Rules and Regulations

Federal Register
Vol. 47, No. 57
Wednesday, March 24, 1982

GENERAL ACCOUNTING OFFICE

4 CFR Part 92

Waiver of Claims for Erroneous Payment of Pay and Allowances; Investigation, Report of Investigation

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This amendment to Part 92 of title 4, Code of Federal Regulations, will increase the minimum amount of claim from $25, set in June 1972, to $100 below which an agency need not conduct a report of investigation for waiver requests and will clarify that such authority extends to overpayments involving members of the military services. The cost of conducting a report of investigation exceeds $100 for the vast majority of Government agencies and thus exceeds the value of many claims which are being considered for waiver. This amendment will improve the efficiency of the Government's waiver processing operations.

Measures of inflation, such as the Consumer Price Index or average cost of Government salaries, have increased substantially since June 1972. Increasing the minimum would be warranted on that basis alone. Also, available evidence from some agencies indicates that the cost of investigation ordinarily exceeds $100. Moreover, agencies have gained vast experience in processing waiver requests over the years and should be better able to recognize those types of overpayments which eventually would be waived after conducting a report of investigation.

EFFECTIVE DATE: March 25, 1982.

FOR FURTHER INFORMATION CONTACT: Chris Farley, Jr., U.S. General Accounting Office, Accounting and Financial Management Division, Claims Group, Room 5031, 441 G Street, NW., Washington, DC 20548, (202) 275-5440.

SUPPLEMENTARY INFORMATION: Under the current authority of 4 CFR 92.2(c), agencies are not required to conduct detailed reports of investigation in making waiver determinations on claims involving amounts of $25 or less. Such claims may be waived where there is no indication in the record of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.

The $25 minimum was set in June 1972 in recognition that the cost of a full investigation of such claims could reasonably be assumed to exceed the amount to be considered for waiver.

Measures of inflation, such as the Consumer Price Index or average cost of Government salaries, have increased substantially since June 1972. Increasing the minimum would be warranted on that basis alone. Also, available evidence from some agencies indicates that the cost of investigation ordinarily exceeds $100. Moreover, agencies have gained vast experience in processing waiver requests over the years and should be better able to recognize those types of overpayments which eventually would be waived after conducting a report of investigation.

It is emphasized that the authority to waive erroneous payments under $100 without a report of investigation is discretionary and is not intended as a blanket authorization to waive all claims of less than that amount. We expect that the authority will not be exercised on claims, regardless of amount, in which there is a reasonable presumption that the employee or member had complicity in the creation of the overpayment or had knowledge of the overpayment.

In addition, the words "or member" are added to 4 CFR 92.2(c) to avoid any possible confusion as to whether the provision applies to overpayments involving members of the military services.

List of Subjects in 4 CFR Part 92

Accounting, Administrative practice and procedure, Claims, General Accounting Office, Government employees, Investigations, Military personnel, Wages.

PART 92—PROCEDURE

Accordingly, 4 CFR Part 92 is amended as follows:

§ 92.2 [Amended]

4 CFR 92.2(c) is amended by deleting the amount of "$25" and replacing it with "$100" and by adding the words "or member" immediately after the phrase "on the part of the employee".

Dated: March 17, 1982.

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 82-7871 Filed 3-23-82; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 0

Employee Responsibilities and Conduct

AGENCY: Office of the Secretary USDA.

ACTION: Final rule.

SUMMARY: This document amends the conduct regulations of the Department of Agriculture to reflect the requirement that certain employees must file statements of employment and financial interests pursuant to the Ethics in Government Act of 1978, as amended (Pub. L. 95-521, Title II, 5 U.S.C. App.).

EFFECTIVE DATE: March 24, 1982.

FOR FURTHER INFORMATION CONTACT: Peter Sleight (Office of Personnel), United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250, (202) 447-7654.

SUPPLEMENTARY INFORMATION: Title II of the Ethics in Government Act of 1978, as amended (Pub. L. 95-521, Title II, 5 U.S.C. App.), mandated that certain Federal employees should submit financial disclosure statements which will be available to the public, under the general supervision of the Office of Government Ethics. These amendments change the Department of Agriculture's financial disclosure regulations to reflect the requirements of the law by adding § 0.735-44 to outline the new disclosure requirements for covered employees and by making corresponding changes in §§ 0.735-31, 0.735-32 and 0.735-34 to remove the affected employees from the reporting requirements of Executive Order 11222.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553 it is found that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to agency personnel management, it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act. Accordingly, 7 CFR Part 0 is amended as follows:

PART 0—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. § 0.735-31 is amended by revising the heading, by removing paragraphs (a) and (b), by redesignating paragraphs (c) through (g) as (a) through (e) respectively, and by revising paragraphs (a) through (e) as redesignated to read as follows:

§ 0.735-31 Employees required to submit statements under the Executive order.

Except as provided in § 0.735-32, the following employees shall submit a statement of employment and financial interests on USDA Form AD-392 in accordance with this part:

(a) Employees classified at GS-13 through 15 under 5 U.S.C. 5332, or at a comparable pay level under other authority who are in positions the basic duties and responsibilities of which require the incumbent to exercise judgment in making a Government decision or in taking Government action on contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing private or other non-Federal enterprise, or other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise;

(b) Employees classified at GS-13 through 15 under 5 U.S.C. 5332, or a comparable pay level under other authority, who are in positions which the Agency has determined have duties and responsibilities which require that the incumbents report their employment and financial interests in order to avoid involvement in a possible conflict-of-interest situation and carry out the purpose of law, Executive Order, Part 735 of the Office of Personnel Management's regulations, this part, and applicable Agency regulations;

(c) Employees classified below GS-13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, where the Agency has determined that they are in positions which otherwise meet the criteria in paragraphs (a) and (b) of this section, and that statements from them are essential to protect the integrity of the Government and avoid employee involvement in a possible conflict-of-interest situation, provided such determination has been approved in writing by the Office of Personnel Management; and

(d) All employees regardless of grade, pay level or type of appointment who perform any function or duty under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) unless he or she files a financial disclosure report under the provisions of the Ethics in Government Act of 1978 (see § 0.735-32(a)).

(e) An employee who refuses to file a statement for reasons other than that the duties and responsibilities of the position do not come within the criteria for reporting as set forth in this part, or who refuses to file after a final determination that the duties and responsibilities of the position do come within the criteria, will be subject to appropriate disciplinary action.

2. § 0.735-32 is revised to read as follows:

§ 0.735-32 Exceptions.

(a) Employees covered under § 0.735-44 are not required to file employment and financial interest statements under § 0.735-31.

(b) Employees in positions that meet the criteria in § 0.735-31(a) may be excluded from the reporting requirement when the Department Counselor determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote, or

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(c) Exceptions will be considered by the Department Counselor at the request of the Agency Head.

(d) An employee shall be afforded the opportunity for a review, through the Departmental grievance procedure as described in Chapter 771 of the Department Personnel Manual; of the designation of his or her position as one requiring the submission of a statement of employment and financial interests.

3. § 0.735-34 is amended by removing paragraph (b), by revising paragraph (a), by redesignating paragraphs (c) and (d), as (b) and (c) respectively, and by revising paragraphs (b) and (c) as redesignated to read as follows:

§ 0.735-34 Time and place for submission of employees' statements.

(a) When a decision is reached to make an appointment to a position requiring submission of a statement of employment and financial interests, the prospective employee should be informed.

(b) Employees covered under § 0.735-31 will submit statements to the Agency Head or to an employee designated by him or her.

(c) Agencies are responsible for assuring that persons subject to the reporting requirements are notified of those requirements and are provided the necessary forms and instructions.

4. § 0.735-44 is added to read as follows:

§ 0.735-44 Financial disclosure under the Ethics in Government Act.

(a) The following individuals are covered by the financial reporting requirements of the Ethics in Government Act of 1978 and shall submit a financial disclosure report on Office of Personnel Management Standard Form 278 in accordance with this section:

(1) Members of the Senior Executive Service and other officers or employees in the executive branch, including a special Government employee as defined in 18 U.S.C. 202, whose position is classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate of basic pay for GS-16;

(2) Employees who are administrative law judges appointed pursuant to 5 U.S.C. 3105;

(3) Employees not described in paragraph (a)(2) of this section who are in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policy making nature;

(4) The Designated Agency Ethics Official; and

(5) Employees on detail to a position normally occupied by an individual described in paragraphs (a)(1) through (a)(4) of this section, irrespective of the detailed employee's actual grade level or compensation, if the detail can reasonably be expected to last for more than 60 days in a calendar year.

(b) Financial disclosure reports required under this section shall be submitted to the Designated Agency Ethics Official at USDA (the Director of Personnel) or his or her designee. Reports are due as follows:

(1) Within 30 days of assuming a position or office described in paragraphs (a) of this section—unless the employee has already filed a current Standard Form 278 either for a similarly covered position which he or she has left within 30 days of assuming the duties of the new one, or has filed as a nominee for the position assumed;

(2) Within 30 days of termination of employment from a position or office described in paragraph (a) of this section, unless the employee enters a similarly covered position within 30 days of such termination; and

(3) On or before May 15 of each calendar year during the incumbency of an employee in a covered position, when he or she has served more than 60 days in such position during the previous calendar year.

(c) Instructions covering the types of information to be provided on a Standard Form 278 are included with the form. The basic categories of information required are: income from and interests in property; purchases, sales and exchanges; gifts and reimbursements; liabilities; positions held; and relations with other employers.

(d) Financial disclosure reports submitted under the provisions of this section shall be reviewed by the Director of Personnel as the Designated Agency Ethics Official, or by those individuals delegated authority for that purpose as Deputy Ethics Officials (subject to the restrictions of 5 CFR 738.204).

(e) The official responsible for reviewing the disclosure statement shall either approve it, or make an initial determination that a conflict or appearance thereof exists, or may determine that additional information is needed to resolve potential problems. The reporting individual shall be afforded the opportunity for written or oral response to any initial determinations other than approval, and should a final determination of a conflict be made, shall be afforded the opportunity for a personal consultation where practicable. If after these steps have been taken the reviewing official determines that a conflict or appearance of a conflict continues to exist, the reporting individual shall be notified in writing of what steps must be taken to resolve the problems. Failure to take any required remedial actions will result in appropriate disciplinary action against the individual involved in accordance with the provisions of 5 CFR 734.604(b)(6).

(f) Financial disclosure reports filed under the Ethics in Government Act of 1978 shall be made available for public inspection within 15 days of their receipt within the parameters established in 5 CFR 734.603.

(g) The Ethics in Government Act of 1978 provides that the Office of Government Ethics, Office of Personnel Management, shall be responsible for developing rules and regulations affecting financial disclosure procedures under the Act. These regulations are found in 5 CFR Part 734. Employees with questions concerning this section may consult the complete regulations in 5 CFR Part 734, ask their servicing personnel office, or address their inquiries directly to the Designated Agency Ethics Official, Director of Personnel, Room 16-W, U.S. Department of Agriculture, Washington, D.C. 20250.

(5 U.S.C. 301; Title II of Pub. L. 95-521, 92 Stat. 1836, as amended, 5 U.S.C. app.; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 734.103)

Dated: March 18, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-7809 Filed 3-23-82; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Parts 982 and 999

Filberts Grown in Oregon and Washington and Filbert Imports; Grade Requirements for Domestic and Imported Filberts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rules.

SUMMARY: These rules amend the grade requirements under Marketing Order No. 982 for domestic shelled filberts, and the grade requirements for imported shelled filberts under § 999.400. These amendments are to assure the quality of shelled filberts consumed in the United States.

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5697.

SUPPLEMENTARY INFORMATION: These final rules have been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified "designated non-major" rules. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated nine handlers and approximately 20 importers.

Notice was published in the April 8, 1981, issue of the **Federal Register** (46 FR 21017) to change the grade requirements for domestic shelled filberts by amending § 982.101 of Subpart—Grade and Size Regulation (7 CFR 982.101; 45 FR 73634). This subpart is issued under the marketing agreement and Order No. 982, both as amended (7 CFR Part 982; 46 FR 26037), regulating the handling of filberts grown in Oregon and Washington. The marketing ageement and order are referred to collectively in this document as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "act". The order is locally administered by the Filbert/Hazelnut Marketing Board (hereinafter referred to as the "Board").

That notice also contained a proposal to change the grade requirements for imported shelled filberts by amending § 999.400(b)(2) and (Exhibit A) of § 999.400. That section is authorized by section 8e (7 U.S.C. 608e-1) of the act.

The notice contained proposals submitted by the Board and an association representing filbert importers (hereinafter referred to as the "association"), and the Department. In response to a request by the association, the comment period was extended from May 15 to July 15, 1981, by notice published in the May 8, 1981, issue of the **Federal Register** (46 FR 25626).

The April 8 notice contained a detailed chronology of the events in this rulemaking action, beginning with the amendment of section 8e September 29, 1977, to include filberts in that section, and culminating with that notice. The chronology also concluded an explanation of the various authorities in the order and the act for the issuance of grade regulations on domestic and imported shelled filberts.

Comments were received from the Board, filbert importers, the association, the Office of Management and Budget, members of Congress, the Embassy of Turkey, Commercial users of filberts, producers and handlers of domestic filberts, organizations representing them, consumers and consumer groups.

Section 982.101 was issued pursuant to § 982.45(a) and establishes the minimum grade standards for domestic shelled filberts as Oregon No. 1 whole and broken under the Oregon Grade Standards for Filbert/Hazelnut Kernels. The standards currently effective pursuant to § 982.101 were issued by the State of Oregon in 1976 as an amendment of previous standards, and have been applied continuously under that section to domestic shelled filberts since October 4, 1976. These requirements allow a five percent tolerance for serious defects including not more than a one percent tolerance for kernels which have mold, rancidity or insect injury. These same requirements were applied to imported shelled filberts December 29, 1977. Effective August 1, 1980, the State of Oregon revised its standards to include decay in the one percent tolerance along with mold, rancidity and insect injury, and defined decay to mean that any portion of the kernel is decomposed.

A number of commentators noted that earlier Oregon standards for shelled filberts included specific reference to decay, and the August 1980 action merely restored the term which was inadvertently omitted in an amendment prior to 1976. Under earlier standards, Oregon No. 1 Grade consisted of filbert kernels which, among other requirements, were free from "bitter flavor and decay". Oregon Broken Grade was defined to consist of filbert kernels which met the requirements of Oregon No. 1 Grade, except that they could be broken or mechanically damaged, and there were no variety or size requirements.

One commentator contended that decay is evidence of serious damage, and the strictest tolerance level should apply, and must be associated with mold, rancidity, and insect injury. The commentator cited a study by the U.S. Department of Agriculture involving another tree nut and showing that high moisture levels can attract toxic fungi.

The Board and several other commentators favored a tolerance of one percent for the four defects because any higher tolerance would ultimately affect sales and be detrimental to both, the industry and the American consumer. Unlike numerous other commentators who expressed the need for high quality shelled filberts for the U.S. market without recommending a specific tolerance level, the Board and others said the tolerance should be one percent, which could be achieved by the domestic industry.

Comments in opposition to the Board's recommendation for that tolerance for domestic shelled filberts under the marketing order grade standard came from the association and others who supported one of the two proposals submitted by the association and published in the April 8 notice. The association previously had proposed that the tolerance for decay be established as follows: (1)(a) For shelled filberts which are mechanically dried and held in refrigerated storage, one percent for mold, rancidity, decay and insect injury, and (b) for shelled filberts which are solar dried and/or held in non-refrigerated storage, three percent for mold, rancidity, decay and insect injury; or in the alternative, (2) a one percent tolerance for mold, rancidity and insect injury and two percent for decay.

In its comment, the association indicated that it "favored" the second of its two proposals. Because the association and other commentators failed to support the establishment of the association's first alternative, it will not be considered further in this document.

The association and other commentators opposing the Board's proposal argue that its primary objective is to exclude foreign competition. They stated that the Board's proposal can be met by the domestic filbert industry without difficulty, but that it would permit entry of only about half of the current level of the imported foreign shelled filberts (primarily from Turkey). The significance of proposed domestic standards to importers and users of imported shelled filberts is that, once established, these or comparable standards also should apply to imported shelled filberts pursuant to section 8e of the act.

These commentators also contend that the Board's proposal would result in a shortage of shelled filberts in U.S. markets because the U.S. industry can supply only half of the current U.S. needs for shelled filberts. This would promote higher prices, benefiting U.S. growers and shippers and penalizing U.S. consumers. The association contends that the Board's recommendation would remove the freedom of U.S. consumers to select shelled filberts of the type, flavor, origin, quality, and corresponding price level they may desire.

The association and others state that the association's proposal would "strengthen and tighten" quality standards. Also, since the association's proposed standards are stricter than those currently in effect, U.S. consumers should not be displeased with the quality of imported filberts meeting those standards and stop buying them. On the other hand it was also contended that the quality of imported filberts currently is high enough to satisfy the needs of U.S. users of imported shelled filberts, some of whom prefer imported filberts for their special characteristics. In addition, some of the commentators indicated that they were satisfied with the quality level of imported shelled filberts, and that there should be no change in the grade standards for them. The association contends that this lack of any problem should be given paramount consideration in determining whether or not the standards for imported shelled filberts should be changed.

Finally, the association contends that the Board's proposal is unnecessary because the decay level of domestic filberts is so low that it would not result in the elimination of any domestic shelled filberts from the markets. Thus, it questions whether the Board's recommendation would result in greater U.S. consumption of shelled filberts.

Decay is a deterioration or decline of the plant tissues involving decomposition which is induced by fungi, bacteria, and similar organisms, and which is of a complete and progressive nature. Thus, from the standpoint of wholesomeness of any commodity for human consumption, decay is as serious a defect as mold, rancidity, and insect injury.

Among other nuts for which U.S. Standards exist—e.g., almonds, peanuts, pecans, and walnuts—decay is included with mold, rancidity, and insect injury (other highly objectionable defects). These standards include decay in the definitions of "very serious damage" or "serious damage".

The need to improve the quality of shelled filberts in order to expand consumption has long been recognized by the domestic industry. In 1959, the order was amended to provide authority for establishment of minimum grades for domestic shelled filberts. The recommended decision issued on this amendment stated, in part, as follows: "It was testified that the grade as now written was so liberal that it would not be effective in eliminating low-grade shelled filberts from the market if it were used as a required minimum standard in its present form and that the expense of inspecting all shelled filberts against such grade would be disproportionate to the very small benefits that would be realized. Despite the lack of a satisfactory standard at this time, the industry recognizes the growing importance of the shelled filbert market and favors authority to put a minimum quality requirement into operation at such time as the details of the requirement can be agreed upon and established. * * * Establishment of an appropriate minimum standard of quality for shelled filberts would tend to promote orderly marketing of shelled filberts since it would require that only acceptable quality filberts would be permitted to be handled and consumers and users could depend on the quality of each shipment." (24 FR 4169). The standard referred to in that decision was the standard cited earlier in this document as "earlier Oregon standards for shelled filberts".

While the standard proposed by the Board is consistent with the findings of the 1959 recommended decision, insufficient evidence was presented to justify, specifically or precisely, a one percent tolerance for the four defects for domestic shelled filberts, or that such one percent tolerance was in fact, necessary to achieve the domestic industry's stated objective of expanding consumption. Nor did it justify need for an abrupt adjustment of this magnitude; the proposed level would require an immediate reduction of as much as 80 percent in the tolerance for decay, without documented support for such urgency. However, there is a need to establish a tighter standard than currently in effect. Imposition of a two percent tolerance for the four defects appears to be a reasonable new tolerance level so long as it includes the current one percent tolerance for mold, rancidity and insect damage. This achieves the domestic industry's objective of providing overall improved quality to the consumer by tightening the tolerance for decay, albeit not as abruptly as proposed by the Board. Also, this standard would not result in any disruption in trade and would present minimal, if any, difficulties to the importation of shelled filberts. At the same time, it retains the current quality level for the remaining three defects (mold, rancidity, and insect damage) which has been in effect for domestic shelled filberts since October 1976, and for imported shelled filberts since December 1977. Also, this one percent tolerance for the three defects was contained in both the Board's and the association's proposals. The association's proposal is not realistic in that it seeks to separate decay from mold, rancidity, and insect injury, and it has failed to justify that decay is any less serious a defect than the other three defects, either for domestic or imported shelled filberts.

Under section 8e of the act, the same or comparable standards must apply to imported filberts as are applicable to domestic filberts regulated under the order. Comments were offered that stated that Turkish shelled filberts differ sufficiently from Oregon shelled filberts to warrant a comparable standard because Turkish filberts (1) have a distinct taste and flavor, (2) are higher in oil and moisture, (3) are smaller and have darker pellicles, and (4) are not inspected until seven weeks to four months after shelling.

Under the act, the criteria for establishing a standard for imports which is different than the domestic standard for reasons of comparability are limited to variations in characteristics between the domestic and the imported commodity. The fact that imported shelled filberts are not inspected until seven weeks to four months after shelling would not warrant a comparable standard. With respect to other stated differences, no conclusive information was submitted that any of these attributes would cause variations in characteristics between domestic and imported shelled filberts. Thus, there is no basis warranting the establishment of a different standard for imported shelled filberts because of comparability.

The information and data available in this rulemaking proceeding justify and support the tolerances hereinafter set forth. It is recognized that the shelled filbert industry, as are most agricultural commodity industries, is subject to continual change. Accordingly, the tolerances hereinafter set forth will be effective May 24, 1982, and continue in effect until July 31, 1983. During this period, interested parties may review and evaluate the effects of this regulation on quality improvement, trade, and consumption, and such material will be reviewed to determine whether further reduction of the tolerance levels is justified.

One commentator stated that the USDA should stay the rulemaking proceedings to complete the necessary economic cost benefit analysis required by Executive Order 12291. The Department is not required to complete such analysis under this Executive Order.

As a conforming change, § 999.400(b)(2) should be revised by deleting the second sentence. That sentence cites the requirements for Oregon No. 1 whole and broken grade for shelled filberts, but is no longer needed since this action deletes such references in § 982.101.

After consideration of all relevant matter presented, including that in the notice, the recommendations of the Board, and the petition of the association, the comments received, and other available information, it is found that to amend the grade and size regulation for shelled filberts grown in Oregon and Washington, and the requlation for imported shelled filberts, shall be as hereinafter set forth.

Therefore, §§ 982.101 and 999.400, for domestic and imported filberts, respectively, are amended as follows:

PART 982—FILBERTS GROWN IN OREGON AND WASHINGTON

1. Section 982.101 of Subpart—Grade and Size Regulation (7 CFR 982.101) is revised to read as follows:

§ 982.101 Grade requirements for shelled filberts.

(a) Pursuant to § 982.45(a), no handler shall handle any shelled filberts unless such filberts meet the grade requirements for shelled filberts as contained in Exhibit A of this section.

(b) Pursuant to §§ 982.50(a) and 982.51(b), a handler may declare and withhold shelled filberts in lieu of merchantable filberts in satisfaction of the handler's restricted obligation. Shelled filberts so declared and withheld shall, in lieu of the standards prescribed in § 982.50(a)(3), meet the grade requirements contained in Exhibit A of this section.

Exhibit A

Grade Requirements for Shelled Filberts

Filbert kernels or portions of filbert kernels shall meet the following requirements:

(1) Well dried and clean;

(2) Free from foreign material, mold, rancidity, decay or insect injury; and

(3) Free from serious damage caused by serious shriveling, or other means.

Tolerances

In order to allow for variations incident to proper grading and handling the following tolerances, by weight, are permitted as specified:

(1) For Foreign Material: 0.02 of one percent, for foreign material.

(2) For Defects: Five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than the following: Two percent for mold, rancidity, decay or insect injury: *Provided*, That not more than one percent shall be for mold, rancidity, or insect injury. The two percent tolerance shall be in effect until July 31, 1983.

Definitions

(1) "Well dried" means that the kernels are firm and crisp, not containing more than 6 percent moisture.

(2) "Clean" means practically free from plainly visible adhering dirt or other foreign material.

(3) "Foreign material" means any substance other than the filbert kernels, or portions of kernels. (Loose skins, pellicles or corky tissue which have become separated from the kernels shall not be considered as foreign material, provided that this material does not exceed .02 of one percent by weight.)

(4) "Serious damage" means any specific defect described in this section, or any equally objectionable variation of any one of these defects, or any other defects, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as serious damage.

(i) "Serious shriveling" means when the kernel is seriously shrunken, wrinkled and tough.

(ii) "Mold" means that there is a visible growth of mold either on the outside or inside of the kernel.

(iii) "Rancidity" means that the kernel is noticeably rancid to the taste. An oily appearance of the flesh does not necessarily indicate a rancid condition.

(iv) "Decay" means that any portion of the kernel is decomposed.

(v) "Insect injury" means that the insect, frass or web is present, or the kernel or portion of kernel show definite evidence of insect feeding.

PART 999—FILBERT IMPORTS

§ 999.400 [Amended]

2. Section 999.400(b)(2) is amended by removing the second sentence.

3. Exhibit A of § 999.400 is revised to read as follows:

Exhibit A

Grade Requirements for Shelled Filberts

Filbert kernels or portions of filbert kernels shall meet the following requirements:

(1) Well dried and clean;

(2) Free from foreign material, mold, rancidity, decay or insect injury; and

(3) Free from serious damage caused by serious shriveling, or other means.

Tolerances

In order to allow for variations incident to proper grading and handling the following tolerances, by weight, are permitted as specified:

(1) For Foreign Material: 0.02 of one percent, for foreign material.

(2) For Defects: Five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than the following: Two percent for mold, rancidity, decay or insect injury: *Provided*, That not more than one percent shall be for mold, rancidity, or insect injury. The two percent tolerance shall be in effect until July 31, 1983.

Definitions

(1) "Well dried" means that the kernels are firm and crisp, not containing more than 6 percent moisture.

(2) "Clean" means practically free from plainly visible adhering dirt or other foreign material.

(3) "Foreign material" means any substance other than the filbert kernels, or portions of kernels. (Loose skins, pellicles or corky tissue which have become separated from the kernels shall not be considered as foreign material, provided that this material does not exceed .02 of one percent by weight.)

(4) "Serious damage" means any specific defect described in this section, or any equally objectionable variation of any one of these defects, or any other defects, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as serious damage.

(i) "Serious shriveling" means when the kernel is seriously shrunken, wrinkled and tough.

(ii) "Mold" means that there is a visible growth of mold either on the outside or inside of the kernel.

(iii) "Rancidity" means that the kernel is noticeably rancid to the taste. An oily appearance of the flesh does not necessarily indicate a rancid condition.

(iv) "Decay" means that any portion of the kernel is decomposed.

(v) "Insect injury" means that the insect, frass or web is present, or the kernel or portion of kernel show definite evidence of insect feeding.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 18, 1982 to become effective May 24, 1982.

Charles R. Brader,

Director, Fruit and Vegetable Division.

March 18, 1982.

[FR Doc. 82–7917 Filed 3–23–82; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 82–031]

Change in Disease Status of Denmark Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes Denmark from the list of countries declared to be free of rinderpest and foot-and-mouth disease. This action which prohibits the importation of cattle, sheep, or other ruminants, or swine or fresh, chilled, or frozen meats of such animals into the United States from Denmark is necessary because the existence of foot-and-mouth disease has been confirmed in that country. This action is necessary as an emergency measure in order to protect the livestock of the United States from the threat of introduction or dissemination of foot-and-mouth disease into the United States.

DATES: Effective date: March 18, 1982. Comments on or before: May 24, 1982.

ADDRESS: Written comments should be submitted to the Deputy Administrator, Veterinary Services, APHIS, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Room 821, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8530.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This final action is issued in conformance with Executive Order 12291 and has been determined to be "not major."

The Department has determined that this rule will have an annual effect on the country of less than $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**.

The emergency, discussed above, makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis addressing the issues required by section 604 of Pub. L. 354, the Regulatory Flexibility Act, will be prepared.

On March 18, 1982, the Department was notified that foot-and-mouth disease was confirmed on the Isle of Fyn (part of Denmark). Foot-and-mouth disease, Type O, was confirmed on a farm which contained 66 cattle and no swine.

Foot-and-mouth disease is a dangerous and destructive communicable disease of ruminants and