

(b) [Reserved]

[FR Doc. 92-29115 Filed 11-30-92; 8:45 am]

BILLING CODE 6580-60-M

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 22**

[CC Docket No. 90-258, FCC 92-489]

**Limited Transfers and Assignments of Applications in Rural Service Areas**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This Report and Order amends the Commission's Rules to specify exceptions from the prohibition against transfers and assignments of interest in applications for cellular Rural Service Areas prior to the issuance of a construction authorization. The amendment is necessary because the rule was not serving its primary objective of preventing processing delays but instead has served to delay processing by requiring applicants to file waiver requests in order to accommodate business activities that relate only incidentally to cellular applications. The amended rule sets forth specific exemptions which allow transactions conducted in the ordinary course of business which have no more than an incidental effect on cellular applications to proceed unimpeded.

EFFECTIVE DATE: December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Joseph Weber, Common Carrier Bureau, Mobile Services Division, 202-632-6450.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order in CC Docket 90-258, adopted November 3, 1992, and released November 17, 1992. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, suite 640, Washington, DC 20036.

**Synopsis of Report and Order**

1. This Report and Order amends § 22.922 of the Commission's Rules which prohibits the sale, transfer, assignment, or other alienation of any interest in a cellular application for a Rural Service Area (RSA) prior to the authorization of a construction permit. Under the amended rule, cellular

applicants will be able to engage in transactions which transfer or assign interest in an RSA application when the transaction consists of one of the following exemptions: (1) The transfer is necessary to raise capital (including equity or debt placement) to finance a *bona fide* business need of the applicant or an affiliated company not relating to the RSA application or financing thereof; (2) the transfer is part of a *bona fide* sale of an on-going business to which the cellular applications are merely adjunct or incidental; (3) the transfer is required by a court-ordered decree granting a divorce or enforcing a spousal separation agreement; (4) the transfer is necessitated by the death of the applicant; (5) the transfer involves the routine trading of shares of a publicly traded corporation which does not constitute a transfer of control of the applicant; (6) the transfer is a *pro forma* transfer of control not involving a change in ownership interests; (7) the transfer involves only the alienation of an interest by an existing partner in a partnership that owns an application to another existing partner in the same partnership or between existing shareholders of a closely held corporation and does not effect a transfer of control of the application; and (8) the transfer involves the alienation or exercise of stock warrants or stock options in the application, which options or warrants existed prior to the filing of the RSA application.

2. The exceptions apply equally to wireline and nonwireline cellular applicants. The Commission determined that application of the amended rule equally to wireline and nonwireline carriers would be more expedient and effective than a wholesale exemption for wireline carriers.

3. The Commission determined that although Section 22.922 was initially adopted to prevent processing delays, in practice the rule served to delay application processing because the Commission was forced to handle requests for waivers of the rule. The record in the proceeding demonstrated that the types of transfers contemplated in the waiver requests were not the kind of transfers which required protection against application abuse, but instead were transactions which occur in the ordinary course of business. Furthermore, the Commission determined that other rules adequately protect against speculation in the filing of cellular applications.

**Ordering Clauses**

Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, 47 U.S.C.

154(i), 154(j), and 303(r), that part 22 is amended as set forth below, effective 30 days after publication in the Federal Register.

**List of Subjects in 47 CFR Part 22**

Communications common carriers, Domestic public cellular radio telecommunications services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

**Rule Changes**

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 22—PUBLIC MOBILE SERVICE**

1. The authority citation for part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.922 is amended by revising paragraph (a) to read as follows:

**§ 22.922 Transfers and assignments of applications or licenses in Rural Service Areas.**

(a) Notwithstanding any other sections of this part, the transfer of any interest in or of any cellular wireline or nonwireline application to offer service in Rural Service Areas is prohibited prior to the grants of a construction authorization. The term "transfer" is defined as a sale, assignment, placement of equity or convertible debt, or grant of an option or future share or participation in the application or any interest thereof. The following are exceptions to this rule:

(1) The transfer is necessary to raise capital, including the placement of debt or equity, to finance a *bona fide* business need of the applicant, or an affiliated company, not relating to the RSA application or financing thereof;

(2) The transfer is part of a *bona fide* sale of an ongoing business to which the cellular applications are merely adjunct or incidental;

(3) The transfer is required by a court-ordered decree granting a divorce or enforcing a spousal separation agreement;

(4) The transfer is necessitated by the death of the applicant;

(5) The transfer involves the routine trading of shares of a publicly traded corporation which does not constitute a transfer of control of the application;

(6) The transfer is a *pro forma* transfer of control from an applicant not involving a change in ownership interests;

(7) The transfer involves only the alienation of an interest by an existing

partner in a partnership which owns an application to another existing partner in the same partnership or between existing shareholders in a closely-held corporation and does not effect a transfer of control of the application; or

(8) The transfer is the result of the alienation or exercise of stock warrants or stock options which existed prior to the filing of the RSA application.

[FR Doc. 92-28999 Filed 11-30-92; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 90-164; RM-6814, RM-6926, RM-7706, RM-7707]

**Radio Broadcasting Services; St. Augustine, St. Augustine Beach and Gainesville, FL**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document grants a petition for reconsideration filed by Gillen Broadcasting Corporation to the extent of substituting Channel 287A for Channel 288A at Gainesville, Florida, and modifying the license of Station WYKS, Gainesville, to specify operation on Channel 287A. See 57 FR 29655 (July 6, 1992). The reference coordinates for the Channel 287A allotment at Gainesville, Florida, are 29-37-52 and 82-25-18. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** January 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 90-164, adopted October 29, 1992, and released November 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 288A and adding Channel 287A at Gainesville.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-28996 Filed 11-30-92; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 92-161; RM-8011]

**Radio Broadcasting Services; Glencoe and Le Sueur, MN**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document substitutes Channel 241C3 for Channel 241A, realots the channel from Le Sueur to Glencoe, Minnesota, and modifies the construction permit for Station KQXA to specify Glencoe as the community of license for Channel 241C3. This action is taken in response to a petition filed by Waite Park Broadcasting. See 57 FR 36050, August 12, 1992. The coordinates for Channel 241C3 at Glencoe are 44-46-09 and 94-09-05. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 92-161, adopted October 28, 1992, and released November 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is

amended by removing Channel 241A, Le Sueur and adding Channel 241C3, Glencoe.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-28997 Filed 11-30-92; 8:45 am]

BILLING CODE 6712-01-M

#### DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

#### 50 CFR Part 672

[Docket No. 911176-2018]

#### Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of Pacific cod by all vessels in the Central and Eastern Regulatory Areas of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for Pacific cod in these areas.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), November 27, 1992, until 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final notice of specifications (57 FR 2844, January 24, 1992) established the TAC for Pacific cod in the Central and Eastern Regulatory Areas as 39,000 and 1,000 metric tons respectively.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3) that the TACs for Pacific cod in the Central and Eastern Regulatory Areas have been reached. Therefore, NMFS is requiring that further catches of Pacific cod by all vessels in the Central and Eastern Regulatory Areas be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon,

A.l.t., November 27, 1992, through 12 midnight, A.l.t., December 31, 1992.

**Classification**

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672  
Fisheries, Reporting and  
recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 24, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation  
and Management, National Marine Fisheries  
Service.*

[FR Doc. 92-29050 Filed 11-25-92; 3:01 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 57, No. 231

Tuesday, December 1, 1992

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

[Docket No. 92-088-1]

#### User Fees—Exemption of Certain Aircraft from Aircraft Inspection Fees; Phytosanitary Certificates for Reexport of Low Value Commercial Shipments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** We propose to amend the regulations concerning user fees for commercial aircraft by making aircraft that have 64 or fewer seats and that require little or no inspection exempt from the per aircraft inspection fee. This action would ensure that we are charging similar fees for similar aircraft by expanding the present exemption of commuter aircraft with 30 or fewer seats, which require little or no inspection, to include larger commuter aircraft that also require little or no inspection. We are also proposing to set a user fee for issuance of phytosanitary certificates for reexport of low value commercial shipments. This action would allow exporters of low value commercial shipments to pay a lower user fee for issuance of these certificates than exporters of regular commercial shipments.

**DATES:** Consideration will be given only to comments received on or before December 31, 1992.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-088-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between

8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 638, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8646.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### Aircraft Inspection Fees

In a final rule published in the **Federal Register** on January 9, 1992, and made effective on February 9, 1992 (57 FR 755-773, Docket No. 91-135), we amended the regulations in 7 CFR part 354 (referred to below as the regulations) to, among other things, impose an aircraft inspection fee of \$76.75 for each commercial aircraft arriving at a United States (U.S.) port and subject to inspection under 7 CFR part 330 or 9 CFR chapter I, subchapter D. We exempted certain categories of commercial aircraft from the fee, including "(a)ny aircraft with 30 or fewer seats, which is not carrying cargo and which is not equipped to offer inflight food service" (§ 354.3(e)(2)(iv)).

On May 20, 1992, we received a petition submitted by American Airlines, also on behalf of Executive Airlines, Flagship Airlines, Henson Aviation, Paradise Island Airlines, and the Regional Airline Association, to amend § 354.3(e)(2)(iv) of the regulations to exempt any aircraft with 64 or fewer seats from the \$76.75 user fee. The petitioners believe that the present exemption is too limited to provide effective relief. Each of the airline petitioners operates small commuter services, with fleets of small aircraft that have from 19 to 64 seats. The petitioners believe that the Animal and Plant Health Inspection Service (APHIS) resources required to inspect these commuter aircraft are negligible. They also state that they cannot absorb the user fee without substantially curtailing schedules.

APHIS has carefully reviewed the arguments set forth in the petition, and believes that the regulations should be amended. The "30 or fewer seats" exemption was intended to exempt commuter aircraft that require little or no inspection from the per aircraft inspection fee. We now believe that, in order to exempt the intended aircraft, we must expand the exemption to

commuter aircraft with 64 or fewer seats. We therefore propose to amend the regulations to exempt commuter aircraft with 64 or fewer seats from the per aircraft inspection fee.

However, further provisions must be made to ensure that little or no inspection would be required of these aircraft. Therefore, we propose three additional requirements:

(1) The proposed exemption would be limited to passenger aircraft only. This provision would ensure that the aircraft is primarily a commuter aircraft and is not used for any other purpose, other than occasionally carrying small amounts of cargo. The proposed limitations on cargo are discussed below.

(2) The current regulations stipulate that the aircraft may not offer inflight food service. This provision was intended to prohibit foods which would carry a risk of introducing a plant pest or animal disease into the U.S. We do not believe the prepackaged snacks that the petitioners serve on their aircraft would carry such a risk. Therefore, we propose to revise the regulations to allow aircraft to be eligible for exemption from the user fee as long as they do not offer meal services other than beverages and prepackaged snacks that do not contain meats derived from ruminants, swine, or poultry or fresh fruits and fresh vegetables (meats derived from ruminants, swine, or poultry could carry animal diseases and fresh fruits and vegetables could carry plant pests). However, this provision would not exempt the aircraft from the garbage handling requirements found in 7 CFR part 330.400 and 9 CFR part 94.5, which regulate garbage arriving in the United States, and its territories and possessions, in order to prevent the spread of plant pests and animal diseases.

(3) The current regulations stipulate that the aircraft may not carry cargo. This provision was intended to prohibit cargo that would require APHIS inspection. The petitioners state that they sometimes carry small amounts of cargo, and that an embargo on such cargo is a considerable restraint on their operations. APHIS has determined that cargo may be carried on these aircraft, provided that it would not impose any risk of introducing a plant pest or animal disease into the U.S., and that the cargo carried would not require any

inspection. Therefore, we propose that no fresh fruits, fresh vegetables, plants, unprocessed plant products, cotton or covers, sugarcane, or fresh or processed meats would be permitted as cargo if the aircraft is to be eligible for exemption, as these items carry plant pests or animal diseases and would be subject to inspection under 7 CFR chapter III and 9 CFR chapter I, subchapter D.

Additionally, we propose to make a nonsubstantive editorial change to correct a typographical error. Section 354.3(e)(2) currently reads "The following categories of commercial aircraft are exempting from paying an APHIS user fee." We would correct "exempting" to read "exempt."

#### *Phytosanitary Certificates*

We are also proposing to set a user fee for the issuance of phytosanitary certificates for reexport of low value commercial shipments. "Commercial shipment" is defined in the regulations as "a shipment for gain or profit." "Low value" is specified in the regulations at § 354.3(g)(5)(i)(B)(2) to mean a value less than \$1,250 (see the final rule published in the *Federal Register* on January 9, 1992, 57 FR 755-773, Docket No. 91-135).

In a document published in the *Federal Register* on August 7, 1991 (56 FR 37481-37499, Docket No. 91-021), we proposed to charge a \$30 user fee for the issuance of both phytosanitary certificates for the export of commercial shipments and phytosanitary certificates for the reexport of commercial shipments. The calculations used to arrive at the \$30 figure are explained in the proposed rule. We did not propose to assess separate fees for low value commercial shipments. However, in response to that proposed rule, we received a comment suggesting that calculation of user fees be tied to the value of the item receiving service. For example, one commenter stated that someone exporting a \$40 box of plants should not have to pay the same fee for a phytosanitary certificate as the shipper of a \$20,000 load of lumber. APHIS agrees that it does take less time and effort to issue a certificate for a low value commercial shipment because shippers usually bring their plants to an APHIS office for inspection. In a document published in the *Federal Register* on January 9, 1992 (57 FR 755-773, Docket No. 91-135), which made final the proposed rule described above, we explained that, based on this comment, we were amending the regulations to charge \$19 for phytosanitary certificates for export of low value shipments. We also explained that we intended to publish a proposed

APHIS user fee covering phytosanitary certificates for reexport of low value commercial shipments in another document.

We are now proposing to charge \$19 for issuance of phytosanitary certificates for reexport of low value commercial shipments. Currently, all phytosanitary certificates for reexport of commercial shipments carry a fee of \$30. As explained above, issuing a certificate for a regular commercial shipment generally requires more services by APHIS personnel than for a low value shipment. Our proposed user fee of \$19 for reexport of low value commercial shipments would lower the fee currently required for reexport of these shipments, ensuring that exporters of low value commercial shipments are charged an amount more appropriate for the services they receive.

We are specifying in the regulation that commercial shippers can take advantage of this lower user fee only if: (1) The shipper requests the lower fee. We do not normally establish the value of shipments we inspect. Therefore, if a shipper wishes to be charged the lower fee, the shipper must bring it to APHIS' attention that the shipment is valued at less than \$1,250; (2) the items to be inspected are the same ones identified on the phytosanitary certificate. This verification assures that the items listed on the certificate as low value are the same ones being shipped; and (3) the shipment is accompanied by an invoice stating that the shipment is worth less than \$1,250.

#### *Executive Order 12291 and Regulatory Flexibility Act*

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### *Aircraft Inspection Fee*

This proposed rule, if adopted, would expand the present exemption of commuter aircraft with 30 or fewer seats, which require little or no

inspection, to include commuter aircraft with 64 or fewer seats that also require little or no inspection. By broadening the exemption, virtually all U.S. commuter air services would be exempt from the user fee charge. There are a few commuter aircraft operations that use slightly larger planes. However, these businesses operate primarily between Canada and the United States. Since Canadian routes are already exempt under the current regulations, these aircraft would not be affected by this regulatory change.

The Small Business Administration defines a small entity in the air transportation industry as one with less than 1,500 employees. It appears all of the entities potentially affected by this regulatory change would be considered small. While it was not possible to determine the exact number of affected commuter airlines, it has become clear that a major segment of these airline operations transports passengers and small amounts of cargo in and out of Florida and Puerto Rico from the Bahamas and other destinations in the Caribbean. Information submitted to APHIS from various private commuter airlines indicates that the \$76.75 user fee has had a significant impact on the smaller airlines, making it difficult for them to compete with larger commercial airline companies. For example, passengers travelling on commuter-size aircraft ultimately pay a share of the total user fee that is 11 times greater than the share paid by passengers travelling on a 400-seat B747. This per-passenger cost differential makes it difficult for the small commuter airlines to compete with larger airlines for business. The commuter airlines submitting information indicated that broadening the exemption would result in over 23,000 flights annually that would no longer be subject to the user fee. The cost savings would be more than \$1.4 million annually.

#### *Phytosanitary Certificates*

This proposed rule, if adopted, would also establish a user fee for the issuance of phytosanitary certificates for reexport of low value commercial shipments. This fee would be lower than the fee charged for issuance of phytosanitary certificates for reexport of commercial shipments. APHIS currently charges \$30 for such certificates for commercial shipments, and issues approximately 8,800 of these certificates annually. Approximately 10 percent of these reexport certificates are for low value commercial shipments. Since the resources needed to inspect low value commercial shipments are not as great as they are for regular commercial

shipments, it seems inappropriate to charge the same fee. Thus, APHIS is proposing to charge \$19 for issuance of phytosanitary certificates for reexport of low value commercial shipments. The \$11 difference results in a total savings of approximately \$9,680 annually to those entities requiring such certificates.

In general, both proposed rule changes ease the regulatory burden that APHIS user fees place on small entities. These proposed rule changes appear to be appropriate when considering the differences in resources required for APHIS inspection services for small commercial commuter aircraft and low value cargo.

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

#### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This document contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

#### Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes

that public input from all interested persons can be available to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this notice.

#### List of Subjects in 7 CFR Part 354

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

Accordingly, 7 CFR part 354 would be amended as follows:

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

1. The authority citation for part 354 would continue to read as follows:

**Authority:** 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 354.3, paragraph (e)(2), the introductory text and paragraph (iv) would be revised to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) The following categories of commercial aircraft are exempt from paying an APHIS user fee:

(i) \* \* \*

(iv) Any passenger aircraft with 64 or fewer seats, which is not carrying the following cargo: Fresh fruits, fresh vegetables, plants, unprocessed plant products, cotton or covers, sugarcane, or fresh or processed meats; and which does not offer meal service other than beverages and prepackaged snacks that do not contain meats derived from ruminants, swine, or poultry or fresh fruits and fresh vegetables. Aircraft exempt from the user fee under this paragraph would still be subject to the garbage handling requirements found in 7 CFR part 330.400 and 9 CFR part 94.5.

3. In § 354.3, paragraph (g)(5)(iii) would be revised to read as follows:

#### § 354.3 User fees for international services.

\* \* \* \* \*

(g) \* \* \*

(5) \* \* \*

(iii)(A) \$30 for a certificate for reexport of a commercial shipment; or (B) \$19 for a certificate for reexport of a low value commercial shipment, if the following criteria are met:

(1) The items being shipped are identical to those identified on the phytosanitary certificate;

(2) The shipment is accompanied by an invoice which states that the items being shipped are worth less than \$1,250; and

(3) The shipper requests that the user fee charged be based on the low value of the shipment;

\* \* \* \* \*

Done in Washington, DC, this 23d day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-29063 Filed 11-30-92; 8:45 am]

BILLING CODE 3410-34-M

#### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV-92-100PR]

#### Kiwifruit Grown in California; Proposed Rule To Modify Administrative Rules Pertaining to Delinquent Assessments

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would modify requirements pertaining to delinquent assessments by revising the time period specified for timely payment and adding a late payment charge on delinquent assessments owed by handlers under Marketing Order No. 920 covering kiwifruit grown in California. This action would contribute to the efficient operation of the program by ensuring that adequate funds are available to cover budgeted expenses incurred under the marketing order, and would promote more equitable treatment of kiwifruit handlers.

**DATES:** Comments must be received by December 31, 1992.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the

date and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:**

Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 720-8139; or Robert Curry, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; telephone (209) 487-5901.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement and Order No. 920 (7 CFR part 920), both as amended, regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, kiwifruit are subject to assessments. An assessment rate established under the marketing order is intended to be applicable to all assessable kiwifruit handled during a fiscal period. If adopted, this proposed rule would modify requirements pertaining to delinquent assessments by revising the time period specified for timely payment and adding a late payment charge on delinquent assessments owed by handlers. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 handlers of California kiwifruit subject to regulation under the marketing order and approximately 650 kiwifruit producers in the production area. The Small Business Administration (13 CFR 121.601) has defined small agricultural producers as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order, met on July 21, 1992, and unanimously recommended modifying the administrative rules in effect under the order pertaining to delinquent handler assessments. The modification would revise the time period specified for timely payment of assessments owed by handlers.

Under § 920.41 of the marketing order, each person who first handles kiwifruit is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's shipments.

Section 920.41 also provides that if a handler does not pay an assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both. The authority to establish late payment charges was recently added to the order and became effective on February 12, 1992.

Section 920.112 of the rules and regulations in effect under the order specifies that delinquent assessments be

subject to an interest charge of 1½ percent per month. Assessments are considered to be late 60 days after the date of the invoice sent to the handler by the committee. This rule proposes a revision in the deadline for assessment payments to recognize different billing procedures that are based upon the two methods in which handlers may choose to have their kiwifruit inspected.

Kiwifruit grown in California is harvested in late September or early October. The fruit is packed shortly after harvest and much of it is placed into storage until shipment. The primary shipping season extends through the following May, although some fruit is marketed during the summer months.

Whenever quality or size requirements are in effect for California kiwifruit, handlers are required to have their fruit inspected and certified as meeting those requirements. Handlers have a choice of two different inspection methods, referred to as "in-line" and "block" inspection. With in-line inspection, Kiwifruit is inspected during the packing process, prior to storage. With block inspection, the kiwifruit is inspected after it has been packed. Block inspections are typically performed just prior to shipment.

The committee bills handlers for assessments on a monthly basis, with invoices typically prepared the last day of each month. For fruit that is inspected in-line, the billing period runs from the first to the last of the month, and invoices are mailed the end of the succeeding month. For block-inspected fruit, the billing period runs from the 16th of one month through the 15th of the next month; invoices are prepared at the end of the following month. Thus, under current procedures, the time lapse from the end of the billing period through the date of invoice is about 30 days for handlers utilizing in-line inspection and about 45 days for handlers choosing block inspection.

As previously indicated, assessment payments are currently deemed to be delinquent if they are not received within 60 days of the invoice date. Because invoices are prepared at the end of each month, handlers utilizing in-line inspections have 90 days after the end of the billing period in which to pay assessments before they are deemed delinquent. This time is extended to about 105 days for handlers choosing block inspections.

This action proposes revising § 920.112 to provide that assessments due on in-line inspected kiwifruit be considered late if not received within 60 days of invoice, and those due on block-inspected kiwifruit be deemed late if not received within 45 days of invoice. This

change would equalize the time between the end of the billing period and the deadline for receipt of assessments and should therefore promote more uniform treatment of handlers.

This rule also proposes establishing a 10 percent late charge on assessments that are received 30 days or more after they are due. The 10 percent charge would apply only to the late assessment and not to accrued interest, and would not be compounded.

The timely payment of assessments is important to the efficient functioning of the marketing order program. The committee incurs expenses on a continuous basis and must be assured of a positive cash flow in order to meet its financial obligations. The establishment of a late payment charge, in addition to the current interest charge, would provide additional incentive for handlers to remit their assessments in a timely manner. This action should therefore contribute to the efficient operation of the program.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 920 be amended as follows:

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.112 is revised to read as follows:

##### § 920.112 Late payments.

Pursuant to § 920.41(a), interest will be charged at a 1.5 percent monthly simple interest rate. Assessments for kiwifruit inspected in-line shall be deemed late if not received within 60 days of invoice. Assessments for block-inspected kiwifruit shall be deemed late if not received within 45 days of invoice. A 10 percent late charge will be assessed when payment becomes 30 days late. Interest and late payment charges shall be applied only to the overdue assessment.

Dated: November 23, 1992.

**Robert C. Keeney,**  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 92–29012 Filed 11–30–92; 8:45 am]  
BILLING CODE 3410–02–M

#### 7 CFR Part 981

[Docket No. FV–92–083PR]

#### Almonds Grown in California; Proposed Rule to Revise Regulations Concerning Crediting for Advertising and Promotion

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on revisions to the administrative rules and regulations established under the Federal marketing order for California almonds, which describe conditions under which handlers may receive credit against their assessments for paid advertising. This proposal would: (a) Limit credit against handlers' assessment obligations for paid outdoor advertising in certain almond producing counties to those advertisements that direct consumers to a particular store or outlet for almonds. Currently, many outdoor advertisements are directed at growers; and (b) disallow credit against handlers' assessment obligations for paid advertising placed in publications that target the farming or grower trade. The changes are intended to better address the intent of the regulations which is to promote the sale, consumption, or use of California almonds. This action is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order. The Board believes that advertisements targeting growers are not effective in promoting the sale, consumption, or use of California almonds.

**DATES:** Comments must be received on or before December 31, 1992.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:**  
Kathleen M. Finn, Marketing Specialist,

Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2170.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California. The marketing agreement and order are submitted by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a “non-major” rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially