

Proposed Rules

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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

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Commodity Credit Corporation, Agriculture.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes to revise the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480).

The purpose of these changes is to simplify the purchasing procedures and shorten the regulations, keep the costs of the Pub. L. 480, title I program as low as possible, reflect the provisions of the Federal Agricultural Improvement and Reform Act of 1996 ("FAIR Act of 1996"), and reduce the public reporting burden.

DATES: Written comments in duplicate should be submitted on or before March 28, 1997.

ADDRESSES: Comments should be sent to Christopher E. Goldthwait, General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Room 5071 South Building, Stop 1001, 1400 Independence Ave., S.W., Washington, D.C. 20250-1001.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 20250-1033. Telephone: (202) 720-3664.

SUPPLEMENTARY INFORMATION: This proposed rule is issued in conformance with Executive Order 12866. It has been determined significant for the purposes of E.O. 12866 and, therefore, has been

reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. The Vice President, CCC, who is the General Sales Manager, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would eliminate several existing program requirements which should make it easier for firms to participate, including small businesses, and may result in some suppliers receiving payment more quickly. A copy of this proposed rule has been submitted to the General Counsel, Small Business Administration.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

This proposed rule revises the Pub. L. 480, title I financing regulations. CCC has submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Title: Regulations—Financing Commercial Sales of Agricultural Commodities Under Title I, Pub. L. 480.
OMB Control Number: 0551-0005.

Expiration Date of Approval: Three years from OMB approval.

Type of Request: Revision.

Abstract: The purpose of the changes in this proposed rule is to simplify the purchasing procedures and shorten the regulations, keep the costs of the Pub. L. 480, title I program as low as possible, reflect the provisions of the "FAIR Act of 1996", and reduce the public reporting burden. The proposed rule would eliminate the requirement that suppliers report to USDA payments to representatives of importing countries and the requirement that prospective commodity suppliers submit information to the P.L. 480 Operations Division in order to participate. Prospective suppliers that have been

determined to be eligible for participation in the GSM-102 or GSM-103 export credit guarantee programs could participate in title I sales.

Prospective suppliers that are not yet eligible for GSM programs would have to submit information to GSM; this information is not as extensive as that presently required for becoming an eligible supplier under title I. CCC would require shipping agents to provide complete information on the firm and its activities only once per fiscal year instead of doing so each time they are nominated by a title I importer.

The recordkeeping requirement would be retained. Successful commodity suppliers would still be required to report to USDA the details of sales made under the program for price review and to submit to USDA, for approval, information on any amendments to the sales.

Estimate of Burden: CCC estimates the public reporting burden to be 1 hour for new suppliers that need to develop the information necessary for eligibility under GSM programs; 1¼ hours for shipping agents to prepare a complete package of information required by the regulations each fiscal year and ¼ hour to prepare each subsequent submission updating information as changes occur; and ¼ hour for commodity suppliers to prepare telephonic notices of sale and requests for approval of sale amendments.

Respondents: Commodity suppliers that are interested in becoming eligible to participate in title I sales; shipping agents that have been selected by importers to help them purchase Title I commodities and arrange ocean transportation; and commodity suppliers that have been awarded sales under the program.

Estimated Number of Respondents: Eight new commodity suppliers; 10 shipping agents; and 15 successful commodity suppliers.

Estimated Number of Responses per Respondent: One for each new commodity supplier; between 1 and 4 for each shipping agent; and, between 1 and 25 for each successful commodity supplier.

Estimated Total Annual Burden on Respondents: Including recordkeeping requirements, 455 burden hours.

CCC requests comments regarding: (a) Whether the collection of information is necessary for the proper performance of

the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

USDA will accept comments on this information collection at: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Connie B. Delaplane, Director, Pub. L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250-1033. USDA will incorporate all comments as part of the public record.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection(s) of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to USDA on the proposed rule. CCC submitted the information collection requirements to OMB totaling 455 burden hours.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The final rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Background

Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480) authorizes CCC to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 *et seq.* On September 13, 1995, the Foreign Agricultural Service (FAS)

published an Advance Notice of Proposed Rulemaking (60 FR 47495) requesting comments on how to streamline and simplify the purchasing and shipment procedures under the Public Law 480, title I program. CCC considered these comments in drafting the proposed rule, and welcomes further input regarding the issues raised in the ANPRM at this stage of rulemaking procedure. The key comments received are discussed below, except those that were outside the scope of the ANPRM and those which have already been implemented by final rules published on December 7, 1995 (60 FR 62072) and April 23, 1996 (61 FR 17823). A copy of the "Benefit-Cost Assessment" prepared in connection with this proposed rule can be obtained from Connie B. Delaplane. See "For Further Information Contact."

Discussion of Comments

Purchase Authorization

After CCC and the participant have signed a title I agreement, CCC issues a purchase authorization ("PA") which establishes general specifications for the commodity to be purchased, sets the contracting and delivery periods, and establishes conditions for CCC's financing of the commodity and any authorized ocean transportation costs. The participant issues, upon CCC approval, public Invitations for Bids ("IFB's") for commodities and ocean transportation. These IFB's contain the importer's requirements including precise commodity specifications, delivery dates, and payment documents. Subsequently the importer and suppliers of commodities and ocean transportation enter into contracts based upon offers received in response to these IFB's.

The ANPRM asked for comments on whether the PA could be eliminated, with the relevant portions being incorporated into the financing regulations or the IFB, as appropriate. Most comments stated there was no urgent need for the PA, agreeing that the PA terms could be incorporated in the title I agreement, the buyer's IFB or the regulations. One comment supported retaining the PA, suggesting that the PA terms were not appropriate for either the regulations or the IFB.

The proposed rule would retain the PA. By doing so CCC could delete from the regulations Appendix A (Contracting Requirements) and Appendix B (Documentary Requirements). CCC's up-to-date contracting and documentary requirements for a commodity would appear in the PA. (The regulations

specify that the PA may contain requirements in addition to, or in lieu of, the regulations.) Through the PA we could quickly update CCC's program requirements, if needed, and make that information widely available. If the PA did not exist, it would be necessary to make such changes by amending the regulations or the title I agreement, which could delay purchasing and shipment of the commodities. If the buyer were required to include such information in the IFB's, those documents would be longer and more complex.

Some respondents felt that the PA issuance procedure could cause delays in implementing the program. We would like to receive specific examples of such delays to help us improve the process. A delay in PA issuance may simply reflect the fact that the participant is not ready to purchase.

Letters of Credit

After the participant enters into commodity and ocean freight contracts, the existing regulations provide that the importer must cause a separate letter of credit to be opened for the commodity supplier, and for the supplier of ocean transportation when CCC is financing any part of the ocean transportation. CCC also issues a Letter of Commitment to the U.S. bank that has issued, confirmed or advised the letter of credit. The supplier receives payment from the bank upon presentation of required documentation. CCC will reimburse the bank, pursuant to this Letter of Commitment, for payments made under the letter of credit.

The ANPRM asked for comments on an alternative procedure under which CCC would simply pay the suppliers directly for the commodity and for ocean freight costs which are financed by CCC. The participant would not open a letter of credit for these amounts, and there would be no need for CCC to issue any Letters of Commitment.

Most comments supported direct payment by CCC, noting that the bank charges associated with letters of credit ranged from 1-2% of the value of the letter of credit. Since the buyers were required to bear these costs, the benefit of the title I program to the recipient was lessened. Under the proposed rule, title I recipients would save about \$2.5-\$5 million each year in banking costs, based on an estimated \$250 million per year which would be paid directly to suppliers by CCC instead of through letters of credit. U.S. banks would bear some costs from this change, based on the loss of these fees, and reduced opportunities to develop business relationships with food aid recipients.

The change is proposed based on the assessment that the cost to U.S. banks would be outweighed by the significant benefits to food aid recipients, given the relatively small size of these letter of credit fees relative to total bank income, the static or declining food aid budget, and the length of time needed for recipients to develop into commercial opportunities for U.S. banks. There would still be opportunities for banks to issue letters of credit for a portion of the ocean freight costs, as discussed in detail below. Based on the fiscal year 1996 title I program, such letters of credit might be opened for about \$16 million, generating banking fees of \$160,000–\$320,000.

Commodity suppliers have generally been unwilling to load vessels without a letter of credit to secure payment. Such delayed loading can be costly to the recipient, which may owe “carrying charges” to the commodity supplier and “detention” to the supplier of ocean transportation. These costs are not financed by CCC and they can be significant; for example, one day of “detention” for a U.S.-flag vessel can cost the recipient as much as \$25,000.

Finally, some title I recipient countries do not have well established banking systems through which to open letters of credit.

As a result, the proposed rule would adopt the procedure for direct payment by CCC for all commodity and freight costs which are financed by CCC (see § 17.9.) In connection with this change, the proposed rule would also prohibit certain payments which are permitted under existing regulations, but which cannot be financed by CCC. This includes consular fees for legalization of documents, and total ocean transportation brokerage commissions in excess of 2½ percent of the freight. Under existing regulations, the supplier is required to show on the invoice any amounts which are not eligible for financing by CCC. The bank may then pay the supplier the total invoice amount under the importer’s letter of credit, and CCC would deduct the ineligible amount from its reimbursement to the bank under the Letter of Commitment. With the proposed direct payment procedure, there is no simple mechanism to allow a supplier to be paid for such costs while protecting CCC from ultimately bearing the costs. It would not be equitable to prohibit a supplier from recouping these costs as part of the supplier’s sales price and such a rule may discourage firms from showing on the invoice any amounts ineligible for CCC financing. Consequently, the proposed rule would prohibit payment

of these costs; however, suggestions are requested regarding other ways to address the issue of costs which are ineligible for CCC financing.

Several comments expressed concern about how quickly CCC would pay suppliers, saying that direct payment would not be beneficial if it took longer than payment by a bank under a letter of credit. CCC plans to pay suppliers as promptly as a bank does, upon receipt of the documentation required by the importer and by CCC.

This proposal is not expected to significantly increase USDA’s workload, although there will be a slight increase in burden for the Farm Service Agency (“FSA”), which would be responsible for making the payments to suppliers.

One comment raised the issue of potential financial exposure on the part of CCC for financing a product that did not meet specifications, for example. CCC would examine each document with reasonable care to ascertain that it appears on its face to be in accord with documentary requirements specified in the regulations, the PA, and the buyer’s own IFB or contract. Agreements between CCC and the participants would provide that CCC would be liable only for breaching this standard of review.

Comments indicated some confusion regarding payment of ocean transportation costs. CCC would not require the participant to open a letter of credit for shipments for which the participant paid the entire freight costs, or in the rare instances when CCC financed 100% of the freight costs. However, when CCC financed a portion of the freight costs on a shipment and the participant paid the balance, the participant would be required to open a letter of credit for its share of the freight costs. For example, when commodities are shipped on a U.S.-flag vessel and CCC finances only the ocean freight differential, the supplier would collect the ocean freight differential from CCC and the balance from a U.S. bank under the participant’s letter of credit.

The regulations would require the participant to open this partial letter of credit in order to provide the supplier of ocean transportation a high level of confidence that the participant’s portion of the freight would be paid in accordance with the contract. This should keep freight costs down and encourage competition.

CCC would not pay any commodity or freight costs which were not to be financed by CCC, which is consistent with the current operation of the program.

Cost and Freight

The ANPRM asked for comments on whether CCC should finance commodity contracts on a cost and freight (C&F) basis, or a cost, insurance and freight (CIF) basis, instead of requiring separate contracts for the commodity and the ocean transportation. Under such contracts the commodity supplier would be responsible for securing ocean transportation.

Respondents were concerned that such contracts would keep smaller commodity suppliers, which do not own or control vessels, from offering competitively. They also noted that it would be more difficult to enforce cargo preference requirements for use of U.S.-flag vessels with C&F or CIF sales. Several comments stated that contracting under these terms would blur the distinction between the commodity costs and the freight costs, complicating both commodity price review and the determination of “fair and reasonable” U.S.-flag freight rates by the Maritime Administration, Department of Transportation. The proposed rule retains the option for such contracts; however, permitting such contracts would be a matter of agency policy, as at present.

Other Comments

The proposed rule contains several provisions based on other comments submitted in response to the ANPRM. For example, shipping agents (firms helping the buyers arrange the purchase and shipment of Title I commodities) would be required to provide complete information on the firm and its activities only once per fiscal year. At present, they must submit the information each time a firm is nominated by a recipient. The firm would certify, in conjunction with any subsequent nominations as shipping agent during the fiscal year, that the information initially submitted was still current, or would specify any changes. This proposal would reduce the reporting burden on shipping agents and also save a small amount of FAS staff time.

Another comment recommended that the Form FAS-359 (“Declaration of Sale”) and the Form CCC-105 (“Request for Vessel Approval”) be eliminated. We believe that it is necessary to retain a written price approval document, a purpose served by the existing “Declaration of Sale” form. This key document insures that all parties—the commodity supplier, FAS, and the entity making payment—clearly understand the terms of the sale as approved for financing by CCC. The document includes the unit price,

delivery period, and commodity specifications.

The Form CCC-105, submitted to FAS by the charterer, is the formal written notification from the importer regarding the ocean freight contract and contains the information on which the written "Advice of Vessel Approval" is based (Form CCC-106). The latter form is a required payment document, which shows the amount of freight to be financed by CCC, along with the main contract terms. If the Form CCC-105 were eliminated, the CCC-106 would be more likely to contain errors and thus delay payment to the supplier.

Other Key Changes

The proposed rule would contain a definition of "private entity," and would amend the definition of "participant" to cover both private entities and foreign countries. This reflects the FAIR Act of 1996 which permitted title I agreements to be signed with private entities. (References to "private trade entities," no longer included under the legislation, have been deleted.) The proposed rule would require that, in order to participate, a private entity would need to have a legal presence in the United States.

The proposed rule would eliminate the requirement in existing § 17.7 that prospective commodity suppliers must submit information to the P.L. 480 Operations Division, FAS, including a current financial statement, to be determined eligible to participate. Any supplier eligible under the GSM-102 or GSM-103 programs could participate. Financial information on the firm and experience as an exporter are not required for eligibility under the GSM-102 and GSM-103 programs, which are fully commercial. Comments are requested as to whether the bid and performance bond requirements in the importer's IFB would be sufficient to insure performance by a supplier.

Approximately ten firms per year wish to become eligible commodity suppliers under title I. Two or three of those firms are already eligible under the GSM programs, and would have no additional reporting burden to be eligible under title I. The remaining seven or eight firms would require only about an hour to develop the information needed for eligibility under the GSM programs instead of the three hours currently estimated for title I. FAS would also save a small amount of staff time by deleting this separate eligibility requirement for title I suppliers.

The proposed rule would also require that cotton suppliers report sales to FAS, instead of to the Kansas City Commodity Office, Farm Service

Agency. FAS would become responsible for price review and for vessel approval for cotton shipments, as it is now for all other commodities purchased under title I.

The proposed rule would eliminate the requirement in existing § 17.12 that suppliers report to USDA any payments made to representatives of the importer or importing country. The underlying legislation was repealed in December 1995 by the Federal Reports Elimination and Sunset Act of 1995. CCC will not finance such payments, however, except for ocean transportation brokerage commissions which do not exceed 2-1/2% of the freight.

The ocean transportation provisions in § 17.8(b)(2) of the proposed rule would not contain the prohibition in existing § 17.14(b)(2) against "clarification or submission of additional information" under competitive freight IFB's. This is not intended to reflect a substantive policy change. Only freight offers which were responsive to the terms of the IFB as of the date and time for receipt of offers could be considered, as at present. No information or clarification submitted after that date and time could be used to make the offer responsive. The prohibition against negotiation also remains in the regulations. This change would simply acknowledge that it is occasionally necessary to seek factual information after an offer has been submitted, such as the maximum tonnage which can be loaded at a certain port, given existing draft conditions and stowage factors for the commodity in question.

The proposed rule does not contain the requirement in existing § 17.18(c)(7) that a "transshipment certification" be placed on the commodity invoice in certain circumstances. The Maritime Administration of the U.S. Department of Transportation published a final rule on May 17, 1996 (61 FR 24895) which amended the definition of "available" commercial U.S.-flag service for shipments during the 1996-2000 Great Lakes shipping seasons. This change made the transshipment certification unnecessary. (Purchase authorizations for affected commodities already exempt exporters from this requirement.)

The proposed rule would not provide for the obsolete "letter of conditional reimbursement" procedure (existing § 17.4(h)), nor for the "reimbursement method of financing" (existing § 17.16) which would no longer be necessary with direct payment to suppliers by CCC.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Accordingly, it is proposed to revise Part 17 of 7 CFR as follows:

PART 17—SALES OF AGRICULTURAL COMMODITIES MADE AVAILABLE UNDER TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954, AS AMENDED

Subpart A—Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

Sec.

- 17.1 General.
- 17.2 Definition of terms.
- 17.3 Purchase authorizations.
- 17.4 Agents of the participant or importer.
- 17.5 Contracts between commodity suppliers and importers.
- 17.6 Discounts, fees, commissions and payments.
- 17.7 Notice of sale procedures.
- 17.8 Ocean transportation.
- 17.9 CCC payment to suppliers.
- 17.10 Refunds and insurance.
- 17.11 Recordkeeping and access to records.

Authority: 7 U.S.C. 1701-1704, 1731-1736b, 1736f, 5676; E.O. 12220, 45 FR 44245, 3 CFR, 1980 Comp., p. 263.

Subpart A—Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

§ 17.1 General.

(a) *What this subpart covers.* This subpart contains the regulations governing the financing of the sale and exportation of agricultural commodities by the Commodity Credit Corporation (CCC), through private trade channels to the maximum extent practicable, under the authority of Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter called "the Act").

(b) *Agricultural commodities agreements.* (1) Under the Act, the Government of the United States enters into Agricultural Commodities Agreements with governments of foreign countries or with private entities. These agreements cover financing of the sale and exportation of agricultural commodities, including certain ocean transportation costs.

(2) Agricultural Commodities Agreements may provide that a participant will repay CCC for the financing extended by CCC either in dollars or in local currencies.

(c) *Purchase authorizations.* This subpart covers, among other things, the issuance by the General Sales Manager of purchase authorizations which authorize the participant to

(1) Purchase agricultural commodities and
 (2) Procure ocean transportation therefor.

(d) *Financing.* For amounts to be financed by CCC, CCC will pay the supplier of commodity or of ocean transportation upon receipt of the documents specified in the subpart, the purchase authorization and the IFB. The cost of ocean freight or ocean freight differential will be financed by CCC only when specifically provided for in the purchase authorization.

(e) *Where information is available.* General information about operations under this subpart is available from the Director, Public Law 480 Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250-1033. Information about financing operations under this subpart, including forms prescribed for use thereunder, is available from the Controller, Commodity Credit Corporation, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013-2415.

§ 17.2 Definition of terms.

Terms used in the regulations in this subpart are defined or identified as follows, subject to amplification in subsequent sections:

Affiliate and associated company—any legal entity which owns or controls, or is owned or controlled by, another legal entity. For a corporation, ownership of the voting stock is the controlling criterion. A legal entity is considered to own or control a second legal entity if—

(1) The legal entity owns an interest of 50 percent or more in the second legal entity, or

(2) The legal entity and one or more other legal entities, in which it owns an interest of 50 percent or more, together own an interest of 50 percent or more in the second legal entity, or

(3) The legal entity owns an interest of 50 percent or more in another legal entity which in turn owns an interest of 50 percent or more in the second legal entity.

CCC—the Commodity Credit Corporation, U.S. Department of Agriculture.

Commodity—an agricultural commodity produced in the United States, or product thereof produced in the United States.

Controller—the Controller, Commodity Credit Corporation, or the Controller's designee.

Copy—a photocopy or other type of copy of an original document showing all data shown on the original, including signature or the name of the

person signing the original or, if the signature or name is not shown on the copy, a statement that the original was signed.

Delivery—the transfer to or for the account of an importer of custody and right of possession of the commodity at U.S. ports or Canadian transshipment points in accordance with the delivery terms of the contract and purchase authorization. For purposes of financing, delivery is deemed to occur as of the on-board date shown on the ocean bill of lading.

Destination country—the foreign country to which the commodity is exported.

Director—the Director, Public Law 480 Operations Division, Foreign Agricultural Service.

Expediting services—services provided to the vessel owner at the discharge port in order to facilitate the discharge and sailing of the vessel; this may include assisting with paperwork, obtaining permits and inspections, supervision and consultation.

FAS—the Foreign Agricultural Service, U.S. Department of Agriculture.

FSA—the Farm Service Agency, U.S. Department of Agriculture.

FSA Office—the office designated in the purchase authorization to administer this financing operation on behalf of CCC.

Finance—To expend CCC funds, whether or not the participant is required to repay the funds to CCC. For example, this subpart refers to CCC "financing" both the ocean freight differential, which the participant does not repay, and the commodity cost, which the participant does repay.

Form CCC-106—the form entitled "Advice of Vessel Approval."

Form CCC-329—the signed original of the form entitled "Supplier's Certificate."

General Sales Manager and GSM—the General Sales Manager, FAS, or the General Sales Manager's designee.

Importer—the person that contracts with the supplier for the importation of the commodity. The importer may be the participant or any person to which a participant has issued a subauthorization.

Importing country—any nation with which an agreement has been signed under the Act.

Invitation for bids and IFB—a publicly advertised request for offers.

Legal entity includes, but is not limited to, an individual (except that an individual and his or her spouse and their minor children are considered as one legal entity), partnership, association, company, corporation and trust.

Letter of credit—an irrevocable commercial letter of credit issued, confirmed, or advised by a banking institution in the United States and payable in U.S. dollars.

Local currency and foreign currency—interchangeable terms; the currency of the importing or destination country.

Notice of arrival—a written notice in accordance with § 17.8(g) stating that the vessel has arrived at the first port of discharge.

Ocean bill of lading—

(1) *In the case of cargo carried on a vessel other than LASH barges:* An "on-board" bill of lading, or a bill of lading with an "on-board" endorsement, which is dated and signed or initialed on behalf of the carrier, or

(2) *In the case of cargo carried in a LASH barge:*

(i) For the purpose of financing commodity price, an "on-board" bill of lading showing the date the commodity was loaded on board barges, which is dated and signed or initialed on behalf of the carrier, or a bill of lading or a LASH barge bill of lading with an "on-board barge" endorsement which is dated and signed or initialed on behalf of the carrier.

(ii) For the purpose of financing ocean freight or ocean freight differential, a bill of lading which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC-106 not later than eight running days after the last LASH barge loading date (contract layday) specified in the Form CCC-106. This may be either an "on board" bill of lading or a bill of lading or a LASH barge bill of lading with an "on-board ocean vessel" endorsement.

(3) Documentary requirements for a copy of an "ocean bill of lading" refer to a non-negotiable copy thereof.

Ocean freight contract—a charter party or liner booking note.

Ocean transportation—interchangeable with the term "ocean freight".

Ocean transportation brokerage—services provided by shipping agents related to their engagement to arrange ocean transportation and services provided by ships brokers related to their engagement to arrange employment of vessels.

Ocean transportation-related services—furnishing the following services: lightening, stevedoring, and bagging (whether these services are performed at load or discharge), and inland transportation, i.e., transportation from the discharge port to the designated inland point of entry in the destination country, if the discharge

port is not located in the destination country.

Participant—the collective term used to denote the importing country or the private entity with which an agreement has been negotiated under the Act.

Person—an individual or other legal entity.

Private entity—the nongovernmental legal entity with which an agreement has been signed under the Act. A foreign private entity must maintain a bona fide business office in the United States and have a person, principal, or agent on whom service of judicial process may be had in the United States.

Purchase authorization—Form FAS-480, "Authorization to Purchase Agricultural Commodities," issued to a participant under this subpart.

Purchasing agent—any person engaged by a participant to procure agricultural commodities.

Secretary—the Secretary of Agriculture of the United States, or the Secretary's designee.

Selling agent—a representative for the supplier of the commodity, who is not employed by or otherwise connected with the importer or the participant.

Shipping agent—any person engaged by a participant to arrange ocean transportation.

Ships broker—any person engaged by a supplier of ocean transportation to arrange employment of vessels.

Supplier—any person who sells a commodity to an importer under the terms of a purchase authorization, or who sells ocean transportation to an importer or supplier of the commodity under the terms of a purchase authorization.

United States—the 50 States, the District of Columbia, and Puerto Rico.

USDA—the U.S. Department of Agriculture; includes all or any of the agencies mentioned in this section.

§ 17.3 Purchase authorizations.

(a) **Issuance.** After an agreement is signed, the GSM will issue a purchase authorization to the participant for each commodity included in the agreement.

(b) **Contents.** Each purchase authorization includes the following information:

(1) The commodity to be purchased and specifications, approximate quantity and maximum dollar amount authorized;

(2) Contracting requirements;

(3) The contracting period, during which suppliers and importers must enter into contracts; and the delivery period, during which the commodity must be delivered;

(4) The terms of delivery to the importer;

(5) Documentation required for CCC financing in addition to or in lieu of the documentation specified in § 17.9;

(6) Provisions relating to payment to CCC, if applicable;

(7) The address of the FSA office administering the financing operation on behalf of CCC;

(8) The method of financing provided under the Agricultural Commodities Agreement;

(9) Any provisions relating to financing by CCC in addition to or in lieu of those specified in this subpart;

(10) Authorization to procure ocean transportation, and provisions relating to the financing of ocean freight or ocean freight differential, as applicable;

(11) Any other provisions considered necessary by the General Sales Manager.

(c) **Applicability of this subpart.** In addition to the provisions of a particular purchase authorization, each purchase authorization, unless otherwise provided, is subject to the provisions of this subpart to the same extent as if the provisions were fully set forth in the purchase authorization.

(d) **Modification or revocation.** The General Sales Manager reserves the right at any time for any reason or cause whatsoever to supplement, modify or revoke any purchase authorization, including the termination of deliveries, if it is determined to be in the interest of the U.S. Government. CCC shall reimburse suppliers who would otherwise be entitled to be financed by CCC for costs which were incurred as a result of such action by the GSM in connection with firm sales or shipping contracts, and which were not otherwise recovered by the supplier after a reasonable effort to minimize such costs: *Provided, however,* That such reimbursement shall not be made to a supplier if the GSM determines that the GSM's action was taken because the supplier failed to comply with the requirements of the regulations in this subpart or the applicable purchase authorization; *Provided further,* That reimbursement to suppliers of ocean transportation shall not exceed the ocean freight differential when the purchase authorization provides only for financing the differential.

(e) **Subauthorizations.** The participant may issue subauthorizations to importers consistent with the terms of the applicable purchase authorization. The participant, in subauthorizing, shall specify to importers all the provisions of the applicable purchase authorization which apply to the subauthorization.

(f) **Cotton textiles.** (1) Except as provided in paragraph (f)(2) of this section, financing of textiles under this subpart is limited to cotton yarns and

fabrics processed up to and including the dyed and printed state, and preshrinking. Any processing of such yarns and fabrics beyond this stage will be at the expense of the participant.

(2) Purchase authorizations may permit cotton textiles processed beyond the stage described in paragraph (f)(1) of this section to be purchased, but the maximum financing by CCC is limited to the equivalent value of the cotton yarns and fabrics described in paragraph (f)(1) of this section, contained in the textiles, plus eligible ocean transportation costs.

(3) Financing is available only for textiles manufactured entirely of U.S. cotton in the United States.

§ 17.4 Agents of the participant or importer.

(a) **General.** (1) A participant or importer is not required to use a purchasing agent or shipping agent, or employ the services of any other agent, broker, consultant, or other representative (hereafter "agent") in connection with arranging the purchase of agricultural commodities under title I of the Act and arranging ocean transportation for such commodities. However, if an agent is used, the participant shall submit a written nomination of the agent to the Deputy Administrator, Export Credits, along with a copy of the proposed agreement between the participant or importer and such agent. The written nomination shall also specify the period of time to be covered by the nomination. A person may not act as agent for a participant or importer unless the Deputy Administrator, Export Credits, has provided a written statement that the nomination is accepted in accordance with the provisions of this section.

(2) See § 17.6(c) regarding commissions, fees, or other compensation of any kind to agents of a participant or importer.

(3) A freight agent employed by the Agency for International Development under titles II and III of the Act is not eligible to act as an agent for the participant or importer during the period of such employment. A subcontractor of such freight agent is not eligible to act as an agent for the participant or importer during the period of its subcontract.

(b) **Affiliate defined.** For purposes of this section, the term affiliate has the meaning provided in § 17.2 and, in addition, persons will also be considered to be affiliates if any of the following conditions are met:

(1) There are any common officers or directors.

(2) There is any investment by eligible commodity suppliers, selling agents, or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government, or by agents of such persons, or their officers or directors, in the agent of the participant or importer.

(3) There is any investment by the agent of the participant or importer, or its officers or directors, in approved commodity suppliers; selling agents; or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government, or in agents of such persons. These conditions include those cases in which investment has been concealed by the utilization of any scheme or device to circumvent the purposes of this section but does not include investment in any mutual fund.

(c) *Information to be furnished.* A person nominated to act as an agent of the participant or importer, and any independent contractor that may be hired by such person to perform functions of a shipping agent, shall furnish to the Deputy Administrator, Export Credits, the following information or documentation as may be applicable:

- (1) The names of all incorporators;
- (2) The names and titles of all officers and directors;
- (3) The names of all affiliates, including the names and titles of all officers and directors of each affiliate, and a description of the type of business in which the affiliate is engaged;
- (4) The names and proportionate share interest of all stockholders;
- (5) If beneficial interest in stock is held by other than the named shareholders, the names of the holders of the beneficial interest and the proportionate share of each;
- (6) The amount of the subscribed capital;
- (7) For USDA acceptance of a nomination covering services provided during each U.S. fiscal year (October 1—September 30), a written statement signed by such person:

(i) Certifying that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not engaged in, and will not engage in, supplying commodities

under any title of the Act or the Food for Progress Act of 1985 or furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether any part of the ocean transportation is financed by the U.S. Government; and that the person has not served and will not serve as an agent of firms engaged in providing such commodities, ocean transportation and ocean transportation-related services;

(ii) Certifying that, for ocean transportation brokerage services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not shared and will not share freight commissions with the participant, the importer, or any agent of the participant or the importer, whether CCC finances any part of the ocean freight. CCC will consider as sharing a commission a situation where the agent forgoes part or all of a commission and the supplier of ocean transportation pays a commission directly to the participant, the importer, or any other person on behalf of the participant or the importer; and

(iii) Undertaking that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, affiliates of such person have not engaged in and will not engage in the activities or actions prohibited in this paragraph (c)(7).

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment, kickback, or illegal benefit in connection with the person's selection as agent of the participant or importer.

(d) *USDA acceptance.* (1) USDA will consider accepting the nomination of a person to act as an agent of the participant or importer when the documents required to be submitted by this section are received by the Deputy Administrator, Export Credits.

(2) USDA's acceptance of such nomination shall remain in effect for the period of time requested by the participant or such shorter period as the Deputy Administrator, Export Credits, may determine. USDA will withdraw such acceptance if the agent of the participant or importer, or any of the affiliates of such agent, violates the certifications or undertakings made pursuant to paragraphs (c) (7) and (8) of this section.

(3) A person is required to submit the information and documentation required by paragraph (c) of this section to support the person's first nomination to act as an agent of any participant or

importer for each fiscal year. For subsequent nominations covering the same fiscal year, the person must provide a written certification that all the information and documentation provided earlier is still accurate and complete, or must provide the details of any changes.

(e) *Notification.* The Deputy Administrator, Export Credits shall promptly notify persons nominated as agents of the participant or importer, of the determination or of the need for further inquiry, and shall provide a written response within 30 calendar days of receipt of all the required documents. If USDA will not accept the nomination, the notification shall state the reasons therefor. The determination of the Deputy Administrator, Export Credits is effective immediately and continues in effect pending the result of any appeal to the General Sales Manager.

(f) *Non-acceptance or withdrawal.* (1) If USDA does not accept the nomination of a person, or if acceptance has been withdrawn pursuant to the provisions of this section, the person may, within 30 calendar days, present to the General Sales Manager, orally or in writing, any reasons as to why such action should not stand. Nothing in this paragraph shall be construed as to prohibit a person whose nomination has not been accepted or whose acceptance has been withdrawn by USDA from being nominated at a later time.

(2) If, in the procurement of commodities made available under title I, Public Law 480, a participant or importer uses an agent whose nomination has not been accepted in writing by the Deputy Administrator, Export Credits, USDA may withhold sales approval.

(3) If, in the shipping of commodities made available under title I, Public Law 480, a participant or importer uses an agent whose nomination has not been accepted in writing by the Deputy Administrator, Export Credits, USDA may withhold vessel approval or may deduct from the ocean freight differential to be paid, the amount of any commission to the agent in connection with the shipment.

(g) *No competitive advantage.* A shipping agent may not take any action which would give a competitive advantage to any supplier of commodities or ocean transportation. This includes, but is not limited to, providing advance notice of IFB's or amendments, or selectively enforcing IFB or contract requirements.

§ 17.5 Contracts between commodity suppliers and importers.

(a) *Commodity suppliers and selling agents.* (1) In order to participate in the Public Law 480, title I program, a prospective commodity supplier must submit to CCC the information required by 7 CFR 1493.30.

(2) If, at the time the commodity supplier reports the sale it is determined that an agent employed or engaged by a commodity supplier to obtain a contract is not a selling agent as defined in § 17.2, the sale will not be eligible for financing.

(b) *Eligibility for financing.* To be eligible for financing, commodity contracts must comply with the following requirements unless otherwise specified in the purchase authorization.

(1) Commodity contracts between suppliers and importers are considered to be conditioned on the approval by USDA of the contract price; conformance of the sale to the provisions of the purchase authorization; responsiveness of the offer to IFB terms; and compliance by the supplier and the selling agent, if any, with paragraph (a) of this section.

(2) Importers and suppliers must enter into contracts within the contracting period specified in the purchase authorization. The contracts must provide for deliveries to the importer in accordance with the delivery terms and during the delivery period specified in the purchase authorization, or any amendment or modification thereto.

(3) Contracts for a commodity, under a purchase authorization which limits delivery terms to f.o.b. or f.a.s., must be separate and apart from the contracts for ocean transportation of the commodity.

(4) The supplier's sales price may not exceed the prevailing range of export market prices as applied to the terms of sale at the time of sale, as determined by USDA. The "time of sale" is the date and time specified in the IFB for receipt of offers; or the date of the contract amendment if the amendment affects the sale price, as determined by USDA. The contract price may not be on a cost plus a percentage-of-cost basis.

(c) *Contracting procedures—(1) Purchasing—general.* (i) Importers must purchase commodities on the basis of IFB's.

(ii) The participant shall maintain a record of all offers received from suppliers until the expiration of three years after final payment under contracts awarded under the purchase authorization. The GSM may examine these records or request specific information in connection with the offers.

(2) *Invitations for bids.* The following conditions shall apply on all purchases of commodities on the basis of IFB's:

(i) The General Sales Manager must approve the terms of the IFB before it is issued by the importer.

(ii) The importer shall issue the IFB in the United States and shall open all offers in public in the United States at the time and place specified in the IFB.

(iii) The IFB must permit submission of offers from all suppliers who meet the requirements of this subpart.

(iv) The IFB may not preclude offers for shipment from any United States port(s) unless the purchase authorization provides for exportation only from certain ports.

(v) The IFB may not establish minimum quantities to be offered or which will be considered.

(vi) The IFB must be in compliance with the regulations, the purchase authorization, and sound commercial standards.

(3) *Contract awards.* (i) The importer shall consider only offers which are responsive to the IFB and shall make awards either on the basis of the lowest commodity price(s) offered or on the basis of lowest landed cost. However, when vessels offered under the flag of the participant, the importing country or the destination country; or vessels controlled by the participant, the importing country or the destination country are to be used, the participant must purchase commodities for shipment on such vessels only on the basis of the lowest commodity price(s) offered. This limitation may, however, be waived by the GSM:

(A) When the lowest commodity price(s) offered are in locations where vessels cannot reasonably be made available without a substantial increase in freight costs to the participant;

(B) For small quantities offered at additional loading points (in aggregate not more than 15 percent of the total tonnage offered by a vessel); or

(C) Where this limitation would conflict with the purposes of the program.

(ii) For purposes of this section, "lowest commodity price(s)" means the lowest commodity price(s) offered for loading onto the type of vessel (dry bulk carrier, tanker, etc.) to be utilized to carry the commodity purchased.

(iii) For purposes of this section, "lowest landed cost" means the combination of commodity price and ocean freight rate resulting in the lowest total cost to deliver the commodity to the importing country, considering the quantity which must be shipped on privately owned U.S.-flag commercial vessels, as determined by the Director.

Lowest landed cost may be defined on either a foreign flag or U.S. flag basis. Awards may not be made on the lowest landed cost basis unless IFB's are issued for commodity and ocean freight so that all commodity and ocean freight offers are reviewed simultaneously.

(iv) Participants are encouraged to purchase commodities on the basis of lowest landed cost when U.S. flag vessels are to be used. If such commodity purchases are not made on the basis of lowest landed cost (U.S. flag), ocean freight differential payments will nonetheless be calculated on the rates of U.S. flag vessels which would represent the lowest landed cost.

(v) Announcement of awards shall be made in the United States. The importer shall promptly submit to the Director copies of all offers received with a copy of the IFB which was issued. No sale can be approved for financing until this information has been received by FAS. The decision of the GSM shall be final regarding the responsiveness of offers to IFB terms in the awarding of contracts.

(d) *Contract quantity eligible for financing.* The quantity eligible for financing in the contract between the supplier and the importer may not exceed that quantity approved by the Public Law 480 Operations Division, FAS, including any approved contract tolerance.

(e) *Contract disputes.* Contracts between suppliers and importers should stipulate the responsibility of each party for payment of any costs not eligible for financing by CCC. Questions as to payment of ineligible costs should be resolved between the contracting parties.

(f) *Contract provisions.* Each contract entered into for financing under this subpart is deemed to include all terms and conditions required by this subpart.

(g) *Export Trade Act (Webb-Pomerene Law).* A supplier who is a member of a Webb-Pomerene association and who enters into contracts with importers as a member of such an association shall so indicate in a statement on, or attached to, the copy of the supplier's detailed invoice referred to in § 17.9(c)(2).

§ 17.6 Discounts, fees, commissions and payments.

For purposes of this section, the term "payment" means a commission, fee or other compensation of any kind. The term "other compensation of any kind" includes anything given in return for any consideration, services, or benefits received or to be received.

(a) *Discounts.* If a contract provides for one or more discounts (including but not limited to trade or quantity

discounts and discounts for prompt payment) whether expressed as such or as "commissions" to the importer, CCC will only pay the invoice amount after the discount (supplier's contracted price less all discounts).

(b) *Selling agents.* (1) A supplier may not make a payment to a selling agent employed or engaged by the supplier to obtain a contract. This prohibition applies to any payment to a person who has acted as a selling agent to obtain a contract even though the payment may be for services performed that are not themselves services to obtain a contract.

(2) A person is deemed to act "to obtain a contract" if the person acts on behalf of a commodity supplier to:

- (i) Influence a buyer to award a contract to the supplier;
- (ii) Give the supplier a competitive advantage in relation to other potential suppliers; or
- (iii) Influence CCC to approve a contract for financing under these regulations.

(3) CCC will not consider acts which are purely ministerial in nature and do not require the exercise of personal influence, judgment, or discretion (such as attending bid openings or presenting offers at bid openings), or services to implement a contract after it has been entered into by the parties (such as handling documentation problems or contract disputes), as acts to obtain a contract.

(c) *Other prohibitions.* (1) Suppliers of commodities or ocean transportation may not:

(i) Pay a commission to the participant or importer; to any agency, including an agency of the government of the importing country or the destination country; or to a corporation owned or controlled by the participant or the government of the importing country or the destination country.

(ii) Pay a commission to any affiliate of the participant, if the participant is a private entity;

(iii) Make any payment to an agent of the participant or importer, in the person's capacity as such agent, other than total ocean transportation brokerage commissions which do not exceed 2½ percent of the freight.

(iv) Pay an address commission or payment.

(2) For ocean transportation, in addition to this paragraph, see also § 17.8(j).

(3) If a payment is made in violation of this section, CCC may demand dollar refund of the entire amount financed by CCC under the contract.

§ 17.7 Notice of sale procedures.

(a) *Telephonic notice of sale.* The supplier shall, immediately upon

making a firm sale, telephone a notice of sale to Public Law 480 Operations Division, FAS. A sale is considered firm when the supplier has been notified by the importer of an award, even though the contract is conditioned on approval by FAS (see § 17.5(b)(1).) If the supplier fails to furnish a notice of sale within 3 working days after the date of sale, CCC has the right to refuse to finance the sale.

(b) *Sale approval.* (1) Public Law 480 Operations Division will notify the supplier by telephone of approval of the notice of sale.

(2) The supplier will prepare Form FAS-359, "Declaration of Sale," and submit it to Public Law 480 Operations Division promptly as soon as FAS has provided the CCC Registration Number to the supplier. The supplier or the supplier's authorized representative must sign the form.

(3) Each Form FAS-359 shall cover only a single sale contract. If a sale is made under two or more purchase authorizations, the supplier will prepare separate forms for each purchase authorization.

(4) If any correction is needed to the Form FAS-359, the supplier must immediately notify FAS. If a contract is amended, the supplier should present the original Form FAS-359 for payment along with a copy of the written USDA approval of the contract amendment.

(c) *Sale disapproval.* (1) Public Law 480 Operations Division, FAS, will notify the supplier by telephone when a sale is disapproved for financing. The related contract between the supplier and importer shall, for purposes of financing, be considered null and void.

(2) On receipt of a notice of disapproval, the supplier shall promptly notify the importer.

(d) *Contract delivery period.* Price approval is limited to exports made during the delivery period stated in the notice of sale or any contract amendment approved by the Public Law 480 Operations Division, FAS. If the supplier cannot complete delivery by the terminal delivery date of the contract delivery period, the supplier and the participant or importer shall submit a notice of contract amendment as provided in paragraph (e) of this section. If the supplier fails to comply, § 17.10(d) of the regulations shall apply.

(e) *Contract amendments.* (1) The supplier and the participant or importer shall each submit a written notice of each contract amendment to the Director immediately after the amendment to the contract is made. This includes not only any change in the contract delivery period or any other terms and conditions of the contract as

provided in the information given in the original notice of sale or any amendment thereto, but also any change in any other terms and conditions of the contract.

(2) The notice of contract amendment must contain the following:

(i) A request that USDA approve an amendment to the specifically identified sale contract between (the participant or importer) and (the commodity supplier).

(ii) A statement of what the amendment consists of (as, extension of delivery period through (date)) and a detailed explanation of the reasons for the amendment.

(iii) A statement that the contract amendment has been agreed to by both buyer and seller.

(3) Public Law 480 Operations Division, FAS, will notify the supplier as to whether the amendment is approved or disapproved.

(4) The supplier shall furnish a copy of the USDA approval of the amendment with other documentation submitted to obtain payment.

(5) If the supplier fails to furnish notice of a contract amendment to Public Law 480 Operations Division, FAS, within 3 working days after the date of such amendment, CCC has the right to refuse to finance the sale or any portion of the sale.

(6) Any amendment must be consistent with the provisions of the purchase authorization and this subpart and must otherwise be acceptable to Public Law 480 Operations Division, FAS.

§ 17.8 Ocean transportation.

(a) *General.* (1) This section applies to the financing of ocean freight or ocean freight differential. Ocean freight will be financed by CCC only to the extent specifically provided for in the purchase authorization. The purchase authorization may provide requirements in addition to or in lieu of those specified in this section.

(2) The supplier of ocean transportation must be engaged in the business of furnishing ocean transportation from the United States and must have a person, principal or agent, on whom service of judicial process may be had in the United States.

(3) The quantity of the commodity which must be shipped on privately owned U.S.-flag commercial vessels will be determined by the Director.

(4) The supplier of ocean transportation shall release copies of the ocean bills of lading to the supplier of the commodity promptly upon completion of loading of the vessel.

(5) When CCC finances any part of the ocean freight or the ocean freight

differential, the participant must open an operable irrevocable letter of credit for the portion of the ocean freight not financed by CCC. The amount of the letter of credit shall be computed using the information provided in the Form CCC-106. The letter of credit shall provide for sight payment or acceptance of a draft, payable in U.S. dollars, on the basis of the quantities specified in the applicable ocean freight contract. If the supplier of ocean transportation accepts the commodity before receipt of an acceptable letter of credit from a bank, the supplier takes such action at its own risk. This action in itself does not affect eligibility for CCC financing.

(b) *Contracting procedures.*—(1) *Invitations for Bids (IFB's).* (i) Public freight "Invitations for Bids" are required in the solicitation of freight offers from all U.S. and non-U.S. flag vessels when CCC is financing any portion of the ocean freight.

(ii) For non-U.S. flag vessels when CCC is not financing any portion of the ocean freight, public freight IFB's are also required unless otherwise authorized by the Director, or unless the participant requires the use of vessels under its flag, the flag of the destination country, or other non-U.S. flag vessels under its control. Vessels considered to be under the control of the participant or the destination country include vessels under time charters, bare boat charters, consecutive voyage charters, or other contractual arrangements for the carriage of commodities which provide guaranteed access to vessels.

(iii) Prior to release to the trade, all freight IFB's must be submitted to the Director for approval. Freight IFB's must be issued by means of the Transportation News Ticker, New York, plus at least one other means of communication.

(iv) All freight IFBs must:

(A) Specify a closing time for the receipt of offers and state that late offers will not be considered;

(B) Provide that offers are required to have a canceling date no later than the last contract layday specified in the IFB;

(C) Provide the same deadline for receipt of offers from both U.S. flag vessels and non-U.S. flag vessels.

(2) *Competitive bidding.* When CCC is financing any portion of the freight, all offers shall be opened in public in the United States at the time and place specified in the IFB. Offers shall be opened prior to receipt of offers for the sale of commodities as the Director determines appropriate. Only offers which are responsive to the IFB may be considered, and no negotiation shall be permitted.

(3) *Records of offers.* Copies of all offers received must be promptly furnished to the Director, who may require the participant, or its shipping agent, to submit a written certification to the GSM that all offers received (with the times of receipt designated thereon) were transmitted to the Department. For purposes of this paragraph "time of receipt" shall be the time a hand-carried offer, mailed offer, or telegram was received at the designated location for presentation or, if transmitted electronically, the time the offer was received, as supported by evidence satisfactory to the Director.

(4) *Re-tenders.* The Director may permit or require a participant to refuse any and all bids, and in such case a participant may conduct a re-tender with the approval of the Director. The Director shall not approve or require freight re-tenders unless they will increase the likelihood of meeting U.S. flag cargo preference requirements, will permit the desired quantity to be shipped, will likely result in reduced CCC expenditures, or are otherwise determined to be in the best interest of the program.

(c) *Request for vessel approval.* The pertinent terms of all proposed charters and all proposed liner bookings, regardless of whether any portion of ocean freight is financed by CCC, must be submitted to the Director for review and approval before fixture of the vessel. Tentative advance vessel approvals may be obtained by telephone provided Form CCC-105, Ocean Shipment Data—Pub. L. 480 (Request for Vessel Approval), is furnished promptly confirming the information supplied by telephone. The Form CCC-105 shall be submitted in duplicate to the Director.

(d) *Advice of vessel approval.* (1) USDA will give written approval of charters and liner bookings on Form CCC-106, "Advice of Vessel Approval." The Form CCC-106 will state whether CCC will finance any part of the ocean freight. For f.a.s. or f.o.b. shipments, CCC will issue a signed original of Form CCC-106 to the ocean carrier when CCC finances any part of the ocean freight. For c.& f. or c.i.f. shipments, CCC will issue Form CCC-106 to the supplier of commodity.

(2) If CCC agrees to finance any portion of the ocean freight, the participant or its agent shall forward a copy of the ocean freight contract immediately after execution to the Director for review and approval prior to issuance of Form CCC-106.

(3) CCC may also require the supplier of ocean transportation to submit copies of lightening, stevedoring, or bagging

contracts for any voyage for which CCC finances ocean freight or ocean freight differential.

(e) *Special charter party provisions required when any part of ocean freight is financed by CCC.* This paragraph applies when CCC finances any part of the ocean freight for commodities booked on charter terms. In the event of any conflict between the provisions of the regulations in this subpart and the charter party or ocean bills of lading issued pursuant thereto, the provisions of the regulations in this subpart shall prevail. The charter party shall contain or, for the purpose of financing pursuant to the regulations in this subpart, be deemed to contain the following provisions:

(1) That if there is any failure on the part of the supplier of ocean transportation to perform the charter party after the vessel has tendered at the loading port, the charterer shall be entitled to incur all expenses which in the judgment of the General Sales Manager are required to enable the vessel to carry out her obligations under the charter party including, but not limited to, expenses for lifting any liens asserted against the vessel.

(2) That, notwithstanding any prior assignments of freight made by the owner or operator, the expenses authorized in paragraph (e)(1) of this section may be deducted from the freight earned under the charter party.

(3) That ocean freight is earned and that 100% thereof is payable by the charterers when the vessel and cargo arrive at the first port of discharge, subject to paragraph (e)(4) of this section, and to the further condition that if a force majeure as described in paragraph (l)(1) of this section results in the loss of part of the vessel's cargo, 100% of the ocean freight is payable on the part so lost. This provision does not relieve the carrier of the obligation to carry to other points of discharge if so required by the charter party.

(4) That if a force majeure as described in paragraph (l)(1) of this section prevents the vessel's arrival at the first port of discharge, the freight shall be payable by the charterer at the time the General Sales Manager determines that such force majeure was the cause of nonarrival.

(5) That laydays are non-reversible.

(6) That in a dispute involving any rights and obligations of CCC, including rights and obligations as successor or assignee, which cannot be settled by agreement, the dispute shall not be subject to arbitration.

(f) *Special charter party information required when any part of ocean freight is financed by CCC.* When CCC finances

any part of the ocean freight for commodities booked on charter terms, the charter party shall contain the following information:

(1) The name of each party participating in the ocean freight brokerage commission, if any, and the percentage thereof payable to each party;

(2) The name of the vessel and the name of the substitute vessel, if any.

(g) *Notice of arrival.* Each Form CCC-106 will indicate whether a notice of arrival is required. A notice of arrival, when required, must be furnished promptly by the participant or its designated agent or other source acceptable to CCC (excluding the carrier or its agent) and must include the name of the vessel, the purchase authorization number, the first port of discharge, and the date of arrival. The notice of arrival of the vessel also constitutes prima facie evidence of arrival of the cargo.

(h) *Foreign flag vessels.* The cost of ocean transportation will be financed by CCC on non-U.S. flag vessels only when, and to the extent, specifically provided in the applicable purchase authorization.

(i) *U.S.-flag vessels.* When a commodity is required to be shipped on a privately owned U.S.-flag commercial vessel, Form CCC-106 will set forth:

(1) The rate of the ocean freight differential, if any, which the Director determines to exist between the prevailing foreign-flag vessel rate and the U.S.-flag vessel rate; and

(2) The approximate tonnage for which CCC will authorize reimbursement of ocean freight or ocean freight differential, as appropriate.

(j) *Items not eligible for financing by CCC.* The following costs will not be financed by CCC, either separately or as part of the commodity contract price:

(1) Loading, trimming, and other related shipping expenses unless included in the ocean freight rate;

(2) Discharge costs unless included in the ocean freight rate;

(3) The cost of "dead freight";

(4) Cargo dues and taxes assessed by the importing or recipient country;

(5) Surcharges assessed by steamship conferences or carriers, unless specifically authorized by the Director;

(6) General average contributions;

(7) Stevedoring overtime and vessel crew overtime;

(8) Ship's disbursements;

(9) Ocean transportation brokerage commissions in excess of 2-1/2 percent of the freight;

(10) Any payments prohibited in § 17.6(b) and (c); and

(11) Detention.

(k) *General financing provisions.* When any part of ocean freight will be

financed either separately or as part of the commodity contract price, the following shall apply:

(1) Ocean freight contracts must show the ocean freight rate from one loading port to one discharge port, and may provide for an increase in rate for an additional port of loading or discharge, or other option. CCC, however, will finance initially the lowest such rate or OFD, as appropriate. Increased amounts due because of the exercise of such option will be financed only after receipt of an ocean bill of lading or other evidence showing that the option was exercised.

(2) In the case of transshipment to a foreign flag vessel, CCC will finance the ocean freight or OFD, as appropriate, only to the point of transshipment, at a rate determined by the GSM, and CCC will not finance any part of the ocean freight beyond the point of transshipment unless specifically approved by the GSM. If the commodity was transported from a U.S. port and was transhipped at another U.S. port, CCC will not finance, without prior approval of the GSM, any part of the ocean freight incurred before transshipment.

(3) The ocean freight rate eligible for CCC financing and the rate used for the U.S.—flag vessel in calculating ocean freight differential shall not exceed the following rates for the category of the vessel concerned:

(i) For commodities covered by published tariff rates—the published conference contract rate;

(ii) For other commodities—the market rate prevailing at the time of request for approval as determined by the Director, but in any event not in excess of rates charged other shippers (irrespective of booking dates) for like commodities on the voyage concerned.

(4) Payment will be made for ocean freight or OFD, as appropriate, from loading points to discharge points at rates approved by the Director on Form CCC-106 in conformity with paragraph (k)(3) of this section.

(5) Freight for a vessel designated on Form CCC-106 as a U.S. flag vessel shall not be eligible for financing unless such vessel complies with the provisions of Public Law 87-266.

(6) Ocean freight contracts must specify that the participant shall be liable for detention of the vessel for loading delays attributable solely to the decision of the supplier of ocean transportation not to commence loading because of the failure of the participant to establish an ocean freight letter of credit in accordance with paragraph (a)(4) of this section. However, ocean freight contracts may not contain a

specified detention rate. The ocean transportation supplier shall be entitled to reimbursement for detention costs for all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the ocean freight contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable ocean freight contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for the applicable ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(l) *Force majeure.* (1) The GSM will waive the requirement for the notice of arrival required by Form CCC-106 by a written notice to the supplier of ocean transportation on the receipt of evidence satisfactory to the General Sales Manager that the vessel is lost or unable to proceed to destination after completion of loading as a result of one or more of the following causes: Damage caused by perils of the sea or other waters; collisions; wrecks; stranding without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies or pirates; arrest or restraint of princes, rulers or peoples without the fault of the supplier of ocean transportation; wars; public disorders; captures; or detention by public authority in the interest of public safety. The supplier may substitute such waiver for the notice of arrival.

(2) The determination of a force majeure by the GSM shall not relieve the participant from its obligation under the Agricultural Commodities Agreement to pay CCC, when due, the dollar amount of ocean freight, plus interest (exclusive of ocean freight differential), financed by CCC.

(m) *Demurrage/despatch.* CCC will not finance demurrage and CCC will not share in despatch earnings. Owners and commodity suppliers will settle laytime accounts at load port(s) and owners and charterers will settle laytime accounts at discharge port(s). Under no circumstances shall CCC be responsible for resolving disputes involving calculation of laytime or the payment of demurrage or despatch.

(n) *Ocean freight included in the commodity contract price.* For cost and freight or c.i.f. contracts the ocean

freight, or the ocean freight differential, as appropriate, will be financed only to the extent specifically provided in the applicable purchase authorization.

(o) *Separate freight contracts.*

Contracts for ocean transportation, under a purchase authorization which limits delivery terms to f.o.b. or f.a.s., must be separate and apart from the contracts for the commodity.

§ 17.9 CCC payment to suppliers.

(a) *General.* (1) The supplier shall request payment from CCC for the amount of the commodity price or the ocean freight or ocean freight differential to be financed by CCC.

(2) The supplier shall support such a request for payment by presenting to CCC the documents required by this section, the purchase authorization, and the IFB, unless such documents were previously submitted to CCC. Such documents, however, need not be submitted when and to the extent that the Controller determines that the intended purpose of a document is served by documents otherwise available to or under the control of CCC or by alternate documents specified in such determination.

(3) CCC will examine each document with reasonable care to ascertain that it appears on its face to be in accord with documentary requirements. When CCC has determined that all required documents have been submitted and that the documents are acceptable, CCC will pay the supplier for the commodity price or the ocean freight or ocean freight differential to be financed by CCC which is supported by the documents.

(b) *General documentation requirements.* The supplier must put the appropriate purchase authorization number on all required documents which are prepared under the supplier's control, and should arrange for the appropriate purchase authorization number to be put on all other required documents at the time of their preparation.

(c) *Documents required for payment—commodity.* The general provisions relating to required documents are as follows. Additional requirements for payment to commodity suppliers for c.& f. or c.i.f. sales are contained in paragraph (c)(8) of this section.

(1) *Supplier's certificate.* A signed original of Form CCC-329 "Supplier's Certificate" from the commodity supplier covering the net invoice price for the commodity.

(2) *Supplier's detailed invoice.* Two copies of the supplier's detailed invoice showing quantity, description, contracted price, net total invoice price

expressed in dollars, the amount for which financing is requested from CCC, the amount not eligible for financing by CCC, and basis of delivery of the commodity (e.g., f.o.b. vessel). In arriving at the net invoice price there shall be deducted:

(i) All discounts from the supplier's contracted price through payments, credits, or other allowances made or to be made to the importer, the importer's agent or consignee;

(ii) All purchasing agents' commissions;

(iii) All other amounts not eligible for financing.

(3) *Additional payment.* A request for an additional payment submitted for a transaction for which all or part of the required documents have been previously submitted to CCC shall be supported by a Form CCC-329 "Supplier's Certificate" and the supplier's detailed invoice, covering the additional amount requested. The supplier's invoice must show the date, serial number and the amount of the original invoice and the basis for the additional amount claimed.

(4) *Weight certificate.* The weight certificate shall be issued by or on authority of a State or other governmental weighing department, Chamber of Commerce, Board of Trade, Grain Exchange, or other independent organization or firm providing public weighing services. Such organization or firm must have

(i) Qualified, impartial, paid employees who are stationed at the port facility or, if authorized under the applicable purchase authorization, other facility where weights customarily are determined, one of whom performed the weighing covered by the certificate, or

(ii) Qualified, independent, impartial, supervised, weighmasters stationed at the port facility or, if authorized under the applicable purchase authorization, other facility where weights are customarily determined, one of whom supervised the employee of such a facility in the performance of the weighing covered by the certificate.

(5) *Federal appeal inspection certificate.* A Federal appeal inspection certificate, when included in the documents presented for payment, shall supersede any other inspection certificate required by this subpart, the applicable purchase authorization, the IFB or the contract.

(6) *Form CCC-359.* (i) Form FAS-359, "Declaration of Sale," signed for the GSM, is the written document by which USDA notified the supplier that the sale was approved for financing. The supplier shall submit Form FAS-359 to CCC with the documents covering the

first transaction under the contract. The unit price shown on the supplier's invoice must not exceed the approved unit price shown on the Form FAS-359.

(ii) For subsequent transactions under the same contract, the supplier shall certify on the CCC copy of the detailed invoice as follows:

I hereby certify that the applicable Form FAS-359 was submitted to CCC with documents covering Invoice No.

_____ dated _____ for \$ _____.

(7) *Bill of lading.* Four copies of the ocean bill of lading.

(8) *C.&f. or c.i.f. sales.* In addition to the above, the following requirements apply for c.& f. or c.i.f. sales:

(i) Signed original of Form CCC-106.

(ii) The supplier's detailed invoice shall show a computation of the dollar amount of ocean freight differential, whenever the Form CCC-106 provides for an ocean freight rate differential on a cost and freight or c.i.f. sale and authorizes financing of any portion of ocean freight by CCC. In arriving at the net invoice price the supplier shall deduct the ocean freight, or portion thereof which is not being financed by CCC.

(iii) One nonnegotiable copy of the insurance certificate or policy where the cost of insurance is included in the price of the commodity to be financed by CCC.

(iv) A request for an additional payment shall also include a statement signed by the ship's master or owner (or agent of either of them) showing exercise of the higher-rated option, if the payment is stated to be due because of the exercise of a higher-rated option provided in an ocean freight contract.

(d) *Documents required for payment—ocean freight financed separately from commodity price.*

(1) *Supplier's certificate.* A signed original of Form CCC-329, "Supplier's Certificate", to be executed by the carrier or its agent, covering the dollar cost of ocean freight or ocean freight differential.

(2) *Ocean bill of lading.* One copy of the ocean bill of lading and, if required by the related Form CCC-106, a notice of arrival at the first port of discharge of the vessel named in the Form CCC-106. In lieu of a notice of arrival the carrier may present a waiver of the notice of arrival signed by the GSM or Controller.

(3) *Invoice.* One copy of the carrier's invoice which shows the total freight costs, the amount not eligible for financing by CCC, and the amount for which payment is requested from CCC. If the invoice relates to a U.S.-flag

vessel, such invoice shall contain the following typed or stamped certification, executed by the supplier:

The undersigned hereby certifies that the vessel named herein and for which ocean freight is claimed, qualifies as a privately owned U.S.-flag commercial vessel within the requirements of Pub. L. 87-266 and is an eligible U.S.-flag vessel for the purposes of Pub. L. 664, 83rd Congress.

(4) *Form CCC-106*. Signed original of Form CCC-106.

(5) *Ocean freight contract*. One copy of the ocean freight contract.

(6) *Higher rated option*. A request for payment of any amounts claimed because of the exercise of a higher rated option following payment of a lower rated option pursuant to § 17.8(k)(1) shall be supported by the following documents:

(i) One copy of the carrier's invoice as described in paragraph (d)(3) of this section except for the certification required therein.

(ii) The Form CCC-329, Supplier's Certificate, for the balance claimed.

(iii) A statement signed by the ship's master, owner, or owner's agent, and signed laytime statements or other written concurrence of charterer or the charterer's agent showing the exercise of the higher rated option.

(e) *Payment of freight by CCC prior to the vessel's arrival at the discharge port*.

(1) Upon request by the supplier, CCC may pay the ocean freight or ocean freight differential to be financed by CCC before the vessel arrives at the first port of discharge if the supplier furnishes CCC financial coverage in the form of an acceptable letter of credit from a U.S. bank.

(2) The amount of security required by CCC under paragraph (e)(1) of this section may be computed by multiplying the ocean freight rate or ocean freight differential rate financed by CCC as shown on the related Form CCC-106 times either—

(i) The tonnage shown on the related bill of lading, if the bill of lading is furnished to CCC; or

(ii) The tonnage stated in the ocean freight contract (without tolerance).

(3) On receipt of an acceptable letter of credit, the Controller will issue a waiver of the notice of arrival which is required under paragraph (d)(2) of this section.

(f) *Advice of amount financed*. CCC will forward advice of payment to the participant.

§ 17.10 Refunds and insurance.

(a) *Participant—failure to comply*. The participant shall pay in U.S. dollars promptly to CCC on demand by the General Sales Manager the entire

amount financed by CCC (or such lesser amount as the GSM may demand) whenever the GSM determines that the participant has failed to comply with any agreement or commitment made by the participant in connection with the transaction financed or with the applicable Agricultural Commodities Agreement between the U.S. and the participant.

(b) *Adjustment refunds*. All claims by importers for adjustment refunds arising out of terms of the contract or out of the normal customs of the trade, including arbitration and appeal awards, allowances, and claims for overpayment of ocean transportation, if such refunds relate to amounts financed by CCC, shall be settled by payment in U.S. dollars and such payment shall be remitted by the supplier to CCC. The remittance shall be identified with the date and amount of the original payment and the applicable purchase authorization number.

(c) *Insurance on c.i.f. sales*. The provisions of this paragraph apply only to transactions under purchase authorizations that specifically authorize c.i.f. sales in which the cost of insurance is included in the net c.i.f. invoice price of the commodity financed. When the supplier furnishes insurance in favor of or for the account of the importer, the policies or certificates of insurance shall include a loss payable clause which provides that all claims shall be paid in U.S. dollars to the Controller. Such payments shall be accompanied by advice of the purchase authorization number, the names and addresses of the supplier and importer, the nature of the claim, the quantity of the commodity involved in the claim, the date of shipment, the bill of lading number, and the name of the vessel. CCC will credit the account of the participant or will refund local currency in accordance with paragraph (e) of this section.

(d) *Refund of ineligible amounts*. If a sale has been financed and CCC determines that the sales price exceeds the price permissible under § 17.5(b)(4), or that the sale is otherwise ineligible for financing, in whole or in part, the supplier shall refund in dollars such excess price or ineligible amount to CCC promptly on demand. If not promptly refunded, such amount may be set off by CCC against monies it owes to the supplier. The making of any such refund to CCC, or any such setoff by CCC shall not prejudice the right of the supplier to challenge such determination in a court action brought against CCC for recovery of the amount refunded or set off.

(e) *Refund of local currency or reduction of amount due*. Immediately after receipt by CCC of U.S. dollar payment from suppliers or from or for the account of the participant under this section, CCC will provide for payment to the participant of the local currency equivalent of dollars received, if such local currency has been deposited for the particular transaction or will credit the participant's account as follows:

(1) For payments under this section, except paragraph (a), the local currency refunded will be at the exchange rate agreed to by the Government of the United States and the participant in effect at the time the local currency is paid to or for the account of the importer except that if there has been a change in the exchange system or structure of the importing country or the destination country, such payment shall be made at the agreed exchange rate which was in effect on the date of dollar disbursement for the transaction financed, and except further that local currency shall not be paid when the dollars are to be reauthorized for replacement of the commodity.

(2) For payment under paragraph (a) of this section, the local currency refunded will be at the agreed exchange rate in effect on the date of the dollar disbursement for the transaction financed: *Provided*, that local currency will not be refunded to the extent that deposits of such currency have been made available to the participant on a grant basis.

(3) For refunds received by CCC under long-term credit agreements the participant's account shall be credited with the dollar amount refunded or otherwise recovered, and the participant notified accordingly.

§ 17.11 Recordkeeping and access to records.

Suppliers and agents of the participant or importer shall keep accurate books, records and accounts with respect to all contracts entered into hereunder, including those pertaining to ocean transportation-related services and records of all payments by suppliers to representatives of the importer or participant, if CCC finances any part of the ocean freight. Suppliers and agents shall permit authorized representatives of the U.S. Government to have access to their premises during regular hours to inspect, examine, audit and make copies of such books, records and accounts. Suppliers and agents shall retain such records until the expiration of three years after final payment under such contracts.

Signed at Washington, D.C. on September 13, 1996.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service and Vice-President, Commodity Credit Corporation.

[FR Doc. 97-1736 Filed 1-24-97; 8:45 am]

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Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 96-038-1]

RIN 0579-AA81

User Fees; Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fee regulations by adjusting the fees charged for certain agricultural quarantine and inspection services we provide in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. We are proposing to set user fees in advance for these services for fiscal years 1997 through 2002. We have determined that the fees must be adjusted to reflect the anticipated actual cost of providing these services through FY 2002.

DATES: Consideration will be given only to comments received on or before March 28, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-038-1, Regulatory Analysis and Development, PPD, APHIS, suite 3CO3, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-038-1. 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: For information concerning program Operations, contact Mr. Jim Smith, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1236, (301) 734-8295. For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FSSB, BAD, APHIS, 4700 River Road Unit 54,

Riverdale, MD 20737-1232, (301) 734-5901.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as the "regulations") contain provisions for the collection of user fees for certain agricultural quarantine and inspection (AQI) services provided by the Animal and Plant Health Inspection Service (APHIS). In this docket, we are proposing to amend the user fees for servicing certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States from points outside the United States. (The customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.)

These user fees are authorized by section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a). This statute, known as the Farm Bill, was amended by section 504 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127), on April 4, 1996.

As amended, the 1990 Farm Bill provides that APHIS may prescribe and collect fees sufficient to cover the cost of providing AQI services in connection with the arrival, at a port in the customs territory of the United States, of commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. The Farm Bill also provides that APHIS may prescribe and collect fees sufficient to cover the cost of providing preclearance or preinspection at a site outside the customs territory of the United States to such passengers and vehicles. The Farm Bill further states that the fees should be sufficient to cover the cost of administering the fee program, and sufficient to maintain a reasonable balance in the Agricultural Quarantine Inspection User Fee Account (discussed below). In addition to user fees, the Farm Bill, as amended, authorizes APHIS to assess late payment penalties and interest charges if a person fails to pay a fee when due. The Farm Bill, as amended, establishes a no-year fund, known as the "Agricultural Quarantine Inspection User Fee Account" (Account), in the Treasury of the United States. All fees, late payment penalties, and interest charges collected by APHIS through fiscal year 2002 are to be deposited in the Account. For each fiscal year 1997 through 2002, funds in the Account are available to APHIS,

until expended, to cover the costs of providing AQI services and administering the AQI program.

For each of fiscal years 1997 through 2002, fees collected in excess of \$100 million may be used to cover the costs of providing AQI services and are automatically available.

This is a major change from the situation under our previous authority. Under our previous authority, reimbursement was controlled by spending limitations imposed through the annual congressional budget appropriations process. Since this spending authority was determined each year, it was not a dependable vehicle for funding long-term needs such as permanent personnel. This made it extremely difficult to keep pace with workload demands and be able to respond quickly to emergencies and unanticipated industry expansion.

Under the Farm Bill, as amended, we may spend all AQI user fees we collect in excess of \$100 million for the next 5 years, as long as we spend the money only to provide AQI services. Any money we do not spend must remain in the Account. After FY 2002, any unobligated balance in the Account and any other amounts collected but not disbursed will be credited to APHIS for future AQI activities.

We anticipate that this authority will have a major impact on the way APHIS administers its AQI user fees. Costs to provide services supported by user fees each year since fees were instituted in 1991 are shown in the following table. The cost of the AQI program exceeded \$100 million in FY 1995, and is projected to exceed \$100 million in FY 1996.

COSTS TO RUN THE AQI PROGRAM

FY 1991 ...	Appropriated funds for entire fiscal year (user fees collected were used to capitalize the AQI User Fee Account).
FY 1992 ...	\$ 85,922,000.00.
FY 1993 ...	83,362,000.00.
FY 1994 ...	98,257,160.00.
FY 1995 ...	105,907,999.00.
FY 1996 ...	127,027,001.00 (projected).

Since FY 1992, APHIS has received no directly appropriated funds to provide AQI services. Although the Farm Bill, as amended, speaks of "appropriations," the term does not mean money out of the general treasury to run the program, but only the dollar amount of user fees and other charges collected by APHIS that the Agency may spend on the AQI services.

We have always based our user fees on the actual costs to provide a service during the fiscal year. This means that