

a. The entries for "*Borreria alata* (Aublet) de Candolle" and "*Ipomoea triloba* L." are removed.

b. The entry for "*Rottboellia cochinchinensis* Clayton" ("=*R. exaltata* (L.)L. f.") is amended by removing the words "Clayon (= *R. exaltata* (L.)L. f.)" and adding the words "W. Clayton" in their place.

c. New entries for "*Caulerpa taxifolia* (Mediterranean clone)", "*Solanum tampicense* Dunal (wetland nightshade)", and "*Spermocoe alata* (Aublet) de Candolle" are added in alphabetical order.

Done in Washington, DC, this 11th day of March 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-6344 Filed 3-15-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 782

RIN 0560-AF64

End-Use Certificate Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule will amend regulations governing the End-Use Certificate Program for imported Canadian wheat to allow the Farm Service Agency (FSA) to collect additional information regarding distinguishing characteristics of imported wheat. This rule also will revise the definition of importer to include only the importer of record as recognized by the U.S. Customs Service. Lastly, the deadline for submission of the End-Use Certificate will be revised from 15 work days to 10 work days after the date of entry. These changes are necessary to facilitate a cooperative effort between FSA and the U.S. Customs Service to make End-Use Certificates a part of the official entry summary package. These changes will also help ensure that Canadian wheat will not benefit from U.S. export programs. This rule takes into consideration the comments received on a January 13, 1999 proposed rule (64 FR 2152).

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy R. Murray, Chief, Inventory Management Branch, U.S. Department of Agriculture, Farm Service Agency, STOP 0553, 1400 Independence

Avenue, SW, Washington, DC 20250-0553; telephone (202) 720-6125; FAX (202) 690-0014; E-mail Tim_Murray@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined not significant and therefore has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

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

Paperwork Reduction Act

The amendments to 7 CFR part 782 set forth in this proposed rule involve a change in the existing information collection requirements which were previously cleared by OMB under the provisions of 44 U.S.C. 35. In accordance with § 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements were included in the proposed rule and a request for emergency approval was submitted to the Office of Management and Budget (OMB). OMB has assigned control number 0560-0151 to the information collection and recordkeeping requirements. A regular submission of the information collection will be forwarded to OMB at the end of the comment period.

Regulatory Flexibility Act

On January 26, 1995, FSA published a final rule that established program requirements for the End-Use Certificate Program. A copy of this Regulatory Flexibility Analysis is available upon request from Timothy Murray, Warehouse and Inventory Division, FSA, STOP 0553, 1400 Independence Avenue, Washington, DC 20250-0553; telephone (202) 690-4321.

Because these changes will not have an adverse impact on a substantial number of small businesses, a Regulatory Flexibility Assessment is not required.

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 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and do not preempt any State laws.

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).

Background

This final rule amends 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. To further ensure that Canadian wheat does not benefit from U.S. export programs, End-Use Certificates will include distinguishing characteristics of grade, protein content, moisture content, dockage and date of sale in addition to the class and/or varietal information currently collected for each shipment. These additional data are deemed necessary because imported wheat may benefit from U.S. export programs even if the imported wheat itself is not directly eligible for use under such programs. Such benefit may accrue if wheat of the type or quality used under U.S. export programs (including humanitarian assistance programs) is imported into the United States in anticipation of, or as a result of use of a similar type or quality of U.S. wheat under the U.S. program. Indeed, the Department of Agriculture is frequently implored not to take action to facilitate sales of U.S. wheat out of a concern that such sales will only encourage off-setting imports of Canadian wheat. This rule provides for the collection of necessary information to monitor for such an occurrence and potentially allow appropriate actions to minimize such an occurrence. In addition, these additional data will help facilitate effective program audits while minimizing the burden on importers of Canadian wheat.

This rule will also replace the current definition used for "Importer" found at 7 CFR 782.2 with the same definition

used by the U.S. Customs Service and found at 19 U.S.C. 1484(a).

The U.S. Customs Service has amended the provisions of their basic import bond to allow for the assessment of damages if there is a failure to provide the End-Use Certificate in the time period provided by FSA.

Public Comments

A proposed rule was published in the **Federal Register** (64 FR 2152) on January 13, 1999. Comments from interested parties were due on or before January 25, 1999. A total of 12 comments were received from 7 different sectors as follows: 5 Industry Associations; 2 State Agriculture Departments; 1 Interested Party; 1 Grain Company; 1 Foreign Government; 1 Foreign Wheat Board; 1 U.S. Government Official. Of the above comments 4 were against the proposed rule, and 8 were in favor of the proposed rule.

Comments opposing the proposed rule addressed different aspects as follows:

1. Reduction to 10 days for submission of Certificate

Issue: Impracticality in transactions involving multiple parties (1 Comment).

Response: Only one of the parties (the importer of record) is responsible for the submission.

2. Additional identifying characteristics

Issue: Sensitivity of proprietary information (2 Comments).

Response: We agree that this data is proprietary and is therefore exempt from disclosure under 5 U.S.C 552(b)(4) as confidential commercial or financial information.

Issue: Changes will exacerbate trade conflicts between U.S. and Canada (2 Comments).

Response: This data will provide valuable insight that should help mitigate some of the misinformation and misunderstanding surrounding the Canadian Wheat Board's sales into the United States. In response to previous requests from the United States for this type of information, Canadian officials have encouraged the United States to use its own data gathering sources.

Issue: Domestic Origin regulations are sufficient to cover this issue (1 Comment).

Response: All U.S. export programs authorized under the Agricultural Trade Act of 1978, as amended, require that any agricultural commodity benefitting from the particular program be entirely

produced in the United States. Enforcement of this rigorous standard requires additional information to facilitate identification of the distinguishing characteristics of Canadian wheat. With respect to other programs, a vendor or exporter would only have to demonstrate access to an amount of U.S. wheat equivalent to that exported in the transaction to satisfy the applicable origin requirement. To the extent such origin requirements rely on inventory accounting of a fungible, commingled mass, collection of information on distinguishing characteristics of Canadian wheat will facilitate proper accounting.

Issue: Most sales are based on destination weights and grades (1 Comment).

Response: The contractual terms (i.e. minimum grades and factors) should be sufficient for tracking purposes.

Issue: Date of Sale is too ambiguous to be useful (1 Comment).

Response: We agree that the date of sale could be an issue of interpretation. Consequently, if there is a contract for sale giving rise to the particular import, the date of the contract is required. If no contract for sale exists, the date of entry will be accepted.

The opposition comments also pointed out that there is no evidence that Canadian wheat is benefitting, either directly or indirectly, from any USDA programs. Our response is that with this additional data we will be better able to ascertain whether that is true.

Other comments were received that did not directly address the proposed changes. These comments are summarized as follows:

1. Collect information regarding total damage and vitreous kernel content to enhance identification of the imported wheat.

Response: Total damage is integral to the U.S. grade and standards that will be collected. Dark, hard, and vitreous kernel count (DHV) is integral in the classing of spring wheat and durum.

2. Utility grade "feed wheat" should be denatured because grade factors will not be available.

Response: Not within the scope of this rulemaking.

3. Standardize the testing procedures between NAFTA participants. e.g. moisture/protein relationships, dockage removal, and Near Infrared Reflectance Technology (NIRT) testing for protein.

Response: Not within the scope of this rulemaking.

4. Require licensed Inspection Certificates for all imported grain (especially Canadian wheat).

Response: Not within the scope of this rulemaking.

List of Subjects in 7 CFR Part 782

Administrative practice and procedure, Barley, Reporting and Recordkeeping, Wheat.

Accordingly, the provisions of 7 CFR part 782 are 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. Amend § 782.2 to revise the definition for "Importer" to read as follows:

§ 782.2 Definitions

* * * * *

Importer means a party qualifying as an Importer of Record pursuant to 19 U.S.C. 1484(a).

* * * * *

3. Amend § 782.12(a) as follows:

A. Revise the first sentence to read as follows:

"Each entity that imports wheat originating in Canada shall, for each entry into the U.S., obtain form FSA-750, End-Use Certificate for Wheat, from Kansas City Commodity Office, Warehouse Contract Division, P.O. Box 419205, Kansas City, MO 64141-6205, and submit the completed original form FSA-750 to KCCO within 10 workdays following the date of entry or release."

B. Redesignate paragraph (a)(6) through (a)(9) as paragraphs (a)(8) through (a)(11), and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 782.12 FSA, End-Use Certificate for Wheat.

(a) * * *

(6) Grade, protein content, moisture content, and dockage level of wheat being imported,

(7) If imported as a result of a contract for sale, the date of such contract.

* * * * *

Signed at Washington, DC, on March 11, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

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