

Naturalization Service (INS) in regulations located at 8 CFR Part 210a.

In each of the three years during the RAW program was authorized, the Secretaries found the shortage number to be zero and no alien workers were granted benefits under the program.

As the statutory authority for the RAW program has expired and Congress has given no indication that the program will be reauthorized, USDA believes that it is appropriate to remove the implementing regulations.

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

List of Subjects in 7 CFR Part 1e

Agriculture, Aliens, Immigration, Labor, Migrant workers, Rural labor.

#### **PART 1e—[REMOVED]**

Accordingly, under the authority of 8 U.S.C. 1161, Part 1e of title 7, subtitle A, of the Code of Federal Regulations is removed.

Done at Washington, DC, this 19th day of January, 1996.

Keith J. Collins,  
*Chief Economist.*

[FR Doc. 96-1294 Filed 1-26-96; 8:45 am]

BILLING CODE 3410-01-M

#### **Animal and Plant Health Inspection Service**

#### **7 CFR Part 354**

[Docket No. 94-074-2]

RIN 0579-AA68

#### **User Fees—Commercial Aircraft and Vessels; Phytosanitary Certificates**

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the user fee regulations by lowering the fees charged for certain agricultural quarantine and inspection services we provide in connection with the arrival of an international commercial aircraft at a port in the customs territory of the United States. We are also amending the user fee regulations by raising the fees charged for export certification of plants and plant products. We have determined, based on a review of our user fees, that the fees must be adjusted to reflect the actual cost of providing these services. In addition, we are amending the user fee regulations to clarify the exemption for certain vessels

which sail only between the United States and Canada.

**EFFECTIVE DATE:** March 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Mr. Don Thompson, Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road, Unit 136, Riverdale, MD 20737-1236, (301) 734-8295.

For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FSSB, BAD, APHIS, 4700 River Road, Unit 54, Riverdale, MD 20737-1232, (301) 734-5901.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The regulations in 7 CFR 354.3 (referred to below as the "regulations") contain provisions for the collection of user fees for certain international services provided by the Animal and Plant Health Inspection Service (APHIS). Among the services covered by these user fees are: (1) Servicing international commercial aircraft and vessels arriving at ports in the customs territory of the United States; and (2) certifying plants and plant products for export.

On May 24, 1995, we published a document in the Federal Register (60 FR 27437-27441, Docket 94-074-1) proposing various changes to these regulations.

We solicited comments concerning our proposal for 30 days ending June 23, 1995. We received 45 comments by that date from trade associations connected with the air travel industry, trade associations representing various sectors of the lumber industry, producers in the lumber, flower, and other plant or plant-related industries, members of Congress, and private individuals. The comments are discussed below by topic.

##### **International Commercial Aircraft**

We proposed to amend the user fee for agricultural quarantine and inspection (AQI) services provided by APHIS in connection with the arrival of an international commercial aircraft at a port in the customs territory of the United States. (The customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.) the current user fee for services for international commercial aircraft is \$61. We proposed to lower this user fee from \$61 to \$53 for each arrival. We determined the proposed fee based on a review of user fees collected in FY 1993 and FY 1994 and a projection of our cost and revenue for FY 1995. As stated in

our proposal, the lower fee is necessary to avoid collecting more revenue than needed to cover the costs of the services we provide.

Only three comments directly addressed the proposed fee reduction. One commenter expressed no "specific objection" to lowering the fee, but "[took] exception to \* \* \* lowering the fee charged \* \* \* while overlooking the inadequate passenger inspection staffing levels." A second commenter stated that "it is almost impossible to reconcile this proposed reduction with the current levels of service provided by APHIS \* \* \*". The third commenter expressed displeasure with our collecting user fees both from air passengers and from airlines, and suggested that the passenger fee alone should be adequate to cover all costs.

We are not making any changes based on these comments. The inspection service provided to airline passengers is different than the inspection service provided for aircraft. We therefore charge separate user fees for these services. Aircraft user fees are paid by the airlines, passenger user fees are paid by the individual passengers, and the amount of each fee is based on the cost of providing each service.

All government agencies are currently under mandate to reduce staff year ceilings, i.e. the number of employees. We have no plans to reduce the staff year ceilings in the AQI program and we are considering ways to increase such staff year ceilings. However, we would have to review any increases carefully to ensure sufficient staffing in other APHIS and U.S. Department of Agriculture programs.

One commenter stated that the commercial aircraft inspection fee is "contrary to and inconsistent with the international obligations of the United States, and thus must be withdrawn." The comment suggested that this APHIS user fee violates the Convention on International Civil Aviation ("Chicago Convention") and certain specified bilateral air transport service agreements and treaties, such as the U.S. Air Transport Agreement with Italy. The comment stated that this issue has been raised in previous rulemakings on APHIS user fees.

Although we have never previously specifically addressed the U.S. Air Transport Agreement with Italy, we believe our previous discussions of these issues are also pertinent to this agreement. Its language is similar, if not identical, to the many bilateral Air Transport Services Agreements to which the United States is a party, and which we have addressed in previous Federal Register documents.

On April 12, 1991, we discussed this subject in a final rule published in the Federal Register (56 FR 14837-14846, Docket No. 91-028; see pages 14840 and 14841), and concluded that APHIS complied with the General Agreement on Tariffs and Trade (GATT), the Caribbean Basin Economic Recovery Act, the U.S. Air Transport Agreement with Austria, the U.S.-Jamaican Bilateral Aviation Agreement of 1969, and that the International Civil Aviation Convention (ICAO) does not apply to APHIS.

Again, on January 9, 1992, in a final rule published in the Federal Register (57 FR 755-773, Docket No. 91-135, see pp. 762-763), we responded to the same or similar concerns. At that time, we addressed: (1) The Chicago Convention; (2) bilateral air transport agreements with Switzerland and the United Kingdom; (3) the United States-Japan Treaty of Friendship, Commerce and Navigation; (4) GATT; and (5) ICAO. We continue to believe that the Chicago Convention and ICAO are inapplicable to APHIS and that the user fees are in compliance with the bilateral air transport agreements as well as the United States-Japan Treaty of Friendship, Commerce and Navigation, and GATT.

#### International Commercial Vessels

The May 24, 1995 proposal also sought to clarify the exemption from user fees for any vessel which sails only between United States and Canadian ports. To aid the identification of vessels eligible for this exemption, we proposed to require the Masters of such vessels to state in their General Declaration, Customs Form 1301, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

None of the comments specifically addressed the proposal to clarify this exemption. One commenter, however, stated that the exemption is inequitable and should be abolished because it allows these ships to be inspected without payment of any user fees, and the result is that those who pay user fees for other APHIS services subsidize vessel inspections.

These vessels were originally exempt from paying the user fee because they pose little animal or plant disease or pest risk to United States agriculture, and APHIS does not provide agricultural quarantine inspection services for them (see 56 FR 8150). There has been no change in the animal or plant risk posed by these vessels and we still do not provide inspection services to them. Therefore, we are not

making any change in our proposal based on this comment.

#### Phytosanitary Certificates

The May 24, 1995, proposed rule also proposed to raise user fees for certifying plants and plant products for export. APHIS inspectors and designated State employees issue phytosanitary certificates in accordance with the International Plant Protection Convention and regulations in 7 CFR part 353, certifying that agricultural products being exported from the United States are free from injurious insects and diseases.

Virtually all of the comments we received addressed these user fees. With one exception, the commenters were opposed to any fee increase. The comments raised the following issues:

##### 1. Economic Impact/Benefit to User

Many commenters stated that the fees are unfair or too high, and raise the cost of doing business because they cannot be passed on. Some commenters were particularly concerned that small businesses will be harmed by the proposed increases in user fees.

APHIS sympathizes with these commenters and has attempted to minimize the cost of the services, thereby keeping the user fees at the lowest possible level for all users. Also, APHIS previously established a user fee category for low value commercial shipments in an attempt to minimize the impact on small businesses.

However, when Congress authorized APHIS to prescribe and collect user fees to recover the costs of inspecting plants and plant products for export, it specifically reduced APHIS' appropriation by the estimated amount of providing such services. Currently, APHIS is not appropriated funds to cover the cost of providing these services. Therefore, APHIS must charge user fees which recover the full cost of providing the service. For this reason, APHIS cannot exempt certain classes of users, such as small businesses, from the user fees, and cannot charge user fees which recover less than the full cost of providing the service.

Another commenter stated that there is no benefit to the user that "caused" the fee increase. We believe the commenter's intended meaning was that there is no benefit to the user which justifies the fee increase.

We disagree. The proposed user fees are designed to recover the cost of providing phytosanitary certificates. These certificates are not required by APHIS or any other agency of the Federal Government. They are required by foreign countries importing the plant

or plant products and are provided to the exporters solely for their benefit. The exporters could not import their plant and plant products into most foreign countries without such a certificate.

##### 2. Eliminate Phytosanitary Certificate Requirements

Several commenters suggested that phytosanitary certificates should not or need not be required for certain products. As discussed above, phytosanitary certificates are required by the country importing the plant or plant product; they are not required by APHIS, the U.S. Department of Agriculture, or any other agency or organization within the Federal Government. Therefore, we are unable to eliminate certificate requirements. However, on August 16, 1995, we published a proposal in the Federal Register (60 FR 42472-42479, Docket No. 90-117-1, see p. 72474) to allow, under an agreement with the European Union, approved producers in the United States to complete their own certificates for kiln-dried lumber and other plant products. The certificate requirement would not be eliminated, but obtaining a certificate would be much simpler and less time consuming for the recipient. We will continue to work with other countries for improvements such as these.

##### 3. Relationship of User Fee to Time Spent Providing Service

Several comments suggested that we adjust our user fees to take into account how long it takes to provide the service or whether we conduct an on-site inspection.

After carefully considering this comment we have determined not to make any changes in the proposed regulation. The time spent by APHIS employees is only part of the cost that we must recover through user fees. Supplies, overhead, equipment, telephone, and numerous support costs must be included. A service may be provided faster in one instance than another; however, our proposed user fees reflect the average cost of providing particular services on a nationwide basis. To adjust the fee on the basis of the time it takes to provide the service would increase the cost of the fees by the additional time and expense involved in customizing the fee for each individual inspection and issuance of a phytosanitary certificate. We believe such a system would be expensive to administer and the additional expenses of such a system would, in turn, have to be included in the fee, raising it further.

#### 4. Competitiveness

Many comments stated that our proposed user fees would make it difficult or impossible for U.S. products to compete in the international marketplace, especially as some foreign countries, including Canada, do not charge for phytosanitary certificates. Some comments also stated that our proposed user fees are anti-competitive because some countries do not require certificates from exporters in certain other countries. Comments also stated that our proposed user fees contradict efforts to increase U.S. exports and will inhibit exports.

We have carefully considered these comments, but are not making any changes based on them. Although some countries do not currently charge for issuing phytosanitary certificates, user fees for this service are being adopted by more and more countries. In fact, as of May 17, 1995, Canada charges a user fee for all export phytosanitary certificates (see May 17, 1995, Canada Gazette Part II, Vol. 129, No. 10, SOR/DORS/95-218). Other countries, including New Zealand, France, Australia, Belgium and The Netherlands, also charge user fees for export phytosanitary certificates. U.S. exporters are therefore not at a competitive disadvantage compared with exporters in other countries.

To the best of our knowledge, there are no countries which do not require phytosanitary certificates. However, some countries do not enforce their requirements in all cases. Also, some countries have negotiated with individual trading partners and agreed to adjust certain specific requirements, such as, for example, who fills out the form and who conducts the inspection, to make certificates easier or cheaper to obtain. For example, as mentioned elsewhere in this document, we proposed to allow, under an agreement with the European Union, approved producers in the United States to complete their own certificates for kiln-dried lumber and certain other plant products. Because APHIS inspectors would not inspect each export shipment, costs would be reduced for both APHIS and the exporter. In this situation the certificate requirement would not be eliminated, but obtaining a certificate would be simpler and less time consuming.

#### 5. APHIS Costs and Procedures

Several comments suggested that APHIS should keep its costs as low as possible, to keep user fees as low as possible. Other comments, many of which made specific suggestions, stated that APHIS should improve its service.

The suggestions included changes in procedures and paperwork.

We are always trying to reduce our costs and operate as efficiently as possible to maintain APHIS user fees at the lowest possible level. All of the suggestions made by commenters will be carefully considered. If we determine that changes in procedures and paperwork requirements are practical and desirable, we will publish proposed changes for public comment in the Federal Register.

#### 6. Effective Date

One comment suggested that we delay the effective date of any final rule until January 1996. We understand the commenter's desire to make business plans and not have business already settled affected by increases in our user fees. This rule will not take effect until 30 days after the date it is published in the Federal Register. This delay should give the commenter and others time to prepare.

#### 7. Calculations

One comment objected that a disproportionate share of APHIS costs is allocated to agricultural exports. The comment appears to say that APHIS is recovering 21 percent of the total cost for our agricultural quarantine and inspection (AQI) program through user fees for phytosanitary certificates. The comment also compares aircraft user fees with phytosanitary certificate fees and states that each aircraft fee covers up to 300 individual passenger inspections.

Neither of these statements is correct. User fees for phytosanitary certificates recover only that portion of the total costs of the AQI program attributable to phytosanitary certificate issuance. Phytosanitary certificates actually account for less than 5 percent of total AQI program costs. More than 95 percent of total AQI program costs is recovered through other user fees or through appropriated funds. Among the other user fees is a fee for international commercial aircraft. The user fee for international commercial aircraft recovers only the portion of total AQI program costs attributable to international commercial aircraft inspections. It does not cover inspection of aircraft passengers. Passengers on international commercial aircraft pay a separate user fee for inspection services. This user fee recovers only that portion of total AQI program costs attributable to international commercial aircraft passenger inspections. Therefore, we are making no changes based on these comments.

#### 8. State-Issued Phytosanitary Certificates

A couple of comments addressed the fact that phytosanitary certificates are issued by some States, and those State-issued certificates often cost less than federally-issued certificates. The commenters were concerned that APHIS is "losing business" to States. The commenters were also concerned that recipients of State-issued certificates are not paying any fee to APHIS, although the certificates themselves are provided by APHIS, which must also maintain files, track certificates, and otherwise manage the program.

APHIS provides a service to the public and is not "in business" as such. Because APHIS seeks to provide efficient and economical service, designated State officials are permitted to issue phytosanitary certificates. Users have the option of obtaining a phytosanitary certificate from a designated State official, which is often more convenient, and saves substantial time and transportation costs.

The commenters are correct that APHIS provides certificates to States and provides oversight of State programs. Although we have decided not to make any changes in the proposed regulations at this time, we will analyze the issue to determine if further adjustments in the user fees are warranted. If we determine that changes are desirable, we will publish proposed changes for comment in the Federal Register.

#### 9. New Fee

One comment suggested that we establish a new category of user fee for issuing phytosanitary certificates for the reexport of noncommercial shipments. We are not aware of the need for such an additional category of user fee at this time. However, we will keep this suggestion in mind as we continue to review the user fee program. If we determine that there is a demand for this type of certificate, we will publish a proposed fee for public comment in the Federal Register.

#### 10. Miscellaneous

One commenter asked who pays for other services. We have user fees for other services, where appropriate, and the users of those services pay for them. We do not have user fees for domestic programs. User fees apply only to import and export services.

The same commenter asked why we "encourage foreign airlines." This comment was apparently prompted by our proposal to lower the user fee for international commercial aircraft. This

user fee applies to all commercial aircraft arriving in the customs territory of the United States. Ownership of the aircraft—foreign or domestic—is irrelevant. The user fee is designed to recover the cost of inspection services provided to each aircraft. The fact that we proposed to lower the user fee only reflects the fact that the costs of providing this service were lower than anticipated.

Another commenter stated that there is a double charge for State certificates which are then endorsed by APHIS. We believe the commenter has misunderstood the system for issuing Federal phytosanitary certificates. Federal phytosanitary certificates are issued only by APHIS officials or, in some States which cooperate with APHIS, by designated State officials. Users pay only one fee for a Federal phytosanitary certificate, although the certificate may be obtained from a State or APHIS official.

Some States require a State phytosanitary certificate before allowing plants or plant products to be moved into their territory from other parts of the United States. State phytosanitary certificates are generally not valid for exports to another country.<sup>1</sup> If a shipper obtains, and pays for, a State phytosanitary certificate to ship a commodity interstate, and the shipper then decides to export the plant or plant products instead, then the shipper must obtain a Federal certificate either from the State, if it issues Federal phytosanitary certificates, or from APHIS. If the shipper obtains a certificate from APHIS, the user fee due for APHIS' certification is not a double charge: The Federal phytosanitary certificate is a separate document issued for a different purpose.

There are two ways to obtain a federally-issued phytosanitary certificate for plants regulated under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The exporter has a choice—he or she can either obtain a State phytosanitary certificate and forward it to certain designated APHIS offices, which will issue a Federal phytosanitary certificate to the exporter by mail; or the exporter can bring the plants to the nearest designated APHIS office and APHIS personnel will issue the Federal phytosanitary certificate directly to the exporter. Which method to use is up to the exporter. If the exporter chooses to obtain a State phytosanitary certificate and forward it to APHIS, there will be

two fees—one for the State phytosanitary certificate and one for the Federal phytosanitary certificate. However, the exporter would save the cost of transporting the plants to the designated APHIS office.

One commenter stated that he could not figure out in advance what the user fee would be for a phytosanitary certificate and did not understand how to obtain a refund of overpayments. This situation only results when a prospective exporter buys a block of phytosanitary certificates from APHIS, paying a fixed amount per certificate. Because the user fee varies for different types of certificates, the actual user fee due for a particular phytosanitary certificate is not known until the certificate is complete. For example, the user fee due for a low value commercial shipment may be less than the user fee already paid for the certificate. Under these circumstances, the user is entitled to a refund from APHIS. We have an established refund system. The user should contact the APHIS office where the block of certificates was purchased to arrange for a refund.

One commenter also stated that APHIS no longer issues phytosanitary certificates for as many different plant and plant products as the agency once did. This is correct. Because importing countries have stopped requiring phytosanitary certificates for some plants and plant products, APHIS has stopped issuing phytosanitary certificates for these plants and plant products.

#### 11. Regulatory Impact Analysis

One comment stated that we have not conducted an economic analysis of the proposed phytosanitary certificate fees. This is incorrect. Our analysis was included in the proposed regulations at 60 FR 27439–27440. An updated analysis, using the most current data available at the time this was written, is a part of this document.

One comment stated that if we raise the user fees for phytosanitary certificates, the number of certificates APHIS issues will decline. The commenter may be correct. However, we do not have data to show how much of a decline might occur. Regardless, we are required to recover the cost of providing the service. Therefore, it is necessary to increase our fees for issuing phytosanitary certificates.

Another comment questioned our statement that \$3 billion in exports was certified during 1993, and suggested it should be much higher. We have rechecked all of our figures and find that the commenter is correct. In fact, approximately \$39 billion in

agricultural exports was certified in 1993. Our original figure included only fruits and vegetables; major exports such as lumber and wood products and grain and cereals were not included. We have revised our Regulatory Flexibility Act analysis to reflect the correct figure.

Four comments disagreed with our conclusion that the proposed fees would not have a significant economic impact on a substantial number of small entities. One stated that we should compare the total user fees paid by the affected industry with the profit generated by that industry, rather than comparing user fee costs with overall value of exports. Another stated that our analysis was valid only as to large wholesale agriculture shipments.

We have carefully reviewed our analysis. Based on the data available to us, we continue to believe the proposed fees will not have a significant economic impact on a substantial number of small entities. We would have compared the amount of proposed user fees with business profits if this were possible. However, information on profits from sales is proprietary for many small entities and not part of the public record. In order to minimize any potential impact from increased user fees, small exporters could work through brokers to combine shipments.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, without change.

#### Executive Order 12866 and Regulatory Flexibility Act

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

This rule will increase the user fees for phytosanitary certificates to recover the cost to APHIS of providing export certification services for plants and plant products. This rule will also reduce the user fee for international commercial aircraft to correspond with the cost to APHIS of providing services. Amendments to user fees are necessary to adjust for changes in service volume and service costs.

Federal phytosanitary certificates must be issued by APHIS or, as explained earlier, by designated State employees in States that cooperate with APHIS, to be accepted in international commerce. Federal phytosanitary certificates must accompany the majority of agricultural commodities (except livestock products) traded. Traded commodities generally include

<sup>1</sup> For certain products from certain States, some countries may accept a State phytosanitary certificate.

cereals and grains (such as soybeans, wheat, and corn), fruits and vegetables, other nursery and horticultural products, and lumber and wood products. In 1993, the value of exported agricultural products requiring phytosanitary certificates was estimated at \$39 billion.

Current user fees for phytosanitary certificates do not fully recover APHIS' costs for services performed. In fiscal year 1994, the total cost of providing phytosanitary certificate services was \$4,314,000, while total fee collections amounted only to \$3,015,000 when the fees were \$30 for commercial certificates and \$19 for noncommercial certificates. The reason for the discrepancy is that we overestimated the number of certificates and underestimated the time to issue a certificate, thereby underestimating the cost of issuing each certificate. The total program cost for the 1995 fiscal year, which we should have recovered through user fees, was estimated at \$4,707,000. This amount includes costs associated with the direct charges for program delivery and associated allocations for program direction and support, agency support, departmental charges, and Office of the General Counsel services. If the proposed fee increases are adopted, estimated collections would rise to \$4,717,947 annually.

Exporters of agricultural commodities will be affected by this rule. The Regulatory Flexibility Act requires APHIS to address the economic impact of imposing user fees on "small" entities. The Small Business Administration (SBA) criteria for a small wholesale business engaged in the trading of fresh fruits and vegetables is that the business have 100 or fewer employees. SBA criteria for a small crop production business is that it have annual revenues up to \$500,000.

Approximately 98,387 federally-issued phytosanitary certificates were issued in 1994. Certificates for commercial shipments are issued to wholesale businesses engaged in the trading of cereals and grains, fresh fruits and vegetables, other nursery and horticultural products, and lumber and wood products. Certificates are also issued to export brokers who handle shipments of produce from various sources. The proportion of exporters in this group which may qualify as small is unknown. It is likely that a large number of these brokers employ fewer than 100 workers.

The value of an average commercial shipment greatly exceeds the increase in the \$30 user fee up to the \$50 user fee. The total value of agricultural products

requiring phytosanitary certificates exported in 1993, estimated at \$39 billion, is sufficiently large to incorporate the 0.012 percent (\$4.7 million) in total user fee collection; consequently, the impact on U.S. producers and exporters is expected to be very small.

Phytosanitary certificates for noncommercial exporters are generally issued to individuals and to exporters of low value commodities. The user fee for this category of phytosanitary certificate will increase from \$19 to \$23, an increase of 21 percent. Although user fees represent a proportionately larger share of the total value of noncommercial and low value exports, these small exports may possess a much higher value in the foreign country than in the United States. Moreover, exports by individuals may be gift items with nonmonetary values offsetting some of the effect of the fee increase.

SBA criteria for a small airline is that it have 1,500 or fewer employees. Data from the 1988 Census indicates that there were 67 domestic and international airline operators employing a total of 481,000 employees. Although the size distribution of air carriers that enter the customs territory of the United States is unknown, the effect of the proposed user fee change, regardless of carrier size, is positive—we are proposing a 13 percent user fee reduction, from \$61 to \$53 per aircraft. The lower fee is sufficient to recover the full cost of providing aircraft inspection services, without collecting more revenue than needed to recover costs. The estimated cost to provide inspection services for international commercial aircraft in FY 1995 is \$18 million. At the proposed user fee of \$53 per aircraft and a projected FY 1995 commercial aircraft volume of 346,204, total collections would amount to \$18.3 million.

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

#### Executive Order 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 rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State

and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### 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 rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 1515-0062.

#### List of Subjects in 7 CFR Part 354

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

Accordingly, 7 CFR part 354 is amended as follows:

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

1. The authority citation for part 354 continues 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).

#### **§ 354.3 [Amended]**

2. Section 354.3 is amended as follows:

a. By revising paragraph (b)(2)(vi) to read as set forth below.

b. In paragraph (e)(1), the last sentence, by removing "\$61.00" and adding "\$53" in its place.

c. In paragraph (g)(5)(i)(A), by removing "\$30" and adding "\$50" in its place.

d. In paragraph (g)(5)(i)(B), by removing "\$19" and adding "\$23" in its place.

e. In paragraph (g)(5)(ii), by removing "\$19" and adding "\$23" in its place.

f. In paragraph (g)(5)(iii)(A), by removing "\$30" and adding "\$50" in its place.

g. In paragraph (g)(5)(iii)(B), by removing "\$19" and adding "\$23" in its place.

h. In paragraph (g)(5)(iv), by removing "\$30" and adding "\$50" in its place.

i. In paragraph (g)(5)(v), by removing "\$6" and adding "\$7" in its place.

j. In paragraph (h)(2), by removing "\$6" and adding "\$7" in its place.

k. By adding at the end of the section the following: "(Approved by the Office of Management and Budget under control numbers 1515-0062, 0579-0094, or 0579-0052)".

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) Any vessel which sails only between United States and Canadian ports, when the Master of such vessel arriving from Canada certifies, in the "Remarks" block of the General Declaration, Customs Form 1301, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 1515-0062, 0579-0094, or 0579-0052)

Done in Washington, DC, this 24th day of January 1996.

Lonnie J. King,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96-1506 Filed 1-26-96; 8:45 am]

BILLING CODE 3410-34-P

**Agricultural Marketing Service****7 CFR Part 982**

[Docket No. FV95-982-2IFR]

**Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1995-96 Marketing Year**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule establishes interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1995-96 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced filberts/hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

**DATES:** Effective January 29, 1996. Comments which are received by February 28, 1996 will be considered prior to any finalization of the interim final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., Room 369, Portland, OR 97204; telephone (503) 326-2725 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2536-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 205-2830.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable filberts/hazelnuts handled during the 1995-96 marketing year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any

district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this interim final rule are based on requirements specified in the order. This rule establishes the amount of inshell filberts/hazelnuts that may be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of interim and final free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the handlers may ship to the domestic market throughout the season, and the percentages release the volume of