Proposed Rules

Federal Register
Vol. 66, No. 168
Wednesday, August 29, 2001

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. 00–014–1]

RIN 0579–AB18

Phytosanitary Certificates for Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations to require that a phytosanitary certificate accompany all fruits and vegetables imported into the United States, with certain exceptions. This proposal would include commercial produce imported into the United States as well as fruits and vegetables brought in by travelers. We would exempt fruits and vegetables that are dried, cured, frozen, or processed, as well as fruits and vegetables that travelers and shoppers bring into the United States for personal use through land ports of entry located along the Canadian and Mexican borders. The regulations currently do not require that phytosanitary certificates accompany produce imported into this country, except for certain fruits and vegetables grown in designated foreign regions. We believe this change is necessary to help prevent foreign plant pests from being introduced into and disseminated within the United States. If implemented, this proposal would require changes in the practices of importers and travelers who bring produce into the United States from other countries.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 29, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–014–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–014–1.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to prohibit or restrict the importation and entry into the United States of any plants and plant products, including fruits and vegetables, to prevent the introduction of plant pests or noxious weeds into the United States. Under this authority, the Animal and Plant Health Inspection Service (APHIS) administers regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) (referred to below as the regulations) that prohibit or restrict the importation of fruits and vegetables into the United States from various regions of the world to prevent the introduction and dissemination of plant pests. One form of regulatory restriction placed on certain imported fruits and vegetables is that the shipment be accompanied by a phytosanitary certificate.

A phytosanitary certificate is a document issued by a plant protection official of a national government to facilitate the international movement of a plant or plant product. A phytosanitary certificate attests to the phytosanitary status of the plant or plant product, including the plant or plant product's origin, as well as certification that the plant or plant product has been inspected and/or tested, is considered to be free from plant pests of quarantine significance, and is otherwise believed to be eligible for importation into the country of destination pursuant to the phytosanitary laws and regulations of that country. A phytosanitary certificate may include additional declarations containing information required by the importing country and not routinely noted on the certificate.

The form, content and use of phytosanitary certificates is governed by the International Plant Protection Convention (IPPC). The IPPC is a multilateral treaty under the auspices of the Food and Agriculture Organization of the United Nations (FAO) and is administered through the IPPC Secretariat located in FAO's Plant Protection Service. The IPPC is recognized by the World Trade Organization in the Agreement on the Application of Sanitary and Phytosanitary Measures as the source for international standards for phytosanitary measures affecting trade. Over 100 governments, including the United States, are contracting parties to the IPPC.

The use of phytosanitary certificates in conjunction with the shipment of agricultural and other plant material is the approach that regulatory officials around the world are increasingly relying on to help reduce the introduction and spread of plant pests. 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. Our trading partners and the IPPC have also recognized that the responsibility of pest risk mitigation and quarantine compliance can be shifted to the exporting country.

Phytosanitary certificates are in wide use in international trade. APHIS issues hundreds of thousands of phytosanitary certificates each year to facilitate the export of U.S. agricultural products to countries that require certificates to accompany such products. We also require that a number of agricultural products imported into the United States be accompanied by a

phytosanitary certificate to ensure freedom from certain plant pests. Articles that must have a phytosanitary certificate to be imported into the United States include citrus from South Africa (§ 319.56–2q); papayas from Brazil and Costa Rica (§ 319.56–2w); cantaloupe, honeydew melons, and watermelon from Brazil and Venezuela (§ 319.56–2aa); tomatoes from Spain, France, Morocco and Western Sahara (§ 319.56–2dd); pears from China (§ 319.56–2ee); Hass avocados from Mexico (§ 319.56–2ff); peppers from Spain (§ 319.56–2gg); and garlic from a number of countries (§ 319.56–2g). Phytosanitary certificates must also accompany nursery stock, plants, roots, bulbs, seeds, and other plant products imported into the United States under 7 CFR 319.37 through 319.37–14.

On August 4, 1995, we published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (60 FR 39888–39889, Docket No. 95–04601). The ANPR sought comments on whether all fruits and vegetables imported into the United States should be accompanied by a phytosanitary certificate. This included commercial shipments of fruits and vegetables as well as produce brought into the United States by travelers and shoppers. The majority of comments submitted to APHIS in response to the ANPR generally opposed the expanded use of phytosanitary certificates. A number of commenters were particularly concerned that this requirement would cause significant disruptions and delays in commercial shipments of produce from Canada and Mexico. Others contended that the specific pest risk was not adequately demonstrated to justify the uniform, widespread application of this requirement. After considering the comments, we believe it is necessary that we move forward with this proposal, subject to certain exceptions, for the reasons discussed below.

In this document we are proposing to amend the regulations to require that a phytosanitary certificate accompany all fruits and vegetables imported into the United States, with certain exceptions. This proposal would apply to all commercial shipments of fruits and vegetables imported into the United States, as well as to all fruits and vegetables brought in by individual travelers for personal use. We would exempt fruits and vegetables that are dried, cured, frozen, or processed unless we determine that the drying, curing, freezing, or processing to which the fruits or vegetables have been subjected does not entirely eliminate pest risk. We would also exempt fruits and vegetables that travelers and shoppers bring into the United States for personal use through land ports of entry located along the Canadian and Mexican borders.

We define commercial shipment in § 319.56–1 of the regulations as a shipment containing fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Requiring fruits and vegetables imported into the United States to be accompanied by a phytosanitary certificate would mean that U.S. importers would have to get the certificate from an official agency of the country where the goods originate. Typically, this would entail an inspection by a plant protection official of the foreign country, certification of where in the country of origin the fruit or vegetables were grown or acquired their phytosanitary status, and a statement that the shipment is free of plant pests of quarantine significance. The certifying country usually charges a fee for these services. Travelers to the United States from foreign countries, unless entering the United States through land border ports, also would be required to obtain a phytosanitary certificate for any fruits or vegetables they wish to bring into the country. This would be true even for travelers bringing fruits and vegetables with them in baggage for personal use.

Because adoption of this proposal would require changes in the practices of importers and travelers who bring produce into the United States, we would conduct an intensive public relations and education campaign to alert importers and travelers to the new requirements. We would also delay the effective date of the rule until at least 6 months after publication of the final rule.

Inspection Role of APHIS

Over the past 200 years, several thousand foreign plant and animal species have become established in the United States. About one in seven has become invasive, leading to economic harm to the United States that runs in the billions of dollars annually. Invasive species are nonindigenous organisms whose introduction can cause economic and environmental harm as well as harm to human health. Problems associated with invasive species are national in scope and are becoming more and more widespread. Once an invasive species establishes itself, it is often difficult and expensive to remove. Recent cases in which invasive species have had a significant effect on fruits and vegetables in the United States include, among others, citrus canker, plum pox virus, and various fruit flies, including the Mediterranean fruit fly (Medfly), Mexican fruit fly, and Oriental fruit fly.

APHIS is one of three primary Federal Inspection Service (FIS) agencies responsible for monitoring the movement of cargo and passengers into the United States. The two other FIS agencies are the U.S. Customs Service (U.S. Customs) in the Department of the Treasury and the Immigration and Naturalization Service (INS) in the Department of Justice. APHIS is the lead Federal agency responsible for preventing the introduction of foreign plant pests and noxious weeds. Plant pests or noxious weeds new to or not known to be widely prevalent in the United States constitute a potential threat to crops and other plants or plant products. It is the job of APHIS to facilitate exports, imports, and interstate commerce in agricultural products and other commodities in ways that will reduce, to the extent practicable, the risk of introducing plant pests or noxious weeds into and within the United States.

At one time, U.S. Customs carried out all primary inspection activity involving the importation of food, plant, and animal articles into the United States. This included initial screening as well as actual inspection of cargo and baggage. APHIS officials were generally called in by U.S. Customs only upon discovery of plant and animal articles.

This allocation of duties has changed in recent years. Beginning in the 1980's, APHIS assumed greater responsibility in conducting the initial screening of cargo and passengers with regard to food, plant, and animal products and now has primary responsibility for carrying out the actual inspection of cargo, as well as baggage, containing or suspected of containing food, plant, and animal articles. We also inspect nonagricultural products that may carry plant pests. In FY 1999, we employed approximately 2,000 inspectors at 126 land, sea, and air ports of entry in carrying out these services, which we refer to as agricultural quarantine inspection (AQI) activities. By comparison, in the early 1980's we employed approximately 1,200 inspectors. Expenditures for AQI activities in FY 2000 totaled approximately $182 million. For the same fiscal year, APHIS received

approximately $26.8 million in appropriations for AQI activities along with $137.5 million in user fees, with remaining revenues coming from other sources such as reimbursable overtime and issuance of phytosanitary certificates.

The detection of plant pests in commercial shipments of fruits and vegetables is usually predicated on inspecting samples of the shipment. APHIS inspectors follow detailed guidelines on selecting a sample representative of the entire shipment. Inspection of pedestrians, travelers, and passenger vehicles follows a two-stage process, primary and secondary inspection. During primary inspection, APHIS inspectors screen passengers, their baggage, and vehicles by questioning the individuals, reviewing their written declaration, and visually observing for possible referral for further examination. We also use x-ray equipment and detector dogs to aid in this process. Secondary inspection involves more detailed questioning of the individual and a visual examination of baggage contents, if necessary. Passenger and baggage inspection tends to require more APHIS staffing and resources in comparison to other AQI activities.

Historically, APHIS has not required all fruits and vegetables imported into the United States to be accompanied by a phytosanitary certificate. We have instead relied largely on having well-trained personnel to inspect imported produce. Port of entry inspection was, and continues to be, the primary safeguard to which all imported produce is subject. However, we are increasingly using other ''offshore'' safeguarding measures for imported fruits and vegetables, such as preclearance inspection in the country of origin, treatments, and phytosanitary certification. These additional measures have become crucial in augmenting inspection efforts in light of worldwide developments and trends involving the movement of goods and people.

Effect of Growth in Trade and Travel

In recent years, opportunities for international commerce and travel have reached unprecedented levels. This has resulted in an explosive growth in both commercial and noncommercial shipments of fruits and vegetables imported into the United States by shippers, travelers, and other individuals. For example, from 1995 to 1999, the value of U.S. agricultural imports increased from $30.6 billion to approximately $38 billion. Fruits and vegetables represent a growing share of this import total as refrigerated containerization and other technological improvements have made it possible to ship perishable commodities longer distances. In 1999, the total value of fruits and vegetables imported into the United States was $4.74 billion. Moreover, the number of international air passengers traveling to the United States has increased over 50 percent during this same period, exceeding 60.8 million passengers in FY 1999.

This growth in trade and travel has not only been with our major trading partners. The movement towards a more globalized marketplace has resulted in increased trade and travel with a number of other countries as well. This has presented us with new challenges in better understanding the pest complexes and potential pest risks associated with goods from these regions.

In response to this growth in international activity, there has been an expansion in the number of U.S. ports of entry. Unfortunately, the number of potential pathways for the movement and introduction of foreign, invasive plant pests has increased with this boom in global trade and travel, placing a tremendous demand on APHIS' inspection services.

Coupled with this unprecedented growth in international commerce and travel, APHIS and other FIS agencies have been directed to carry out their inspection responsibilities in a more timely manner. Recognizing the importance of trade to the national economy, we and our FIS partners have responded by adopting new customer service standards to move the increasing volume of passengers and cargo through ports of entry within specific time periods. For example, current standards call for the agencies to clear international airline passengers within 30 minutes of arrival. Similarly, APHIS has adopted standards to schedule inspections of perishable cargo within 3 hours of being notified of its arrival.

APHIS' record in preventing the introduction and establishment of harmful agricultural invasive species in recent years is noteworthy. Yet, the unprecedented growth in international trade and travel has placed the current system, which relies primarily on inspection at the port of entry, under stress. Studies, reports, and other data have documented how the current AQI system faces a number of challenges in keeping pace with the increasing amount of produce entering this country through commercial channels and by means of individual travelers. For example, a 1993 report by the U.S. Congressional Office of Technology Assessment concluded that policies designed to protect the United States from the introduction of harmful invasive species were not safeguarding our national interests. It further concluded that the current system was unable to keep pace with new pest pathways and introductions. Similarly, a 1997 report by the U.S. Government Accounting Office (GAO) declared that the increasing flow of passengers and cargo is far outdistancing APHIS inspection capabilities despite a 78 percent increase in funding and a 44 percent increase in staffing for AQI activities since 1990. According to the GAO, the APHIS workload has been directly affected by the increase in international trade and travel, both in the volume of cargo and number of international passengers traveling to the United States. Furthermore, increases in the number of ports of entry, as well as the increased risk at existing ports due to expanded volume, have extended APHIS' workload.

Our own AQI monitoring survey and sampling data covering international air passengers arriving in the United States raise similar concerns as to the effect this growth in imported fruits, vegetables, and other agricultural products is having on our inspection efforts. Based on a sample of 149,431 international air passengers arriving in the United States in FY 1999, we found that 12,833 (or 8.6 percent) of these passengers were carrying some type of plant item subject to inspection and possible seizure. Further, we found that 7,451 (5.0 percent) of these passengers carried a plant item that was either prohibited or was subject to seizure because the plant item was infested or the plant item's origin could not be established. To the extent we can generalize, based on this sampling data approximately 5.2 million of the 60.8 million international air travelers arriving in the United States in 1999 would have carried some type of plant item subject to inspection and possible seizure, and that approximately 3.0 million of these passengers carried plant items that would have been prohibited or subject to seizure because the item was infested or the item's origin could not be established. Although we do not maintain data on the types of plant items brought in by air passengers, we know from experience that most of the items would be some form of fruits or vegetables.

An earlier study, an APHIS survey on Medfly exclusion efforts, covered a 12-month period over 1993 and 1994 and involved the inspection of 71,175 passengers out of a total of 14,679,905 passengers arriving at 12 airports, both directly and via hub cities from countries where Medfly existed. Based

on the number of quarantine pests detected during the survey, we estimated that approximately 11,000 quarantine pests were imported by the 14,679,905 passengers. These results probably would have shown even higher pest detections, except that the survey did not include passengers from Asia and Australia or non-Medfly host material and other produce that was not declared.

With respect to commercial shipments, our inspectors must now contend not only with an increased volume of imports, but also with changing transportation modes and technologies. These include increased use of containerized cargo, and transshipments through one or more countries, as well as sharing of vessel container space. These market-driven trends, while resulting in greater transportation efficiencies, can make inspection more problematic, particularly during high-volume periods. Container characteristics that account for productivity gains for industry present challenges for inspectors, since the cargo is not as easily accessible or observable for inspection. Unloading and reloading of the contents is costly, and the threat of invasive plant pest introductions extends more readily beyond the port of entry if the cargo is not unloaded until reaching its final destination. This reverses the historical pattern where species generally first appeared at ports of entry. Since containers are used and reused many times for many different types of cargo, and shipped all over the world, there is also the potential that pests from previous shipments can contaminate the container itself.

Requiring the unloading and reloading of cargo en route for purposes of inspection can be a time consuming and expensive process, while inspecting only the accessible areas of the shipment does not necessarily yield a sample representative of the entire cargo. In fact, in selecting a sample from the tailgate area of a container or truck, we have found that if infested cargo is elsewhere in the container or truck, it will likely not be detected 40 to 60 percent of the time. Phytosanitary certification at the place of origin would help address pest risk concerns while reducing the need for lengthy inspection and the consequent delays and disruptions as containers arrive in the United States for further shipment to their final destination.

In an effort to objectively evaluate and improve our ability to safeguard U.S. resources from invasive species, APHIS recently arranged to have the National Plant Board (NPB) conduct a thorough review of all aspects of our safeguarding system. The review group, composed of State, industry, academia, and environmental groups, conducted extensive research, interviews, site visits, and other interactions with APHIS and its stakeholders. In preparing its evaluation, the review group focused on four major areas: Pest exclusion, responses to pests that breach the exclusion system, use of permits to control the movement of pests, and collection and use of international information. The review group's 1999 report, ''Safeguarding American Plant Resources, A Stakeholder Review of the APHIS-PPQ Safeguarding System'' (Safeguarding Report),[1] contained over 300 recommendations addressing the four major areas of focus.

The Safeguarding Report identifies a number of opportunities to enhance the safeguarding system. In the area of pest exclusion, the Safeguarding Report addresses issues relating to preclearance inspection in the country of origin, smuggling interdiction, handling of commercial cargo, initiatives with regard to the traveling public, port of entry inspection, application of technology, risk analysis, utilization of user fees, and public education and awareness, to name just a few. As of April 2001, a number of recommendations contained in the Safeguarding Report have been implemented, including enactment of the Plant Protection Act, increased use of digital imaging for pest identification, and expanded collection of user fees.

The Safeguarding Report strongly recommends that we modify our risk management strategy, which has relied primarily on port of entry inspections as the main line of defense, to also include other alternative measures to exclude invasive species. It specifically urges us to take a more proactive approach towards the prevention and detection of harmful plant pests through greater use of offshore mitigation measures, including the use of phytosanitary certificates, to supplement inspection at the port of entry.

The Safeguarding Report also specifically recommends that we prohibit the importation of unprocessed food and plant products by the traveling public, or, alternatively, require that such items be accompanied by a phytosanitary certificate. Although a total prohibition on these items would ease enforcement and reduce the amount of potential host material moving into the United States, we have opted for a less restrictive measure of allowing the continued importation of produce by the traveling public, subject to the phytosanitary certificate requirement. We believe this proposed course of action should significantly curtail the quantity of produce brought in by travelers and thereby reduce the risk of pest introduction, yet provide those travelers who wish to bring in produce the opportunity to do so by procuring a phytosanitary certificate.

As mentioned earlier, our proposal would provide an exception to the phytosanitary certificate requirement for fruits and vegetables that are dried, cured, frozen, or processed. We would also exempt noncommercial shipments of produce brought into the United States by travelers and shoppers through land ports of entry located along our borders with Canada and Mexico (see discussion under heading, ''Travelers and Shoppers Entering the United States Through Land Border Ports'').

Why Target Commercial Shipments

Commercial shipments of fruits and vegetables imported into the United States have increased significantly over the last decade as shipping technologies and other factors relating to trade have facilitated the importation of larger quantities of perishable items to this country. This trend is likely to continue as the global marketplace becomes more integrated and U.S. consumers come to expect a year-round supply of various varieties of fruits and vegetables.

We have responded to the increased flow of commercial shipments of agricultural goods into this country with additional staffing, resources, and other measures. However, the growth in imports has increased at a faster rate than our ability to inspect using traditional means. The large amount of prohibited material passing through inspection undeclared or undetected persists. It is apparent that the current reliance on inspection at the port of entry is no longer sufficient, by itself, to adequately respond to the new dynamics governing the commercial movement of imported fruits and vegetables into this country. Even with additional staffing and resources, what can be done at the inspection site is limited, particularly if commercial shipments are to be released in a timely manner.

Requiring phytosanitary certificates for commercial shipments of imported fruits and vegetables would help alleviate the workload of APHIS inspectors at the port of entry by providing inspectors with verifiable information as to the place of origin

[1] The Safeguarding Report is available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.** It is also available on the Internet at *http://www.aphis.usda.gov/ppq/safeguarding.*

where the goods acquired their true phytosanitary status, i.e., where the goods were exposed to possible infestation or contamination by pests. Normally, this will be the place where the commodity was grown. The phytosanitary certificate would also provide the added security that the shipment has already been inspected by a plant protection official of a national government in the exporting country.

The required use of phytosanitary certificates would also help mitigate inspection concerns relating to container shipments. Containers present challenges for inspectors, since the cargo is often not easily accessible or observable for inspection. Unloading and reloading of the contents for purposes of inspection can be a time consuming and expensive process, while inspecting only the accessible areas of the shipment does not necessarily yield a sample representative of the entire cargo. Phytosanitary certification based on inspection at the place of origin would help address some of these concerns involving the use of containers. It would lessen the potential need for lengthy inspection and the consequent delays and disruptions upon arrival in the United States.

Requiring phytosanitary certificates for commercial shipments of imported fruits and vegetables would also help overcome inspection challenges by accurately identifying the origin of the shipment's contents. This is particularly important when the shipment has moved through more than one country prior to arrival in the United States. It is becoming more common for perishable agricultural products to be shipped from the country where produced to intermediate layover points in other countries (for further handling and storage) before shipment to the country of final destination. While in storage, these goods may be split up, combined with other consignments from other regions, or be repackaged. The laws of the country where the goods are being temporarily stored may allow for commingled shipments to be labeled as originating there so long as a portion of the shipment includes goods produced in that country. Such practices may obscure the true origin of certain contents in the shipment. For example, it may not be readily apparent that a shipment exported from a low-risk pest region includes articles that were produced in a high-risk pest region. Phytosanitary certificates would help alleviate identification issues relating to the goods' origin, since even goods that are in a commingled shipment or repackaged must still be certified as to their place of origin.

Requiring phytosanitary certificates for all commercial shipments of imported fruits and vegetables would be an important step in mitigating the pest risk associated with the increased volume of commercial produce coming into this country. It would help alleviate inspection concerns with respect to cargo shipped in containers as well as identification issues involving the goods' place of origin. Ultimately, phytosanitary certification should expedite the clearance process at the port of entry for commercial shippers, while providing needed additional security against the introduction and dissemination of invasive plant pests into the United States.

Why Target Travelers

Imported produce brought into the United States by travelers poses a risk because:

- The origin of the produce is often difficult to determine;
- There is a greater chance that the produce is grown in backyard gardens with little or no pest control. Historically, decisions to allow importation of produce have been based on an evaluation of the pest risk associated with commercial production, not backyard production;
- Travelers bring noncommercial varieties with unknown susceptibility to pests; and
- The fruits are often ripe or overripe, and, therefore particularly susceptible to infestations.

The required use of phytosanitary certificates would significantly reduce the total amount of fruits and vegetables brought in by travelers arriving by plane or other means of transportation, resulting in far less infested produce being imported. For travelers who do bring in produce accompanied by a phytosanitary certificate, the inspection process at the port of entry would be more efficient as inspection officers could better determine the origin of the produce. There should also be more consistency in identifying products subject to confiscation. Currently, it is often difficult for inspectors to determine the origin of produce when interviewing passengers. This can result in items being seized that should not be, while other items are released that should be seized. If the number of passengers arriving with produce is significantly reduced, then inspection officers currently required on the baggage floor to facilitate entry of products would be free to conduct more cargo sampling and other detection and compliance activities.

We have considered the potential difficulty, particularly in the initial years, of travelers procuring a phytosanitary certificate. For example, phytosanitary certificates are required to include detailed information about where the fruit or vegetable was grown and, in certain cases, where or how it was treated. This kind of information may not be readily available to travelers or shoppers who purchase the products at a market in a foreign country. We have also taken into account that, even if readily available, the cost of obtaining a certificate may outweigh the benefits for those carrying small amounts of produce with them for personal use. However, the inconveniences and hardships to certain travelers would be more than offset by the fact that this requirement would provide a considerable measure of added protection against the introduction of foreign plant pests by travelers.

Travelers and Shoppers Entering the United States Through Land Border Ports

We are proposing to exempt noncommercial shipments of produce brought in by travelers and shoppers entering the United States through land ports along the Mexican and Canadian borders. We believe that the existing system of inspection provides sufficient protection against the introduction of plant pests in produce carried in by individuals through these ports for personal use, and not for sale.

Vehicular and pedestrian traffic in the millions crosses our land borders annually. In FY 2000, approximately 90.9 million vehicles and 51.0 million pedestrians entered the United States through our ports of entry along our southern border with Mexico. We do not maintain similar statistics for vehicles and pedestrians entering the United States from Canada. The high volume of travelers and shoppers crossing our land borders is not a new phenomenon, but has existed for decades now, due in part to the cultural and economic ties that have developed along our borders with Mexico and Canada. It has been a long-standing practice for a number of shoppers and travelers to bring agricultural goods with them when crossing the border. For example, based on a sample of 52,982 vehicles and 31,553 pedestrians entering the United States from Mexico in FY 2000, we found that approximately 7 percent of the vehicles sampled and 8 percent of the pedestrians sampled carried some type of plant article. (This data does not include passengers on buses.) Applying these percentages to the total number of vehicles and pedestrians entering the

United States from Mexico, we estimate that approximately 6.5 million vehicles and 4.1 million pedestrians would have carried some type of plant article. Although we do not maintain data on the types of plant articles brought in by vehicles and pedestrians, we know from experience that most of the plant articles would be fruits or vegetables.

We have found that the pest risk factors discussed earlier with regard to imported produce brought into the United States by international travelers from around the world are not as applicable in the case of shoppers and travelers bringing in produce through our land border ports of entry. Fruits and vegetables that shoppers and travelers carry in through our land ports along the Mexican and Canadian borders tend to be purchased and consumed in the vicinity of the border area. For instance, it is common for U.S. residents living along the Mexican border to purchase produce in Mexico for local consumption in the United States. These groceries are referred to locally as ''mandado.'' The purchase of mandado represents a long-standing tradition and is symbolic of the culturally-blended society and economy that exists along the United States-Mexican border. A somewhat similar situation occurs along the Canadian border, although there is less traffic of this sort from Canada. The purchase and consumption of produce within the general area of the border is not as great a concern since land areas on either side of the border generally share common plant pests, so the risk of introducing new or not widely prevalent plant pests is minimal.

Based on our many years' experience in inspecting vehicle and pedestrian traffic along the Mexican and Canadian borders, we and our FIS partners have become familiar with the long-standing practices of shoppers and travelers bringing in agricultural items. We are also quite knowledgeable in the types and varieties of fruits and vegetables grown in Mexico and Canada. When inspecting plant articles at land ports, we can act with a greater degree of certainty in determining the general origin of the article without the need of certification, such as whether the article was produced near the border area, or in a location in the interior of Mexico or Canada, or somewhere outside Mexico or Canada. We also have greater flexibility in not being subject to the strict time standards that govern inspection of commercial cargo and airport baggage. Therefore, we believe that the existing system of inspection at our land ports provides sufficient protection against the introduction of plant pests in produce carried in by individuals for personal use without the need of requiring phytosanitary certification.

We are proposing that the exemption from phytosanitary certification would apply only to shoppers and travelers entering the United States through our land ports of entry, and would not be extended to travelers arriving in the United States by plane or boat from Mexico or Canada. There are several reasons for doing this. First, there is a greater potential that these air or boat passengers may have also traveled in areas outside of Mexico or Canada. There is also a greater potential that produce brought into the United States by these passengers may be carried to more distant points from the border that do not necessarily share some of the plant pests common in our land areas along the Mexican or Canadian borders.

We would also not extend this exemption from phytosanitary certification to commercial shipments arriving from Mexico and Canada. We believe that phytosanitary certificates are necessary in the case of commercial shipments from Mexico and Canada in order to mitigate the plant pest risks associated with container shipments and to address the practice of commercial shipments moving through more than one country prior to arrival in the United States.

Certification as a Risk Mitigation Tool

Given the likelihood of continued growth in commercial and noncommercial shipments of produce and the imperative to clear commercial cargo and international travelers in a timely, efficient manner, it is difficult to foresee how the current system, which relies primarily on port of entry inspection, can keep pace with the increased flow of imported produce without greater use of offshore mitigation measures to augment existing detection efforts.

The required use of phytosanitary certificates should greatly curtail the quantity of high-risk imports by travelers. For commercial shipments, the phytosanitary certificate would document the origin of each shipment and ensure inspection in the country of origin by a member of the foreign plant protection organization, helping to ensure shipment of clean commodities.

In our view, greater use and reliance on phytosanitary certificates, by both the United States and other countries, is the wave of the future. While port of entry inspection must continue to play an important role, the historic view that this activity can function as the focal point for exclusion must be augmented by greater emphasis on other viable approaches, including detection, compliance, and mitigation of pest risks in the country of origin. A risk management strategy that emphasizes the increased use of phytosanitary certificates and other offshore mitigation measures, along with continued inspection activities at the port of entry should, in the long run, allow for expedited entry of commercial cargo and passengers while providing the necessary level of quarantine security.

Proposed Changes to Part 319

In § 319.56–1, we propose to amend the definition of *commercial shipment* and add definitions for the terms *noncommercial shipment* and *phytosanitary certificate*.

Commercial shipment is defined in the regulations as ''a shipment containing fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.'' We would amend the definition of *commercial shipment* by revising the phrase ''fruits and vegetables'' in the first sentence to read ''fruits or vegetables.'' We would make this change to be consistent with APHIS inspection policy. We consider a commercial shipment, for purposes of inspection and treatment, to consist of a particular type of fruit or vegetable as opposed to a commingled lot of fruits and vegetables. So if two types of produce enter the United States at the same time as part of a single consignment, we would consider that to be two shipments. We identify commercial shipments on a commodity basis in most circumstances since our regulations for inspection and treatment are based on the pest risks associated with specific fruits or vegetables. In the first sentence, we would also replace the word ''imported'' with the word ''produced.'' While an article may have been ''produced'' for sale in the country of origin, it loses its commercial character if brought to this country by an individual for personal use. Inspectors identify a shipment to be commercial based on whether it is subject to sale and distribution at the time it is ''imported'' into the United States. Also, we would delete the words ''mass markets'' as used in the phrase ''for sale and distribution in mass markets.'' The key factor in identifying a shipment as commercial is whether it

is produced for sale and distribution, and not whether distribution occurs in a mass market.

We would define *noncommercial shipment* as ''a shipment containing fruits or vegetables that an inspector identifies as having been imported for personal use and not for sale.''

We would define *phytosanitary certificate* as ''a document, including electronic versions, that is related to a fruit or vegetable shipment and that: (1) Is patterned after the model certificate of the International Plant Protection Convention (IPPC), a multilateral convention on plant protection under the authority of the Food and Agriculture Organization of the United Nations; (2) is issued by an official of a foreign national plant protection organization; (3) is addressed to the plant protection service of the United States (Animal and Plant Health Inspection Service); (4) describes the shipment; (5) certifies the place of origin for all contents of the shipment; (6) certifies that the shipment has been inspected and/or tested according to appropriate official procedures and is considered to be free from quarantine pests of the United States; and (7) contains any additional declarations required under this subpart.''

We propose to amend the regulations at § 319.56–2(a) by providing that a phytosanitary certificate must accompany all commercial and noncommercial shipments of fruits and vegetables imported into the United States, except for fruits and vegetables that are dried, cured, processed, or frozen, and noncommercial shipments of fruits and vegetables brought into the United States through land ports of entry located along U.S. borders with Canada and Mexico.

We propose to amend paragraphs (b) through (d) of § 319.56–2, which cover the entry of fruits and vegetables under particular situations or from particular countries, to reflect the appropriate application of the new phytosanitary certificate requirement. Under § 319.56–2(b), dried, cured, and processed fruits and vegetables would not require a phytosanitary certificate unless APHIS determines that the drying, curing, or processing to which the fruits or vegetables have been subjected has not eliminated the pest risk. We would amend §§ 319.56–2(c) and (d) to reflect the applicability of the phytosanitary certificate requirement to fruits and vegetables from Canada and to fruits and vegetables imported into the U.S. Virgin Islands from the British Virgin Islands. We would also make a technical correction to § 319.37–2(c), for purposes of syntax and clarity, by substituting the words ''may not be imported'' in place of ''are prohibited importation.'' We would also move the phrase ''in accordance with § 319.37–2 of this part'' to appear earlier in the sentence.

Section 319.56–6 covers inspection and other requirements at the port of first arrival. We propose to amend paragraph (c) of this section to cite APHIS' authority to refuse entry of imported fruits and vegetables if not accompanied by a phytosanitary certificate, when required.

We would leave unchanged those sections of the regulations that already require a phytosanitary certificate to accompany specified fruits and vegetables from particular regions. These sections require specific declarations to appear on the phytosanitary certificates and would remain in effect.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This 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.

Below is an economic analysis for the proposed rule to require that all fruits and vegetables imported into the United States be accompanied by a phytosanitary certificate, with certain exceptions. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule, including the cost of procuring a phytosanitary certificate from other countries, any other administrative and logistical costs that might be incurred in procuring these certificates, and any costs associated with inspection.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation and entry into the United States of any plant and plant products, including fruits and vegetables, to prevent the introduction of plant pests or noxious weeds into the United States.

This proposed rule would require that all fruits and vegetables imported into the United States be accompanied by a phytosanitary certificate, with certain exceptions. We would exempt fruits and vegetables that are dried, cured, frozen, or processed, as well as noncommercial shipments of fruits and vegetables brought into the United States through land ports of entry located along the Canadian and Mexican borders. The United States does not currently require a phytosanitary certificate for the importation of fruits and vegetables, except in specific instances as detailed in the regulations.

This proposed rule has been prompted by the need for offshore pest mitigation measures to augment port of entry inspection efforts in response to the explosive growth in the number of and variety of commercial fruit and vegetable imports coming into this country as well as the increased number of travelers entering the United States from foreign countries. The primary alternative to this proposed rule would be to continue increasing our staffing and resources at port of entry inspection facilities. We could adjust our user fees to help offset any additional costs associated with this effort. APHIS has tried to address the plant pest threat over the past decade through increased staffing at the inspection site. We have also implemented new programs and technologies such as the deployment of detector dogs and the use of x-ray equipment at certain ports. Despite these efforts, however, the large amount of prohibited material passing through port of entry inspection undeclared and undetected persists.

We have also considered the potential benefits of including additional questions on the U.S. Customs form that travelers complete prior to entry into the United States relating to any plant articles they are carrying with them. We have explored this possibility with U.S. Customs since it is their form and is designed primarily to meet the needs of U.S. Customs. However, even if travelers could provide additional information, such as where the article was purchased, in many cases it would not provide us with definitive data as to where and under what conditions the plant article was produced.

It is apparent that even with additional staffing and other measures, what can be done at the inspection site is limited, particularly if cargo and passengers are to be inspected and released in a timely manner. As noted in the 1999 report, ''Safeguarding American Plant Resources, A

Stakeholder Review of the APHIS–PPQ Safeguarding System'' (Safeguarding Report),[2] we must more vigorously pursue offshore mitigation measures that augment our port of entry inspection efforts.

Offshore mitigation has several important advantages. By conducting inspections at the point of origin, pests can be intercepted before they enter the country instead of at U.S. ports. Additionally, inspection at the point of origin is often more efficient and effective as it allows for inspecting cargo before it is packed for shipment rather than having to unpack and repack the shipment for inspection upon arrival at the country of destination. We already require phytosanitary certificates for selected fruits and vegetables exported to the United States from other countries. We are also working with countries seeking to establish preclearance programs for the inspection of a number of commodities. Right now we have APHIS personnel stationed abroad managing permanent preclearance programs for fruits, vegetables, and flower bulbs destined for the United States from Mexico, Chile, and The Netherlands as well as air passenger preclearance programs in Aruba, The Bahamas, Bermuda, and Canada.

We considered requiring phytosanitary certificates only for commercial shipments of fruits or vegetables. We did not propose this alternative because the risks posed by imported fruits and vegetables are not limited to commercial shipments. We also considered prohibiting the importation of unprocessed food and plant products by the traveling public as recommended in the Safeguarding Report. A total prohibition on these items would ease enforcement and reduce the entry of potential host material carrying harmful pests. However, we have opted for a less restrictive measure of allowing the continued importation of produce by the traveling public, with a phytosanitary certificate except as explained below for produce from Mexico and Canada. We recognize that it may be difficult for travelers to obtain a phytosanitary certificate in a number of countries, particularly during the initial years this rule is in effect if it is adopted. However, we expect that, if this proposal is implemented, a number of countries will develop or improve their facilities and services for issuing certificates to travelers and shoppers as is done for commercial importers.

We are exempting from the phytosanitary certificate requirement fruits and vegetables brought into the United States by travelers and shoppers for personal use through land ports of entry along the Canadian and Mexican borders. We believe the continued use of screening and inspection for noncommercial shipments crossing the Canadian and Mexican borders provides a sufficient safeguard.

The growth in the number and variety of commercial shipments as well as the increased number of travelers to the United States has significantly increased the risk of pest introduction. Establishment of foreign plant pests can have a significant economic effect on the United States. Not only do these pests have the potential to cause economic harm to agricultural producers, but subsequent APHIS monitoring and eradication programs can be quite costly.

APHIS programs to control Mediterranean fruit fly (Medfly) and Mexican fruit fly serve as examples in illustrating the potential costs. These particular pests can enter the United States through both commercial cargo shipments and passenger baggage. APHIS studies of the Medfly and Mexican fruit fly have shown the potential for significant economic harm should these pests become established in the United States. A recent APHIS study[3] of the ongoing Texas Valley Mexican Fruit Fly Protocol estimates total costs of between $888 million and $928 million annually if the Mexican fruit fly becomes established throughout its possible range in the United States. These costs take into account additional pest control and treatment for fruit production in California and Florida as well as for projected crop losses. There would also be trade losses due to export prohibitions, as well as quarantine treatment costs, as other countries react to protect themselves from the pest risk associated with the affected produce. The Medfly program in Florida[4] provides a similar example. The total economic effect of Medfly establishment in Florida has been estimated at $308 million annually. This includes costs for pest control and treatment of fruit, as well as projected crop losses.

Both of these existing programs illustrate the potential costs of new foreign plant pests entering and becoming established in this country and represent the types of programs and costs that we hope to be able to avoid in the future, in part through this rule.

This proposed rule would primarily affect two major groups. The first group would be U.S. firms that import fruits and vegetables into the United States. Import brokers who work with these firms would also be affected by the new certification requirements. The second group would be travelers who carry fruits and vegetables into the United States from foreign countries for their own personal use. Based on our initial analysis, it appears that the economic effect of this proposed rule for both U.S. importers and travelers is likely to be small.

In 1999, the total value of fruits and vegetables imported into the United States was $4.74 billion. Most of these imports came from Mexico (40 percent), with the rest from Chile (10.5 percent), Costa Rica (10.1 percent), Canada (8.5 percent) and Ecuador (7 percent). The regulations currently require phytosanitary certification only in specific instances. In 1999, shipments requiring certification accounted for $547.6 million or 11.6 percent of total fruit and vegetable imports. The extent to which phytosanitary certification is required varies from country to country. Of the top five sources of fruits and vegetables listed above, 95.5 percent of Chile's exports to the United States (based on value) require a phytosanitary certificate, whereas only 1 percent of Mexico's exports to the United States require certification.

U.S. Importers

Based on the number of import permits APHIS issues, we expect that between 800 and 1000 firms would be affected by this proposed rule if it is adopted. Requiring a phytosanitary certificate for all commercial shipments of fruits and vegetables imported into the United States would mean that U.S. importers would have to get the certificate from the government of the country where the goods originated. Typically, this would involve an inspection by the foreign government, certification of where in the country of origin the fruits or vegetables were grown, and a statement that the shipment or shipments are free from plant pests of quarantine significance.

Our proposal would represent a significant administrative change for many importers, especially those

[2] The Safeguarding Report is available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT**. It is also available on the Internet at *http://www.aphis.usda.gov/ppq/safeguarding*.

[3] APHIS, Policy & Program Development, Policy Analysis and Development, ''Economic Analysis of Options for Eradicating Mexican fruit fly (Anastrepha ludens) from the Lower Rio Grande Valley of Texas,'' March, 2000.

[4] APHIS, Policy & Program Development, Policy Analysis and Development, ''Economic Assessment of Options for the Medfly Cooperative Program in Florida,'' February, 1998.

importing from countries from which we do not typically require phytosanitary certificates, such as Canada. The additional paperwork and inspection burden may result in additional costs to importers who find it necessary to restructure their operations to meet the new requirements. We do not expect these costs to be significant.

Foreign national plant protection organizations that issue phytosanitary certificates usually charge a fee for their services. The fee is typically quite small in comparison to the value of the commercial shipment. The value of commercial shipments of fruits and vegetables can vary widely, from a few thousand dollars to over $100,000. The size and value of a shipment will depend on the type of goods, the origin of the goods, the transportation method used, and other factors. The majority of commercial fruit and vegetable shipments appear to range between $5,000 and $20,000 in value, based on data from APHIS and the Census Bureau of the U.S. Department of Commerce. In contrast, the fee that is charged for a phytosanitary certificate and inspection is comparatively small. The actual fee varies from country to country and is based solely on the criteria that the issuing country deems appropriate. As points of reference for most shipments, Canada charges C$17 Canadian dollars ($10.75US) and Mexico charges 244 Mexican new pesos ($24.50US). The structure of the costs upon which the fee is based also varies from country to country. Spain does not charge a fee if a phytosanitary certificate is required by the importing country. If a certificate is not required, Spain charges 0.0525 percent of the customs value of the shipment, with a minimum of 795 pesetas ($4.57US). The Netherlands charges for the time required to conduct the inspection. This includes an initial fee of 48.50 Dutch guilders plus 31.50 Dutch guilders for each 15 minutes. A typical inspection of 15 to 30 minutes would cost between 80 to 111.50 Dutch guilders ($34.72 to $48.39US). APHIS charges $50 for commercial shipments valued at over $1,250.

The cost of obtaining a certificate in comparison to the average value of a commercial fruit and vegetable shipment can be illustrated in the following example involving Canada. The Canadian government charges C$17 for shipments valued above C$1,600, and C$7 for lesser valued shipments. For the higher valued shipments, this would mean a maximum cost of approximately 1 percent of the value of the shipment. For smaller shipments, the certification cost as a percentage of the shipment's value might be higher, but not significantly. For a shipment valued at C$500, the certification cost would be 1.4 percent of the value of the shipment. Since commercial shipments are usually valued much higher than C$1,600, the fee charged for obtaining the certificate would likely be a minor expense. Consequently, based on our initial analysis, this proposed rule would only marginally increase the costs to importers.

A detailed analysis of the cumulative costs of phytosanitary certification in relation to the number of shipments or the value of a shipment is not possible at this time because certain critical information is unavailable, and is to our knowledge not collected. For example, we do not collect data that show the quantitative relationship between the number of shipments entering the United States and the number of phytosanitary certificates issued for those shipments. There may be one or more phytosanitary certificates attached to a single shipment, or conversely, one phytosanitary certificate may apply to several shipments. Without data showing the relationship between shipments and certificates, it becomes difficult to speak in a formal way about the potential added costs due to phytosanitary certification. As such, we are inviting comments that address this issue. However, we have made some estimation of the additional costs of this proposal based on what information we have coupled with our experience in inspecting shipments of fruit and vegetables at land, air, and sea ports of entry. We have strived to be conservative in our estimates so as to not underestimate the cumulative cost.

Our records show that 662,549 commercial shipments of fruits and vegetables entered the United States in 2000. In this specific context, we consider a commercial shipment to consist of a particular type of fruit or vegetable. So, if two types of produce enter the United States at the same time as part of a single consignment, we would consider that to be two shipments. Out of the total of 662,549 commercial shipments in 2000, 77,682 shipments were received at U.S. maritime ports of entry; 99,316 shipments were received at ports of entry located at U.S. airports; and 485,551 shipments were received at U.S. land ports of entry located along the Canadian and Mexican borders. This information covers FY 2000, with the exception of shipments entering U.S. land ports from Canada, which is based on data covering calendar year 2000. Although we do not maintain data on the number of phytosanitary certificates that accompanied these commercial shipments, for purposes of this analysis, we are estimating a 1 to 1 ratio (i.e., one phytosanitary certificate per shipment) for commercial shipments that arrived at our maritime ports, and a 1 to 3 ratio (i.e., one phytosanitary certificate per 3 shipments) in the case of commercial shipments that arrived at our air and land ports. We are estimating a 1 to 1 ratio in the case of maritime cargo because such shipments almost always arrive as one intact load of a particular commodity. We are estimating a 1 to 3 ratio for commercial shipments arriving at our air and land ports since it is quite common for a single consignment of produce arriving by land or air to consist of commingled lots of more than one type of produce, resulting in multiple shipments per consignment. In these situations, one phytosanitary certificate could be issued to cover all of the shipments in the consignment. We are estimating here that one phytosanitary certificate would typically cover 3 commercial shipments that arrive at our air or land ports. We invite you to comment on these estimated ratios.

Based on an 1 to 1 ratio for maritime shipments, we estimate that total maritime shipments of 77,682 in 2000 would have been accompanied by an estimated 77,682 phytosanitary certificates. Using the ratio of 1 to 3 for air and land shipments, the 99,316 shipments arriving by air would have been accompanied by a total of 33,105 phytosanitary certificates, while the 485,551 shipments coming through our land ports would have been accompanied by a total of 161,850 phytosanitary certificates. So we estimate that total fruit and vegetable shipments of 662,549 in 2000 would have required the issuance of 272,637 certificates if this proposed rule were implemented. If we use the cost of a phytosanitary certificate issued by APHIS (i.e., $50), the total cost of requiring phytosanitary certificates for commercial shipments of fruits and vegetables would be approximately $13.6 million (272,637 certificates x $50). Note that this total dollar amount includes the cost of certificates that we already require for certain fruits and vegetables under our regulations. Also, the $50 figure charged by APHIS is generally higher than the fees charged by other countries as discussed above.

In addition to the actual fee for obtaining a phytosanitary certificate, there could be costs associated with the additional time and disruption in having the shipment or shipments inspected and certified in the exporting country. Delays in having the shipments

inspected could result in further costs. We collect no data on these potential costs and are therefore inviting your comments that address this issue.

The other potential area where costs could be incurred is through the added paperwork and administrative burdens associated with finding the appropriate officials in foreign countries to issue the certificates and learning what the appropriate procedures are for each country. There are two main reasons why we do not expect that this will be a major issue for most importing firms.

First, it may be difficult to find the appropriate officials in some countries to conduct the inspections and issue the phytosanitary certificates. However, we are proposing that any final rule would not go into effect until 6 months after publication in the **Federal Register**. This advance notice should give affected parties sufficient time to contact the plant protection agencies in the countries that they are importing from and learn the procedures for procuring a certificate. Furthermore, phytosanitary certificates are governed under the International Plant Protection Convention (IPPC), a multilateral treaty under the auspices of the United Nations Food and Agriculture Secretariat. This treaty has over 100 countries as signatories. Signatories to the IPPC agree that pest risk mitigation is the responsibility of the exporting country, and that they are willing and able to issue phytosanitary certificates. We expect any logistical or administrative difficulties associated with discovering the requirements for obtaining a phytosanitary certificate in specific countries to be short term in most cases, and should be resolved within the 6 month time window before the final rule goes into effect.

The second issue is that many firms use import brokers in order to facilitate the movement of their shipments into the United States. The broker's primary role is to make arrangements and get appropriate documentation for the import and export of goods. Firms that hire brokers will likely be able to avoid the added burden of phytosanitary certification since this task would fall within the purview of the broker. The certification burden as it applies to brokers is less an issue, since this task would fall within the broker's existing role of obtaining necessary documentation in order to expedite the movement of goods on behalf of clients.

Essentially, these new administrative burdens are not expected to have a major impact because there should be sufficient time to adapt to the requirements before they go into effect. In addition, many import firms will continue to rely on a broker to handle these issues for them.

Small Entities

We do not have enough information to fully evaluate the potential effect of this proposed rule on small entities. As such, we are inviting comments addressing this issue. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule, and if there are any special issues relating to the business practices of these small entities that would make them particularly different from larger firms in their ability to comply with this proposed rule. However, we have made some initial conclusions.

Relevant small entities would include small U.S. wholesalers who import fruits and vegetables from foreign countries. The Small Business Administration defines a small wholesaler of fresh fruits and vegetables as one having less than 100 employees. While smaller firms are likely to import smaller quantities than larger firms, the cost of a phytosanitary certificate likely represents less than 1 percent of the value of a commercially viable shipment, and as such this issue should not constitute a major impact.

Smaller firms would have to deal with the same new administrative burdens as other larger firms. If these smaller firms choose to employ an import broker, then they should be able to avoid any potential problems by relying on the broker. If they choose not to employ a broker, the firm will have to discover the requirements for obtaining a phytosanitary certificate and adjust its procedures accordingly. Smaller firms are likely to import only from a few countries and, thus, will not have to learn the requirements for many countries. Additionally, the 6 month period before the final rule would take effect should allow sufficient time to adjust operations as necessary. We expect any problems that are created in complying with this rule, if implemented, to be short term in nature. As such, based on our initial analysis, the economic effects on these entities should not be significant.

Travelers to the United States From Foreign Countries

Travelers to the United States from foreign countries often bring fruits and vegetables with them in baggage for personal use. Under the proposed rule, travelers would need to obtain a phytosanitary certificate in the country of origin for any fruits and vegetables they bring into the United States for personal use. An exception to this requirement would apply to travelers coming through land ports along the Canadian or Mexican borders.

It would likely be difficult for individual travelers to obtain a phytosanitary certificate in a number of countries, particularly during the initial years this rule is in effect, if it is adopted. Phytosanitary certificates are required to include detailed information about where the fruit or vegetable was grown and where and how it was treated. This kind of information would not likely be readily available to an individual who purchased the produce at a market in a foreign country. Unless a foreign government establishes a special program to facilitate issuance of certificates to the traveling public, most travelers would not know how to obtain a phytosanitary certificate from a foreign government even if they did elect to pay the charge.

The typical fees charged by issuing countries may be prohibitively expensive for travelers. The cost of obtaining a phytosanitary certificate can vary substantially, from no charge to over $50, based on our initial analysis. While these charges would be inconsequential for a commercial shipper, they could be greater than the value of material typically brought in by travelers. APHIS will issue phytosanitary certificates to travelers leaving the United States on request at the noncommercial rate of $23. While a few travelers do make use of this service, it is a fairly rare occurrence as it is typically not worthwhile for travelers.

We have taken into account the possibility that some travelers may consider not obtaining a phytosanitary certificate and attempt to bring in fruits and vegetables without declaring them. However, we believe few people would take this risk. Persons who fail to declare a prohibited item can be fined in addition to having the item confiscated.

In estimating the total cost of this proposed rule on travelers, we know that in FY 1999 approximately 60.8 million international air travelers arrived in the United States, and that approximately 5.2 million (or 8.6 percent) of these air travelers arrived with a plant item. Although we do not maintain data on the types of plant items brought in by air passengers, we know from experience that most of these articles would have been fruits or vegetables. We believe that once the phytosanitary certification requirement is in place, the vast majority of international travelers arriving in the United States would forego bringing in

the typically small amount of fruit and vegetable items for personal consumption since the cost or inconvenience in getting the certificate would not make it worthwhile. For purposes of illustration, assuming 10 percent (or 520,000) of the estimated 5.2 million passengers that brought in a plant item in FY 1999 decided to obtain a phytosanitary certificate, the estimated total cost of certification to these travelers would be approximately $11.9 million. This estimation is based on using the cost for issuing a noncommercial certificate in the United States (i.e., $23), which we believe to be representative of what other countries would charge for this service. Once again, we are inviting your comments that address this issue.

Consequently, this proposed rule would make it more difficult for travelers to carry fruits and vegetables into the United States for personal use. The availability of the required information, as well as the cost, will vary from country to country. In many cases, this proposed rule could prevent individuals from carrying fruits and vegetables with them when traveling to the United States. This could mean a small economic loss to all of these travelers, but we believe most travelers affected will view this change more as an inconvenience, since they may not be able to bring in certain favorite food items.

It is worth noting that there are some countries where it is common for travelers and tourists to bring back specific specialty fruits and vegetables. We do not expect that the proposed rule will have a significant effect on this type of item. In these cases, a market specifically directed at travelers and tourists exists. In order to protect this market, the country exporting the specialty item will likely set up a program to inspect and certify the items for travelers in an efficient and cost effective way. This may be in the form of pre-certified products being sold at airports or some other similar program. This market incentive would lessen the effect of the proposed rule in places where these specialty items exist.

We expect any costs to U.S. importers and travelers to be more than offset by the added safeguarding of U.S. agriculture, the environment, and the economy against the introduction and dissemination of invasive plant pests, which cause economic harm to the United States in the billions of dollars annually. The required use of phytosanitary certificates should greatly reduce the quantity of high-risk baggage imports. It will also provide the additional security of foreign inspection for commercial shipments at the place of origin. We also believe that, in the long run, as use of phytosanitary certification gains further acceptance and credibility, this measure will allow for more expedited entry of commercial cargo and travelers from abroad, while maintaining the necessary level of quarantine security against the introduction and dissemination of invasive pests.

This proposed rule would also entail information collection requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

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. 00–014–1. Please send a copy of your comments to: (1) Docket No. 00–014–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 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.

We are proposing to amend our regulations to require that a phytosanitary certificate accompany all fruits and vegetables imported into the United States, with certain exceptions.

We are soliciting comments from the public (as 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 15 minutes per response.

Respondents: Plant health officials employed by the national governments of countries that export fruits and vegetables to the United States.

Estimated annual number of respondents: 4,000.

Estimated annual number of responses per respondent: 25.

Estimated annual number of responses: 100,000.

Estimated total annual burden on respondents: 25,000 hours.

Copies of this information collection can be obtained from 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, we propose to amend 7 CFR part 319 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. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.56–1, the definition of *commercial shipment* would be revised and new definitions would be added, in alphabetical order, for *noncommercial shipment* and *phytosanitary certificate* to read as follows:

§ 319.56–1 Definitions.

* * * * *

Commercial shipment. A shipment containing fruits or vegetables that an inspector identifies as having been imported for sale and distribution. Such

identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

* * * * *

Noncommercial shipment. A shipment containing fruits or vegetables that an inspector identifies as having been imported for personal use and not for sale.

* * * * *

Phytosanitary certificate. A document, including electronic versions, that is related to a fruit or vegetable shipment and that:

(1) Is patterned after the model certificate of the International Plant Protection Convention (IPPC), a multilateral convention on plant protection under the authority of the Food and Agriculture Organization of the United Nations;

(2) Is issued by an official of a foreign national plant protection organization;

(3) Is addressed to the plant protection service of the United States (Animal and Plant Health Inspection Service);

(4) Describes the shipment;

(5) Certifies the place of origin for all contents of the shipment;

(6) Certifies that the shipment has been inspected and/or tested according to appropriate official procedures and is considered to be free from quarantine pests of the United States; and

(7) Contains any additional declarations required under this subpart.

* * * * *

3. In § 319.56–2, paragraphs (a), (b), (c), and (d) would be revised to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

(a) To be eligible for entry into the United States:

(1) All fruits and vegetables imported under this subpart, whether commercial or noncommercial shipments, must be free from plants or portions of plants, as defined in § 319.56–1; and

(2) All fruits and vegetables imported under this subpart, whether commercial or noncommercial shipments, must be accompanied by a phytosanitary certificate, except for:

(i) Fruits and vegetables that are dried, cured, or processed as provided in paragraph (b) of this section;

(ii) Frozen fruits and vegetables as provided in § 319.56–2c of this subpart; or

(iii) Noncommercial shipments brought in from Canada or Mexico through land border ports.

(b) Dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables), including cured figs and dates, raisins, nuts, and dried beans and peas, may be imported without permit, phytosanitary certificate, or other compliance with this subpart. However, a permit, a phytosanitary certificate, and other safeguards may be required for any such articles when the Deputy Administrator determines that the drying, curing, or processing to which the fruits or vegetables have been subjected does not entirely eliminate pest risk. Such determination with respect to any such articles will become effective after due notice.

(c) Except as provided in paragraph (a) of this section, fruits and vegetables grown in Canada may be imported into the United States without further restriction under this subpart, *Provided,* that, in accordance with § 319.37–2 of this part, potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road may not be imported into the United States.

(d) Except as provided in paragraph (a) of this section and §§ 319.56–5, 319.56–6, and 319.56–7, fruits and vegetables grown in the British Virgin Islands may be imported into the U.S. Virgin Islands without further permit or restriction other than the authorization contained in this paragraph. However, such fruits and vegetables are exempted from the notice of arrival requirements of § 319.56–5 only when an inspector finds that equivalent information is obtainable from the U.S. Collector of Customs.

* * * * *

4. In § 319.56–6, paragraph (c) would be revised to read as follows:

§ 319.56–6 Inspection and other requirements at the port of first arrival.

* * * * *

(c) *Refusal of entry.* If an inspector finds that an imported fruit or vegetable is prohibited, or is not accompanied by proper documentation such as a phytosanitary certificate, or is so infested with a plant pest that, in the judgment of the inspector, it cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

* * * * *

Done in Washington, DC, this 23rd day of August 2001.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 01–21809 Filed 8–28–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–01–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe Aerospatiale Models TB 9, TB 10, TB 20, TB 21, and TB 200 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 all SOCATA—Groupe Aerospatiale (SOCATA) Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. The proposed AD would require you to repetitively inspect the lower rudder hinge fitting for cracks. The proposed AD would also require you to repair any crack found in accordance with a repair scheme obtained from the manufacturer through the Federal Aviation Administration (FAA). The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to detect and correct fatigue cracks in the lower rudder hinge fitting. This condition could cause the lower rudder to detach from the control linkage with consequent loss of control of the airplane.

DATES: The FAA must receive any comments on this proposed rule on or before September 28, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–01–AD, 901 Locust, Room 506, 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 SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33)