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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 98-073-2]

RIN 0579-AB05

User Fees; Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending 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. The adjusted fees cover part of fiscal year 2000 and all of fiscal years 2001 through 2002. We have determined that the fees must be adjusted to reflect the anticipated actual cost of providing these services through FY 2002.

EFFECTIVE DATE: December 16, 1999.

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, BASE, ABS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-8351.

SUPPLEMENTARY INFORMATION:

Background

Section 2509(a) of the Food, Agriculture, Conservation, and Trade

Act of 1990 (21 U.S.C. 136a), referred to below as the FACT Act, authorizes the Animal and Plant Health Inspection Service (APHIS) to collect user fees for agricultural quarantine and inspection (AQI) services. The FACT Act was amended by section 504 of the Federal Agricultural Improvement and Reform Act of 1996 (Pub. L. 104-127) on April 4, 1996.

The FACT Act, as amended, authorizes APHIS to collect user fees for 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.
- International airline passengers.

According to the FACT Act, as amended, these user fees should recover the costs of:

- Providing the AQI services listed above.
- Providing preclearance or preinspection at a site outside the customs territory of the United States to such passengers and vehicles.
- Administering the user fee program.
- Maintaining a reasonable balance in the Agricultural Quarantine Inspection User Fee Account (AQI account).

On July 24, 1997, we published in the **Federal Register** (62 FR 39747-39755, Docket No. 96-038-3) a rule amending the user fees and setting user fees in advance for AQI services for fiscal years 1997 through 2002.

APHIS has had to provide AQI services beyond what we anticipated when the currently scheduled fees were set in 1997. The increases in services stem from an increase in international trade and travel, necessitating more inspections at ports of arrival; changes in our regulations that result in our having to inspect additional imported articles; and enhanced efforts to crack down on the smuggling of agricultural commodities.

On August 9, 1999, we published in the **Federal Register** (64 FR 43103-43114, Docket No. 98-073-1) a proposal to amend the existing user fees for 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. We proposed to amend the

user fees for these services for fiscal years 2000 through 2002 to ensure that we recover the anticipated actual cost of providing these services through FY 2002.

We solicited comments concerning our proposal for 60 days ending October 8, 1999. We received eight comments by that date. They were from State Government officials and representatives of the produce and airline industries. Four of the comments were supportive. One of the comments requested us to clarify part of our proposal. Three commenters opposed the rule. Concerns and questions raised by the commenters are discussed below by topic.

Collection of International Airline Passenger User Fees

Two commenters asked us to clarify what fee airlines, travel agents, and others who issue international air travel tickets should collect from ticket purchasers or passengers if the passenger is traveling after the effective date of a new fee but is purchasing a ticket before the effective date of the new fee.

Under § 354.3(f)(4)(i), persons who issue international airline tickets or travel documents are responsible for collecting the APHIS international airline passenger user fee from ticket purchasers. In order to make the implementation of new user fees easier for those who issue tickets, APHIS requires that when user fees are paid by passengers to ticket issuers in advance of travel, the proper user fee to be collected from a passenger is the fee applicable at the time tickets are sold. Further, under § 354.3(f)(4)(i)(A), in the event that ticket sellers do not collect the APHIS user fee when tickets are sold, the air carrier must collect the user fee from the passenger upon departure. Under this scenario, the proper user fee to be collected from a passenger by the carrier is the fee applicable at the time of departure. We are adding a footnote to the table of fees for airline passengers to make these requirements clearer.

Rationale and Need for Amending AQI User Fees

One commenter suggested that APHIS should be able to pay the cost of providing new and additional AQI services and equipment with user fees collected under the existing fee schedule, based on the rationale that

increasing volumes of user fee collections that result from increasing numbers of airline passengers will pay for additional AQI services by themselves.

We do not agree with the commenter's position. As stated in our proposal, APHIS has been required to process increased volumes of international air passengers and aircraft and has struggled to maintain an adequate level of service to some airports due to terminal expansions and reorganizations. We need to establish additional inspection facilities, purchase necessary x-ray equipment, and add personnel in order to process passengers and aircraft quickly and efficiently. Further, additional personnel are needed not only to staff new inspection facilities, but also to supplement existing inspection crews. By increasing the proportion of inspectors available in relation to the number of users requiring services, APHIS will be able to conduct more inspections, thereby better ensuring against the introduction into the United States of harmful plant pests. Since the currently scheduled user fees do not contain an allowance for purchasing additional x-ray equipment and increasing the numbers of AQI inspectors, we need to revise the fees to ensure that we have the necessary funds available to provide an adequate level of AQI service.

Another commenter stated that we have "attributed cost overruns to a reduction in the rate of international passengers paying an inspection fee." This is incorrect. In our proposal, we stated that we have had to provide AQI services beyond what we anticipated when the currently scheduled fees were set in 1997. The increases in services stem from an increase in international trade and travel, among other things.

One commenter claimed that the existing AQI user fee schedule will provide APHIS with adequate funds to pay for program costs, including the new costs explained in our proposal. The commenter interpreted the information provided in our proposal to mean that APHIS needs to increase user fees and receipts because not all of the user fees collected from users over the past few years have been available to APHIS due to appropriations shortfalls. The commenter was concerned that APHIS will not spend additional money collected to provide additional AQI services.

The commenter is correct that, because expenditures are linked to appropriations, not all of the user fees collected from users over the past few years have been available to APHIS.

However, this is not the reason we are increasing our AQI user fees. Over the past several years, demand for our AQI services has increased. Serious pests have entered the United States despite our efforts. In order to ensure continuous AQI services, we have been forced to draw on our reserve fund. Our reserve fund is now insufficient to ensure continuous and effective service and needs to be gradually rebuilt. User fee collections are the only means APHIS has to fund the AQI program. Under these circumstances, we have no choice but to amend our fees accordingly, both to fund services we provide and ensure an adequate reserve.

Setting AQI User Fees in Advance

One commenter noted that continual adjustment of AQI user fees is problematic for the industry and does not allow for adequate business planning.

When we published our 1997 proposal to set user fees in advance for AQI services for fiscal years 1997 through 2002 (62 FR 3823-3830, Docket No. 96-038-1), we stated that we were acting on behalf of affected industries who suggested that industry would be able to plan for the effects of fee changes more effectively if fees were set in advance. However, as stated previously in this document and in our proposal, APHIS has had to provide AQI services beyond what we anticipated when the currently scheduled fees were set in 1997. To recover the costs of providing these services, we must amend our fees. In our 1997 proposal, we stated that if reserve levels were drawn too low, we would publish, for public comment, proposed fee increases in the **Federal Register**. We regret any inconvenience these fee adjustments may cause affected industries, but they are necessary to ensure an adequate level of AQI service.

Need for Additional Equipment and Personnel

One commenter questioned whether additional personnel and equipment are necessary to provide adequate AQI services and stated that APHIS had not adequately explained the basis for some additional equipment purchases and personnel increases or justified the corresponding need for fee increases.

Particularly at airports, APHIS has struggled to maintain an adequate level of service due to new and expanding air terminals and demands for faster processing time. As explained in our proposal, along with other agencies in the Federal Inspection Service (FIS), our goal is to clear international airline passengers through all required FIS

inspections in 30 minutes or less. To accomplish this goal, we need additional personnel and equipment to process increasing volumes of international air passengers and imported agricultural commodities effectively and efficiently.

As stated in the proposed rule, we anticipate hiring 511 new inspectors. They will be assigned to high-volume, high-risk ports, with distribution as follows: 51 at seaports; 57 at land border ports (39 to inspect commercial trucks and 18 to inspect railroad cars); and 403 at airports (137 to inspect commercial aircraft and 266 to inspect passengers). Our projected costs for these new positions include both salaries and vehicles, since many of these inspectors must travel from one location to another to perform inspections. These costs were set out in the proposed rule, and the costs associated with the additional inspectors are discussed further, below, under the heading "Personnel Costs."

Our projected costs for new x-ray equipment include the costs of both new, advanced technology equipment for our busiest ports (primarily airports) and additional and replacement equipment for other ports. The costs of this equipment were set out in the proposed rule and are discussed further, below, under the heading "Cost of X-ray Equipment."

Funding for the additional inspectors and equipment can only come from user fees. Use of user fees for these purposes is fully compatible with the recommendations of the newly completed report, "Safeguarding American Plant Resources."¹ This report is based on a review of APHIS' safeguarding systems that was conducted at APHIS' request by a panel of external stakeholders assembled by the National Plant Board, an organization of State plant regulatory officials. The review was prompted by the recognition, both within and outside the Agency, that our safeguarding systems are being increasingly challenged by changes in global travel and trade.

Cost of Services

One commenter questioned why commercial aircraft inspection fees cost nearly 15 times as much as commercial truck fees.

In our experience, inspecting a commercial aircraft is much more involved than inspecting a commercial

¹ This report is available on the Internet at <http://www.aphis.usda.gov/ppq/safeguarding/>. Copies of this report may also be obtained by contacting Mr. Jim Smith at the address listed under **FOR FURTHER INFORMATION CONTACT**.

truck and, therefore, takes longer. The result is a higher user fee for aircraft.

Cost of X-ray Equipment

One commenter questioned why the high resolution x-ray equipment that APHIS plans to purchase with funds from additional user fee collections are so much more costly than equipment being deployed by the Federal Aviation Administration (FAA).

The cost of high-definition x-ray machines sought by APHIS is different than the cost of some machines deployed by the FAA because the machines are able to detect smaller volumes of agricultural products in passenger luggage at faster belt speeds than x-ray technology currently used by FAA at many airports. The development and use of high-definition x-ray technology could help us to identify as little as 10 grams of agricultural products in passenger baggage while maintaining a fast belt speed. Most x-ray technologies currently used by FAA can only detect agricultural products in

passenger baggage if 200 or more grams of the products are present, but smaller quantities can carry pests that have the potential to cause significant economic losses to agriculture. Further, it is our hope that, in the future, we will be able to x-ray every piece of international passenger luggage that passes through a given airport without unreasonably delaying the passenger clearance process. The development and implementation of these high-definition x-ray technologies will allow us to see small quantities of agricultural products in baggage while processing them at high speeds. We believe these new technologies will benefit air passengers by decreasing FIS processing times while simultaneously increasing the effectiveness of the AQI program.

Personnel Costs

Two commenters questioned the calculations contained in the table in our proposed rule entitled "Agricultural Quarantine Inspection (AQI) Program

Projected Costs FY1999–2002." The commenters noted that it appears that, for FY 1999, \$2,779,000 is allotted for 116 new employees for 2 months, suggesting that the annual salaries of these employees would be upwards of \$140,000. The commenters further noted that, based on the information provided in the table, the average annual salary per new employee would then drop to approximately \$75,000 in FY 2000, and then increase to approximately \$87,000 and \$98,000 in fiscal years 2001 and 2002, respectively.

In labeling the table in question, we neglected to state that the "personnel increase" estimates for fiscal years 1999 through 2002 also include increased pay costs for progressive promotions and within-grade increases for both current and future employees. To clarify the information provided in our proposal, the breakdown of our annualized personnel cost estimates for fiscal years 1999 through 2002 is shown in the table below.

PERSONNEL PAY COST INCREASES; AGRICULTURAL QUARANTINE INSPECTION (AQI) PROGRAM PROJECTED COSTS FY 1999–2002

Fiscal year	Number of new employees (cumulative)	New employees		Current employees	Total increased employee costs ³
		Cumulative salaries ¹	Cumulative pay costs ²	Cumulative pay costs ²	
1999	116	\$1,158,000	0	\$1,620,000	\$2,779,000
2000	315 + 116	24,690,000	\$2,057,000	5,402,000	32,149,000
2001	40 + 431	26,958,000	3,530,000	10,515,000	41,003,000
2002	40 + 471	29,226,000	5,295,000	15,506,000	50,027,000

¹ As stated in our proposal, new salaries for FY 1999 would have reflected 2 months of service for 116 employees.

² Pay costs include allocations for progressive promotions and within-grade increases.

³ These figures were provided in our proposal in the table entitled "Agricultural Quarantine Inspection (AQI) Program Projected Costs FY 1999–2002."

Agency Support and Departmental Charges

One commenter stated that APHIS has not justified the level of support costs and departmental charges shown in the proposed rule and questioned how we arrived at the percentage rate for support costs and departmental charges shown in the table entitled "Agricultural Quarantine Inspection (AQI) Program Projected Costs FY1999–2002."

In that table, support costs, including Agency overhead and departmental charges, are approximately 10.63 percent of the total AQI program cost, not 10.63 percent of the AQI program cost before support costs are added.

As we have stated in previous rulemakings, in addition to direct inspection activity costs, each user fee activity also includes the costs of program delivery, which are incurred at

the State level and below. Also included was a pro rata share of the program direction and support costs, which includes items at the regional and headquarters program staff levels. Finally, each projection includes a pro rata share of Agency level support and departmental charges, which includes activities that support the entire Agency, such as recruitment and development, legislative and public affairs, regulations development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. Costs for billing and collection services and legal counsel that are directly related to user fee activities are directly added to the user fee activities they support and are not included in the proration of Agency level costs. No government program or business entity can operate without overhead, and including such costs in

pricing goods or services is a standard cost accounting principle.

Productivity and Efficiency in the AQI Program

One commenter suggested that APHIS should make every effort possible to improve the productivity of the existing AQI workforce before increasing user fees to purchase new equipment and hire additional personnel. The commenter further stated that APHIS has not adequately explained how the additional resources that it plans to acquire with new fees will increase productivity.

We are always looking for innovative approaches to improve our efficiency and productivity. Along with manual inspections, we use alternative inspection methods and technologies such as automated information systems, x-ray systems, and specially trained detector dogs.

We try to allocate our inspection personnel and equipment as efficiently as possible, based on risk assessment. With statistics obtained via the AQI Monitoring Program, we are able to determine which ports are relatively more likely to present high pest risks, and we use those statistics to determine how to allocate resources. For example, under the AQI monitoring program, we conduct a fixed number of detailed inspections each day for each category of service. Hypothetically, we might survey every 25th international air passenger bag by pulling it aside and performing the same detailed inspection that we would perform if there were reason to suspect that the bag contained a plant pest. We compile the data from these surveys at each port and rate the relative effectiveness of the inspection system at those ports. Then we compare the effectiveness ratings of various ports and determine how to allocate inspectors from there.

As stated in our proposal, APHIS is continually requested to process international airline passengers faster, although we need to inspect passengers and their baggage thoroughly to safeguard against the introduction of harmful pests and diseases of animals and plants. We are committed to processing passengers as quickly as possible, without jeopardizing the success of the AQI program, whose purpose is to prevent the introduction of foreign plant and animal pests and diseases which are harmful to this country's agriculture; however, faster processing requires additional personnel and equipment.

As stated previously in this document, we need to purchase new x-ray equipment for placement in new inspection stations in new airport terminals. All the new x-ray equipment is destined for use at airports around the country to speed up the passenger inspection process and make it more efficient.

In cases where we are replacing old x-ray equipment, we are doing so to increase the effectiveness of our inspection program. Many x-ray machines currently in use are outdated and are not always able to help us detect agricultural commodities in passenger luggage or cargo. As stated earlier in this document, due to the increased risk of pest introduction that follows from increased levels of international travel and trade, we need to upgrade these older machines in order to protect American agriculture and serve the best interests of our stakeholders.

Rebuilding the Reserve and Additional Collections

One commenter suggested that the size of the AQI reserve fund (25 percent of annual costs) is unreasonable and that a smaller reserve (5 percent of annual costs) is all that is necessary. The commenter also questioned why the additional collections we receive due to rounding of fees are no longer sufficient to maintain a reasonable balance in the reserve.

APHIS' user fee authority provides for the maintenance of a reasonable balance in the user fee account. As stated in our proposal, we believe it is necessary to maintain a reserve of 25 percent of the annual AQI program costs due to the fact that approximately 85 percent of the fees we collect are remitted, in arrears, on a quarterly basis. Based on our experience, 25 percent is a reasonable reserve balance and is consistent with the size of reserve funds established by other agencies within the Department of Agriculture. Further, over the last several years, we attempted to maintain reserve levels with additional funds received due to the rounding of fees. However, as shown in our proposal, this practice has not provided us with a sufficient reserve. We included a reserve building component in the amended fees to ensure that reserve can gradually be rebuilt to an adequate level by 2002. We continue to believe that a fully funded reserve in each category's user fee account is essential to ensure the continuity of service in cases of bad debt, carrier insolvency, and fluctuations in activity volumes.

One commenter questioned what APHIS does with the unearned money it receives in the first quarter of a fiscal year for services provided during the last quarter of the previous fiscal year. The commenter implied that though APHIS cannot use fees it collects after the close of a fiscal year for services provided in that fiscal year, it still has fees collected from after the close of the prior fiscal year to make up for those unavailable collections, and therefore cannot say that it is annually "short" one quarter's collections.

The commenter is correct in suggesting that APHIS typically uses collections received after the close of a given fiscal year to pay for services provided during the next fiscal year. However, it does not follow that the AQI program is therefore fully funded as a result. Since both user fees and the volume of users change annually, the costs of providing AQI services in the fourth quarter of one fiscal year can be markedly different from costs of providing services in the fourth quarter

of the prior fiscal year. Essentially, APHIS must make up for the difference in fee collections between the fourth quarters of a given year and the prior year with funds from the reserve. For this reason, maintaining an adequate reserve fund is essential to the AQI program.

Advisory Committee

Two commenters suggested that APHIS should establish an advisory committee to assist in determining appropriate changes to the user fee amounts and expenditure of user fee funds. Both commenters referred to U.S. Customs Service's (Customs) and Immigration and Naturalization Service's (INS) advisory committees.

Both Customs and INS are mandated to establish advisory committees. The FACT Act, as amended, does not authorize or direct us to form an advisory committee for AQI user fees. Since the establishment of an advisory committee is outside the scope of this rulemaking proceeding, we are taking no action based on these comments at this time. However, if in the future we determine that an advisory committee is necessary for effective management of the AQI program, we will consider establishing one.

Additional AQI Activities and User Fees

Two commenters suggested that we should consider requiring commercial trucks and railcars entering the United States from Canada to be inspected for plant pests and pay a user fee for AQI services as is required for trucks and railcars entering the United States from Mexico. The commenters stated that due to an increased risk of plant pests being introduced into the United States from prohibited areas via land border ports along the northern U.S. border with Canada, APHIS should propose to eliminate the inspection and user fee exemption for Canadian trucks and railcars in the current user fee regulations. One commenter also stated that APHIS should develop a user fee program for the inspection of cargo containers.

While we acknowledge this increasing risk of pest introduction, the creation of new user fees is outside the scope of this rulemaking. However, we are taking the matter under consideration.

Separation of Costs for Various Categories of AQI Service

One commenter suggested that APHIS may be using fees collected from airlines and air passengers to pay for other AQI services and activities. The commenter implied that a clear link between the fees airlines pay and the

services they receive is not apparent in our proposal. The commenter specifically questioned our using fees collected from airlines to help pay for border blitzes and market surveys.

As stated in previous rulemakings on this subject and in our proposal, each service category is considered separately. Each category must, through user fee receipts, return enough money to APHIS to cover the cost of providing AQI services to that particular category. Costs are assigned directly to a category when the cost is directly related to providing the service. For example, our beagle brigade program only applies to

passenger inspections. Therefore, the passenger inspection fees includes the full costs for the beagle brigade program. However, where a cost benefits all categories of service, it is pro-rated among the categories based on historic direct labor staff hours. Border blitzes (inspections) and market surveys, which are ways we test the efficacy and efficiency of our AQI programs, are supported by all of our AQI user fees. As we explained in our proposed rule, we are using data obtained from these inspections and searches to build a database on violations. The database will help us target specific commodities

that are smuggled and importers who have a history of smuggling prohibited commodities, while allowing legitimate importers and exporters to move their products through commerce without undue delay. As a result, we will be able to more efficiently serve all those who pay user fees, including airlines.

Another commenter questioned how new equipment and personnel would be allocated among the various categories of AQI service. As stated above and in our proposal, the projected allocation of new personnel to the various categories of service is as follows:

ANTICIPATED AQI PROGRAM HIRES FY 2000–2002, BY CATEGORY OF SERVICE

	Commercial vessels	Commercial trucks	Commercial railcars	Commercial aircraft	International air passenger
New hires	51	39	18	137	216

New and replacement x-ray equipment will be allocated first to expanded airport terminals and to replace outdated machines currently in use. It is possible that a small number of new x-ray machines could be employed at U.S.-Mexico land border ports if we determine that there is sufficient risk to necessitate additional inspection activities and improved technologies there.

New and replacement vehicles will be allocated to AQI operations at airports, land border ports, and sea ports, but again, most of those vehicles will be allocated to airports.

We would like to restate that costs for each category of service are determined separately. A particular category of service does not pay for vehicles that are allocated to other categories of service. We have accounting methods in place to ensure the proper assignment of costs so that each category of service pays only for services provided to that same category of service.

Computer Programming, Y2K Concerns, and Postponement of Effective Date

One commenter suggested that APHIS should delay the implementation of fee changes until at least 6 months after the effective date of the final rule to allow airlines and other ticket issuers time to reprogram their computer systems to account for the revised fees.

The commenter also requested that APHIS either withdraw its proposal to amend existing AQI user fees or delay action for 6 months to provide time for the Agency to respond to a request for additional information that the commenter has submitted under the Freedom of Information Act.

We do not believe that delaying the effective date of this rulemaking is appropriate. If sufficient revenue is not available to fund AQI services, we must reduce service or take money from other programs, either of which would negatively affect our customers.

Changes in Program Collection and Cost Estimates

In our proposed rule, we made certain collection and cost estimates based on the best data available at the time. Actual collections and costs varied somewhat from the estimates, but did not cause a significant difference in the scope of the program or the need to revise the fees as proposed. Our full analysis has been updated to reflect the new data.

The calculations underlying the proposed rule assumed an October 1, 1999, implementation date. Implementing the rule on January 1, 2000, will reduce the anticipated FY 2000 collections by \$13,289,865. Also, the FY 2000 Agriculture Appropriation Act made \$13,000,000 of FY 2000 collections unavailable instead of the \$5,000,000 assumed in the proposed rule. Together, these changes reduce the amount available from FY 2000 collections by \$21,289,865. However, changes in program collections and costs for FY 1999 substantially offset this loss and will allow the Agency to proceed with the program enhancements noted in the proposed rule. In FY 1999, the collections actually received totaled \$171,904,404 instead of the \$159,727,857 assumed in the proposed rule. Also, FY 1999 program costs totaled \$152,232,527 instead of the \$158,457,857 assumed in the proposed

rule. Together, these changes added \$18,401,877 to the available reserve, which is available to recover the cost of fees that we could not collect from October 1, 1999 to December 31, 1999.

We now anticipate FY 2000 program costs will total \$194,607,291 instead of the \$199,965,458 assumed in the proposed rule. The hiring of 315 new inspectors will begin slightly later in the fiscal year than assumed in the proposed rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The economic analysis prepared for this rule provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of economic effects on small entities as required by the Regulatory Flexibility Act. The analysis is summarized below. Copies of the full analysis are available by contacting Ms. Donna Ford at the address listed under **FOR FURTHER INFORMATION CONTACT**.

Introduction

APHIS is revising existing agricultural quarantine and inspection (AQI) user fees to recover additional and unanticipated program costs and to rebuild the AQI reserve. The AQI user fee revisions will become effective

January 1, 2000, and will be in effect through FY 2002.

International air passengers, commercial aircraft, commercial vessels, commercial trucks, and commercial railroad cars arriving at ports in the customs territory of the United States will be affected by the increase in AQI user fees.

The FACT Act, as amended, provides that APHIS may prescribe and collect fees to cover the cost of providing quarantine and inspection services in connection with the arrival of international airline passengers, commercial aircraft, commercial vessels, commercial trucks, and commercial railroad cars at ports in the customs territory of the United States. The FACT Act further states that the fees should be sufficient to cover the cost of administering the program and sufficient to maintain a reasonable balance (or reserve) in the AQI User Fee Account.

Need for Regulation

The purpose of agricultural quarantine inspections at U.S. ports of entry is to prevent international travelers and conveyances from introducing harmful plant and animal pests that could damage U.S. agriculture and cause substantial economic losses to domestic producers, consumers, exporters, and to a range of allied agricultural industries. In the case of AQI user fees, those international travelers or conveyances who may carry agricultural pests or diseases from abroad are required to pay for AQI program activities.

Generating revenues to operate public programs by charging users is widely practiced by Federal, State, and local government agencies and is based on the premise that the beneficiaries or users of a public system, and not the public at large, should pay for its operation. User fees can be an equitable way of matching program costs to program users or beneficiaries.

Composition of Proposed Fees

Computation of AQI user fees is based on direct program delivery costs, program support costs, Agency-level support costs, anticipated user fee administrative costs, and reserve fund costs.

Direct Program Costs

Direct program costs include, but are not limited to: Salary and benefits for inspectors, canine officers, supervisory and clerical staff, uniform allowances, local travel expenses, and specialized equipment purchases.

Program Support Costs

Program support costs include all expenditures necessary to maintain regional and headquarters support staffs and offices, including APHIS program staff, detection methods development, plant risk assessments, and automatic data processing (ADP) support.

Agency-level Costs

In addition to salary and benefit costs, Agency-level support costs include, but are not limited to: Recruitment and development, legislative and public affairs, regulatory enforcement, communications, postage, budget and accounting services, and the cost for USDA's National Finance Center to provide payroll, purchasing, and other related financial services.

Administrative Costs

The FACT Act, as amended, allows the Agency to recover administrative costs that the Agency incurs as a direct result of developing, collecting, and monitoring AQI user fees.

The Reserve Fund

The FACT Act allows for a reasonable balance in the AQI User Fee Account. The reserve fund serves several purposes. The reserve fund ensures that the Agency has access, through the AQI User Fee Account, to funds for normal operating expenses. Second, the reserve fund ensures that the Agency has sufficient operating funds in cases of bad debt, carrier insolvency, or fluctuations in activity volumes. Further, in the July 1997 final rule, we explained that it is also necessary to maintain a reasonable reserve balance in the AQI account in order to account for fees earned for providing AQI services in a given fiscal year that were not received until after that fiscal year ended.

Regulatory Flexibility Analysis

The effects of increased fees on small entities in each of the affected industries are discussed separately below. The fee changes will also affect international airline passengers arriving at ports in the customs territory of the United States; however, passengers are not included in this analysis because the Regulatory Flexibility Act does not cover individuals.

Commercial Vessels

We are amending the scheduled user fees for inspecting commercial vessels by increasing the fees by \$3.75 in FY 2000, by \$3.25 in FY 2001, and by \$0.25 in FY 2002. APHIS inspects vessels of 100 net tons or more arriving from all foreign ports, except Canada. Typically,

APHIS inspects (and charges) dry cargo vessels operating between the United States and foreign ports. At the beginning of 1996 there were 192 U.S. dry cargo vessels.

Bureau of the Census data compiled by the Small Business Administration (SBA) in 1995 show that the affected industry, U.S. commercial vessels engaged in deep sea foreign transportation of freight, was composed mostly of small firms (less than 500 employees, according to the SBA definition). In 1995, there were 125 firms engaging in deep sea transportation of freight and 111 of them, or 89 percent of the affected industry, employed less than 500 employees. Also in 1995, the average or typical small U.S. firm engaged in deep sea transportation of freight had roughly 31 employees, a payroll of less than \$1.6 million, and annual receipts of \$28 million. Data on the number of dry cargo vessels per firm or firms exclusively operating dry cargo vessels are not available.

Anecdotal information suggests that many of the companies that are subject to AQI inspections are not U.S. firms. Further, it is unclear how many of the 125 U.S. firms will actually be affected by the increase in AQI user fees and how many of the affected firms are small entities. We do know that total daily operating costs for dry cargo vessels idle in port average between \$23,600 and \$26,800. The user fee increases of \$3.75 in FY 2000, \$3.25 in FY 2001, and \$0.25 in FY 2002 are very insignificant fractions of daily operating costs, suggesting that the fee revision will not have a significant economic effect on small firms operating vessels.

Commercial Trucks

APHIS inspects trucks entering the United States from Mexico. It is unclear how many of these trucks entering the United States from Mexico are owned and operated by U.S. firms. According to a recent General Accounting Office report, roughly 11,000 trucks cross the border each week day (a total of 3,113,091 in FY 1996) from Mexico into the United States. The bulk (93 percent) of northbound truck traffic comes through seven major customs ports: Otay Mesa, California; Calexico, California; Nogales, Arizona; El Paso, Texas; Laredo, Texas; McAllen, Texas; and Brownsville, Texas. Many of these trucks are owned and operated by Mexican firms. At present, trucks from Mexico are limited to commercial zones along the border and many make multiple daily crossings. Mexican brokers tend to control much of the truck traffic at some border locations.

Reliable data on future traffic patterns are not available.

It is unclear how many U.S. trucking firms will be affected by the increase in AQI user fees. Anecdotal evidence from APHIS employees indicates that many of the AQI truck decals, which are good for multiple inspections, are being purchased by U.S. trucking firms operating in Texas, California, and Arizona. Bureau of the Census data for 1995 show that the overwhelming majority of trucking firms in these States would be considered small firms by SBA standards (less than \$18.5 million in receipts annually). SBA data also show that the typical small trucking firm in one of these border States had 10 employees and earned a little less than \$1 million in receipts annually.

If we assume that any small U.S. trucking firm that regularly transports freight from Mexico would purchase an APHIS truck decal, which is good for an unlimited number of entries during the calendar year, the increase in user fees could cost a small firm, at most, an additional \$5 per truck or an estimated \$55 per firm in FY 2000; and \$10 per truck or an estimated \$110 per firm in FY 2001 and FY 2002. This estimate is based on the assumption that a small firm owns a maximum of 11 trucks. There are no official statistics on the fleet size of small trucking firms either for selected border States or for the United States as a whole. This assumption is based on private sector trucking industry data on 256,223 U.S. trucking firms representing a combined fleet of over 2.3 million vehicles. These data show that 91 percent of firms own 11 or fewer trucks.

SBA data show that the typical small trucking firm in Arizona, California, or Texas has annual receipts of \$932,000. We, therefore, believe that the increase in cost, as explained above (\$110 for the average small firm), will not result in a significant new burden on small commercial trucking firms.

Loaded Commercial Railroad Cars

There are four U.S. railroad companies currently transporting goods across the U.S.-Mexico border. Two of these railroad companies meet the SBA criteria for small entities (fewer than 1,500 employees). As of 1991, the smaller railroad companies transported between 960 and 2,000 loaded railcars into the United States from Mexico annually. Data on operating expenses and profit margins for these companies are not available; but user fees will not increase in FY 2000 and FY 2002 and will only increase by \$0.25 in FY 2001, suggesting that there will not be a

significant economic effect on these two small U.S. railroad companies.

Commercial Airlines

We are amending the scheduled user fees for inspecting commercial aircraft by increasing the fees by \$3.75 in FY 2000, \$3.50 in FY 2001, and \$3.00 in FY 2002. International scheduled and unscheduled (chartered) air passenger, air cargo, and air courier carriers arriving at U.S. customs ports are subject to AQI inspections. Bureau of the Census data compiled by the SBA show that there were a total of 6,107 firms in the U.S. air transportation industry in 1995 and that more than 5,893 (or more than 96.5 percent) would have met the SBA criteria for small entity (employing fewer than 1,500 employees). The typical small firm in the air transportation industry had 15 employees, an annual payroll of \$398,000, and estimated annual receipts of \$2.1 million.

APHIS regulations affect international flights, many of which are operated by foreign-owned firms. Those U.S. air transport firms that do not operate international flights are not subject to the rule. Agency records show that, in 1995, only 123 of the 6,107 firms in the air transportation industry were subject to agricultural quarantine inspections because they operated international flights. This data suggest that the increased user fees will not affect a substantial number of small air transportation companies. Even if all 123 U.S. airline firms were small entities (which they are not), the fee revision would be applicable to only 2 percent of small firms in the industry. Using information on the number of firms inspected, the number of projected inspections, and the assumption that firms subject to inspection are distributed by size in a fashion consistent with the industry as a whole, we can develop very rough estimates of effect on small firms.

Each of the 123 U.S. companies would have had an airplane inspected between 1,600 and 1,700 times per year if inspections were prorated equally between large and small firms. In practice, small firms with fewer aircraft would probably have substantially fewer annual inspections, so we are overestimating the effect of fee revisions on small firms. Given the assumptions above, the increased fees listed above will likely translate into additional costs per firm of between \$5,000 and \$6,000 per year, which are less than three-tenths of one percent of estimated annual receipts for the average small air transportation firm.

Given the data, assumptions, and calculations above, it is reasonable to conclude that fee revisions will not have a significant economic effect on a substantial number of small air transportation firms.

Other Costs and Benefits

Additional reporting costs to private airlines associated with revising user fees are likely to be very small because mechanisms are already in place for collecting fees. There should be no additional recordkeeping costs for ticketing agents and tour operators who are not involved in remitting fees and are not expected to remit fees in the future. Further, there will be no additional reporting burdens on vessel, aircraft, railcar, and truck operators as a result of revisions to user fees.

The benefit of user fees is the shift in the payment of services from taxpayers as a whole to those persons who are receiving the government services. While taxes may not change by the same amount as the change in user fee collections, there is a related shift in appropriations, which allows tax dollars to be applied to other programs that benefit the public in general.

The administrative cost involved in obtaining these savings will be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place, and since this rule simply updates existing user fees, increases in administrative costs will be small. Because the savings are sufficiently large and the administrative costs will be small, it is likely that the net gain in reducing the burden on taxpayers as a whole will outweigh the cost of administering the revisions of the user fees.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

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

Accordingly, 7 CFR part 354 is amended as follows:

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

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

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

2. Section 354.3 is amended by revising the tables in paragraphs (b)(1), (c)(1), (d)(1), (e)(1), and (f)(1) to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(b) * * *

(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	465.50
October 1, 2000 through September 30, 2001	474.50
October 1, 2001 through September 30, 2002	480.50

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(c) * * *

(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	4.25
October 1, 2000 through September 30, 2001	4.50
October 1, 2001 through September 30, 2002	4.75

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(d) * * *

(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	6.75
October 1, 2000 through September 30, 2001	7.00

Effective dates	Amount
October 1, 2001 through September 30, 2002	7.00

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(e) * * *

(1) * * *

Effective dates	Amount
January 1, 2000 through September 30, 2000	64.00
October 1, 2000 through September 30, 2001	64.75
October 1, 2001 through September 30, 2002	65.25

* * * * *

(f) * * *

(1) * * *

Effective dates ¹	Amount
January 1, 2000 through September 30, 2000	3.00
October 1, 2000 through September 30, 2001	3.00
October 1, 2001 through September 30, 2002	3.10

¹ Persons who issue international airline tickets or travel documents are responsible for collecting the APHIS international airline passenger user fee from ticket purchasers. Issuers must collect the fee applicable at the time tickets are sold. In the event that ticket sellers do not collect the APHIS user fee when tickets are sold, the air carrier must collect the user fee from the passenger upon departure. Carriers must collect the fee applicable at the time of departure from the traveler.

* * * * *

3. In § 354.3, paragraph (c)(3)(i) would be amended by removing the words “, except, that through September 30, 1997, the amount to be paid is \$40.00”.

Done in Washington, DC, this 9th day of November 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-29868 Filed 11-15-99; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 330

RIN 3064-AC30

Technical Amendments to FDIC Regulations Relating to Rules of Practice and Procedure and Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending various sections of its Local Rules of Practice

and Procedure (Local Rules) governing administrative enforcement proceedings. The amendments are generally technical in nature, and are necessary to ensure that the rules are consistent with statutory provisions and procedural changes that have occurred since the rules were first adopted. The FDIC also is making a conforming, technical amendment that was inadvertently omitted from recent revisions to the FDIC's deposit insurance regulations.

EFFECTIVE DATE: November 16, 1999.

FOR FURTHER INFORMATION CONTACT: On the Part 308 amendments, Andrea Winkler, Counsel, Legal Division (202) 898-3727; on the Part 330 amendment, Joseph A. DiNuzzo, Counsel, Legal Division (202) 898-7349, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Part 308 Amendments

A. Background

On August 9, 1991, the federal banking agencies¹ published one set of final uniform rules and procedures (Uniform Rules) for formal administrative enforcement hearings required to be conducted on the record under the Administrative Procedure Act (APA)(5 U.S.C. 554-557).² In addition, each agency published separate “Local Rules” applicable to that agency to supplement the Uniform Rules in order to address some or all of the following: formal enforcement actions not within the scope of the Uniform Rules, informal actions which are not subject to the APA, and procedures to supplement or facilitate the processing of administrative enforcement actions within the FDIC and the other agencies.

B. Summary of the Amendments

The FDIC is amending various subparts of its Local Rules as described below.

Authority. The section listing the authority for the Uniform Rules and Local Rules has been amended to incorporate references to the cross guaranty provisions of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1815(e)), which were initially omitted by technical oversight, and to the prompt corrective action and safety and

¹ The agencies were the FDIC, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Office of Thrift Supervision and National Credit Union Administration.

² 56 FR 37975 (1991) (amended at 61 FR 20347 (1996)). The uniform rules, which are contained in subpart A of part 308 ((12 CFR part 308, subpart A), are intended to standardize procedures for actions common to at least four of the five Agencies.