



CALIFORNIA CITRUS QUALITY COUNCIL

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DATE: August 24, 2009
TO: All Citrus Packinghouses & Interested Parties
SUBJECT: PCIT User Fee Rule Published

The attached information is being forwarded for your information regarding the Phytosanitary Certificate & Issuance Tracking (PCIT) System. The California Department of Food & Agriculture issued a Phytosanitary Advisory on July 13, 2009 to each of the County Agricultural Commissioners outlining the requirements to begin collecting user fees effective October 1, 2009. More specific guidance on how the fees will be collected from individual packing houses/shippers will be coming. We encourage your packinghouse to use the new PCIT Electronic Phyto System.

APHIS, PPQ personnel are available to assist you in making the transition to the electronic phyto system. If you haven't already done so and would like to schedule a training session, contact your local Export Certification Specialists (ECS) office. If you need additional information on user fees or assistance in signing up for the new PCIT system, you can contact John Loyd at (559) 233-3165.

Sincerely,

A handwritten signature in black ink that reads "JRCranney Jr".

James R. Cranney, Jr.
President
California Citrus Quality Council

User Fees; Export Certification for Plants and Plant Products

The user fee rule was printed in the Federal Register as a final rule on July 8, 2009. The effective date for the changes is October 1, 2009. A complete copy of the final rule can be accessed at: <http://edocket.access.gpo.gov/2009/pdf/E9-16146.pdf>

State/County Issued Certificates*
ADMINISTRATIVE FEES

Effective dates	Amount per certificate	
	PCIT used	PCIT not used
October 1, 2009 - September 30, 2010	\$3	\$6
October 1, 2010 - September 30, 2011	\$6	\$12
October 1, 2011 -	\$6	\$12

*The administrative fee is applicable for every certificate issued by state/county cooperators. The only exception is when the replacement is because of a mistake by the ACO.

PPQ Issued Certificates**
USER FEES for COMMERCIAL SHIPMENTS

Effective dates	Amount per Certificate
October 1, 2009 - September 30, 2010	\$77
October 1, 2010 - September 30, 2011	\$104
October 1, 2011 -	\$106

USER FEES for NON-COMMERICAL SHIPMENTS

Effective dates	Amount per shipment
October 1, 2009 - September 30, 2010	\$42
October 1, 2010 - September 30, 2011	\$60
October 1, 2011 -	\$61

USER FEES for REPLACING ANY CERTIFICATE

Effective dates	Amount per certificate
October 1, 2009 - September 30, 2010	\$11
October 1, 2010 - September 30, 2011	\$15
October 1, 2011 -	\$15

**Certificates issued by PPQ on overtime are subject to both the overtime fees and the associated certificate fee.

User Fees for Export Certification of Plants and Plant Products Q(s) and A(s)

Why does APHIS charge a user fee for export certificates for U.S. exports of plants and plants products?

APHIS's export program provides phytosanitary certification of plants and plant products as a service to exporters. The user fee is money paid for a specific Government service by the beneficiary of that service and is designed to recover the costs of providing that service. The user fees covered by this rule are paid by the exporters who benefits from our export certification services. Phytosanitary certification is required by importing countries for most plants and plant products. The fees allow APHIS to recover the full costs of providing these services.

Why are user fees increasing for export certification for plants and plant products?

APHIS has not adjusted user fees for export certificates since January 29, 1996, which has resulted in short falls in full-cost recovery for the export program. The economic analysis of this rule indicated that the updated fee schedule will ensure that costs of the program are borne by those exporters directly benefiting from the service being provided and to allow for a reasonable reserve to ensure that APHIS have sufficient operating funds in cases of fluctuations in activity volumes or unanticipated events that could impact the program.

Why doesn't APHIS bill the exporter for export certificates?

For each certificate issued by APHIS personnel, the applicant must pay the applicable user fee at the time and place the certificate is issued according to regulation 7 CFR 354.3(g).

Why is there an administrative fee for export certificates issued by States and Counties?

The administrative fee is intended to cover the direct labor and administrative support costs incurred by APHIS when export certificates are issued on its behalf by State and County cooperators.

The Federal fee structure incorporates the administrative fee into the flat rate.

How can the administrative fee be paid?

The preferred method of payment is by the exporter directly to APHIS through the Phytosanitary Certificate Issuance and Tracking (PCIT) system. If the exporter does not have a PCIT account or if the State or county is not using PCIT, then the burden of collecting the administrative fee from the exporter and remitting it to APHIS would fall directly on the State or County issuing the Federal export certificate and must occur monthly.

Is the administrative fee cheaper when using PCIT?

The administrative fee as well as any associated overhead costs is lower when the export certificate is issued in PCIT; therefore, the administrative fee is cheaper for certificates issued in PCIT. APHIS adopted a two-tiered fee structure for the administrative fee. For those States and counties issuing certificates through PCIT, the administrative fee will initially be set at \$3 per certificate in FY 2010 and \$6 starting in FY 2011. For those States and counties issuing paper certificates, the administrative fee will be set at \$6 per certificate in FY 2010 and \$12 thereafter.

What if states/counties or industry does not use PCIT?

If PCIT is not utilized during the phytosanitary certification process, the State or county issuing the export certificate is responsible for collecting the fee and remitting it monthly to the U.S. Bank, United States Department of Agriculture, APHIS, AQI, P.O. Box 979043, St. Louis, MO 63197-9000.

Can APHIS collect State and county fees in addition to Federal fees?

APHIS has a mechanism in place that allows the collection of State and county fees in addition to the administrative fee. PCIT has the capability of collecting both the State and county fees for Federal Certificates and State certificates. APHIS will remit the fees to each state and county on a monthly basis.

PCIT already collects all fees for certificates issued by Federal ACOs.

What are some of the benefits to States and counties in using PCIT to collect fees?

PCIT has the capability to:

- Provides the States and counties a more efficient and cost effective means of collecting and tracking certificates issued than does the four part paper certificates;
- Assists in developing an accurate balance sheet for the organization;
- Provides various reports that can be utilized by both government and industry;
- Assists getting held shipments released in a foreign country in a more timely manner.

chain of commerce to clear the system and allow the honey industry time to reconfigure labels as appropriate. A 90-day period is provided for that purpose.

The Agency has identified some Federal rules that may be viewed to duplicate or overlap with this rule. Under pre-existing Federal laws and regulations, country of origin labeling is required.

Such requirements are enforced by the U.S. Customs and Border Protection (CBP) as authorized by the Tariff Act of 1930 and CBP regulations (19 U.S.C. 1304(a) and 19 CFR Part 134). This law requires that every imported item must be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin.

Additionally, repackers are required by CBP to mark containers of repackaged imports with the English name of the country of origin. In the event that further reprocessing or material is added to the article in another country and results in a "substantial transformation" of the product, the other country becomes the country of origin within the meaning of CBP's labeling requirements, 19 CFR 134.1(b) and 134.11.

AMS has reviewed this rule under the Paperwork Reduction Act, 44 U.S.C. 3501–3520, and has determined that there are no additional information collection requirements imposed by this rule.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) This rule has to be implemented because of an amendment by the Farm Bill to the Act and has an effective date of October 6, 2009; and (2) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Honey, Miscellaneous products, Debarment of services, Reporting and recordkeeping requirements, Approved identification, Country of origin labeling, and Prohibited uses of approved identification.

■ For the reasons set forth in the preamble, 7 CFR part 52 is amended as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. In part 52, § 52.54 is amended by adding paragraph (a)(4) to read as follows:

§ 52.54 Debarment of service.

(a) * * *

(4) *Country of origin labeling for packed honey.* (i) The use of a label or advertising material on, or in conjunction with, packaged honey that bears any official certificate of quality, grade mark or statement, continuous inspection mark or statement, sampling mark or statement, or any combination of the certificates, marks, or statements of the Department of Agriculture is hereby prohibited unless there appears legibly and permanently in close proximity (such as on the same side(s) or surface(s)) to the certificate, mark, or statement, and in at least a comparable size, the one or more names of the one or more countries of origin of the lot or container of honey, preceded by the words 'Product of' or other words of similar meaning.

(ii) A violation of the requirements of this section may be deemed by the Secretary to be sufficient cause for debarment from the benefits of the regulations governing inspection and certification only with respect to honey.

Dated: June 30, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–16029 Filed 7–7–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. APHIS–2006–0137]

RIN 0579–AC22

User Fees; Export Certification for Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the user fee regulations by adjusting the fees charged for export certification of plants and

plant products. We are increasing these user fees for fiscal years 2010 through 2012 to reflect the anticipated costs associated with providing these services during each year. We are also adding a new user fee for Federal export certificates for plants and plant products that an exporter obtains from a State or county cooperator in order to recover our costs associated with that service. Finally, we are making several nonsubstantive changes to the regulations for clarity. These changes will enable us to properly recover the costs of providing export certification services for plants and plant products.

DATES: *Effective Date:* October 1, 2009.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. Marcus McElvaine, Senior Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8414. For information concerning rate development, contact Mrs. Kris Caraher, User Fee Section, Financial Services Branch, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737–1232; (301) 734–0882.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2007, we published in the **Federal Register** (72 FR 32223–32230, Docket No. APHIS–2006–0137) a proposal¹ to amend the user fee regulations in 7 CFR 354.3 by adjusting the fees charged for export certification of plants and plant products. We proposed to increase these user fees for fiscal years (FYs) 2007 through 2012 to reflect the anticipated costs associated with providing these services during each year. We also proposed to add a new user fee for Federal export certificates for plants and plant products that an exporter obtains from a State or county cooperator in order to recover our costs associated with that service and to make some additional nonsubstantive changes to the regulations for greater clarity. The proposed changes were intended to enable us to properly recover the costs of providing export certification services for plants and plant products.

We solicited comments concerning our proposal for 60 days ending August 13, 2007. We received 75 comments by that date. They were from producers, exporters, research institutions, relief agencies, and representatives of State

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0137>.

and county governments. They are discussed below by topic.

A number of commenters stated that the adjustments to the existing fees, together with the addition of the proposed new fee for certificates issued on behalf of the Animal and Plant Health Inspection Service (APHIS) by State and county cooperators, would increase both the paperwork burden and the cost of doing business for exporters of various products, including seeds, hardwood lumber, cotton, beans, daylilies, and rice, thus making U.S. exports less competitive than they are now. It was also stated that the proposed fees would adversely affect small entities, since many of these exporters are small, according to the Small Business Administration's (SBA's) criteria.

We do not anticipate that the rule will entail any increase in the paperwork burden for the exporters referred to above, and the commenters did not provide details or examples to the contrary. Payment of the increased fees may increase the up-front costs of doing business for some entities; however, these entities benefit from the export certification services we provide, without which their goods would not be allowed into the importing countries. The fees are necessary in order for us to recover the cost of providing these services. Potential impacts of the fee adjustments on small entities, which we anticipate to be small, are discussed in the full economic analysis and in the summary of it presented later in this document. Because the costs APHIS incurs in providing export services vary according to the type or value of the shipment but are the same regardless of whether the exporter is a large or small entity, we cannot offer discounts to the latter if we are to recover our costs fully.

As we noted in the Supplementary Information section of the June 2007 proposed rule, the user fees supporting the Export Program have not been adjusted since 1996, and, due to inflation and other factors, we have not been fully recovering the cost of providing our export services in recent years. Since 1996, the increase in the cost of administering the Export Program has actually outpaced the inflation rate. Many new overseas markets for U.S. agricultural commodities have opened up since then, and U.S. exports have increased correspondingly, both in overall volumes and in the variety of commodities being exported. Our workload has increased due to the increase in volumes of exports, and the need to review and evaluate new commodities for export and new foreign

country phytosanitary requirements has made the background work required to issue export certificates more complex.

Some commenters stated that the adjusted user fees will increase production costs for growers.

The cost of obtaining a phytosanitary certificate to export a commodity is not a direct production cost. While we do recognize that the adjusted fees will raise the costs of doing business, as noted earlier, affected entities also benefit from the export services we provide. Moreover, we need to recover fully the costs of providing those services. Because we last raised user fees in 1996, we have not been fully recovering these costs.

A few commenters expressed the concern that the increased fees could adversely affect the activities of hunger relief agencies and research institutions. Such institutions sometimes export high-value shipments but for noncommercial purposes.

We do not agree with this comment. Under most circumstances, shippers are subject to the higher commercial fees if the value of their shipment exceeds \$1,250. *Commercial shipment* is defined in § 354.3(a), however, as a shipment for gain or profit. As long as they can provide the proper documentation to demonstrate that there are no profits associated with their shipments, relief agencies and research institutions are, and would continue to be, subject to the significantly lower rates applicable to noncommercial shipments even if the value of a shipment exceeds \$1,250. To qualify for the noncommercial rate, the exporter, shipper, or broker must present one of the following documents: CCC 512, Notice of Commodity Availability; KC 269, Notice to Deliver; or KC 269-A, Forwarding Notice. Offering additional discounts or exemptions for relief agencies and research institutions would not allow us to recover the costs associated with the export certification services that we provide them.

Some commenters stated that our proposed fee increases were unjustified because many of the inspections that need to be performed before phytosanitary export certificates can be issued are conducted under compliance agreement by personnel not affiliated with APHIS' Plant Protection and Quarantine (PPQ) program.

Because it is still necessary for us to recover the costs associated with administering such compliance agreements, which we are not doing under the current fee structure, we will not be making any changes to the final rule as a result of these comments. Compliance agreements, which are

voluntary, are intended to help exporters to ship their products more quickly. Such agreements do not alleviate APHIS' costs for reviewing certificates and overseeing and administering the export program.

A commenter suggested that increasing the export certification user fees may actually be detrimental to our efforts to prevent the spread of plant pests and diseases because exporters may attempt to ship their goods without phytosanitary certificates in order to avoid paying the fees.

Export certification is a service provided by APHIS to enable exporters to ship their goods to foreign countries that require such certification. An exporter who elects to ship without a phytosanitary certificate that is required by the importing country runs the risk of having the consignment rejected or destroyed.

Some commenters viewed our proposed incremental fee increases each fiscal year as potentially confusing and burdensome. It was suggested that, rather than raise the fees each year, we do so only once, setting each of them somewhere in the middle range of our projections. Thus, for example, rather than having our fees for commercial shipments rise from \$99 to \$106 over the period covered by the rulemaking, as we projected in the June 2007 proposed rule, we might set the fee at \$103 initially and not make any further adjustments.

We do not agree that the incremental fee increases are confusing or burdensome. The regulations will clearly indicate that on set days, the fees will increase. **Federal Register** notices will be issued before the fees are increased each year to remind users of the upcoming adjustments. Setting the fees years in advance is actually beneficial to industry because it allows entities to plan and budget accordingly. Setting a single fee for the entire period covered by this rulemaking in the middle range of the fee scale, as suggested by the commenters, would not allow us to recover our costs fully in the later years.

One commenter stated that the initial fee increases should be implemented over 2 years, rather than 1, to soften their impact on industry.

We agree with this commenter that a 2-year phase-in period will be less burdensome to industry than an immediate implementation of the full fees, since, under the June 2007 proposed rule, the steepest, and thus potentially the most burdensome, proposed fee increases would have gone into effect in the first year of the period covered by the rulemaking.

Accordingly, under this final rule, the initial increases and the new administrative fee will be phased in over a 2-year period. For reasons discussed in greater detail below, the initial fee changes will go into effect at the beginning of FY 2010 rather than upon publication of this final rule. The fees for FY 2010 will be set at a level reflecting half the necessary increase, meaning that the fees will not cover our full costs during that fiscal year and that the remaining costs will have to be covered using other funds. The full fees will be in place at the beginning of FY 2011, which will be the first year in which they will provide for full recovery of export program costs.

A commenter noted that many exporters request multiple and often similar phytosanitary certificates at one time. Many exporters that ship on a regular basis batch their requests for phytosanitary certificates, a practice that makes the certification process easier and more economical for APHIS than would be the case when requests are submitted singly. Neither the existing nor the proposed fee structures recognize these savings, however. It was suggested that when requests for certificates are batched, thereby lowering APHIS' processing costs per certificate, charging the same fee for each certificate is not justified.

We will not be making any changes to the final rule in response to this comment, though we may reconsider this issue in the future. As explained in the preamble to the June 2007 proposed rule, we estimate our future costs based on data from prior fiscal years, and we calculate our user fees by dividing the sum of the costs of providing each service by the projected volumes. We base our fee calculations on the total estimated volume of certificates endorsed to arrive at the same fee for each fee category, regardless of the level of complexity of one certification versus another or the similarity of subsequent certifications to ones already completed. Adding a new certificate category and a correspondingly lower fee for certifications that are considered similar to ones already endorsed is not desirable due to our averaging approach to rate-setting and is contrary to our goal of having a simplified fee structure.

A commenter stated that if APHIS commits an error that makes it necessary to replace an export certificate, the shipper or producer should not be liable for any additional fees.

We agree with this comment. It has been, and will continue to be, our practice not to charge additional fees in such cases. We also would not charge

additional fees when an error by a State or county cooperator that has issued a certificate on APHIS' behalf necessitates a replacement certificate. If a certificate, whether issued directly by APHIS or on behalf of APHIS by a State or county cooperator, needs to be replaced for other reasons, e.g., as a result of a request by an exporter, the normal fees would apply.

A commenter questioned the justification for the increases in our existing fees, stating that APHIS' costs for providing export certification services should decrease over time, rather than increase as we are projecting, due to technological advances, such as full implementation of the Phytosanitary Certificate Issuance and Tracking System (PCIT).

We do anticipate that the further development and wider use of the PCIT will enable us to realize some cost savings. As we noted in the June 2007 proposed rule, however, the fee adjustments are needed to enable us to recover the full costs of our export certification programs. These costs include ones that we may incur for the development of new technologies, as well as, among others, salaries and benefits, utilities, rents, and office equipment, and information systems development, all of which tend to rise from year to year. We review our costs and fees periodically, however, and will consider future rulemaking to reduce the fees if wider use of the PCIT results in sufficient cost savings to justify such a reduction. Any collections in excess of our costs will remain in the account to be used only for export phytosanitary services. The need for us to maintain a reasonable reserve in this account is discussed in greater detail below.

A commenter stated that, because of the size and magnitude of our proposed fees, they should be considered a tax.

We do not agree with this comment. A tax is money paid by the general public to support general Government operations. A user fee is money paid for a specific Government service by the beneficiary of that service and is designed to recover the costs of providing that service. The user fees covered by this rulemaking are paid by exporters who benefit from our export certification services, which enable them to have their goods allowed entry by the countries of destination. The fees, in turn, allow us to recover the full costs of providing these services.

A commenter stated that our export certification user fees should be applied only to offset the costs of the issuance of the actual certificate and not to cover departmental charges and other program costs. Therefore, according to this

commenter, the fees should be lower than those we are proposing.

We do not agree with this comment. We have a congressional mandate to recover our full program costs by means of user fees. As explained in the proposed rule and noted above, these include direct labor and various other costs.

Some commenters stated that information on how we calculated our reserve funds was lacking in the proposed rule, while others questioned the need for the reserve or viewed the amounts to be set aside as excessive.

We do not agree with these commenters. As we noted in the June 2007 proposed rule, a reasonable reserve is needed to ensure that we have sufficient operating funds in cases of fluctuations in activity volumes or unanticipated events that could impact the export certification program. After calculating our projected costs for the period covered by this rulemaking using prior year costs, added inflationary factors, and planned new costs, we then added in the cost of maintaining that reserve. We anticipate that our user fees will generate a reserve fund of 5 percent per year, an amount that will provide for the maintenance of up to 3 to 5 months' operating expenses. We intend to monitor the reserve balance closely and propose adjustments in our fees as necessary to bring these user fees into line with our actual program costs. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will undertake rulemaking to lower the fees as quickly as possible through our required rulemaking process. Conversely, if it becomes necessary to increase any fees because reserve levels are being drawn too low, we will undertake rulemaking to increase the fees.

A large number of commenters raised issues specific to the new administrative fee for certificates issued by State or county cooperators on APHIS' behalf. Commenters questioned the justification for the new fee and stated that the amount was too high, having been calculated using erroneous data on volumes. Others expressed concern over the financial and other burdens that may be faced by State and county governments in collecting the fees from exporters and remitting them to APHIS, the mechanics of the collection and remittance processes, and the legal and constitutional authority of the States and counties to collect such fees on behalf of APHIS.

Some commenters questioned the justification for this new fee on the grounds that most of the administrative costs of issuing export certificates are

already borne by States or counties and that APHIS does not provide significant oversight of the process of issuing phytosanitary certificates. In the view of these commenters, the administrative costs to APHIS for the issuance of export certificates on its behalf by State and county cooperators were not of sufficient magnitude to justify the fee.

The administrative fee is intended to cover the direct labor and administrative support costs incurred by APHIS when export certificates are issued on its behalf by State and county cooperators. Administrative support costs generally include the following: Local clerical and administrative activities, indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the service but which is nonetheless necessary); travel and transportation for personnel; supplies, equipment, and other necessary items; and training. Agency overhead is the pro rata share, attributable to a particular service of the management and support costs for all Agency activities. Included are the costs of providing budget and accounting services (tracking volumes, rate setting, policy *etc.*), management support, including the Administrator's office and support at the regional level, personnel services, public information service, and liaison with Congress. Additional costs that pertain specifically to phytosanitary certificates issued on APHIS' behalf by State and county cooperators include the costs APHIS incurs in training State and county personnel to issue the certificates, in maintaining the export requirement database (a database containing the shipping requirements of foreign countries, which serves as a resource for certifying officials and U.S. exporters), and in conducting reviews of the program.

A couple of commenters suggested that in instances where State or county fees would apply in addition to the APHIS administrative fee, APHIS should collect both fees and then reimburse the State or county for its portion on a quarterly or monthly basis. The commenters suggested that such a practice would help to minimize confusion and duplication of effort on the part of exporters, who would then only receive one invoice per certificate issued.

This functionality is now available within the PCIT. Additional information may be obtained from the PPQ program operations personnel listed under **FOR FURTHER INFORMATION CONTACT.**

Some commenters stated that our volume estimates for certificates issued by State and county cooperators

appeared to be low. The proposed rule projected that a lower number of certificates would be issued by State and county cooperators in 2007 than the report by Kadix Systems, discussed in the June 2007 proposed rule, stated were actually issued in 2003. The commenters believed that the Kadix figure is a more accurate measure of the number of certificates issued by State and county cooperators than are our volume estimates. If the actual volumes are significantly higher than our estimates, the commenters stated, then the actual revenues that will accrue to APHIS as a result of these fees will also be considerably higher than what we projected. Therefore, we should set the administrative fee at a lower level.

After considering these comments, we reviewed our data in order to identify true export certificate user fee costs and volumes. We used prior year accounting data from the Financial Foundation Information System and the Financial Data Warehouse/Brio reports, which track and record expenses that support the Phytosanitary Export Certificate user fee program. We then added to those costs any planned new source funding, such as new staffing costs (plus support costs for new staffing) and automation initiatives (*e.g.*, further development of the PCIT and the export requirement database); training; and the pro rata share of the distributable accounts such as agency overhead, departmental charges, rent, economic assumptions, and a reasonable amount to be recovered in the reserve account. We then split our total costs for each fiscal year into each individual certification category. We based our projected volumes for certificates issued by State and county cooperators in FY 2007 on Work Accomplishment Data System data, which were provided by PPQ's Eastern and Western regional offices. Our projections allowed for a general trade increase of 1 percent each year. We assumed that 87 percent of customers, on average, will use the PCIT and that 13 percent will not. We split the volumes based on these percentages and divided the total costs by the volumes to calculate the administrative fee for phytosanitary certificates issued by States and counties using the PCIT and those not using the system.

We also determined, as a result of our review, that the number of State and county-issued Federal phytosanitary certificates had been underestimated and that, consequently, the proposed administrative fee was too high. We have therefore recalculated the administrative fee based on a revised State/county volume estimate of 367,137. For those States and counties

issuing phytosanitary certificates through the PCIT, the administrative fee will initially be \$3 per certificate under the 2-year phase-in and will subsequently rise to \$6 in FYs 2011 and 2012. For those States and counties issuing paper phytosanitary certificates, the administrative fee will be \$6 per certificate initially and will subsequently rise to \$12 in FYs 2011 and 2012. Since all phytosanitary certificates issued directly by APHIS must be issued through the PCIT, the two-level administrative fee applies only to State- and county-issued export certificates.

The reason for adopting a two-tiered fee structure is because there are many more costs associated with paper phytosanitary certificates than there are with those issued electronically through the PCIT. Paper phytosanitary certificates entail additional costs for printing, distributing, controlling, and reviewing the paper certificates, as well as billing, collection, recordkeeping, storage, and archiving. On the other hand, PCIT-issued phytosanitary certificates will be maintained in the automated system, with issuance, collection, and accounting functions all handled at the same time. This process is much more cost-effective than issuing paper certificates.

Some commenters suggested that the new administrative fee is unjustified because it shifts costs from APHIS to States and counties.

Collecting the new administrative fee and remitting it to APHIS could entail some new administrative and recordkeeping costs for State and county governments, especially for those that do not use the PCIT. We anticipate, however, that in most cases, these costs will ultimately be recovered from exporters—the users and beneficiaries of our export services—in the form of increased State or county user fees.

Some representatives of State and county governments stated that collecting the administrative fee on APHIS' behalf could place a significant financial burden on States and counties, the magnitude of which we underestimated. Some States and counties, according to their representatives, do not have adequate personnel or funds to collect the fees.

While we recognize that there could be some additional burden on States and counties, States and counties can avoid the costs associated with collection activity by using the PCIT. The PCIT provides the States and counties with a more efficient and cost-effective means of collecting, tracking, and remitting the fees than does the use of paper certificates.

Some commenters indicated that States and counties may also lack mechanisms for tracking and collecting the administrative fee and remitting the revenues to APHIS. It was also stated that information was lacking in the proposed rule regarding how these processes will work. One commenter cited in particular a lack of detail on allowable time intervals for States or counties to remit fees to APHIS.

The June 2007 proposed rule, in § 354.3(g)(3)(i), indicated that the fee may be remitted directly to APHIS by the exporter through the PCIT, or, if the PCIT is not used, the State or county issuing the export certificate is responsible for collecting the administrative fee and remitting it monthly to APHIS at the address given.

A commenter stated that the proposed rule was unclear about whether State or county cooperators issuing paper certificates would be charged by APHIS for blocks of certificates.

The instructions for remittance to APHIS by States and counties of fees collected on APHIS' behalf for paper certificates, contained in § 354.3(g)(3) of the proposed rule, did not distinguish between remittances for individual certificates and blocks of certificates. States or counties may issue blocks of paper export certificates and charge the exporter for them in accordance with their own regulations.

A commenter suggested that we should either delay imposing the administrative fee for certificates issued by State and county cooperators until the PCIT is in wide use or we should use the submitted copies of Federal phytosanitary certificates to invoice shippers directly for the proposed fee.

We do not agree with this comment. The PCIT has been available for over 2 years, and its use is now mandatory for all APHIS-issued phytosanitary certificates. Over 20 percent of all phytosanitary certificates issued in 2007 were issued through the PCIT. The advantages offered by the system should provide ample incentive for all States and counties to adopt it.

Some commenters discussed issues of legal and/or constitutional authority in relation to the administrative fee. There are States and counties, it was suggested, that may not have the legal authority to collect the administrative fee on behalf of a Federal agency. Changes to State or county laws or regulations may be needed, in such cases, to allow for such collection activity. In addition, the States and counties are operating under memoranda of understanding with APHIS that do not direct them to collect the fees. One commenter questioned

whether APHIS has the constitutional authority to mandate that a State or county charge a particular amount for an export certificate.

We will not be making any changes to the final rule in response to these comments. States and counties would not have to change their laws or regulations if the certificate is issued through the PCIT and the exporter can pay the administrative fee directly to APHIS. In addition, APHIS has been reaching out to State and county governments on this issue for more than 4 years in order to give those governments adequate time to prepare for the implementation of this new fee. We will continue to work with States and counties to help them overcome any legal hurdles to implementation.

A number of commenters raised issues related to the effect of the proposed rule on specific industries. Among those who commented were representatives of producers and exporters of such products as table grapes and tree fruit, hardwood, cotton, seeds, grain and oilseed, and southern pine lumber.

Some commenters stated that the industries they represented would be burdened more than others by the fee adjustments. It was suggested that California-based producers and exporters of table grapes and tree fruit would be particularly affected by the new administrative fee because those are the leading commodities exported from the State. A representative of the hardwood industry stated that hardwood exporters do not have the option of sending bulk shipments, unlike exporters of other agricultural commodities, due to the weight of the shipments and the phytosanitary requirements of foreign countries. The increase in the cost per container resulting from the adjusted fees, it was stated, would greatly increase the costs of doing business for hardwood exporters.

We do not agree with these comments. It is to be expected that producers and exporters of commodities such as table grapes and tree fruit, who use our export services frequently, will account for a larger share of the fees we collect than those that use the services less frequently. Neither that industry nor the hardwood industry is being singled out, however. The fees are the same for all individuals and/or entities and are designed to enable us to recover the full costs of providing the export certification services that both the table grapes and tree fruit and the hardwood industry use and from which they both benefit.

It was stated that export certification fees for cotton should not be raised. Commenters who took this position believed that the cotton industry's self-inspection programs justify keeping the fees as they are. It was also suggested that APHIS now has only a limited role in the certification procedure for cotton exports. The current compliance agreement between the industry and APHIS has transferred a significant amount of the workload and the costs from the agency to the industry. These transfers of workload and costs, according to the commenters, should be considered by APHIS in setting the fees.

As noted earlier in this document, voluntary compliance agreements do not eliminate the labor and other costs APHIS incurs in reviewing certificates and overseeing and administering the export program. We still need to recover those costs, whether or not a compliance agreement is in effect.

A commenter stated that the costs we incur for certification programs for cotton exports could be adequately managed if APHIS would direct the current export certification user fees collected from the cotton industry to develop the PCIT further.

We are currently working on improving and expanding the capabilities of the PCIT so that it can be of greater benefit to all users.

Commenters representing the seed industry stated that entities that are involved in the National Seed Health System or that use the PCIT should pay lower fees than other entities because both those programs help increase efficiency and cut costs for APHIS.

It is true that the National Seed Health System and the PCIT help increase efficiency and cut costs. We will consider this comment and may address the issue again in future rulemaking.

Representatives of the grain and oilseed industries stated that the export user fee adjustments should not apply to their commodities because most of the costs of the sampling, examination, and documentation needed to complete phytosanitary certification are provided for under separate user fees paid to USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA).

It is true that exporters of these commodities pay separate user fees to GIPSA and that GIPSA performs the majority of the work required to complete phytosanitary certification. At the present time, however, we do not have the ability to isolate the costs that remain for APHIS after GIPSA's work is performed and cannot exempt any specific industries or businesses from our user fee adjustments. Although we have attempted to minimize the cost of

our services, thereby keeping APHIS user fees at the lowest possible level, allowing such exemptions could result in shortfalls and service cutbacks. However, we will take these comments under consideration and reassess our fees as needed.

A commenter advocated eliminating phytosanitary inspections for southern pine lumber, and adopting the same policy as we use with heat treatment certificates for lumber destined for European Union countries.

Such inspections are performed to meet the requirements of the importing countries rather than those of APHIS. APHIS is not able to drop or change these inspection requirements unilaterally.

Some commenters asserted that the June 2007 proposed rule did not provide enough information on how we calculated our projected costs and fees. One commenter stated that not enough information was presented in the proposed rule to determine which of 12 new cost categories cited by the Kadix report were included in determining our base costs. Another commenter cited a lack of information on costs attributable to new staffing and information technology initiatives. It was suggested that users might be more receptive to new or increased user fees if they could see a more detailed breakdown of our costs.

We do not agree with this comment. The **SUPPLEMENTARY INFORMATION** section of the June 2007 proposed rule contained an extensive discussion of our user fee accounting procedures. This discussion included an explanation of the types of program costs we incur and our procedures for identifying prior year costs and projecting future costs. We also included a table that contained estimated costs, broken down by category, for FY 2007.

A commenter stated that the process of developing the June 2007 proposed rule was flawed. Industry input was lacking, according to this commenter, and the process as a whole should have been more transparent.

We have followed our standard rulemaking process, including allowing stakeholders an opportunity to comment on our proposed changes. This final rule reflects our consideration of stakeholders' comments.

Miscellaneous

The June 2007 proposed rule contained projected export certification user fees for FYs 2007 through 2012. Because FY 2009 is more than half complete, this final rule contains projected fees for the period from FY 2010 through FY 2012. We considered

beginning the phase-in of the new fees prior to October 1, 2009, which marks the beginning of FY 2010, and then raising the fees to the full amount on that date. We decided against that alternative, however, because it would have entailed two fee increases within a relatively short time period. We estimate the opportunity loss of beginning the phase-in of the new fees on October 1, 2009, as opposed to earlier, to be less than 2.9 percent of the program's operational value, an amount we do not consider significant enough to warrant the possible confusion that increasing the fees twice within a short period of time could cause. The tables in § 354.3(g) in this final rule have been revised accordingly, as have our revenue projections in the economic summary below and in the full economic analysis.

Additionally, in this final rule, § 354.3(h), which lists circumstances under which APHIS will issue refunds of, or credits for, user fees to shippers who pay for blocks of export certificates to cover commercial shipments, is removed and reserved. As noted above, we are now using the PCIT whenever we issue export certificates directly to shippers and thus are no longer issuing blocks of paper certificates.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

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.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (*see* footnote 1 in this document for a link to Regulations.gov) or by contacting the people listed under **FOR FURTHER INFORMATION CONTACT**.

Under this rule, the user fee for the certification of commercial or re-export shipments will increase from \$50 to \$77 in FY 2010. With additional yearly adjustments, the fee will increase to \$104 in FY 2011 and \$106 in FY 2012. This rule will also increase the user fee

for low-value commercial or re-export shipments (valued at less than \$1,250) and noncommercial shipments, from \$23 to \$42 in FY 2010, and through yearly increases, to \$60 in FY 2011 and \$61 in FY 2012. The user fee for a replacement certificate will increase from \$7 to \$11 in FY 2010 and then to \$15 in subsequent years. In addition, this rule will establish an administrative user fee for each certificate issued on behalf of APHIS by a U.S. State or county. This fee for FY 2010 will be set at \$3 when a certificate is issued through the PCIT and at \$6 for a paper certificate. These fees will rise to \$6 and \$12, respectively, the following year.

The changes set forth in this rule are intended to recover the full costs of providing our export certification services, which are currently being provided for less than their actual costs. As noted earlier, our export user fees have not been adjusted since 1996. The volume of exports of agricultural commodities has been growing since then. More and more foreign countries are requiring phytosanitary certification for the products they import, and their phytosanitary requirements are becoming increasingly numerous and complex. All of these factors contribute to increasing the costs to APHIS of providing these services. If APHIS were to continue to collect user fees using the rates in effect prior to this rulemaking, over the time period covered by this rule, total collections would be approximately \$25 million, which is nearly \$33 million below the level of the projected costs of the program over that timeframe. This difference represents the shortfall in cost recovery that would occur absent the fee changes.

The export certification services covered in this rule are provided to exporters of plants and plant products. These exporters include those entities shipping plants and plant products to foreign destinations for commercial as well as noncommercial purposes. These exporters will be affected by this rule. In addition, State and county governments providing export certification services will be affected.

A wide variety of commodities are potentially eligible for certification under the APHIS export certification program. Eligibility requirements vary by commodity and, in some cases, by the degree of processing or treatment needed. Eligible commodities generally include live plants, fresh and some dried fruits, vegetables and nuts, unroasted coffee, cereal grains, milling products, oil seeds, raw sugar, tobacco, wood, and cotton. We cannot place a specific value on the commodities that have been certified for export. However,

in 2007, exports of the covered commodity categories were valued at nearly \$57 billion. In addition, products in these commodity categories valued at nearly \$2 billion were re-exported in 2007.

The user fee increases in this rule should increase collections in each year covered. The increased revenues will go to cover the projected costs of administering the program and to build a reserve to ensure that we have sufficient operating funds in cases of program cessation or fluctuations in activity volumes. The initial fee increases cover cost increases that have occurred since the last revision of these fees, in addition to some of the cost increases expected to occur in FY 2010. In FY 2012, the new fees for commercial and re-export certification could generate \$9.2 million in additional revenue; the new fees for noncommercial and low-value commercial and re-export certification could generate \$333,000 in additional revenue; the new fee for replacing any certificate could generate \$58,000 in additional revenue; and the new fee for administering State- and county-issued certificates could generate an additional \$2.6 million in revenue.

To the extent that the changes in user fees impact exporters' operational costs, any entity that utilizes APHIS' export certification services subject to user fees will be impacted. The degree to which any entity may be affected depends on its market power (the ability to which costs can be either absorbed or passed on to buyers). While the lack of information on profit margins and operational expenses of the affected entities and the supply responsiveness of the affected industries prevents the precise prediction of the scale of impacts, some conclusions on overall impacts to domestic and international commerce can be drawn.

The percentage increases in user fees will be large. In all cases, the increases will at least double the existing user fees by FY 2012. About one-half of the increases will occur in FY 2010. If the increase in user fees cannot be passed on, the profit margins of some entities may decline as user fees are increased. However, these fees have not been updated since 1996, and there are now considerable differences between the true costs of providing export certification services and the user fees APHIS has been charging. When a user fee does not cover all associated costs, those costs are shifted away from those receiving and benefiting from the service and onto APHIS, and thus, ultimately, to the taxpayer.

As noted above, this rule will increase the user fee for commercial export and re-export certification from \$50 to \$77 in FY 2010. Subsequent increases will raise the fee to \$106 by FY 2012. These changes could generate additional annual collections of \$9.2 million in FY 2012. To put these numbers in perspective, this fee category is projected to generate total collections of \$17.3 million in FY 2012. This equates to less than 0.03 percent of the \$58 billion in eligible commodities that were exported or re-exported in 2007.

Exporters of plants and plant products are the domestic entities most affected by this rule. Exporters of plants and plant products are part of the wholesale trade sector of the U.S. economy. These entities either sell goods on their own account (export merchants) or arrange for the sale of goods owned by others (export agents and brokers). While the increase in the commercial export and re-export certification fee is large in percentage terms, it is very small relative to the revenues generated by exporters of plants and plant products. This is evident from the average firm revenues for some of the main industries that will be affected by the rule. By this measure the impact of the fee increases on entities should be limited. Exporters of wood fall under the North American Industry Classification System (NAICS) code 423310, "Lumber, plywood, millwork, and wood panel merchant wholesalers." The average firm in this category had sales of \$11.6 million in 2002. Exporters of fruits and vegetables fall under NAICS code 424480, "Fresh fruit and vegetable merchant wholesalers." The average firm in this category had sales of \$10 million in 2002. Exporters of grains, such as corn, wheat, oats, barley, and unpolished rice, dry beans, and soybeans fall under NAICS code 424510, "Grain and field bean merchant wholesalers." The average firm in this category had sales of \$28 million in 2002. Exporters of leaf tobacco are covered under NAICS code 4245902, "Leaf tobacco merchant wholesalers." The average firm in this category had sales of \$8.1 million in 2002. Exporters of cotton are under NAICS code 4245904, "Cotton merchant wholesalers." The average firm in this category had sales of \$35.3 million in 2002. Exporters of plant seeds and plant bulbs are under NAICS code 424910, "Farm supplies merchant wholesalers." The average firm in this category had sales of \$11 million. Exporters of flowers and nursery stock are under NAICS code 424930, "Flower, nursery stock, and florists' supplies merchant

wholesalers." The average firm in this category had sales of \$2.4 million in 2002. Exporters of various other farm product raw materials, such as Christmas trees, fall under NAICS code 4249904, "Other nondurable goods merchant wholesalers." The average firm in this category had sales of \$2.2 million in 2002.

The total impact of the fee increases on an exporter will be directly proportional to their participation in international trade. The greater the number of internationally shipped consignments in need of certification, the more export certification fees will be incurred to facilitate that movement.

Consignments presented for export certification range widely in value and shipment size, even within the same general commodity classification. Therefore, the impact of the fee increases on specific commodity exports cannot be usefully generalized. The impact will vary depending on the size and value of the consignment. An exporter seeking certification for a consignment that comprises an entire loaded container ship will be less impacted than one seeking certification for a single shipping container of the same commodity. With a higher-valued commodity, the fee increase will be smaller relative to the value of the consignment than it will be for a lower-valued commodity of the same size shipment.

This fee will increase by a total of 108 percent over the covered period, but the total dollar value of the fee increase, \$56, represents a small fraction of the value of many consignments. To put the fee increase in perspective, a few commodity examples based on single container consignments are presented below. In order to present consistent examples, we assume that a shipment presented for certification is represented by the capacity of a single shipping container. It should be noted that in many cases this will give a significant overestimate of the impact of the fee changes on a given shipment as many agricultural products are shipped in bulk consignments. Bulk carriers have capacities of 10 to 1,000 or more times that of a single shipping container. Certification fees incurred and their significance as part of the overall costs of exporting may be reduced by consolidating formerly multiple consignments into single consignments for certification.

A 40' by 9'6" shipping container has a capacity of about 26,040 kilograms (kg) or 76.6 cubic meters (m³). In 2006, the average value of corn shipments from the U.S. was \$0.12 per kg. Therefore, a 26,040 kg shipment of corn

would have been valued at \$3,222. The total fee increase over the entire time period covered in this rule represents 1.7 percent of this value. In 2006, the average value of wheat exports from the United States was \$0.18 per kg. Thus, a 26,040 kg shipment would have been valued at \$4,707. The total fee increase over the entire time period covered in this rule represents 1.2 percent of this value. The average value of fresh grapes exported from the United States in 2006 was \$1.79 per kg. Therefore, a half-container, or 13,020 kg, shipment of grapes (the value is calculated in this manner due to the packaging requirements for transporting fresh grapes), would have been valued at \$23,241. The total fee increase over the entire time period covered in this rule represents 0.2 percent of this value. In 2006, the average value of logs exported from the United States was \$150.16 per m³. Therefore, a 76.6 m³ shipment of logs would have been valued at \$11,502. The total fee increase over the time period covered in this rule represents 0.5 percent of this value. The average value of railroad crossties exported from the United States in 2006 was \$93.83 per m³. Thus, a 76.6 m³ shipment of crossties would have been valued at \$7,187. The total fee increase over the time period covered in this rule represents 0.8 percent of this value. The average value of sawn lumber exported from the United States in 2006 was \$421.29 per m³. Therefore, a 76.6 m³ shipment of sawn lumber would have been valued at \$32,271. The total fee increase over the time period covered in this rule represents 0.17 percent of this value.

If a commercial export or re-export shipment is valued at less than \$1,250, the fee for certification will increase in FY 2010 from \$23 to \$42. The new fee will represent at least 3.3 percent of the value of the shipment. The impact of the fee increase may be mitigated to the degree that multiple low-value shipments can be consolidated into single shipments for certification.

This rule will increase the user fee for noncommercial export and re-export certification from \$23 to \$42 in FY 2010, to \$60 in FY 2011, and to \$61 by FY 2012. Combined with the changes for low-value commercial shipments (valued at less than \$1,250), these changes could generate additional annual collections of about \$333,000 in FY 2012. These fees will increase by a total of 161 percent. However, it is estimated that only about 8,500 of these certificates are issued annually.

This rule will increase the user fee for replacing any export certificate from \$7 to \$11 in FY 2010 and to \$15 in FYs

2011 and 2012. These changes could generate additional annual collections of about \$58,000. While this increase is a doubling of the fee, its impact should be small, as there are fewer than 8,000 certificates replaced annually.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. As we have previously noted, exporters of plants and plant products are the domestic entities most affected by this rule and are part of the wholesale trade sector of the U.S. economy. The overwhelming majority of U.S. wholesalers of plants and plant products (ranging from 96 to 99 percent for the various NAICS categories discussed above) fall under the SBA's definition of small entities. The total impact of the changes contained in this rule should be small for these entities. The fee changes represent a tiny fraction of the value of the shipments of plants and plant products. Exports and re-exports of eligible commodities were valued at more than \$58 billion in 2007, as noted previously. By contrast, the total increase in annual collections from user fees in this rule will be about \$12 million by FY 2012.

While the increases in the fees are large in percentage terms, they are small relative to the revenues generated by wholesalers of plants and plant products. This is evident from the average revenues of firms with fewer than 100 employees in some of the main industries that will be affected by the rule. By this measure, the impact of the fee increases on entities should be limited. About 58 percent of lumber wholesalers (NAICS 423310) had between 5 and 100 employees in 2002. Average annual sales by these firms were \$9.8 million. About 37 percent had between 5 and 20 employees and average annual sales of about \$5 million. About 95 percent of fresh fruit and vegetable wholesalers (NAICS 424480) had fewer than 100 employees in 2002. Average annual sales by these firms were \$7.1 million. About 74 percent had fewer than 20 employees and average annual sales of about \$4 million. About 98 percent of grain and field bean wholesalers (NAICS 424510) had fewer than 100 employees in 2002. Average annual sales by these firms were \$11.9 million. About 82 percent had fewer than 20 employees and average annual sales of \$6.5 million. About 85 percent of leaf tobacco wholesalers (NAICS 4245902) had fewer than 10 employees in 2002. Average annual sales by these firms were \$3.1 million. About 80 percent of cotton wholesalers (NAICS 4245904) had fewer

than 10 employees in 2002. Average annual sales by these firms were \$10.2 million. About 69 percent of farm supplies wholesalers (NAICS 424910) had fewer than 10 employees in 2002. Average annual sales by these firms were \$1.7 million. Average annual sales of flowers and florist supplies wholesalers (NAICS 424930) were \$2.7 million in 2002. About 83 percent of other nondurable goods wholesalers (NAICS 4249904) had fewer than 10 employees in 2002. Average annual sales by these firms were \$976,000. Another 6 percent of these firms had from 20 to 99 employees. Average annual sales by these firms in 2002 were \$11 million.

This rule will impose an administrative user fee for each certificate issued on behalf of APHIS by a State or county. This fee will be set at \$3 when a certificate is issued through the PCIT in FY 2010 and at \$6 in FYs 2011 and 2012. The fee for a paper certificate will be \$6 in FY 2010 and \$12 thereafter. States and counties issue a significant percentage of the phytosanitary certificates written. APHIS' activities support the State and county operations, as well as nationwide export certification functions. Because we have not been charging a user fee for such certificates, we have not been recovering our costs for printing, distributing, and tracking the paper certificates that we provide to the States and counties to issue on our behalf or our associated overhead costs. The users who obtain export certification from a State or county only pay for the State or county's costs to deliver the certificate, and nothing to support the program at the Federal level.

These new administrative fees could generate additional annual collections of \$2.6 million in FYs 2011 and 2102. States and counties that do not use the PCIT are likely to incur administrative and recordkeeping costs in collecting the administrative fees associated with paper certificates and remitting them to APHIS. To the extent that a State or county increases the fees it charges to incorporate the administrative fee and passes the cost on to exporters, it will shift the burden of the fee to the user. However, the additional costs to States and counties should be low because, in most cases, mechanisms are already in place for collecting export certification fees. In addition, the PCIT is available for use by States and counties to issue certificates, thus enabling them to avoid the administrative and recordkeeping costs referred to above.

Any fee charged for export certification services performed by a

State or county is determined by the individual State or county performing the service. Thirty-five States have charges for issuing certificates. Twelve States have fee structures that duplicate APHIS' fee structure. Currently, States and counties charge from \$0 to \$212 for a commercial certificate, with the average charge about \$28; and from \$0 to \$50 for a noncommercial certificate, with the average charge about \$19. States and counties currently charge from \$0 to \$75, with the average charge about \$16, to replace a commercial certificate, and from \$0 to \$50, with an average of about \$15, to replace a noncommercial certificate. These fees could change following the implementation of this rule to incorporate the Federal administrative fee.

About 70 percent of certificates issued in California in 2003 were written in eight counties, six of which have rate structures currently higher than those of APHIS. Only 10 States and 2 California counties do not have current legislative authority to charge for certificates. These 10 States and 2 counties account for approximately one-tenth of the certificates issued by States and counties in a given year.

In assessing the need for this rule, we considered alternatives to the chosen course of action. These alternatives are discussed below.

One alternative to this rule would have been to leave the regulations unchanged. In this case, the fees would remain unchanged. However, these fees were last updated in 1996 and no longer recover the full cost of providing certification services. Routine increases in the cost of doing business, such as inflation, replacing equipment, and maintaining databases, have occurred since the last update, and volumes have increased as well. If APHIS were to continue to collect user fees at the current rates in FY 2010 through FY 2012, total collections would be about \$33 million short of projected program costs over that period. Therefore, this alternative was rejected.

Another alternative to this rule would have been not to add an administrative user fee for each certificate issued on behalf of APHIS by a U.S. State or county official. However, APHIS' activities support the State and county operations, as well as the national export certification program. The costs

to APHIS that are associated with State- and county-issued certificates have not been recovered up to now. The users who obtain export certification from a State or county only pay for the State or county's costs, and nothing to support the program at the national level. Therefore, this alternative was not pursued.

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 12988

This final rule has been reviewed under Executive Order 12988, 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

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

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

■ Accordingly, we are amending 7 CFR part 354 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. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.3 is amended as follows:

■ a. In paragraph (a), by removing the definitions of *export certificate for processed plant products*, *phytosanitary certificate*, and *phytosanitary certificate*

for reexport, and adding a new definition of *certificate*, in alphabetical order, to read as set forth below.

■ b. In paragraph (g), by removing paragraphs (g)(2) and (g)(5); by redesignating paragraphs (g)(3) and (g)(4) as (g)(4) and (g)(5), respectively; and by revising paragraph (g)(1) and adding new paragraphs (g)(2) and (g)(3) to read as set forth below.

■ c. By removing and reserving paragraph (h).

§ 354.3 User fees for certain international services.

(a) * * *
* * * * *

Certificate. Any certificate issued by or on behalf of APHIS describing the condition of a shipment of plants or plant products for export, including but not limited to Phytosanitary Certificate (PPQ Form 577), Export Certificate for Processed Plant Products (PPQ Form 578), and Phytosanitary Certificate for Reexport (PPQ Form 579).

* * * * *

(g) * * *

(1) For each certificate issued by APHIS personnel, the recipient must pay the applicable AQI user fee at the time and place the certificate is issued.

(2) When the work necessary for the issuance of a certificate is performed by APHIS personnel on a Sunday or holiday, or at any other time outside the regular tour of duty of the APHIS personnel issuing the certificate, in addition to the applicable user fee, the recipient must pay the applicable overtime rate in accordance with § 354.1.

(3)(i) Each exporter who receives a certificate issued on behalf of APHIS by a designated State or county inspector must pay an administrative user fee, as shown in the following table. The administrative fee can be remitted by the exporter directly to APHIS through the Phytosanitary Certificate Issuance and Tracking System (PCIT), provided that the exporter has a PCIT account and submits the application for the export certificate through the PCIT. If the PCIT is not used, the State or county issuing the certificate is responsible for collecting the fee and remitting it monthly to the U.S. Bank, United States Department of Agriculture, APHIS, AQI, P.O. Box 979043, St. Louis, MO 63197–9000.

Effective dates	Amount per shipment	
	PCIT used	PCIT not used
October 1, 2009, through September 30, 2010	\$3	\$6
October 1, 2010, through September 30, 2011	6	12
Beginning October 1, 2011	6	12

(ii) The AQI user fees for an export or reexport certificate for a commercial shipment are shown in the following table.

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	\$77
October 1, 2010, through September 30, 2011	104
Beginning October 1, 2011	106

(iii) The AQI user fees for an export or reexport certificate for a low-value commercial shipment are shown in the following table. A commercial shipment is a low-value commercial shipment if the items being shipped are identical to those identified on the certificate; the shipment is accompanied by an invoice which states that the items being shipped are worth less than \$1,250; and the shipper requests that the user fee charged be based on the low value of the shipment.

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	\$42
October 1, 2010, through September 30, 2011	60
Beginning October 1, 2011	61

(iv) The AQI user fees for an export or reexport certificate for a noncommercial shipment are shown in the following table.

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	\$42
October 1, 2010, through September 30, 2011	60
Beginning October 1, 2011	61

(v) The AQI user fees for replacing any certificate are shown in the following table.

Effective dates	Amount per certificate
October 1, 2009, through September 30, 2010	\$11
October 1, 2010, through September 30, 2011	15
Beginning October 1, 2011	15

* * * * *
Done in Washington, DC, this 30th day of June 2009.

Cindy Smith,
Acting Under Secretary for Marketing and Regulatory Programs.
[FR Doc. E9-16146 Filed 7-7-09; 8:45 am]
BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. #AMS-CN-09-0015; CN-09-002]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2009 Amendments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by increasing the value assigned to imported cotton for calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An amendment is required to adjust the assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton. In addition, AMS is adding and changing Harmonized Tariff Schedule (HTS) statistical reporting numbers that were amended since the last assessment adjustment.

DATES: *Effective Date:* August 7, 2009.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639-S,

Washington, DC 20250-0224, telephone (202) 720-6603, facsimile (202) 690-1718, or e-mail at *Shethir.Riva@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act (7 U.S.C. 2101-2118) ("Act") provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624) on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and