

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Parts 353 and 354

[Docket No. 90-117-3]

RIN 0579-AA54

#### Export Certificates

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

**ACTION:** Final rule.

**SUMMARY:** We are revising the "Phytosanitary Export Certification" regulations, which concern inspection and phytosanitary certification of plants and plant products offered for export.

The changes we are making will: Revise the requirements for qualifying as an inspector; allow persons other than inspectors, to be known as "agents," to perform phytosanitary field inspections; provide for use of a form specifically for certification of processed plant products offered for export; provide for phytosanitary certification of plants and plant products that are offered for reexport from the United States after having been legally imported into the United States; provide for industry-issued certification of certain plant products under terms of an agreement between the industry and the Animal and Plant Health Inspection Service; and specify that we will issue only one certificate for any export consignment.

These actions will facilitate the export of American agricultural products by providing additional types of certifications and ensuring that a sufficient number of qualified individuals are available to carry out Federal certification activities. We are also making minor editorial changes to our user fee regulations for imports and exports.

**EFFECTIVE DATE:** May 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Nancy Klag, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, Maryland 20737-1236; (301) 734-8537.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Phytosanitary Export Certification regulations, contained in 7 CFR part 353 (referred to below as the regulations), set forth procedures for obtaining phytosanitary certificates for domestic plants and plant products offered for export.

On August 16, 1995, we published in the Federal Register (60 FR 42472-42479, Docket No. 90-117-1) a proposal to amend the regulations to: (1) Revise the requirements for qualifying as an inspector; (2) allow persons other than inspectors to perform phytosanitary field inspections; (3) provide for use of a form specifically for certification of processed plant products offered for export; (4) provide for phytosanitary certification of plants and plant products that are offered for reexport from the United States after having been legally imported into the United States; (5) provide for industry-issued certification of certain plant products under terms of an agreement between the industry and the Animal and Plant Health Inspection Service; and (6) specify that we will issue only one certificate for any export consignment.

##### Comments and Responses

We solicited comments concerning our proposal for 30 days ending September 15, 1995. We reopened and extended the deadline for comments until October 16, 1995, in a document published in the Federal Register on September 18, 1995 (Docket No. 90-117-2, 60 FR 48056). We received 14 comments by that date. They were from producers, exporters, researchers, and representatives of State and foreign governments. They are discussed below by topic.

##### *Training of Agents*

Several commenters suggested that the Animal and Plant Health Inspection Service (APHIS) should take more responsibility for providing, funding, and ensuring the quality of the annual training required of agents by proposed § 353.6(a)(2)(iii). They felt it was an unwarranted strain on State resources to

provide training for agents engaged primarily in activities connected with the issuance of Federal export certificates. Some also felt that APHIS should establish standards for this training to ensure that agents trained in all States have the necessary skills to perform their duties.

APHIS intends to provide some assistance to States including technical expertise and assistance in developing training materials with respect to the training of agents; however, the extent of assistance will vary from year to year. While providing training is no doubt a strain on some States' resources, we believe that the benefits of the Cooperative Phytosanitary Export Certification Program (the program) will outweigh its costs for most or all States. States may withdraw from the voluntary program if they find this is not the case. Because participation is voluntary, requirements of the program do not constitute an unfunded Federal mandate.

Regarding standards for the content of agent training courses, the proposal specified the standard course requirements we consider necessary for agents. Section 353.6(a)(3) states that the required training must include instruction in inspection procedures, identification of plant pests of quarantine importance to importing countries, methods of collection and submission of specimens (organisms and/or plants or plant parts) for identification, and preparation and submission of inspection report forms approved by the State plant regulatory agency. We cannot provide more detailed training guidance because of the wide variation between States with regard to crops and pests of concern and State regulatory agency procedures. We believe the proposed paragraph will ensure that agents receive training in the necessary skills, without being unnecessarily restrictive.

One commenter suggested that the training requirement for agents should specify that they should successfully complete the training, not just receive the training. We agree, and are changing § 353.6(a)(3) to incorporate this suggestion.

##### *Allowing State Employees Who Are Not Agents to Perform Field Inspections*

Regarding the use of trained and authorized agents to perform phytosanitary field inspections as the

basis for certification, one commenter questioned whether employees of State plant protection agencies who are not agents could perform this work, under the supervision of an inspector. The commenter stated that this approach would be more acceptable because most field inspections are done by seasonal employees, such as college students who have not yet completed the education or experience requirements to be agents.

The commenter believed that while such employees might not be able to be certified as agents under the regulations, they could undergo the annual training required for agents and could successfully perform field inspections under the supervision of inspectors.

This comment distinguishes between field inspections which are performed by official employees of a State agency, and inspections performed by agents in general (e.g., agents employed by private businesses).

We agree that properly trained and supervised State plant protection agency employees could effectively perform field inspections, even if they do not have all the qualifications necessary to be designated as agents. State agencies have employed students to do this type of work for many years, with good results. We believe that State agencies, through long experience, have developed the management controls, degree of supervision, and training programs that allow them to use temporary or seasonal employees effectively in support of regulatory programs.

Therefore we are changing the first sentence of § 353.6 to permit agents, inspectors, or employees of a State plant regulatory agency who are authorized by the agency to perform field inspections. Authorized State employees are required to successfully complete annual training provided by the State plant regulatory agency in accordance with paragraph (a)(2)(iii) of § 353.6. Employees of a State plant protection agency who are not agents may perform field inspections only under the supervision of an inspector.

This change in response to comments will allow the effective use of State employees in conducting field inspections, while ensuring these employees have the training and supervision to conduct proper inspections. Regarding field inspections performed by persons other than State plant protection agency employees, this final rule continues to require that only agents may perform field inspections. We established the training and experience standards for agents precisely to prevent the use of

employees whose skills are undetermined, and who are not bound by the well-established management controls of State agencies, from performing field inspections. We believe that private agents must possess the skills and experience described in this rule if the program is to operate successfully and be accepted with confidence.

#### *Enforcement and Penalties*

Two commenters suggested that a significant number of industry-issued certificates (non-phytosanitary certificates issued by a company or industry association under § 353.7(d)) might be inaccurate or fraudulent, unless there is close monitoring and visible enforcement of the regulatory requirements.

APHIS acknowledges the possibility that some inaccurate or fraudulent certificates may be issued by industry. However, as one commenter pointed out, it is in the long-term best interest of the exporting industries to issue certificates accurately. The threat of loss of business, if an inaccurate or fraudulent certificate is discovered, is an effective deterrent.

In addition, APHIS intends to monitor the accuracy of industry-issued certificates, and to investigate reports of inaccurate or fraudulent certificates. Foreign plant protection services routinely report to APHIS inaccurate information found in certificates. APHIS can immediately terminate an agreement, and therefore, the authority of a company to issue certificates, upon a determination that articles were moved in violation of the regulations or any provision of the required agreement. If an agreement has been withdrawn, the individual or company representative cannot obtain a new agreement to issue certificates for at least 12 months, in accordance with § 353.7(d)(2).

Loss of business and the possible withdrawal of authority to issue certificates are therefore two strong motivations for companies to comply with the regulations. In addition, civil and criminal penalties may apply for willful violation of the regulations. For example, 18 U.S.C. 1001 provides that anyone who makes false, fictitious, or fraudulent statements or representations regarding a matter within the jurisdiction of a Federal agency is subject to a fine of up to \$10,000, imprisonment for up to five years, or both.

Several commenters stated that the major part of the expense and the enforcement burden for this program seems to fall upon the States, because their inspectors and agents will be

delivering most of the front-line services. Commenters especially noted the responsibilities of States to coordinate use of agents and to use State inspectors to issue phytosanitary certificates.

We believe that States will play an important role in providing services, ensuring the integrity of the program, and identifying possible violations. It is expected that for most States, the benefits of participating in this program will outweigh the costs. If a State finds this is not the case, the State may withdraw from this voluntary program. In addition to the States, the involved industries, foreign plant protection services, and APHIS also play important roles in sharing information and conducting enforcement activities. In the long run, APHIS hopes to work with States and industry to establish a level of cooperation and compliance in this program that does not require a heavy investment, State or Federal, in traditional enforcement activities. This program will not succeed if compliance depends mainly on continuing strict monitoring and enforcement activities; it will only succeed if a majority of the governments, organizations, and companies involved all perceive continuing benefits in complying with program standards.

#### *Allowing Only One Certificate To Be Issued for Each Consignment*

Two commenters suggested changing proposed § 353.5(c), which states that only one certificate for any consignment shall be issued. These commenters believe that this provision could cause problems for both inspectors and exporters because large consignments are sometimes broken up and shipped on separate vessels after the certificate is issued. For example, an inspector might issue one certificate for a consignment which is then shipped in multiple railcars to an ocean port, where the contents could be transferred to more than one ocean vessel for export. Under these circumstances, enough certificates are needed to accompany multiple vessels.

We believe that issuing one certificate per consignment is an important part of our effort to reform and improve export certification. Limiting the number of certificates in circulation increases control over the authenticity and accuracy of the certificates, reduces the demand on APHIS and State resources, and in some instances saves the exporter the cost of obtaining multiple certificates. In addition, issuing one certificate per consignment is consistent with the International Plant Protection Convention standards for issuing

certificates and safeguarding their integrity.

The program has enough operational flexibility to avoid the types of problems described in the commenters' examples. In the case described above, the shipment would actually constitute multiple consignments because the term "consignment" is defined as "One shipment of plants or plant products, from one exporter, to one consignee, in one country, on one means of conveyance; or any mail shipment to one consignee." Therefore, multiple certificates could be issued. It is true that exporters would have to know the number of consignments involved in their transaction when they request the certificates, but we believe that most exporters possess this information as part of the normal business planning process. Also, if the exporter discovers when a shipment is being repacked, containerized, or loaded at a seaport that the shipment will be sent on multiple vessels, there will usually be enough time for the exporter to request any necessary replacement certificates from the inspector who issued the original certificate. The replacement certificates could be sent by express mail to the port of arrival where the certified shipment is destined. Therefore, we are not making any change based on this comment.

#### *Definition of Phytosanitary Certificate*

One commenter noted that the revised definition of phytosanitary certificate states that the certificate will be issued based on inspection of the entire lot, which is not inconsistent with the current practice of inspecting a representative sample. We agree, and are changing the definition of phytosanitary certificate in § 353.1 and § 354.3 to retain the sense of the language prior to the proposal, "based on inspection of the entire lot or representative samples." For clarity, we are adding a description of who may draw representative samples. The revised definition of phytosanitary certificate states that the certificate will be issued "based on inspection of the entire lot or representative samples drawn by a Federal or State employee authorized to conduct such sampling."

#### *Qualifying Experience for Inspectors*

One commenter pointed out that § 353.6(b)(2)(i) stated that inspectors must have experience in State or county regulatory activities. This commenter suggested that experience in Federal regulatory activities should also qualify.

We agree, and are changing the regulation to include experience in

Federal regulatory activities as qualifying experience.

#### *Participation by Puerto Rico*

One commenter asked whether the Commonwealth of Puerto Rico would be eligible to participate in the Cooperative Phytosanitary Export Certification Program. The answer is yes; the Commonwealth is considered a State under the definition employed in this rule.

#### *Other Comments*

Several commenters submitted comments and suggestions outside the scope of the current rulemaking. We are evaluating these comments in the context of possible rulemaking on other subjects in the future.

One commenter seemed to misunderstand the relationship of phytosanitary certification, which is for plants or plant products, and the export certificate for processed plant products, which is not a phytosanitary certificate. This commenter seemed to think that the export certificate was a certification of the quality and consistency of the processed product, similar to the marketing standards documentation issued by the Agricultural Marketing Service. Since this comment did not address issues raised in the proposal, no changes were made in response to this comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

#### *Review of Existing Regulations*

This final rule is part of the cyclical review of Part 353—Phytosanitary Export Certification, to meet regulatory review requirements and in support of the President's Regulatory Reinvention Initiative. Executive Order 12866 and Departmental Regulation 1512-1 require that agencies initiate reviews of currently effective rules to reduce regulatory burdens and minimize impacts on small entities.

#### *Executive Order 12866 and Regulatory Flexibility Act*

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Our changes to the requirements for qualifying as an inspector, and the change allowing additional individuals to perform phytosanitary field inspections, will have no measurable

financial impact on those entities involved in exporting plants and plant products. The changes will help ensure that sufficient qualified personnel are available to perform inspections.

In addition, allowing use of additional individuals to perform phytosanitary field inspections could result in a cost savings to industry through reduced duplication of effort in field inspection activities. Currently, seed certifying agencies inspect crops for genetic purity. Inspectors make a separate inspection of the crops in the field to determine their phytosanitary condition under part 353. Under this rule, "agents" can perform a single inspection for both purposes. Large commercial seed companies will be the primary beneficiaries of this change because their crops would be inspected in a more efficient manner and will avoid the double inspection described above.

This rule is not expected to significantly increase the number of certificates for reexport issued by APHIS. APHIS currently issues approximately 9,000 certificates for reexport each year. We estimate that approximately 10 percent (900) of these certificates are issued to small businesses, based on the size and value of the shipments.

We anticipate that allowing industry-issued certificates, and inspector-issued export certificates specifically for processed plant products (PPQ Form 578) will benefit exporters, including small businesses, by facilitating exportation of plants and plant products. Most of the articles eligible for such certificates are exported by larger businesses, and we estimate that each year small businesses will probably be issued fewer than 1,000 industry-issued certificates and inspector-issued export certificates specifically for processed plant products.

Exporters will be charged a user fee as stated in § 354.3 upon the issuance of commercial, private, and re-issued (voided and returned certificates) export certificates, respectively. The justification for and the analysis of the user fees can be found in the regulatory impact analysis accompanying the final rule published on January 9, 1992 (57 FR 755-773, Docket No. 91-135).

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

#### *Executive Order 12372*

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579-0052. Unfunded Mandate Reform Act of 1995.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, APHIS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in expenditures to State local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### List of Subjects

##### 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

##### 7 CFR Part 354

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

Accordingly, 7 CFR parts 353 and 354 are amended as follows:

1. Part 353 is revised to read as follows:

#### PART 353—EXPORT CERTIFICATION

Sec.

- 353.1 Definitions.
- 353.2 Purpose and administration.
- 353.3 Where service is offered.
- 353.4 Products covered.
- 353.5 Application for certification.
- 353.6 Inspection.
- 353.7 Certificates.

Authority: 7 U.S.C. 147a; 21 U.S.C. 136 and 136a; 44 U.S.C. 35; 7 CFR 2.22, 2.80, and 371.2(c).

##### § 353.1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Agent.* An individual who meets the eligibility requirements set forth in § 353.6, and who is designated by the Animal and Plant Health Inspection Service to conduct phytosanitary field inspections of seed crops to serve as a basis for the issuance of phytosanitary certificates.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

*Consignment.* One shipment of plants or plant products, from one exporter, to one consignee, in one country, on one means of conveyance; or any mail shipment to one consignee.

*Export certificate for processed plant products.* A certificate (PPQ Form 578) issued by an inspector, describing the plant health condition of processed or manufactured plant products based on inspection of submitted samples and/or by virtue of the processing received.

*Family.* An inspector or agent and his or her spouse, their parents, children, and first cousins.

*Industry-issued certificate.* A certificate issued by a representative of the concerned agricultural or forestry industry under the terms of a written agreement with the Animal and Plant Health Inspection Service, giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government.

*Inspector.* An employee of the Animal and Plant Health Inspection Service, or a State or county plant regulatory

official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plant products inspected under the Act.

*Office of inspection.* The office of an inspector of plants and plant products covered by this part.

*Phytosanitary certificate.* A certificate (PPQ Form 577) issued by an inspector, giving the phytosanitary condition of domestic plants or unprocessed or unmanufactured plant products based on inspection of the entire lot or representative samples drawn by a Federal or State employee authorized to conduct such sampling.

*Phytosanitary certificate for reexport.* A certificate (PPQ Form 579) issued by an inspector, giving the phytosanitary condition of foreign plants and plant products legally imported into the United States and subsequently offered for reexport. The certificate certifies that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products are considered to conform to the current phytosanitary regulations of the receiving country and have not been subjected to the risk of infestation or infection during storage in the United States. Plants and plant products which transit the United States under Customs bond are not eligible to receive the phytosanitary certificate for reexport.

*Plant pests.* Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or other products of plants.

*Plant products.* Products derived from nursery stock, other plants, plant parts, roots, bulbs, seeds, fruits, nuts, and vegetables, including manufactured or processed products.

*Plants and plant products.* Nursery stock, other plants, plant parts, roots, bulbs, seeds, fruits, nuts, vegetables and other plant products, including manufactured or processed products.

*State.* Any of the States of the United States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States.

*The Act.* The act of Congress entitled "Department of Agriculture Organic Act of 1944," approved September 21, 1944 (58 Stat. 735), section 102.

**§ 353.2 Purpose and administration.**

The export certification program does not require certification of any exports, but does provide certification of plants and plant products as a service to exporters. After assessing the phytosanitary condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector issues an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted. APHIS also enters into written agreements with industry to allow the issuance of industry-issued certificates giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government.

**§ 353.3 Where service is offered.**

(a) Information concerning the location of inspectors who may issue certificates for plants and plant products may be obtained by contacting one of the following regional offices:

| Region                                                                           | States                                                                      |
|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Northeastern, Blason II, 1st Floor, 505 South Lenola Road, Moorestown, NJ 08057. | CT, ME, MA, NH, RI, VT, NY, NJ, PA, MD, DE, VA, WI, MN, IL, IN, OH, MI, WV. |
| Southeastern, 3505 25th Avenue, Building 1, North, Gulfport, MS 39501.           | FL, AL, GA, KY, MS, TN, NC, SC, PR, US VI.                                  |
| Central, 3505 Boca Chica Blvd., Suite 360, Brownsville, TX 78521-4065.           | TX, OK, NE, AR, KS, LA, IA, MO, ND, SD.                                     |
| Western, 9580 Micron Avenue, Suite I, Sacramento, CA 95827.                      | HI, CA, CO, ID, MT, UT, WY, WA, OR, NV, NM, AZ, AK.                         |

(b) Inspectors who may issue phytosanitary certificates for terrestrial plants listed in 50 CFR part 17 or 23 are available only at a port designated for export in 50 CFR part 24, or at a nondesignated port if allowed by the U.S. Department of the Interior pursuant to section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1538). The following locations are designated in 50 CFR part 24 as ports for export of terrestrial plants listed in 50 CFR part 17 or 23:

(1) Any terrestrial plant listed in 50 CFR part 17 or 23:

- Nogales, AZ
- Los Angeles, CA
- San Diego, CA
- San Francisco, CA
- Miami, FL

- Orlando, FL
- Honolulu, HI
- New Orleans, LA
- Hoboken, NJ (Port of New York)
- Jamaica, NY
- San Juan, PR
- Brownsville, TX
- El Paso, TX
- Houston, TX
- Laredo, TX
- Seattle, WA

(2) Any plant of the family Orchidaceae (orchids) listed in 50 CFR part 17 or 23:

- Hilo, HI
- Chicago, IL

(3) Roots of American ginseng (*Panax quinquefolius*) listed in 50 CFR 23.23:

- Atlanta, GA
- Chicago, IL
- Baltimore, MD
- St. Louis, MO
- Milwaukee, WI

(4) Any plant listed in 50 CFR 17.12 or 23.23 and offered for exportation to Canada:

- Detroit, MI
- Buffalo, NY
- Rouses Point, NY
- Blaine, WA

(5) Any logs and lumber from trees listed in 50 CFR 17.12 or 23.23:

- Mobile, AL
- Savannah, GA
- Baltimore, MD
- Gulfport, MS
- Wilmington and Morehead City, NC
- Portland, OR
- Philadelphia, PA
- Charleston, SC
- Norfolk, VA
- Vancouver, WA

(6) Plants of the species *Dionaea muscipula* (Venus flytrap):

- Wilmington, NC

**§ 353.4 Products covered.**

Plants and plant products when offered for export or re-export.

**§ 353.5 Application for certification.**

(a) To request the services of an inspector, a written application (PPQ Form 572) shall be made as far in advance as possible, and shall be filed in the office of inspection at the port of certification.

(b) Each application shall be deemed filed when delivered to the proper office of inspection at the port of certification. When an application is filed, a record showing the date and time of filing shall be made in such office.

(c) Only one application for any consignment shall be accepted, and only one certificate for any consignment shall be issued.

(Approved by the Office of Management and Budget under control number 0579-0052)

**§ 353.6 Inspection.**

Inspections shall be performed by agents, by inspectors, or by employees of a State plant protection agency who are authorized by the agency to perform field inspections in accordance with this part and who have successfully completed training in accordance with paragraph (a)(2)(iii) of this section. Employees of a State plant protection agency who are not agents may perform field inspections only under the supervision of an inspector.

(a) *Agent.* (1) Agents may conduct phytosanitary field inspections of seed crops in cooperation with and on behalf of those State plant regulatory agencies electing to use agents and maintaining a Memorandum of Understanding with the Animal and Plant Health Inspection Service in accordance with the regulations. The Memorandum of Understanding must state that agents shall be used in accordance with the regulations in this part. Agents are not authorized to issue Federal phytosanitary certificates, but are only authorized to conduct the field inspections of seed crops required as a basis for determining phytosanitary condition prior to the issuance of a phytosanitary certificate for the crops.

(2) To be eligible for designation as an agent, an individual must:

(i) Have the ability to recognize, in the crops he or she is responsible for inspecting, plant pests, including symptoms and/or signs of disease-causing organisms, of concern to importing countries.

(ii) Have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in identifying plant pests endemic to crops of commercial importance within the cooperating State, or a combination of higher education in the biological sciences and experience in identifying such plant pests, as follows:

- 0 years education and 5 years experience;
  - 1 year education and 4 years experience;
  - 2 years education and 3 years experience;
  - 3 years education and 2 years experience; or
  - 4 years education and 1 year experience.
- The years of education and experience do not have to be acquired consecutively.

(iii) Successfully complete annual training provided by the State plant regulatory agency. The required training must include instruction in inspection procedures, identification of plant pests of quarantine importance to importing countries, methods of collection and submission of specimens (organisms and/or plants or plant parts) for identification, and preparation and submission of inspection report forms

approved by the State plant regulatory agency.

(iv) Have access to Federal or State laboratories for the positive identification of plants pests detected.

(3) No agents shall inspect any plants or plant products in which they or a member of their family are directly or indirectly financially interested.

(b) *Inspector.* (1) An employee of the Animal and Plant Health Inspection Service, or a State or county regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plants and plant products inspected under the Act.

(2) To be eligible for designation as an inspector, a State or county plant regulatory official must:

(i) Have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in Federal, State or county plant regulatory activities, or a combination of higher education in the biological sciences and experience in State plant regulatory activities, as follows:

0 years education and 5 years experience;  
1 year education and 4 years experience;  
2 years education and 3 years experience;  
3 years education and 2 years experience; or  
4 years education and 1 year experience.

The years of education and experience do not have to be acquired consecutively.

(ii) Successfully complete, as indicated by receipt of a passing grade, the Animal and Plant Health Inspection Service training course on phytosanitary certification.

(3) No inspectors shall inspect any plants or plant products in which they or a member of their family are directly or indirectly financially interested.

(c) *Applicant responsibility.* (1) When the services of an agent or an inspector are requested, the applicant shall make the plant or plant product accessible for inspection and identification and so place the plant or plant product to permit physical inspection of the lot for plant pests.

(2) The applicant must furnish all labor involved in the inspection, including the moving, opening, and closing of containers.

(3) Certificates may be refused for failure to comply with any of the foregoing provisions.

### § 353.7 Certificates.

(a) *Phytosanitary certificate (PPQ Form 577).* (1) For each consignment of domestic plants or unprocessed plant products for which certification is requested, the inspector shall sign and issue a separate certificate based on the findings of the inspection.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification, and one forwarded to the Administrator.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections for previous certifications when the previously issued certificates can be canceled before they have been accepted by the phytopathological authorities of the country of destination involved.

(b) *Export certificate for processed plant products (PPQ Form 578).* (1) For each consignment of processed plant products for which certification is requested, the inspector shall sign and issue a certificate based on the inspector's findings after inspecting submitted samples and/or by virtue of processing received.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections/processing used for previous certifications.

(c) *Phytosanitary certificate for reexport (PPQ Form 579).* (1) For each consignment of foreign origin plants or unprocessed plant products for which certification is requested, the inspector shall sign and issue a certificate based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States after determining that the consignment conforms to the current phytosanitary regulations of the receiving country and has not been subjected to the risk of infestation or infection during storage in the United States.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification, and one forwarded to the Administrator.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections for previous certifications when the previously issued certificates can be canceled before they have been accepted by the phytopathological authorities of the country of destination involved.

(d) *Industry-issued certificate.* A certificate issued under the terms of a written agreement between the Animal and Plant Health Inspection Service and an agricultural or forestry company or association giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government. The certificate may be issued by the individual who signs the agreement or his/her delegate.

(1) *Contents of written agreement.* In each written agreement, APHIS shall agree to cooperate and coordinate with the signatory agricultural or forestry company or association to facilitate the issuance of industry-issued certificates and to monitor activities under the agreement, and the concerned agricultural or forestry company or association agrees to comply with the requirements of the agreement. Each agreement shall specify the articles subject to the agreement and any measures necessary to prevent the introduction and dissemination into specified foreign countries of specified injurious plant pests. These measures could include such treatments as refrigeration, heat treatment, kiln drying, etc., and must include all necessary preshipment inspections and subsequent sign-offs and product labeling as identified by Plant Protection and Quarantine (PPQ), APHIS, based on the import requirements of the foreign country.

(2) *Termination of agreement.* An agreement may be terminated by any signatory to the agreement by giving written notice of termination to the other party. The effective date of the termination will be 15 days after the date of actual receipt of the written notice. Any agreement may be immediately withdrawn by the Administrator if he or she determines that articles covered by the agreement were moved in violation of any requirement of this chapter or any provision of the agreement. If the withdrawal is oral, the decision to withdraw the agreement and the reasons for the withdrawal of the agreement shall be confirmed in writing as promptly as circumstances permit. Withdrawal of an agreement may be

appealed in writing to the Administrator within 10 days after receipt of the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the appellant relies to show that the agreement was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the agreement is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator. No written agreement will be signed with an individual or a company representative of the concerned agricultural or forestry company or association who has had a written agreement withdrawn during the 12 months following such withdrawal, unless the withdrawn agreement was reinstated upon appeal.

(Approved by the Office of Management and Budget under control number 0579-0052)

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

2. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

3. In § 354.3, paragraph (a), the definitions for *Designated State inspector* and *Processed product certificate* are removed; new definitions for *Designated State or county inspector* and *Export certificate for processed plant products* are added in alphabetical order; the definitions for *Phytosanitary certificate* and *Phytosanitary certificate for reexport* are revised, and paragraph (g)(2) is revised to read as follows:

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

(a) \* \* \*  
\* \* \* \* \*

*Designated State or county inspector.* A State or county plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plant products inspected under the Department of Agriculture Organic Act of 1944.

*Export certificate for processed plant products.* A certificate (PPQ Form 578) issued by an inspector, describing the plant health condition of processed or manufactured plant products based on

inspection of submitted samples and/or by virtue of the processing received.

\* \* \* \* \*  
*Phytosanitary certificate.* A certificate (PPQ Form 577) issued by an inspector, giving the phytosanitary condition of domestic plants or unprocessed or unmanufactured plant products based on inspection of the entire lot or representative samples drawn by a Federal or State employee authorized to conduct such sampling.

*Phytosanitary certificate for reexport.* A certificate (PPQ Form 579) issued by an inspector, giving the phytosanitary condition of foreign plants and plant products legally imported into the United States and subsequently offered for reexport. The certificate certifies that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products are considered to conform to the current phytosanitary regulations of the receiving country and have not been subjected to the risk of infestation or infection during storage in the United States. Plants and plant products which transit the United States under Customs bond are not eligible to receive the phytosanitary certificate for reexport.

\* \* \* \* \*  
(g) \* \* \*  
(2) There is no APHIS user fee for a certificate issued by a designated State or county inspector.  
\* \* \* \* \*

Done in Washington, DC, this 2nd day of April 1996.

Lonnie J. King,  
*Administrator, Animal and Plant Health Inspection Service.*  
[FR Doc. 96-8621 Filed 4-5-96; 8:45 am]  
BILLING CODE 3410-34-P

**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**13 CFR Part 301**

[Docket No. 950525142-6078-03]

RIN 0610-AA47

**Designation of Public Works Impact Program Areas: Simplification and Streamlining of Regulations; Correction**

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to EDA's final rule which adopted EDA's interim-final rule (60 FR

56702), September 26, 1995, as modified by the changes noted in the final rule (61 FR 7979), published and effective on March 1, 1996. This correction is to the regulation on requirements for Public Works Impact Program Area (PWIP) designations.

**EFFECTIVE DATE:** April 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Awilda R. Marquez, (202) 482-4687; fax number: (202) 482-5671.

**SUPPLEMENTARY INFORMATION:**

**Background**

EDA amended its entire body of regulations to make them easier to read and to understand, by removing numerous unnecessary, redundant, and outdated parts, sections and portions thereof, and by clarifying and simplifying those remaining. The final rule includes program requirements, evaluation criteria, and the selection process in implementing programs under the Public Works and Economic Development Act of 1965, as amended, (PWEDA or the Act), the Trade Act of 1974, as amended (the Trade Act), and other applicable statutes.

**Need for Correction**

As published, the final rule contains an error which may prove to be misleading and is in need of clarification. Currently, § 301.6(a)(4) requires a redevelopment area to meet the qualifications of (a) through (d) of § 301.5. Paragraph (d) requires an overall economic development plan (OEDP) to be submitted to EDA. Since not requiring an OEDP from entities is what the Act provides, § 301.6(a)(4) is being corrected by deleting the reference to paragraph (d) of § 301.5.

**List of Subjects in 13 CFR Part 301**

Community development.

Accordingly, 13 CFR Part 301 is corrected by making the following correcting amendment:

**PART 301—DESIGNATION OF AREAS**

1. The authority citation for Part 301 continues to read as follows:

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

2. Section 301.6 is amended by revising paragraph (a)(4) to read as follows:

**§ 301.6 Designation of public works impact program areas.**

(a) \* \* \*

(4) An actual or threatened abrupt rise of unemployment due to the closing or