in order to satisfy the phytosanitary requirements of importing countries. We are proposing to provide for the issuance of a phytosanitary certificate for reexport (PPQ Form 579). This reexport certificate would certify that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products conform to the current phytosanitary regulations of the importing country and have not been subjected to the risk of infestation or infection during storage in the United States. The reexport certificate would be

issued by an inspector. The original certificate would, immediately upon its issuance, be delivered or mailed to the applicant or a person designated by the applicant. One copy of each certificate would be filed in the office of certification.

The reexport certificate would not be issued for plants and plant products which transit the United States under Customs bond. These commodities do not make Customs entry into U.S. commerce, which means that our inspectors do not have the normal opportunities to inspect the articles, check their paperwork, and determine whether they meet the phytosanitary requirements of the final destination country. It would take a major and uneconomical reorganization of our port of arrival activities to give our inspectors the necessary access to articles and paperwork associated with products which transit the United States under Customs bond. Therefore, our policy is that we will not issue phytosanitary certificates for reexportation for plants and plant products which transit the United States under Customs bond.

#### **Industry-Issued Certificate**

There has been a demonstrated need in the United States (e.g., with conifer lumber exported to Europe and Chile) for segments of the agricultural and forestry industries to be able to issue industry certification under the aegis of the Federal government, affirming that a plant product meets some specific condition. This certification is related to plant health but is less than full phytosanitary certification. For example, some governments require a written certification stating that a wood product exported from the United States is free of bark and grub holes.

We propose to provide for industry-issued certification of certain plant products under terms of a written agreement between the concerned agricultural or forestry company or association and APHIS. Each agreement would specify the articles subject to the agreement and the measures necessary to prevent the introduction and dissemination of specified plant pests into the foreign countries specified in the agreement.

Industry-issued certification would be allowed only with the industry-issued agreement in place. An agreement could be discontinued at any time by request of either party, effective 15 days after one party notifies the other in writing that it wishes to discontinue the agreement. Violation of the terms of the agreement, or movement of articles under the agreement in violation of

APHIS regulations, would result in immediate withdrawal of the agreement. Withdrawal of an agreement could be appealed within 10 days following withdrawal, and a hearing would be held to resolve any conflicts as to any material fact. To encourage compliance and aid enforcement, no new agreement would be signed with a party who has had an agreement withdrawn for 12 months after the withdrawal.

The industry-issued certificate would affirm that a plant product has been handled, processed, or inspected in a manner required by a foreign government. APHIS and State regulatory officials would monitor the industry to ensure compliance with the terms of the agreement. Monitoring would be accomplished through on-site observation of pertinent industry activities and review of industry records relating to these activities.

#### **Application for Certification**

An exporter may sometimes file separate applications for different portions of the same shipment, or consignment. An inspector then ends up conducting multiple inspections of the same consignment and issuing what amounts to duplicate certificates. To eliminate this duplicative work and make better use of available inspectors, we propose to issue only one certificate for any consignment. We propose to amend § 353.5 to stipulate that we will not accept more than one application for any consignment, and that only one certificate will be issued for any consignment. We also propose to amend the definition of consignment currently at § 353.1(b)(7) to indicate that a consignment is a shipment of plants or plant products from one exporter, to one consignee, in one country, on one means of conveyance; or any mail shipment to one consignee. One consignment is entitled to only one certificate.

#### **Miscellaneous**

We are proposing to remove all references to "Deputy Administrator," and to replace them with references to "Administrator," and to remove certain references to "Plant Protection and Quarantine Programs," and to replace them with references to "Animal and Plant Health Inspection Service." We are also proposing to remove the definition of "Plant Protection and Quarantine Programs," and to add definitions of "Administrator" and "Animal and Plant Health Inspection Service." The current regulations indicate that the Deputy Administrator, Plant Protection and Quarantine, APHIS, is the official responsible for the

performance of all duties arising in the administration of the Act. We are proposing to make the terminology changes noted above to indicate that the primary authority and responsibility for various decisions under these regulations belong to the Administrator of the agency.

We are proposing to add definitions for "Family," "Plant pests," "Plant products," "Plants and plant products," and "Representative of the concerned agricultural or forestry industry" for clarity.

We are proposing to add a description of the purpose of the export certification program in § 353.2 to make it clear that APHIS does not require export certificates, but issues them as a service to exporters.

APHIS no longer has offices as listed in current § 353.3(a). Therefore, we are proposing to remove the list of area offices where service is offered at § 353.3(a) and to replace it with the four APHIS regional offices which reflect the actual APHIS regional structure. Information concerning the location of inspectors who may issue certificates for plants and plant products may be obtained from the regional offices.

Sometimes persons holding certificates request APHIS to issue new certificates for a consignment, e.g., if the original certificates are lost. Section 353.7(e) of the current regulations allows inspectors to issue new certificates on the basis of inspections for previous certifications when the previously issued certificates can be canceled before they have been accepted by the phytopathological authorities of the country of destination involved. We are retaining this provision for phytosanitary certificates for domestic plants or unprocessed plant products, because this provision allows inspectors to respond to changing conditions in a flexible and economical manner with the least disruption to commerce. We propose to add a similar provision for export certificates for processed plant products, without including the caveat that the previously issued certificates must be canceled before they have been accepted by the phytopathological authorities of the country of destination. Export certificates for processed plant products are not phytosanitary certificates and are not intended for presentation to the phytopathological authorities of foreign countries, so this caveat would be inappropriate for export certificates for processed plant products.

We are also making nonsubstantive editorial changes in the regulations for clarity.

### **User Fee Regulations**

At the same time we are making changes to 7 CFR 354.3 for consistency. In order to provide for county plant regulatory officials performing phytosanitary certification, we propose to remove the definition of "Designated State inspector" and to replace it with a definition of "Designated State or county inspector." We propose to amend the definitions of "Phytosanitary certificate," "Phytosanitary certificate for reexport," and "Processed product certificate" for consistency with definitions for these certificates in proposed § 353.1. Finally, we also propose to amend § 354.3 to clarify that, just as no APHIS user fee is charged for certificates issued by a designated State inspector, no APHIS user fee will be charged for certificates issued by a designated county inspector, although State or county fees may be assessed.

### **Review of Existing Regulations**

This proposed rule is part of the scheduled review of Part 353—Phytosanitary Export Certification, to meet regulatory review requirements. Executive Order 12866 and Departmental Regulation 1512-1 require that agencies initiate reviews of currently effective rules to reduce regulatory burdens and minimize impacts on small entities.

### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Our proposed changes to the requirements for qualifying as an inspector, and our proposal to allow additional individuals to perform phytosanitary field inspections, would have no measurable financial impact on those entities involved in exporting plants and plant products. The changes would help ensure that sufficient qualified personnel are available to perform inspections.

In addition, our proposal to allow use of additional individuals to perform phytosanitary field inspections could result in a cost savings to industry through reduced duplication of effort in field inspection activities. Currently, seed certifying agencies inspect crops for genetic purity. Inspectors make a separate inspection of the crops in the field to determine their phytosanitary condition under part 353. Under our proposal, "agents" could perform a

single inspection for both purposes. Large commercial seed companies would be the primary beneficiaries of this proposed change because their crops would be inspected in a more timely manner, thus making them available for the marketplace sooner.

This proposal is not expected to significantly increase the number of certificates for reexport issued by APHIS. APHIS currently issues approximately 9000 certificates for reexport each year. We estimate that approximately 10 percent (900) of these certificates are issued to small businesses, based on the size and value of the shipments.

We anticipate that allowing industry-issued certificates, and inspector-issued export certificates specifically for processed plant products (PPQ Form 578) would benefit exporters, including small businesses, by facilitating exportation of plants and plant products. Most of the articles eligible for such certificates are exported by larger businesses, and we estimate that each year small businesses will probably be issued fewer than 1000 industry-issued certificates and inspector-issued export certificates specifically for processed plant products.

Exporters would be charged a user fee as stated in § 354.3 upon the issuance of commercial, private, and re-issued (voided and returned certificates) export certificates, respectively. The justification for and the analysis of the user fees can be found in the regulatory impact analysis accompanying the final rule published on January 9, 1992 (57 FR 755-773, Docket No. 91-135).

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 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

### **Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, 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 the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, 4700 River Road Unit 118, Riverdale, MD 20737-1228, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects**

7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR parts 353 and 354 would be amended as follows:

1. Part 353 would be revised to read as follows:

**PART 353—EXPORT CERTIFICATION**

Sec.

- 353.1 Definitions.
- 353.2 Purpose and administration.
- 353.3 Where service is offered.
- 353.4 Products covered.
- 353.5 Application for certification.
- 353.6 Inspection.
- 353.7 Certificates.

**Authority:** 7 U.S.C. 147a; 21 U.S.C. 136 and 136a; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 353.1 Definitions.**

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Agent.** An individual who meets the eligibility requirements set forth in § 353.6, and who is designated by the Animal and Plant Health Inspection Service to conduct phytosanitary field inspections of seed crops to serve as a basis for the issuance of phytosanitary certificates.

**Animal and Plant Health Inspection Service (APHIS).** The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

**Consignment.** One shipment of plants or plant products, from one exporter, to

one consignee, in one country, on one means of conveyance; or any mail shipment to one consignee.

**Export certificate for processed plant products.** A certificate (PPQ Form 578) issued by an inspector, describing the plant health condition of processed or manufactured plant products based on inspection of submitted samples and/or by virtue of the processing received.

**Family.** An inspector or agent and his or her spouse, their parents, children, and first cousins.

**Industry-issued certificate.** A certificate issued by a representative of the concerned agricultural or forestry industry under the terms of a written agreement with the Animal and Plant Health Inspection Service, giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government.

**Inspector.** An employee of the Animal and Plant Health Inspection Service, or a State or county plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plant products inspected under the Act.

**Office of inspection.** The office of an inspector of plants and plant products covered by this part.

**Phytosanitary certificate.** A certificate (PPQ Form 577) issued by an inspector, giving the phytosanitary condition of domestic plants or unprocessed or unmanufactured plant products based on inspection of the entire lot.

**Phytosanitary certificate for reexport.** A certificate (PPQ Form 579) issued by an inspector, giving the phytosanitary condition of foreign plants and plant products legally imported into the United States and subsequently offered for reexport. The certificate certifies that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products are considered to conform to the current phytosanitary regulations of the receiving country and have not been subjected to the risk of infestation or infection during storage in the United States. Plants and plant products which transit the United States under Customs bond are not eligible to receive the phytosanitary certificate for reexport.

**Plant pests.** Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or

damage in any plants or parts thereof, or other products of plants.

**Plant products.** Products derived from nursery stock, other plants, plant parts, roots, bulbs, seeds, fruits, nuts, and vegetables, including manufactured or processed products.

**Plants and plant products.** Nursery stock, other plants, plant parts, roots, bulbs, seeds, fruits, nuts, vegetables and other plant products, including manufactured or processed products.

**State.** Any of the States of the United States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States.

**The Act.** The act of Congress entitled "Department of Agriculture Organic Act of 1944," approved September 21, 1944 (58 Stat. 735), section 102.

**§ 353.2 Purpose and administration.**

The export certification program does not require certification of any exports, but does provide certification of plants and plant products as a service to exporters. After assessing the phytosanitary condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector issues an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted. APHIS also enters into written agreements with industry to allow the issuance of industry-issued certificates giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government.

**§ 353.3 Where service is offered.**

(a) Information concerning the location of inspectors who may issue certificates for plants and plant products may be obtained by contacting one of the following regional offices:

Region	States
Northeastern: Blason II, 1st Floor, 505 South Lenola Road, Moorestown, NJ 08057.	CT, ME, MA, NH, RI, VT, NY, NJ, PA, MD, DE, VA, WI, MN, IL, IN, OH, MI, WV.
Southeastern: 3505 25th Avenue, Building 1, North, Gulfport, MS 39501.	FL, AL, GA, KY, MS, TN, NC, SC, PR, US VI.
Central: 3505 Boca Chica Blvd., Suite 360, Brownsville, TX 78521-4065.	TX, OK, NE, AR, KS, LA, IA, MO, ND, SD.

Region	States
Western: 9580 Micron Avenue, Suite I, Sac- ramento, CA 95827.	HI, CA, CO, ID, MT, UT, WY, WA, OR, NV, NM, AZ, AK.

(b) Inspectors who may issue phytosanitary certificates for terrestrial plants listed in 50 CFR part 17 or 23 are available only at a port designated for export in 50 CFR part 24, or at a nondesignated port if allowed by the U.S. Department of the Interior pursuant to section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1538). The following locations are designated in 50 CFR part 24 as ports for export of terrestrial plants listed in 50 CFR part 17 or 23:

(1) Any terrestrial plant listed in 50 CFR part 17 or 23:

Nogales, AZ  
Los Angeles, CA  
San Diego, CA  
San Francisco, CA  
Miami, FL  
Orlando, FL  
Honolulu, HI  
New Orleans, LA  
Hoboken, NJ (Port of New York)  
Jamaica, NY  
San Juan, PR  
Brownsville, TX  
El Paso, TX  
Houston, TX  
Laredo, TX  
Seattle, WA

(2) Any plant of the family Orchidaceae (orchids) listed in 50 CFR part 17 or 23:

Hilo, HI  
Chicago, IL

(3) Roots of American ginseng (*Panax quinquefolius*) listed in 50 CFR 23.23:

Atlanta, GA  
Chicago, IL  
Baltimore, MD  
St. Louis, MO  
Milwaukee, WI

(4) Any plant listed in 50 CFR 17.12 or 23.23 and offered for exportation to Canada:

Detroit, MI  
Buffalo, NY  
Rouses Point, NY  
Blaine, WA

(5) Any logs and lumber from trees listed in 50 CFR 17.12 or 23.23:

Mobile, AL  
Savannah, GA  
Baltimore, MD  
Gulfport, MS  
Wilmington and Morehead City, NC  
Portland, OR  
Philadelphia, PA  
Charleston, SC  
Norfolk, VA  
Vancouver, WA

(6) Plants of the species *Dionaea muscipula* (Venus flytrap):

Wilmington, NC

#### § 353.4 Products covered.

Products and plant products when offered for export or re-export.

#### § 353.5 Application for certification.

(a) To request the services of an inspector, a written application (PPQ Form 572) shall be made as far in advance as possible, and shall be filed in the office of inspection at the port of certification.

(b) Each application shall be deemed filed when delivered to the proper office of inspection at the port of certification. When an application is filed, a record showing the date and time of filing shall be made in such office.

(c) Only one application for any consignment shall be accepted, and only one certificate for any consignment shall be issued.

(Approved by the Office of Management and Budget under control number 0579-0052)

#### § 353.6 Inspection.

Inspections shall be performed by agents or inspectors.

(a) *Agent.* (1) Agents may conduct phytosanitary field inspections of seed crops in cooperation with and on behalf of those State plant regulatory agencies electing to use agents and maintaining a Memorandum of Understanding with the Animal and Plant Health Inspection Service in accordance with the regulations. The Memorandum of Understanding must state that agents shall be used in accordance with the regulations in this part. Agents are not authorized to issue Federal phytosanitary certificates, but are only authorized to conduct the field inspections of seed crops required as a basis for determining phytosanitary condition prior to the issuance of a phytosanitary certificate for the crops.

(2) To be eligible for designation as an agent, an individual must:

(i) Have the ability to recognize, in the crops he or she is responsible for inspecting, plant pests, including symptoms and/or signs of disease-causing organisms, of concern to importing countries.

(ii) Have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in identifying plant pests endemic to crops of commercial importance within the cooperating State, or a combination of higher education in the biological sciences and experience in identifying such plant pests, as follows:

0 years education and 5 years experience;

1 year education and 4 years experience; 2 years education and 3 years experience; 3 years education and 2 years experience; or 4 years education and 1 year experience. The years of education and experience do not have to be acquired consecutively.

(3) An agent must receive annual training provided by the State plant regulatory agency. The required training must include instruction in inspection procedures, identification of plant pests of quarantine importance to importing countries, methods of collection and submission of specimens (organisms and/or plants or plant parts) for identification, and preparation and submission of inspection report forms approved by the State plant regulatory agency.

(4) An agent must have access to Federal or State laboratories for the positive identification of plants pests detected.

(5) No agents shall inspect any plants or plant products in which they or a member of their family are directly or indirectly financially interested.

(b) *Inspector.* (1) An employee of the Animal and Plant Health Inspection Service, or a State or county regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plants and plant products inspected under the Act.

(2) To be eligible for designation as an inspector, a State or county plant regulatory official must:

(i) Have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in State or county plant regulatory activities, or a combination of higher education in the biological sciences and experience in State plant regulatory activities, as follows:

0 years education and 5 years experience; 1 year education and 4 years experience; 2 years education and 3 years experience; 3 years education and 2 years experience; or 4 years education and 1 year experience. The years of education and experience do not have to be acquired consecutively.

(ii) Successfully complete, as indicated by receipt of a passing grade, the Animal and Plant Health Inspection Service training course on phytosanitary certification.

(3) No inspectors shall inspect any plants or plant products in which they

or a member of their family are directly or indirectly financially interested.

(c) *Applicant responsibility.* (1) When the services of an agent or an inspector are requested, the applicant shall make the plant or plant product accessible for inspection and identification and so place the plant or plant product to permit physical inspection of the lot for plant pests.

(2) The applicant must furnish all labor involved in the inspection, including the moving, opening, and closing of containers.

(3) Certificates may be refused for failure to comply with any of the foregoing provisions.

#### § 353.7 Certificates.

(a) *Phytosanitary certificate (PPQ Form 577).* (1) For each consignment of domestic plants or unprocessed plant products for which certification is requested, the inspector shall sign and issue a separate certificate based on the findings of the inspection.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification, and one forwarded to the Administrator.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections for previous certifications when the previously issued certificates can be canceled before they have been accepted by the phytopathological authorities of the country of destination involved.

(b) *Export certificate for processed plant products (PPQ Form 578).* (1) For each consignment of processed plant products for which certification is requested, the inspector shall sign and issue a certificate based on the inspector's findings after inspecting submitted samples and/or by virtue of processing received.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections/

processing used for previous certifications.

(c) *Phytosanitary certificate for reexport (PPQ Form 579).* (1) For each consignment of foreign origin plants or unprocessed plant products for which certification is requested, the inspector shall sign and issue a certificate based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States after determining that the consignment conforms to the current phytosanitary regulations of the receiving country and has not been subjected to the risk of infestation or infection during storage in the United States.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification, and one forwarded to the Administrator.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections for previous certifications when the previously issued certificates can be canceled before they have been accepted by the phytopathological authorities of the country of destination involved.

(d) *Industry-issued certificate.* A certificate issued under the terms of a written agreement between the Animal and Plant Health Inspection Service and an agricultural or forestry company or association giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government. The certificate may be issued by the individual who signs the agreement or his/her delegate.

(1) *Contents of written agreement.* In each written agreement, APHIS shall agree to cooperate and coordinate with the signatory agricultural or forestry company or association to facilitate the issuance of industry-issued certificates and to monitor activities under the agreement, and the concerned agricultural or forestry company or association agrees to comply with the requirements of the agreement. Each agreement shall specify the articles subject to the agreement and any measures necessary to prevent the introduction and dissemination into specified foreign countries of specified injurious plant pests. These measures could include such treatments as refrigeration, heat treatment, kiln drying, etc., and must include all necessary preshipment inspections and

subsequent sign-offs and product labeling as identified by Plant Protection and Quarantine (PPQ), APHIS, based on the import requirements of the foreign country.

(2) *Termination of agreement.* An agreement may be terminated by any signatory to the agreement by giving written notice of termination to the other party. The effective date of the termination will be 15 days after the date of actual receipt of the written notice. Any agreement may be immediately withdrawn by the Administrator if he or she determines that articles covered by the agreement were moved in violation of any requirement of this chapter or any provision of the agreement. If the withdrawal is oral, the decision to withdraw the agreement and the reasons for the withdrawal of the agreement shall be confirmed in writing as promptly as circumstances permit. Withdrawal of an agreement may be appealed in writing to the Administrator within 10 days after receipt of the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the appellant relies to show that the agreement was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the agreement is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator. No written agreement will be signed with an individual or a company representative of the concerned agricultural or forestry company or association who has had a written agreement withdrawn during the 12 months following such withdrawal, unless the withdrawn agreement was reinstated upon appeal.

(Approved by the Office of Management and Budget under control number 0579-0052)

#### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

2. The authority citation for part 354 would continue to read as follows:

**Authority:** 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

3. In § 354.3, paragraph (a), the definition for *Designated State inspector* would be removed and a new definition for *Designated State or county inspector* would be added in alphabetical order, the definitions for *Phytosanitary*

*certificate* and *Phytosanitary certificate for reexport* would be revised, the definition for *Processed product certificate* would be removed, and a new definition for *Export certificate for processed plant products* would be added in alphabetical order, and paragraph (g)(2) would be revised to read as follows:

**§ 354.3 User fees for certain international services.**

(a) \* \* \*

\* \* \* \* \*

*Designated State or county inspector.*

A State or county plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plant products inspected under the Department of Agriculture Organic Act of 1944.

*Export certificate for processed plant products.* A certificate (PPQ Form 578) issued by an inspector, describing the plant health condition of processed or manufactured plant products based on inspection of submitted samples and/or by virtue of the processing received.

\* \* \* \* \*

*Phytosanitary certificate.* A certificate (PPQ Form 577) issued by an inspector, giving the phytosanitary condition of domestic plants or unprocessed or unmanufactured plant products based on inspection of the entire lot.

*Phytosanitary certificate for reexport.* A certificate (PPQ Form 579) issued by an inspector, giving the phytosanitary condition of foreign plants and plant products legally imported into the United States and subsequently offered for reexport. The certificate certifies that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products are considered to conform to the current phytosanitary regulations of the receiving country and have not been subjected to the risk of infestation or infection during storage in the United States. Plants and plant products which transit the United States under Customs bond are not eligible to receive the phytosanitary certificate for reexport.

\* \* \* \* \*

(g) \* \* \*

(2) There is no APHIS user fee for a certificate issued by a designated State or county inspector.

\* \* \* \* \*

Done in Washington, DC, this 9th day of August 1995.

**Lonnie J. King,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-20227 Filed 8-15-95; 8:45 am]

BILLING CODE 3410-34-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 95-CE-32-AD]

**Airworthiness Directives; Beech Aircraft Corporation 90, 99, 100, and 200 Series Airplanes**

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

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

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Beech Aircraft Corporation (Beech) 90, 99, 100, and 200 series airplanes. The proposed action would require inspecting the main landing gear drag leg lock link to ensure that the hole for the roll pin is drilled completely through both walls of the main landing gear drag leg lock link and, if not drilled completely through both link walls, replacing any main landing gear drag leg lock link. An incident where the left main landing gear collapsed on one of the affected airplanes prompted the proposed action. Investigation revealed that the roll pin hole was not completely drilled through both walls of the drag leg lock link. The actions specified by the proposed AD are intended to prevent main landing gear collapse caused by drag leg lock link failure, which, if not detected and corrected, could result in loss of control of the airplane.

**DATES:** Comments must be received on or before October 20, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-32-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4124; facsimile (316) 946-4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-CE-32-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-32-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

The FAA received a report of an incident where the left main landing gear collapsed on a Beech Model 99 airplane. Investigation of this incident revealed that the hole for the roll pin was not completely drilled through both walls of the drag leg lock link.

Further investigation shows that spare drag leg lock links were delivered to the field with the roll pin hole only drilled halfway through the link. When drilled only halfway through the link, the roll