

# Proposed Rules

Federal Register

Vol. 60, No. 219

Tuesday, November 14, 1995

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

### Consolidated Farm Service Agency

#### 7 CFR Part 782

RIN 0560-AE37

#### End-Use Certificate Program

**AGENCY:** Consolidated Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Consolidated Farm Service Agency (CFSA) is proposing to amend the regulations found at 7 CFR part 782 which govern the End-Use Certificate Program. The End-Use Certificate Program is administered in accordance with section 321(f) of the North American Free Trade Agreement Implementation Act. This rule proposes to amend reporting requirements, reporting deadlines, and the required notification process in a manner that will increase program effectiveness and efficiency for government and affected industries. If adopted, the provisions of this regulation would simplify the reporting burden placed on importers, subsequent buyers, end users and exporters by extending reporting deadlines and incorporating alternative reporting methods.

Other minor revisions to the regulations are proposed as well.

**DATES:** Written comments must be received on or before December 14, 1995 in order to be assured of consideration.

**ADDRESSES:** Comments concerning this proposed rule must be mailed to Deputy Administrator, Commodity Operations, CFSA, P.O. Box 2415, Washington, DC 20013-2415. All written comments will be available for public inspection in Room 5962, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 5 p.m. Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Steve Gill, Acting Deputy Director, Warehouse and Inventory Division,

CFSA, Box 2415, Washington, DC 20013-2415; telephone (202) 720-5647 or FAX (202) 690-0014.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

##### Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

##### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Analysis is needed.

##### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

##### Paperwork Reduction Act

This rule proposes to amend the reporting requirements by extending reporting deadlines and incorporating alternative reporting methods. Since February 27, 1995, the effective date of the end-use certificate program, CFSA has determined that entities required to file form CFSA-750, End-Use Certificate for Wheat, and form CFSA-751, Wheat Consumption and Resale Report, have encountered some difficulty in meeting the requirement that these forms be filed with the Kansas City Commodity Office (KCCO) within 10 workdays following the date of entry, or the date of resale, as applicable. This proposal to increase the reporting requirement from 10 workdays following the date of entry or resale, as applicable, to 15 workdays following the date of entry or resale will provide increased flexibility to the entity that is required to file the report

without decreasing the efficiency of the program on the part of the government. Additionally, numerous requests have been received by CFSA to permit facsimile transmission and computer generation of forms CFSA-750, End-Use Certificate for Wheat, and CFSA-751, Wheat Consumption and Resale Report. In an attempt to utilize technology that is currently available, CFSA is proposing that such report submissions will be acceptable under the End-Use Certificate Program. While all of the entities that are required to file forms CFSA-750 and CFSA-751 have the potential of being affected by these proposed changes in reporting requirements, no entities will be adversely affected.

The changes proposed in this rule do not impact recordkeeping requirements.

The reporting requirements for CFSA-750 and CFSA-751 were previously approved by the Office of Management and Budget (OMB) and assigned OMB control number 0560-0151.

These revised reporting requirements will be submitted to OMB for approval under the provisions of 44 U.S.C. 35. Send comments regarding this collection of information to: Department of Agriculture, Clearance Officer, Office of Information Resources Management, Room 404-W, Washington, DC 20250, and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Room 3201, New Executive Office Building, Washington, DC 20503.

##### Regulatory Flexibility Act

On January 26, 1995, CFSA published a final rule that established program requirements for the End-Use Certificate Program. At that time, a Regulatory Flexibility Analysis was prepared to discuss the impact of the implementation of the End-Use Certificate Program. A copy of this Regulatory Flexibility Analysis is available upon request from Helen Linden, Warehouse and Inventory Division, CFSA, P.O. Box 2415, Washington, DC 20013-2415; telephone: (202) 690-4321.

The changes that are proposed in this rule are intended to reduce the reporting burden for all businesses, including small businesses. Because these proposed changes will not have an adverse impact on a substantial number of small businesses, a Regulatory Flexibility Assessment is not required for this proposed rule.

**Background**

This rule proposes to amend the regulations at 7 CFR part 782 with respect to the U.S. End-Use Certificate Program. Since February 27, 1995, the effective date for the implementation of the End-Use Certificate Program, several items have been identified that could improve the effectiveness and the efficiency of the End-Use Certificate Program.

The final rule published on January 26, 1995, at 60 FR 5087, did not include a specific time requirement for importers and subsequent buyers to inform subsequent buyers or end users that wheat being purchased is of Canadian origin, and as such, is subject to these regulations. In some instances, importers are delivering Canadian wheat to subsequent buyers and end users through grain handlers. CFSA has found that this method of transporting Canadian wheat results in some grain handlers acquiring title to a portion of the wheat, thus becoming either a subsequent buyer or end user. The general interpretation of existing regulations by affected parties is that the importer or subsequent buyer has 10 days to provide a copy of the form End-Use Certificate for Wheat, ASCS-750, to the subsequent buyer or exporter, which mirrors the requirement for submitting forms to the Kansas City Commodity Office (KCCO). This delay in notification has resulted in situations where subsequent buyers and end users have either commingled Canadian wheat with U.S. origin wheat or resold Canadian wheat before they were informed that the wheat is of Canadian origin. Therefore, CFSA proposes to amend the regulations at 7 CFR part 782 to require importers and subsequent buyers to provide immediate notification to purchasers and grain handlers when wheat being sold is of Canadian origin.

Secondly, in an effort to simplify and expedite the receipt of reports, this proposed rule would extend the time requirements for filing form ASCS-750 with KCCO from 10 to 15 workdays following the date of entry and incorporate provisions which will permit the electronic transmission and computer generation of required forms.

Finally, this proposed rule includes nomenclature changes to revise form numbers ASCS-750 and ASCS-751 to CFSA-750 and CFSA-751, respectively.

For the reasons set out in the preamble, 7 CFR part 782 is proposed to be amended as follows:

**PART 782—END-USE CERTIFICATE PROGRAM**

1. The authority citation for part 782 continues to read as follows:

Authority: 19 U.S.C. 3391(f).

2. In part 782 all references to "ASCS-750" are revised to read "CFSA-750."

3. In part 782 all references to "ASCS-751" are revised to read "CFSA-751."

4. Section 782.2 is amended to add the following definition immediately following the definition for "Entry":

**§ 782.2 Definition.**

\* \* \* \* \*

*Grain handler* means an entity other than the importer, exporter, subsequent buyer, or end user that handles wheat on behalf of an importer, exporter, subsequent buyer, or end user.

\* \* \* \* \*

5. Section 782.4 is revised to read as follows:

**§ 782.4 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 0560-0151.

6. Section 782.12 is amended by:

A. Removing the number "10" in the first sentence of paragraph (a) and adding the number "15" in its place,

B. Removing paragraph (a)(8),

C. Redesignating paragraphs (a)(9) and (a)(10) as paragraphs (a)(8) and (a)(9), respectively,

D. Redesignating paragraphs (b), (c), and (d) as paragraphs (d), (e), and (f), respectively, and revising newly redesignated paragraph (e) to read as set forth below,

E. Adding new paragraphs (b) and (c) to read as follows:

**§ 782.12 Filing CFSA-750, End-Use Certificate for Wheat.**

\* \* \* \* \*

(b) Importers may provide computer generated form CFSA-750, provided such computer generated forms:

(1) Are approved in advance by KCCO,

(2) Contain a KCCO assigned serial number, and

(3) Contain all of the information required in paragraphs (a)(1) through (a)(9) of this section.

(c) KCCO will accept form CFSA-750 submitted through the following methods:

(1) Mail service, including express mail,

(2) Facsimile machine, and

(3) Other electronic transmissions, provided such transmissions are approved in advance by KCCO. The importer remains responsible for ensuring that electronically transmitted forms are received in accordance with paragraph (a) of this section.

\* \* \* \* \*

(e) Distribution of form CFSA-750 will be as follows:

(1) If form CFSA-750 is submitted to KCCO in accordance with paragraph (c)(1) of this section, the original shall be forwarded to Kansas City Commodity Office, Warehouse License and Contract Division, P.O. Box 419205, Kansas City, MO 64141-6205, by the importer,

(2) If form CFSA-750 is submitted to KCCO in accordance with paragraphs (c)(2) or (c)(3) of this section, the original form CFSA-750 that is signed and dated by the importer in accordance with paragraph (d) of this section shall be maintained by the importer,

(3) One copy shall be retained by the importer,

(4) The importer shall provide a photocopy to the end user or, if the wheat is purchased for purposes of resale, the subsequent buyer(s).

\* \* \* \* \*

7. Section 782.13 is amended by:

A. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by removing the number "10" in the new paragraph (d) and adding the number "15" in its place,

B. Adding paragraph (b) to read as follows:

**§ 782.13 Importer Responsibilities.**

\* \* \* \* \*

(b) Immediately notify each subsequent buyer, grain handler, or end user that the wheat being purchased or handled originated in Canada and may only be commingled with U.S.-produced wheat by the end user or when loaded onto a conveyance for direct delivery to the end user or a foreign country.

\* \* \* \* \*

8. Section 782.15 is amended by:

A. Removing the number "10" in paragraph (a)(1) and adding the number "15" in its place, and

B. Adding paragraphs (e), (f), and (g) to read as follows:

**§ 782.15 Filing CFSA-751, Wheat Consumption and Resale Report.**

\* \* \* \* \*

(e) Filers may provide computer generated form CFSA-751, provided such computer generated forms:

(1) Are approved in advance by KCCO, and

(2) Contain the information required in paragraphs (b)(1) through (b)(9).

(f) KCCO will accept form CFSA-751 submitted through the following methods:

(1) Mail service, including express mail,

(2) Facsimile machine, and

(3) Other electronic transmissions, provided such transmissions are approved in advance by KCCO. The importer remains responsible for ensuring that electronically transmitted forms are received in accordance with this section.

(g) Distribution of form CFSA-751 will be as follows:

(1) If form CFSA-751 is submitted to KCCO in accordance with paragraph (f)(1) of this section, the original shall be forwarded to Kansas City Commodity Office, Warehouse License and Contract Division, P.O. Box 419205, Kansas City, MO 64141-6205, by the importer, end user, exporter, or subsequent buyer,

(2) If form CFSA-751 is submitted to KCCO in accordance with paragraphs (f)(2) or (f)(3) of this section, the original form CFSA-751 that is signed and dated by the importer, end user, exporter, or subsequent buyer in accordance with paragraph (b)(8)(v) or (b)(9)(iv) of this section shall be maintained by the importer, end user, exporter, or subsequent buyer,

(3) One copy shall be retained by the importer, end user, exporter, or subsequent buyer.

\* \* \* \* \*

9. Section 782.17 is amended by:

A. Redesignating paragraph (b) as paragraph (c), and

B. Adding a new paragraph (b) to read as follows:

**§ 782.17 Wheat purchased for resale.**

\* \* \* \* \*

(b) The importer or subsequent buyer shall immediately notify each subsequent buyer, grain handler, exporter, or end user that the wheat being purchased or handled originated in Canada and may only be commingled with U.S.—produced wheat by the end user or when loaded onto a conveyance for direct delivery to the end use or a foreign country.

\* \* \* \* \*

Signed at Washington, DC, on November 3, 1995.

Grant Buntrock,

Administrator, Consolidated Farm Service Agency.

[FR Doc. 95-27817 Filed 11-13-95; 8:45 am]

BILLING CODE 3410-05-P

**DEPARTMENT OF JUSTICE**

**8 CFR Parts 292 and 292a**

[EOIR: 109N; AG Order No. 1196-95]

RIN 1125-ZA00

**Executive Office for Immigration Review; Representation and Appearance**

**AGENCY:** Department of Justice.

**ACTION:** Request for public comment.

**SUMMARY:** This request for comment seeks input regarding possible changes in the qualifications required of an organization before it may be recognized by the Executive Office for Immigration Review (EOIR) to represent persons before the Immigration and Naturalization Service (Service), the Board of Immigration Appeals (Board), and the Immigration Court. Specifically, comments are requested regarding whether the requirement that recognized organizations may charge only "nominal fees" should be changed.

**DATES:** Comments must be submitted on or before December 14, 1995.

**ADDRESSES:** Comments may be submitted to General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041.

**FOR FURTHER INFORMATION CONTACT:** Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305-0470.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the present version of 8 CFR 292.2, non-profit religious, charitable, social service, or similar organization may designate representatives to practice before the Service, the Immigration Court, and the Board if the organization has applied for and received recognition from the Board. To gain such recognition, an organization must establish to the satisfaction of the Board that—

(1) It charges only nominal fees for its services and assesses no excessive membership dues, and

(2) It has adequate knowledge, information, and experience to represent its clients in immigration matters.

The requirement that a recognized organization may charge only nominal fees has been a requirement for recognition by the Board since 1975. The requirement has existed to ensure that recognized organizations are in fact

charitable, are serving low-income or indigent clients, and are not representing their clients for profit.

The term "nominal fees" has not been specifically defined, but rather interpretation has been left to a case-by-case analysis. However, the Board has stated that the "imposition of nominal fees was not intended as a means through which an organization could fund itself." *Matter of American Paralegal Academy, Inc.*, 19 I&N Dec. 386 (BIA 1986). The Board has also stated that the fact that an organization's fees are "substantially less than those charged by law firms is not a proper standard for consideration since such organizations are not law firms." *Id.* Beyond this, little concrete guidance regarding the meaning of nominal fees has been provided in the 20 years since the term first appeared in the regulation. Traditionally, however, the term has been narrowly construed to permit recognized organizations to charge only minimal amounts for their services.

The nominal fees restriction has been criticized by some as constituting a barrier to affordable, quality legal services to poor aliens. It has been asserted that some organizations, well-qualified to represent aliens, do not even attempt to gain recognition from the Board because of the nominal fee restriction, and that many other recognized organizations are unable to meet the demand for their services due to the financial constraints imposed by the nominal fees restriction.

On the other hand, other groups have suggested that an increase in nominal fees charged by recognized organizations may place them in competition with members of the bar for clients who can afford legal services. This arguably exceeds the scope of the "recognized organization" program, which was intended to address the needs for pro bono representation. It also creates certain issues with respect to oversight by the Board of the performance and fee charging policies of recognized organizations.

The issues raised by the nominal fees regulation have recently become the focus of additional attention. Many recognized organizations have stated that they are losing funding as charitable contributions dwindle and sentiment against providing legal aid to aliens grows. A number of organizations have informed EOIR that they have closed completely or have scaled back their immigration programs. At the same time, some organizations assert, the need for services to low-income aliens has been steadily growing. The perceived hardship imposed by the nominal fee restriction on both