

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR 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:** Proposed rule.

**SUMMARY:** We are proposing to amend the user fee regulations by adjusting the fees charged for export certification of plants and plant products. We are proposing to increase these user fees for fiscal years 2007 through 2012 to reflect the anticipated costs associated with providing these services during each year. We are also proposing 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 administrative costs associated with that service. Finally, we are proposing to make several nonsubstantive changes to the regulations for clarity. These proposed changes would enable us to properly recover the costs of providing export certification services for plants and plant products.

**DATES:** We will consider all comments that we receive on or before August 13, 2007.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0137 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting

comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link. Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0137, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0137.

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

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Ms. Karen Bedigian, Senior Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5712. For information concerning rate development, contact Mrs. Kris Caraher, User Fee Section, Financial Services Branch, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–5901.

#### SUPPLEMENTARY INFORMATION:

##### Background

User fees for the issuance of export certificates for plants and plant products are contained in 7 CFR 354.3 (referred to below as the regulations). Export certificates are issued in accordance with the regulations in 7 CFR part 353, and they certify agricultural products as being considered free from plant pests, according to the phytosanitary requirements of the foreign countries to which the plants and plant products may be exported. Export certificates are also issued to certify that reexported plants or plant products conform to the most current phytosanitary requirements of the importing country

and that, during storage in the United States, the consignment has not been subjected to risk of infestation or infection. These export certificates must be issued in accordance with 7 CFR part 353 to be accepted in international commerce.<sup>1</sup>

#### Regulations Proposed in This Document

We are proposing to amend the regulations in § 354.3 to adjust the user fees charged for export certification of plants and plant products. The Animal and Plant Health Inspection Service (APHIS) has not adjusted these particular user fees since the publication of a final rule in the **Federal Register** on January 29, 1996 (61 FR 2660–2665, Docket No. 94–074–2). That rule increased the user fees for certification of plants and plant products to reflect the actual cost of providing those services.

Given the routine increases in operating costs, the current user fees for the certification of plants and plant products must be adjusted in order for APHIS to recover the full cost of providing these services. Therefore, we are proposing to adjust these fees. Specifically, we are proposing to set the fees for fiscal years (FYs) 2007 through 2012 and beyond for each of the following categories of service: (1) Certification for export or reexport of a commercial shipment; (2) certification for export or reexport of a low-value commercial or noncommercial shipment; and (3) replacement of any certificate for export or reexport.

In addition, we are also proposing to add a new user fee for exporters who will be obtaining Federal export certificates for plants and plant products from State or county cooperators. State and county cooperators can issue Federal export certificates and APHIS will print, distribute, and track these State/county issued export certificates, incurring administrative as well as associated overhead costs. In order to cover the administrative costs APHIS incurs in connection with these State and county operations, we are proposing to establish a new user fee which would become effective in FY 2007. We are proposing to set fees for FYs 2007 through 2012.

<sup>1</sup> These export certificates are not commercial documents; they can be issued for noncommercial consignments.

This administrative fee for a Federal export certificate issued by State and county cooperators would be remitted by the exporter directly to APHIS through the Phytosanitary Certificate Issuance and Tracking System (PCIT),<sup>2</sup> provided that the exporter has a PCIT account and submits the application for the export certificate through the PCIT. If the exporter does not have a PCIT account or if the State or county creates export certificates independently using the PCIT or cannot or will not use the system, 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.

Under this proposal, the FY 2007 fees would become effective on the date specified in the final rule, the FY 2008 through FY 2012 rates would become effective on the first day of each of those fiscal years, and the FY 2012 rates would remain in effect until new rates were established. The user fee tables in this document, therefore, do not specify an end date for fees that would become effective on October 1, 2011 (the beginning of FY 2012). Establishing the user fee changes 6 years in advance would allow users of APHIS' services to incorporate the fees into their budget planning. APHIS would review the fees annually and, if necessary, publish a proposal to amend them if the published fees do not properly recover our costs.

Finally, this proposed rule would make several nonsubstantive changes to the regulations for clarity. These changes are described below under the section heading "Miscellaneous."

#### User Fee Accounting

In FY 1992, APHIS established accounting procedures to, among other things, segregate export certification costs for plants and plant products from all other costs. We maintain all export certification user fees we collect in a distinct account, carefully monitor the balance of this account, and only use these funds to pay for our actual costs for providing export certification services.

#### Types of Program Costs

As part of our accounting procedures, we maintain separate accounting codes to record costs that can be directly related to an inspection activity. These

are referred to as "direct-charge costs." At the APHIS field level and below, we direct-charge the following costs to the user fee account: Salaries and benefits, direct labor of supervisors, such as officers-in-charge, and clerical staff; equipment used only in connection with services subject to user fees; contracts; large supply items such as uniforms; and systems costs, which include supporting the PCIT, paper, paper distribution, etc.

Other program-delivery-related costs, at the APHIS field level and below, that cannot be directly charged to individual accounts are charged to "distributable" accounts established at the APHIS field level and are referred to as "distributable costs." The following types of costs are charged to distributable accounts: Utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are prorated (or distributed) among all the activities, including export certification services, that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level.

Export Program costs also include program direction and support costs we incur at the regional and headquarters level. These are costs related to the overall management of APHIS' Plant Protection and Quarantine (PPQ) program. The PPQ program incurs these costs for functions carried out by PPQ management support staff at headquarters in Riverdale, MD, and by various staffs at APHIS' two regional hubs located in Raleigh, NC, and Fort Collins, CO. The headquarters and regional staffs perform program support activities such as budget planning, formulation, justification, and execution specific to the PPQ program; specialized agreement management; staff-year management; program spending monitoring and projections; and liaison with higher-level internal and external entities.

We also incur Agency-level support costs through activities that support the Export Program, such as recruitment and development; legislative and public affairs; regulation development; regulatory enforcement; and budget, accounting, payroll, purchasing, billing, and collection services.

Departmental charges are assessed for various program costs, including Agency support staffs at the U.S. Department of Agriculture (USDA) Department level, Federal telephone service, mail, processing of payroll and money management, unemployment compensation, Office of Workers

Compensation Programs, and central supply depots for storing and issuing commonly used supplies and forms.

#### Prior Year Cost Identification

As we have noted, the user fees supporting the Export Program have not been adjusted since 1996. In order to properly identify actual total program costs, we employed contractors from Kadix Systems in FY 2004 to develop and document an accurate cost-based analysis of the nationwide Export Program. We also established an Export User Fee Work Group to assist with technical and program expertise; provide financial and budgetary advice; and perform data collection, regulatory analysis, and management review for this project. The contracting project team provided an export user fee report on their review of export certificate issuance trends, direct labor costs, support costs for 5 fiscal years, and fluctuations in activity volumes.

Based on the analysis of the Kadix Systems study, we were able to better identify our true export certification user fee costs. We then added the pro-rata share of the distributable accounts at the APHIS field level and appropriate amounts to recover regional, headquarters, Agency, and departmental level costs, and other costs to identify our full costs for providing export certification services.

#### Cost Projections for FY 2007 Through FY 2012

We used prior year costs and added inflationary factors and planned new costs, such as new staffing and automation/information technology initiatives, to project our costs for FY 2007 through FY 2012. We then added a reasonable amount to contribute to a reserve in the Export Program user fee accounts to identify our total anticipated costs for those years. Those reserve funds provide us with a means to ensure that we have sufficient operating funds in cases of fluctuations in activity volumes or unanticipated events that could impact the program. We split our total costs for each fiscal year into the certification categories.

#### Development of Estimated Spending Amounts

The estimated spending amounts for FY 2007 through FY 2012 are based on data from FYs 2004 through 2006. The FY 2007 base costs include the direct-charge and program-delivery costs described above. We added our estimated pay cost increases during FY 2007 and our estimated new costs, including new hires, training, and automation initiatives. We next added

<sup>2</sup> While we are not currently accepting payments through the PCIT, we anticipate that the payment collection system will become fully operational in FY 2007, at which time, payment for applications for, and issuance of, the other certificates referred to above would also become possible through the PCIT.

overhead expenses, including the program direction and support and Agency-level support costs and Departmental charges as described above. We then included rent and a reserve amount.

FY 2007 base cost ..... \$9,423,440  
Estimated Pay Costs @ 2.3% ... 216,739

New Costs ..... 4,718,753  
Subtotal ..... 14,358,932  
Overhead @ 16.15% ..... 2,318,967  
Departmental Charges @  
3.38% ..... 563,985  
Rent Costs ..... 299,064  
Subtotal ..... 3,182,016  
Reserve Component ..... 932,301  
FY 2007 Total ..... \$18,473,249

We evaluated our historic cost-distribution percentages and applied them to the costs we identified and estimated for FYs 2007 through 2012 to split our projected costs among the export certificate categories described earlier. The following table indicates the estimated spending amounts for FY 2007 through FY 2012:

TABLE 1.—TOTAL PROJECTED COST FOR ADMINISTERING THE EXPORT PROGRAM, FY 2007–2012

Certificate categories	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Commercial shipment .....	\$15,408,495	\$15,763,411	\$16,126,748	\$16,498,975	\$16,880,308	\$17,261,762
Noncommercial and low-value shipments .....	477,026	488,014	499,262	510,786	522,591	534,401
Replacement .....	97,615	99,864	102,166	104,524	106,940	109,356
State or county issued .....	2,490,113	2,547,470	2,606,187	2,666,342	2,727,968	2,789,613
Total .....	18,473,249	18,898,759	19,334,363	19,780,627	20,237,807	20,695,132

### Volumes

Once we identified our estimated costs for each of the export certificate categories and estimated our costs in out years using economic factors, we then divided our annual costs by the estimated volumes for each export

certification category to obtain our cost per export certification category. We performed extensive volume analyses to project volumes for each fee category in the out years. We reviewed actual data for each service category for FYs 2004 through 2006 and estimated our annual export certification volumes for FYs

2007 through 2012 by reviewing the Kadix Systems volume analysis and conducting surveys of several work units with high volumes of export certifications. The following table identifies volumes for export certificates by service category for FY 2007 through FY 2012.

TABLE 2.—PROJECTED VOLUMES BY SERVICE CATEGORY, FY 2007–2012

Service categories	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Commercial shipment .....	155,565	157,121	158,692	160,279	161,882	163,501
Noncommercial and low-value shipments .....	8,348	8,432	8,517	8,601	8,687	8,774
Replacement .....	6,845	6,913	6,982	7,052	7,123	7,194
APHIS subtotal .....	170,759	172,467	174,191	175,933	177,692	179,469
State or county issued .....	155,206	156,758	158,326	159,909	161,508	163,123
Grand total .....	325,965	329,225	332,517	335,482	339,200	342,592

### User Fees for Export Certification of Plants and Plant Products

Once we established the total annual costs to administer the Export Program, including the amount necessary to maintain the account reserve at a reasonable level for each of the service categories, we began the calculation of our fees. In calculating the user fees, we divided the sum of the costs of providing each service by the projected volumes (i.e., numbers of export certificates issued), thereby arriving at “raw” fees. We then rounded up or down to the nearest whole dollar to

obtain the final fees and ensure adequate reserve funds. Also, unlike the fees for international air passengers, where the service volumes are so high, in the case of the export certification program, there would be no impact from rounding these user fees to the nearest whole dollar. Our current user fees for export certification of plants and plant products and the user fees we are proposing to charge for these services for each fiscal year from 2007 through 2012 are shown in table 3 below. The proposed user fees would be listed in § 354.3, in a new paragraph (g)(3).

The proposed user fees provide for the maintenance of a reasonable reserve of up to 5 months’ operating expenses in each of the export certification accounts. We intend to monitor the reserve balances closely and propose adjustments in our fees as necessary. 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. 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.

TABLE 3.—USER FEES FOR EXPORT OR REEXPORT CERTIFICATION OF PLANTS AND PLANT PRODUCTS

Certificate categories	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Commercial shipment .....	\$50	\$99	\$100	\$102	\$103	\$104	\$106
Noncommercial shipment .....	23	57	58	59	59	60	61
Low value shipment .....	23	57	58	59	59	60	61
Replacement .....	7	14	14	15	15	15	15

TABLE 3.—USER FEES FOR EXPORT OR REEXPORT CERTIFICATION OF PLANTS AND PLANT PRODUCTS—Continued

Certificate categories	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
State or county issued .....	.....	16	16	17	17	17	17

**Miscellaneous**

We are also proposing to make several changes to the regulations in addition to those described above. These changes are needed for clarity and to ensure that APHIS is fully compensated for all the export-certification services it performs.

We have been allowing, and would continue to allow, exporters to purchase prepaid “blocks” of certificates (we do not specify the number of certificates in a block) for commercial shipments only. The current regulations do not indicate clearly that only commercial shipment certificates may be purchased this way. We would amend the regulations in § 354.3(g) to remove any ambiguity on this point.

We are also proposing to amend the regulations in § 354.3(g) to make clear that work necessary to issue an export certificate that must be conducted outside of normal business hours is subject to our reimbursable overtime rates (7 CFR 354.1), in addition to the applicable user fee. This change is necessary to ensure that APHIS is properly compensated for services provided outside of normal business hours.

The current regulations in § 354.3(g) do not clearly reflect that we charge user fees for issuing reexport certificates for noncommercial shipments in connection with the export of plants and plant products. To eliminate confusion, we are proposing to add a specific reference to this existing fee in § 354.3(g).

We would make several changes to § 354.3(h)(1), which currently provides that a shipper who pays for a block of export certificates to cover commercial shipments may obtain a refund or a credit against future AQI user fees under the following circumstances:

- If a certificate from the block is voided;
- If a certificate from the block is returned unused;
- If the shipper pays for inspection outside of normal business hours (8 a.m. to 4:30 p.m.) under § 354.1;
- If a certificate from the block is used for a noncommercial shipment; or
- If a certificate from the block is used to reissue another certificate.

We would amend § 354.3(h)(1)(i) to indicate that the shipper would be eligible for a refund only if an export certificate is voided prior to its being

signed by a certifying official. If APHIS issues a certificate and the exporter then decides to void it, there should be no refund because APHIS will have already performed the work of processing and issuing the certificate and will have incurred the associated costs.

We would also amend the paragraph to eliminate the reference to obtaining credit against future AQI user fees. We do not offer such credits.

We would amend § 354.3(h)(1)(ii) to indicate that the shipper would be eligible for a refund only if an unused export certificate is returned in its original unused condition. This clarification is needed because if a certificate is not in its original condition, *i.e.*, if anything has been written on it, it may no longer be used.

We would remove current paragraph (h)(1)(iii), pertaining to inspection outside normal business hours, because a shipper would no longer be eligible for a refund under the circumstances described in the paragraph. Under proposed paragraph (g)(2), described above, work necessary to issue an export certificate that is conducted outside of normal business hours would be subject to both overtime rates and the applicable user fee.

Current paragraph (h)(1)(iv), concerning refunds for export certificates for noncommercial shipments, would be redesignated as (h)(1)(iii) but would not undergo any substantive changes. Current paragraph (h)(1)(v) provides that a shipper is eligible for a refund if a certificate from the block is used to “reissue” another certificate. Because the term “reissue” may be subject to different interpretations, we are proposing to revise this provision to state that a refund may be issued if a certificate from a block is used to replace another certificate that has been lost or destroyed, provided that the certificate is issued as a duplicate certificate, without changes. This paragraph would be redesignated as (h)(1)(iv).

Current paragraph (h)(2) states that the amount of any refund or credit will be the amount overcharged, less \$7 to cover APHIS administrative expenses. In order to make the paragraph consistent with the changes to the fees that we are proposing elsewhere in this proposed rule and to enable us to cover our costs, we would amend the paragraph to indicate that the amount of

any refund (we would also remove the existing reference to a credit from this paragraph) for a certificate issued by APHIS would be determined by APHIS based on the difference between the cost of purchasing the certificate and the cost that would be applicable to its actual use or disposition. For example, if a commercial certificate were purchased as part of a block of certificates for \$99 and then applied to a noncommercial shipment, the certificate for which could be purchased for \$57, then the amount of the refund would total \$42. We would further state that, in the case of a certificate issued on behalf of APHIS by a designated State or county inspector, the amount of the proposed new administrative fee would be withheld from any refund.

Section 354.3 lists definitions for terms, including the terms *export certificate for processed plant products*, *phytosanitary certificates*, and *phytosanitary certificate for reexport*. These existing definitions add no useful information to the regulations and are unnecessary, provided that we include a definition of *certificate* in the regulations. Therefore, we are proposing to amend the regulations by removing the definitions for the three types of certificates and adding a definition of *certificate* to the regulations to read as follows: “Any certificate issued by or on behalf of APHIS describing the phytosanitary 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).”

**Executive Order 12866 and Regulatory Flexibility Act**

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

For this proposed rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an initial regulatory flexibility analysis that examines the potential economic effects on small entities as required by section

603 of the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the persons listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

This proposed rule would amend the user fees for certifying plants and plant products for export (7 CFR 354.3(g)). This proposed rule would also make several other changes to clarify the regulations. In addition to updating and clarifying the current user fees, this proposal would add an administrative user fee for each export certificate issued on behalf of APHIS by a U.S. State or county in order to recover administrative costs associated with providing that service.<sup>3</sup>

The adjusted and new fees proposed in this rule are designed to recover our full costs for providing plant and plant product export certification services and to allow for a reasonable reserve to ensure that we have sufficient operating funds in cases of fluctuations in activity volumes or unanticipated events that could impact the program. The proposed fees are based on an analysis of our costs for providing these services in FYs 2004 through 2006, as well as our best projections of what it would cost us to provide these services in FYs 2007 through 2012. APHIS is updating

these fees to take into account the routine increases in the cost of doing business, such as inflation, replacing equipment, maintaining databases, etc., as well as to properly cover our costs for new hires, training, automation initiatives, and rent, and to build a reserve balance in this account.

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 that has occurred. The demand for certification by exporters is driven by the phytosanitary requirements of importing countries. Eligible commodities generally include live plants, fresh and some dried fruits, vegetables and nuts, unroasted coffee, cereals, 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 2004, exports of the covered commodity categories were valued at nearly \$41 billion.<sup>4</sup> In addition, products in these commodity categories valued at more than \$1.5 billion were reexported in 2004.

The export certification services covered in this proposal are provided to U.S. exporters of plants and plant products. These exporters include those entities shipping plant and plant products to foreign destinations for

commercial as well as noncommercial purposes. These exporters would be the main affected entities of this proposal. In addition, State and county governments would be affected by this proposal.

Under this proposed rule, the user fee for the certification of a commercial or reexport shipment would increase from \$50 to \$99 in FY 2007. Additional yearly increases would raise the fee to \$106 by FY 2012. This proposed rule would also increase the user fee for low-value commercial or reexport shipments and noncommercial shipments from \$23 to \$57 in FY 2007 and to \$61 by FY 2012, with yearly increases. The user fee for replacing any export certificate would rise from \$7 to \$14 in FY 2007 and to \$15 by FY 2012. The proposed new administrative user fee for each certificate issued on behalf of APHIS by a U.S. State or county would be set at \$16 in FY 2007 and ultimately rise to \$17 by FY 2012.

Table 4 shows the projected collections under the user fees covered in this proposal for FY 2007 through FY 2012. The increased revenues would go to cover the projected costs of administering the program and building a reserve to ensure that we have sufficient operating funds in cases of fluctuations in activity volumes or unanticipated events that could impact the program. The largest increase in collections would occur in FY 2007.

TABLE 4.—PROJECTED REVENUE COLLECTIONS FROM PROPOSED USER FEES

(In millions of dollars)

Service	Collections from proposed user fees					
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Commercial shipment .....	\$15.4	\$15.7	\$16.2	\$16.5	\$16.8	\$17.3
Noncommercial and low-value shipments .....	0.5	0.5	0.5	0.5	0.5	0.5
Replacement .....	0.1	0.1	0.1	0.1	0.1	0.1
State or county issued .....	2.5	2.5	2.5	2.7	2.7	2.8
<b>Total .....</b>	<b>18.5</b>	<b>18.8</b>	<b>19.3</b>	<b>19.8</b>	<b>20.2</b>	<b>20.7</b>

To the extent that the proposed changes in user fees would impact exporters' operational costs, any entity that utilizes APHIS' export certification services that are subject to user fees could be affected by this proposed change. The degree to which any entity may be affected would depend on its

market power (the ability to which costs can be either absorbed or passed on to its buyers). While the lack of information on profit margins and operational expenses of the affected entities, or the supply responsiveness of the affected industry,<sup>5</sup> prevents the precise prediction of the scale of

impacts, some conclusions on overall potential impacts on domestic and international commerce can be drawn.

The proposed percentage increases in user fees would be significant primarily in the first year. In all cases, the increase over current fees would be at least 98 percent in FY 2007. If the user fees

<sup>3</sup>In California, county inspectors are authorized to issue Federal export certificates under a memorandum of understanding (MOU) between the California Department of Agriculture (CDFA) and 55 participating counties. This MOU mirrors the requirements set forth between USDA and States.

<sup>4</sup>These values may overstate the value of commodities certified by APHIS, PPQ in these years. In order to have been certified, a given commodity must have met the eligibility requirements, and have been presented for certification. However, these are the categories covering potentially eligible commodities, and commodities within these general categories that

are categorically not eligible for certification, such as refined sugar and frozen fruit and vegetables, are not included here.

<sup>5</sup>The measurement of supply responsiveness would provide information on the likely impact on an entity's production due to changes in operating costs.

cannot be passed on, the profit margins of some entities may decline as user fees are increased. If a user fee does not cover all associated costs, those costs are shifted away from those receiving and benefitting from the service and onto APHIS, and thus ultimately to the taxpayer.

As noted above, this proposed rule would increase the user fee for commercial export and reexport certification from \$50 to \$99 in FY 2007 and to \$106 by FY 2012. In comparison with the current fees, these adjusted fees could generate additional annual collections of \$7.6 million in the first year of the proposal period and about \$8.7 million in FY 2012. This fee would increase by a total of 108 percent over its current level during the period covered by the proposed rule. However, the total impact of these changes should be small. The total dollar value of the fee increases covered in this proposal, \$56, would represent a tiny fraction of the value of those shipments. To put these fees in perspective, at the proposed level, this fee category is projected to generate total collections of \$15.4 million in FY 2007, while exports and reexports of eligible commodities were valued at more than \$42 billion in 2004. The total collections would represent less than 0.04 percent of the value of those shipments.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. As noted earlier, exporters of plants and plant products would be the domestic entities most affected by this proposed rule. The overwhelming majority of these entities (at least 96 percent of each of the categories described below) fall under the Small Business Administration's (SBA's) definition of small entities.

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). 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 Fruit 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, as well as dry beans and soybeans, are 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 434930 "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.

Based on the above, it can be seen that our proposed fee increases would be very small relative to the revenues generated by exporters of plants and plant products, the overwhelming majority of which are small, according to SBA criteria. Thus, we expect that the impact of the fee increases on small entities should be limited. We welcome any additional information or comments from the public regarding the impact of this proposed rule on small entities.

If a commercial export or reexport shipment is valued at less than \$1,250, the fee for certification in this proposal for FY 2007 would be \$57, an increase from \$23. The new fee would represent at least 4.6 percent of the value of the shipment. This is not an insignificant percentage. However, the impact of the fee increase may be mitigated to the degree that individual low-value shipments can be consolidated into single shipments for certification.

This proposed rule would increase the user fee for noncommercial export and reexport certification from \$23 to \$57 in FY 2007, and to \$61 by FY 2012. Combined with the changes for low-value commercial shipments, these changes could generate additional annual collections of \$284,000 in the first year of the proposal period, increasing to about \$333,000 in FY 2012. These fees would increase by a total of 161 percent over current levels during the period covered by the proposed rule. However, it is estimated that only about 8,500 of these certificates are issued annually.

This proposed rule would increase the user fee for replacing any export certificate from \$7 to \$14 in FY 2007, and to \$15 by FY 2012. Compared with the current fees, these adjusted fees could generate additional annual collections of \$48,000 in the first year of the proposal period and about \$58,000 in FY 2012. While this increase is a doubling of the fee, its impact should still be small.

There are administrative costs to APHIS associated with the running of the export certification program nationwide, regardless of whether APHIS or a State or county cooperator issues the certificate. The proposed user fees for APHIS-issued certificates would recover these administrative costs. This proposed rule would initiate an administrative user fee for each export certificate issued on behalf of APHIS by a State or county in order to recover the costs APHIS incurs in supporting these State and county operations. The user fee for State-or county-issued Federal export certificates would be set at \$16 in FY 2007 and increase to \$17 by FY 2012. These changes could generate additional annual collections of \$2.5 million in the first year of the proposal period and about \$2.8 million by FY 2012.

As noted earlier, the administrative fee for Federal export certificates issued by State and county cooperators could be collected directly from the exporter by APHIS through the PCIT; however, in certain circumstances, such as when the exporter cannot or will not use the PCIT, the burden of collecting this administrative fee and remitting it to APHIS would fall directly on the State or county issuing the Federal export certificate. As a result, States and counties that do not utilize the PCIT would be likely to incur some administrative and recordkeeping costs. However, additional costs should be low because in most cases, alternative mechanisms are already in place for collecting export certification fees. To the extent that a State or county were to increase the fees it charges in order to incorporate the new administrative fee and pass the increased administrative and recordkeeping costs onto exporters, it would shift the burden of the fee to the user.

Any fee charged for export services performed by a State or county is determined by the individual State or county performing the service. Currently, States/counties charge from \$0 to \$212<sup>6</sup> for a commercial export

<sup>6</sup>One county has a sliding scale based upon the commodity being shipped that ranges from \$22 to \$212.

certificate, with an average of about \$28; and from \$0 to \$50 for a noncommercial certificate, with an average of about \$19. States/counties currently charge from \$0 to \$75, with an average of about \$16 to replace a commercial certificate, and from \$0 to \$50, with an average of about \$15 to replace a noncommercial certificate. Thirty-five States have charges for issuing certificates. Twelve States have fee structures that duplicate APHIS' fee structure.<sup>7</sup> These fees could well change following the implementation of this rule to incorporate the Federal administrative fee, thereby shifting the burden of the fee to the users.

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

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

One alternative to this proposed rule would be to leave the regulations unchanged. In this case, the fees would remain unchanged. However, these fees were last updated in 1996 and will no longer recover the full cost of providing certification services. The existing fees will not cover the routine increases in the cost of doing business, such as inflation, replacing equipment, maintaining databases, etc. If APHIS were to continue to collect user fees at the current rates in FYs 2007 through 2012, total collections would be about \$63 million short of projected program costs over that period. Therefore, this alternative was rejected.

Another alternative we considered was not adding the proposed administrative user fee for each certificate issued on behalf of APHIS by a U.S. State or county. However, APHIS' activities support these State and county operations, as well as our nationwide export certification functions. APHIS' costs for printing, distributing, and tracking these State/county issued certificates, as well as associated overhead costs, would not be recovered under the current user fees. The users

who obtain export certification issued by a State or county on APHIS' behalf would only pay the costs that the State or county incurs in issuing the certificate. Therefore, this alternative was rejected.

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

**Paperwork Reduction Act**

This proposed 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 propose to amend 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 would continue 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 would be amended as follows:

a. In paragraph (a), by removing the definitions of *export certificate for processed 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 revising paragraph (h) to read as set forth below.

**§ 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, or, in the case of a prepaid block of certificates (only certificates for commercial shipments may be purchased in this way), at the time the certificates are given to the shipper.

(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 7 CFR part 354.

(3)(i) Each exporter who receives an export or reexport certificate issued on behalf of APHIS by a designated State or county inspector must pay an AQI user fee, as shown in the following table. The AQI user fee will 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 certificate
[Effective date of final rule] through September 30, 2007 .....	\$16
October 1, 2007, through September 30, 2008 .....	16
October 1, 2008, through September 30, 2009 .....	17

<sup>7</sup> Kadix systems. United States Department of Agriculture, Animal & Plant Health Inspection Service, Plant Protection and Quarantine; Analysis of the Export User Fee Program; Final Report. December 2004.

Effective dates	Amount per certificate
October 1, 2009, through September 30, 2010 .....	17
October 1, 2010, through September 30, 2011 .....	17
Beginning October 1, 2011 ..	17

(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
[Effective date of final rule] through September 30, 2007 .....	\$99
October 1, 2007, through September 30, 2008 .....	100
October 1, 2008, through September 30, 2009 .....	102
October 1, 2009, through September 30, 2010 .....	103
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
[Effective date of final rule] through September 30, 2007 .....	\$57
October 1, 2007, through September 30, 2008 .....	58
October 1, 2008, through September 30, 2009 .....	59
October 1, 2009, through September 30, 2010 .....	59
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
[Effective date of final rule] through September 30, 2007 .....	\$57
October 1, 2007, through September 30, 2008 .....	58

Effective dates	Amount per shipment
October 1, 2008, through September 30, 2009 .....	59
October 1, 2009, through September 30, 2010 .....	59
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
[Effective date of final rule] through September 30, 2007 .....	\$14
October 1, 2007, through September 30, 2008 .....	14
October 1, 2008, through September 30, 2009 .....	15
October 1, 2009, through September 30, 2010 .....	15
October 1, 2010, through September 30, 2011 .....	15
Beginning October 1, 2011 ..	15

\* \* \* \* \*

(h) *Refunds of AQI user fees.* (1) A shipper who pays for a block of certificates to cover commercial shipments may obtain a refund under the following circumstances:

(i) If a certificate from the block is voided prior to its being signed by a certifying official;

(ii) If a certificate from the block is returned in its original, unused condition;

(iii) If a certificate from the block is used for a noncommercial shipment; or

(iv) If a certificate from a block is used to replace another certificate that has been lost or destroyed, provided that the certificate is issued as a duplicate certificate, without changes.

(2) The amount of any refund for a certificate issued by APHIS will be determined by APHIS based on the difference between the cost of purchasing the certificate and the cost that applies to its actual use or disposition. In the case of a certificate issued on behalf of APHIS by a designated State or county inspector, the amount listed in paragraph (g)(3)(i) of this section will not be refunded.

\* \* \* \* \*

Done in Washington, DC, this 6th day of June 2007.

**Bruce Knight,**  
Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E7-11278 Filed 6-11-07; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2007-28068; Directorate Identifier 2007-CE-043-AD]

**RIN 2120-AA64**

**Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate No. A00010W1 previously held by Raytheon Aircraft Company) Model 390 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model 390 Airplanes. This proposed AD would require you to inspect the starter-generator to determine the serial number (S/N) and suffix letter, which indicates if the part is defective, and replace any defective starter-generator with one of new design. This proposed AD results from reports of a manufacturing error where certain starter-generators may have been improperly shimmed. We are proposing this AD to detect and replace defective starter-generators, which could result in premature starter-generator failure. This failure could lead to increased chances of dual starter-generator failure on the same flight.

**DATES:** We must receive comments on this proposed AD by August 13, 2007.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- *Fax:* (202) 493-2251.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

For service information identified in this proposed AD, contact Hawker Beechcraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140.