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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 96–038–3]

RIN 0579–AA81

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. We are setting 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 fiscal year 2002.

EFFECTIVE DATE: September 1, 1997.

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, User Fees Section Head, FSSB, BAD, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

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). These services include, among other things, inspecting 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 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, as amended, 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, as amended, 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. 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 (FY) 2002 are to be deposited in the Account. For each FY 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 FYs 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.

Under the Farm Bill, as amended, we may spend all AQI user fees we collect in excess of $100 million for FYs 1997 through 2002, 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.

On January 27, 1997, we published in the **Federal Register** (62 FR 3823–3830, Docket No. 96–038–1) a proposal to amend the regulations by adjusting our 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 and setting user fees in advance for these services for FY 1997 through 2002.

We solicited comments concerning our proposal for 60 days ending March 28, 1997. We received 15 comments by that date. They were from county and State government agencies, airline industry representatives, maritime representatives, and agriculture representatives, including producers and farmers.

Five commenters approved of the proposal as written. Ten commenters opposed some portion of the proposal, supported part of the proposal, or offered suggestions for improvements. Several commenters disagreed with the amount of our fees, questioned our projections, or questioned fees such as the annual truck decal, the vessel fee, and the aircraft fee versus the international passenger fee. We carefully considered the comments, all of which are discussed below by topic, and reviewed our analysis. However, none of the commenters offered additional information to revise our analysis. In the absence of any new

information, we continue to believe that the analysis presented in the proposal is sound and that the proposed fees are appropriate. Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change.

Fees for 6 Years in Advance

Two commenters disliked our proposal to adopt user fees for 6 years in advance; three commenters liked the idea.

By proposing user fees in advance for a 6-year period, we are responding to comments we received in response to past proposals. Those commenters stated that it was difficult to make business plans without knowing in advance when fees would change and by how much. Also, commenters have, in the past, objected to large fee increases, even though they occurred infrequently. We believe adopting user fees for 6 years in advance alleviates these concerns. Under this rule, business planning should be easier and fee increases will be more gradual.

Vessel Inspection Fee

Two commenters objected to the increase in the vessel inspection fee. They based their objections on the small percentage of ships that are boarded in the Port of Hampton Roads in Virginia.

We inspect almost all internationally arriving vessels at ports of entry in the United States. The user fees for these inspections are based on the total cost of the vessel inspection program. The type of inspection ranges from an exterior inspection from outside the vessel to a boarding of the vessel for full-scale inspection of the interior and cargo. The decision to board a vessel is based on numerous variables, including the origin, cargo, and type of the vessel, which indicate the risk presented by a vessel of introducing foreign pests and diseases into the United States. A system that attempted to account for every possible inspection situation would be unwieldy and expensive to administer and would most likely result in higher user fees.

One commenter suggested that all options to reduce costs should be considered before raising vessel inspection fees.

We agree with the commenter's approach. We are constantly trying to reduce costs and minimize necessary cost increases. We raise our user fees only when necessary to reflect unavoidable cost increases. Likewise, because APHIS user fees reflect the actual cost of providing a service, if we can reduce the cost of a service, we can reduce the user fee for that service.

User Fees for Commercial Trucks

One commenter questioned why commercial trucks entering the United States from Canada are exempt from paying an APHIS user fee and suggested that trucks from Canada should pay the same fee as trucks entering from Mexico.

APHIS restricts the importation of plants and animals and/or plant and animal products from foreign countries based on the pest or disease risk associated with those imports. In many cases, such imports from Canada present a very low risk, and few restrictions apply. Under these circumstances it is not necessary for APHIS to provide inspection services for commercial trucks from Canada. Because APHIS provides no inspection services, an APHIS user fee is not justified.

One commenter agreed that the lower truck decal price for FY 1997 is warranted. However, the commenter suggested that equity might call for a 1-year moratorium on increasing the individual truck crossing fee so that the two fees would not have a noticeable difference. Another commenter questioned who is subsidizing the shortfall in user fees for providing AQI inspections for trucks using the annual decal during FY 1997.

As explained in the proposed rule, both the truck decal and individual truck crossing fees must be raised. The FY 1997 truck decal cannot be changed because the decals have already been printed and many have been sold. Therefore, APHIS is covering the FY 1997 truck decal shortfall from the reserve fund. However, we believe the individual crossing fee must be increased for FY 1997, to help ensure that the full cost of inspecting these trucks is covered by user fees. It should be noted that, by the date this rule is effective, FY 1997 will be more than half over, and most truck decals are purchased early in the year. Therefore, the disparity between the FY 1997 truck decal fee and the individual crossing fee will be temporary and most likely minimal.

In addition, it is less expensive and more efficient to allow prepayment of fees for commercial trucks than to attempt to collect and process a fee for each arrival. It is possible that individual trucks might pay more in user fees if there were no prepayment provisions. However, the possible loss that will be incurred in FY 1997 if there is a shortfall is more than offset by the savings of a more efficient collection system.

One commenter stated that the annual decal for commercial trucks violates the law, stating that the decal user fee would not cover the cost of inspections. For example, if the truck with a decal entered the United States enough times, then the average fee per inspection would be lower than the actual cost for the service.

Our user fees cover the cost of providing services for the entire inspection program. Therefore, sometimes fees may be more or less than the actual cost of services received for individual cases. As explained in our proposal, the user fee for the annual decal for commercial trucks is calculated as 20 times the individual crossing fee. The total collected for commercial truck user fees for annual decals and individual crossing fees is expected to recover the cost of providing those inspection services.

Commercial Truck Versus Commercial Aircraft User Fees

One commenter stated that inspecting a commercial truck takes approximately the same amount of time as inspecting a commercial aircraft and implied that the fees should be the same.

In our experience, inspecting a commercial aircraft is much more involved than inspecting a commercial truck, and, therefore, takes longer. The result is a higher user fee for aircraft.

One commenter complained that commercial airlines should be offered quantity discounts similar to that offered commercial trucks through our decal system.

The annual decal available for trucks is a joint APHIS–U.S. Customs Service (Customs) decal covering fees for inspections by both agencies. Commercial trucks may purchase an annual decal for APHIS inspections when they purchase an annual decal from Customs. Although this exact approach would probably not be applicable to aircraft, we appreciate the commenter's suggestion. If we decide to make any changes based on this comment, we will publish a proposal in the **Federal Register** for public comment.

Commercial Aircraft and Airline Passenger User Fees

One commenter pointed out that passenger and aircraft inspection fees would represent a large percent of AQI collections in each year from FY 1997 through 2002. The commenter implied that passenger and aircraft inspection fees subsidize other AQI services. Further, the commenter asserted that

since we do not charge user fees for private vehicles entering the United States at land border ports, it appears that those individuals and vehicles who do pay user fees are subsidizing the inspection process.

Each service category was 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 were assigned directly to a category when the cost directly related to providing the service. For example, our detector dog program only applies to passenger inspections. Therefore, the passenger inspection fees includes the full costs for the detector dog program. However, where a cost benefits all categories of service, it was pro-rated among the categories based on historic direct labor staff hours.

AQI user fees are used only for user fee related activities. APHIS receives appropriated funds to cover the costs of those AQI services not covered by user fees. This includes, among other things, inspection of passengers and aircraft from Hawaii and Puerto Rico, and certain Mexican land border activities, including pedestrian and personal vehicle inspections. Commercial aircraft and aircraft passenger fees do not subsidize any other AQI services.

One commenter stated that the air passenger fee should cover the inspection of the aircraft as well. Two commenters stated that a separate fee for inspection of the aircraft and its passengers violates the law. The commenters asserted that the inspection of the aircraft for food items and garbage is specifically passenger related. The commenters point out that neither Customs nor the Immigration and Naturalization Service (INS) assess a commercial aircraft fee separate from a passenger fee.

On January 9, 1992, we published a final rule in the **Federal Register** (57 FR 755–773, Docket No. 91–135) that amended our user fees to shift all passenger-related inspection costs from the aircraft user fee to the airline passenger user fee. The airline passenger user fee includes the cost of inspections related to the presence of passengers on aircraft, such as inspection of the passenger cabin. Specifically, the airline passenger user fee covers inspection of the aircraft galley, including garbage, the passenger compartment, the baggage hold, and all related administrative and overhead expenses. The aircraft fee covers the inspection of the aircraft and its cargo.

Passengers and aircraft, and the cargo it carries, pose different risks of bringing foreign diseases and pests into the United States. For example, passengers may have visited a farm that may present agricultural concerns, or they may be carrying infested fruits or vegetables or infected meat on their persons or in their baggage. Aircraft may be infested with a pest that has escaped from infested cargo or entered the aircraft when it was in an infested locality. Therefore, aircraft or cargo may need to be fumigated or disinfected. For all these reasons, passengers and their baggage must be inspected separately and in a different manner than the aircraft and its cargo.

It seems appropriate that passengers themselves pay the APHIS user fees for passengers. Although airlines collect the APHIS passenger user fee along with the price of the ticket and then remit the APHIS user fee to APHIS, the airlines could be charged a user fee that would cover the entire cost of both aircraft and passenger inspections. If we decide to consider such a change, we will publish a proposal in the **Federal Register** for public comment.

International Trade

One commenter asserted that raising user fees could decrease exports.

Although some countries do not currently charge for export-related services, such as inspections, user fees for these services are being adopted by more and more countries. Therefore, we do not believe that U.S. exporters are at a competitive disadvantage compared with exporters in other countries.

Unrestricted Access to Resources

One commenter suggested that APHIS should not have unrestricted access to resources.

We do not have unrestricted access to the funds collected through our user fees. Congress only gives access to the amount appropriated plus any amount of collected user fees above $100 million. Our access is also restricted in that we may only use the funds for AQI services rendered.

Congressional Funding

One commenter suggested that ''if Congress stopped funding APHIS as a cost cutting measure, then APHIS should reduce spending and expenses.''

Congress still funds APHIS with appropriated funds; however, the source of most of the appropriations for AQI services is collected user fees. The cost of providing AQI services is projected to exceed $100 million for each of the years 1997 through 2002, and the AQI user fees should generate enough funds to cover these costs. As explained in the proposed rule, APHIS automatically has access to user fee funds in excess of $100 million that are collected each year, but it takes appropriation action to make that first $100 million available to APHIS each year. If the full $100 million is not appropriated during any year between 1997 and 2002, APHIS may find it necessary to increase the amounts of individual user fees through rulemaking, thereby increasing the amount of fees collected in excess of $100 million. Increasing the fees by the proper amount would generate enough funds to compensate for the user fee funds diverted by an appropriation of less than $100 million, and would ensure that APHIS has enough funds to cover the costs of providing the AQI services.

Automated Commercial System Investment in FY 1997 and 1998

One commenter approved of our dedicating funds to fully implement our use of Customs' Automated Commercial System (ACS). Several other commenters expressed confusion about how and when the $3.175 million investment would be made.

We understand the confusion. To clarify, the implementation costs totaling $6.35 million were originally intended to be spent in FY 1996. Due to technology constraints, we did not implement the system in FY 1996. Therefore, our plan is to spread the implementation over 2 years with a one-time investment of $3.175 million each year. In the proposed rule, the spending estimates for FYs 1997 and 1998 included $3.175 million in each year for a total investment of $6.35 million for ACS implementation.

Cost Cutting and Changes in Inspection Process

One commenter suggested a USDA-wide reorganization in an effort to streamline costs.

A USDA-wide reorganization is outside the scope of our control and beyond the scope of the proposed rule. Nonetheless, we would like to point out that USDA has and is still undergoing reorganization to reduce costs and increase efficiency. As part of this reorganization, APHIS has taken actions to reduce costs and increase efficiency. Many of these actions are discussed later on in this document in response to other comments.

Several commenters questioned increasing the number of inspectors. One commenter asserted the percentage of these increases during FY 1996 did not relate to the growth in airline operations or a change in the form of the agricultural inspections. The commenter also questioned whether the large increase in staff in FY 1996 was a one

time augmentation or a new rate of growth.

The large increase in staff in FY 1996 was mandated by Congress to bring APHIS up to a reasonable level of service. With these new hires, we staffed new terminals, extended service hours, and provided more and better service. We increased staff based on need; however, we do not foresee increases such as in FY 1996 to become the trend. In fact, as stated in our proposal, we are planning to hire only 30 additional officers each year, which is fully in line with our estimates of volume increases.

Several commenters suggested that we should cut costs before raising user fees.

We are always looking for ways to reduce our costs. One cost cutting change we made this year was to centralize our detector dog training program. Previously, we had three separate training centers. These have all been combined into a single facility in Orlando, FL. This facility trains dogs to detect agricultural products.

We are planning in the near future to combine our regional offices into regional hubs over the next several years. Cost savings and better program delivery are two factors considered in this and other reorganizations. In addition, we have reduced Headquarters staffing, which lowers overhead costs.

Several commenters suggested that we should improve efficiency before raising user fees. One commenter specifically suggested that we should find new methods to improve efficiency and enforcement via risk assessment and selective or targeted inspection. One commenter suggested that we need a new approach to the inspection process and should look for innovative ways of performing inspections. One commenter complained that APHIS currently does not seem to use computers for its work. One commenter stated that cost estimates need to consider the need for technology upgrades, such as the development and use of tomographic X-ray equipment.

We are always looking for innovative approaches to improve our efficiency. Along with manual inspections, we use alternative inspection methods and technologies such as automated information systems, X-ray systems, and specially trained detector dogs. Examples of what we are doing in these areas and planned enhancements are described below.

We determine where we need our resources based on risk assessment.

We are focusing on facilitation, education, and compliance. Technology and other more efficient approaches facilitate inspections. Education informs the public of our mission.

To facilitate passenger clearance, we use the Interagency Border Inspection System (IBIS), where it is available. IBIS contains incoming passenger information. To facilitate cargo movement, we use Customs' ACS and Automated Targeting Systems (ATS), where they are available. Today, more ports are using these systems, and we are continuing to expand the use of these systems to all of our ports. In addition, we are developing a system that will be integrated to ACS and ATS, so we will provide better information and communication with the public about the release and approval of cargo.

In addition, we, along with other Federal inspection agencies, are negotiating with the airlines to develop an advance passenger information system to provide better technology to facilitate passenger clearance.

We continue to expand the use of X-ray equipment as a screening tool in passenger baggage clearance at major international airports. There are X-ray scanning machines located at all foreign-arrival and predeparture sites. X-ray machines are used at international airports and on the U.S.-Mexico border. We replaced old X-ray equipment with modern X-rays which have integrated computers and provide improved quality through enhanced imaging.

In partnership with the Federal Aviation Administration and the Department of the Army, we are developing a tomographic X-ray system that will automatically detect agricultural products in luggage and alert inspectors. When operational, we expect this system to provide more accurate images of the contents of baggage than current X-ray equipment can. We expect to improve our ability to make decisions about inspecting passenger baggage prior to passengers' picking up their baggage. Therefore, we expect to decrease the number of passengers in the inspection area and over time decrease the size of the inspection area thus reducing costs and time delays associated with the inspection process.

The prototype for this tomographic X-ray system is scheduled to be tested in San Juan, PR, in April 1998. As with all of our enhancements, after the pilot test, we plan to implement this new technology at the largest, most active airports where the most people will benefit and there will be the greatest impact. We will adapt the implementation, as needed, to other locations and gradually incorporate this tool throughout all international airports.

We continue to use specially trained dogs to detect prohibited items at major international airports. Detector dogs have proven useful in selecting bags to inspect and we plan to expand this program to meet increased risk.

Several commenters questioned the apparent change in APHIS' role as compared to other Federal inspection agencies. One commenter asserted that APHIS' function in the airport environment is secondary to Customs, as Customs inspectors perform all primary inspections. The comment further asserted that this serves the needs of all agencies adequately without multiplying the hurdles confronting the arriving passenger.

In the past, Customs inspectors opened passenger baggage and notified our inspectors when agricultural products were found. Customs has shifted their focus away from passenger processing to other areas that are more important from its perspective. Our priority continues to be finding agricultural products that could introduce foreign pests and diseases. One of the highest risks is from agricultural products in passenger baggage. Passengers may inadvertently carry infested fruits or vegetables or infected meat in their baggage. Therefore, we still need to open baggage to check for these agricultural products.

In conjunction with both Customs and INS, we find ways to improve processing of passengers and cargo. Along with other Federal inspection agencies, we meet with the aircraft industry at least once a month as a member of the Federal Inspection Committee. As a result of the efforts of these groups and our continued attention to modernizing and improving our inspections, we have several efforts underway to improve efficiency and cut costs.

One commenter questioned whether user fees have any correlation to the amount of services received by the user. One commenter questioned the relative efficiency of one port operation over another. One commenter suggested a sliding scale of fees based on location, efficiency, and general overhead.

We realize that the amount of service for each user varies. However, the number of variables that determines the amount of service or length of time required to provide service is virtually infinite. A system that attempted to account for every possible inspection situation would be unwieldy and expensive to administer and would require the additional expenses to be included in the fee calculation.

Interpretations/Violations

One commenter stated that the Farm Bill, as amended, does not eliminate the annual review requirement.

Since the inception of our user fees, we have performed annual reviews of our user fees and adjusted fees as required. As stated in our proposed rule, we not only intend to monitor our fees throughout each year, but we intend to look closely at adjustments to fees that may be needed in future years. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will publish lower fees in the **Federal Register** and make them effective as quickly as possible. If it becomes necessary to increase any fees because reserve levels are being drawn too low, we will publish proposed fee increases in the **Federal Register** for public comment.

One commenter asserted that the Farm Bill, as amended, does not permit adjustment in advance of a determination of need.

We disagree with the commenter's interpretation of the requirements of the Farm Bill, as amended. The Secretary is under no formal obligation to make a specific determination of need prior to the adjustment of fees. Nonetheless, the user fee adjustments we propose for FYs 1997 through 2002 were all based on cost estimates (i.e. a determination of need) for providing AQI services for future years. None of the fee adjustments will be effective until the fiscal year for which they were proposed. As we stated in our proposed rulemaking (see 62 FR 3824), ''(w)e * * * plan to publish a notice in the **Federal Register** prior to the beginning of each fiscal year to remind or notify the public of the user fees for that particular fiscal year * * *. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will publish lower fees in the **Federal Register** and make them effective as quickly as possible. If it becomes necessary to increase any fees because reserve levels are being drawn too low, we will publish, for public comment, proposed fee increases in the **Federal Register**.'' Therefore, contrary to the commenter's assertions, no fees are being adjusted ''in advance of a determination of need.''

One commenter suggested that by proposing user fees for 6 years, we avoid notice and comment rulemaking mandated by the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). The commenter also stated that APHIS should be held accountable for timely rulemaking.

APHIS has been actively pursuing different avenues to make user fee rulemaking more timely. Although beneficial for the result, the time spent to develop the user fees, analyze their potential impacts, and have other government organizations review our documents can cause significant delays in implementing our user fees. Therefore, in the past, our user fees have been out of date by the time they are effective. Proposing potential user fees in advance is an attempt to ensure timely rulemaking. Our 6-year proposal has gone through the standard notice and comment rulemaking process as required by the APA. Also, by proposing user fees for a 6-year period, we are responding to comments received in the past by providing information sooner for planning purposes and phasing in gradual increases rather than large increases.

Projections and Cost Estimates

Several commenters stated that our proposed fees were either too high or too low.

We have determined, using the best data available, the cost of each of the services for which we will charge an APHIS user fee. In addition, the services we provide and the cost of providing those services will change over time. Therefore, as stated in our proposal, we intend to monitor our fees throughout the year and review them at least annually. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will publish lower fees in the **Federal Register** and make them effective as quickly as possible. If it becomes necessary to increase any fees because reserve levels are being drawn too low, we will publish proposed fee increases in the **Federal Register** for public comment.

To calculate the proposed user fees, we projected the direct costs of providing AQI services in FYs 1997 through 2002 for each category of service: Commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. The cost of providing these services in prior FYs served as a basis for calculating our projected costs.

In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs. On December 31, 1992, we published a final rule in the **Federal Register** (57 FR 62469–62471, Docket No. 92–148–1) that amended some of our user fees and included a detailed description of these accounting procedures.

As part of our accounting procedures, we established distinct accounting codes to record costs that can be directly related to each inspection activity.

Other costs that cannot be directly charged to individual accounts are charged to ''distributable'' accounts. The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level.

Using these accounting procedures, we calculated the total cost of providing AQI services in each past year by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts.

We then projected total costs to provide each category of service during each future year. Each projection included 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 include items at the regional and headquarters program staff levels. Finally, each projection included a pro rata share of agency-level support costs, 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, legal counsel, and rate development services 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.

Each service category was 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.

Several commenters questioned our cost estimates and variances between years. Specifically, commenters questioned the use of volumes, past estimates, and differences between FYs 1995, 1996, and 1997.

In the proposed rule, different components were included in different categories. For example, because FY 1996 spending was used as the basis for calculations, the base amount did not include all of the components that were added to estimated projected costs for FY 1997.

As explained in our proposed rule, we hired 217 new inspectors in FY 1996. Therefore, there was a large increase between FYs 1995 and 1996. In addition, there were differences in the

per employee costs for new employees in various years, because all new hires were not employed for the full year.

The information regarding spending estimates that we provided in the proposed rule was, in scope, the same information that we used to set the new user fees. Our user fees are based on data gathered at the work unit, region, and headquarters levels. For members of the public who, like the commenters, wish to obtain additional information, the names, addresses, and telephone numbers of knowledgeable APHIS personnel were provided in the proposed rule, and are provided in this document, under the heading **FOR FURTHER INFORMATION CONTACT.**

One commenter stated APHIS' vessel volume was a low figure compared with the number that Customs reported entering in FY 1996. A similar comment was received comparing APHIS' international air passenger volume with INS' international air passenger volume.

We acknowledge that our volume figures are lower, but it is easy to explain. First, the Customs number of vessels entering the United States for FY 1996 was for all vessel arrivals. APHIS only charges for the first 15 arrivals of vessels over 100 net tons and exempts vessels sailing solely between the United States and Canada. Secondly, the INS international air passenger volumes include all arriving international passengers. Again, APHIS is interested in a different portion of total international passengers and various passengers are exempt, including all passengers arriving from Canada. Therefore, our projections are and should be different from other Federal inspection agencies.

Reserve Fund

Commenters suggested that the size of the APHIS reserve fund is unjustified. Two commenters stated that a far smaller reserve fund would be adequate. Both of these commenters compared APHIS' reserve fund with INS', which, according to one commenter, maintains a reserve fund of approximately 8 percent of annual operating expenses, or, according to the other commenter, maintains a reserve fund of approximately 1 month's worth of operating costs.

APHIS' user fee authority provides for the maintenance of a reasonable balance in the user fee account. We link the reserve requirement in each category to the category's collection schedule. The reserves for the commercial aircraft and international air passenger user fee accounts are one-fourth of their respective annual costs because those fees are collected in arrears on a quarterly basis. The reserve requirement for commercial vessels and trucks is one-twelfth of that category's annual costs because those fees are remitted to APHIS monthly. The reserve requirement for loaded railroad cars is one-sixth of that category's annual costs because those fees are remitted to APHIS 2 months in arrears. 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.

Additional Uses for Fees

One commenter suggested additional services that could be funded from the AQI user fees.

We have made no change to the rule based upon this comment since it is ouside the scope of this rulemaking proceeding.

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 Customs' and INS' advisory committees.

Both Customs and INS are mandated to establish advisory committees. The Farm Bill, as amended, has not authorized an advisory committee for APHIS' AQI user fees. We are taking no action based on these comments at this time. The establishment of an advisory committee is outside the scope of this rulemaking proceeding.

Miscellaneous Comments

Two commenters questioned a USDA reorganization, which would consolidate the labs into five ''super-labs'' to reduce USDA expenses. They questioned the effect this would have on ship inspections.

APHIS is not involved in any such reorganization. In addition, we are not aware of any such planned USDA reorganization to establish five ''super-labs.'' However, if there was a USDA reorganization to reduce the Department's expenses, that reorganization might not reduce APHIS' vessel inspection expenses.

Miscellaneous

We have made a correction to a typographical error in the user fee for vessel inspections for FY 1997. In the proposed rule, the user fee was shown as $447.00 in the **SUPPLEMENTARY INFORMATION** under the background and as $447.50 in the rule portion. The correct fee should be $447.00; we have changed the rule portion accordingly.

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.

This rule, will, over a 6-year period, generally increase user fees for certain international airline passengers, commercial aircraft, commercial vessels, commercial trucks, and commercial railroad cars, in order to recover the cost to APHIS of providing services. Some user fees are initially reduced. Amendments to user fees are necessary to adjust for changes in service volume and in costs.

These fee changes will directly affect international commercial maritime vessels of 100 net tons or more, commercial trucks, loaded commercial railroad cars, and commercial aircraft arriving at ports in the customs territory of the United States. The impact of adjusting each fee is discussed separately below.

The fee changes will also directly impact international airline passengers arriving at ports in the customs territory of the United States. However, we have not included a discussion of the effect on airline passengers, as individuals are not covered by the Regulatory Flexibility Act.

Commercial Vessels

According to the Bureau of the Census, there were 334 U.S. businesses in 1992 engaged in water transportation of freight internationally between the United States and foreign ports. Of these businesses, at least 93 percent would be considered small according to SBA criteria for a small entity in this category (i.e., an entity that employs fewer than 500 persons).

APHIS user fees for commercial vessels apply only to those of 100 net tons or more arriving from foreign ports, except vessels sailing solely between Canadian and U.S. ports. All of the United States' oceangoing fleet exceeds 100 net tons, but only a limited portion engages in foreign trade. Data from the Department of Transportation's Maritime Administration shows that there were 319 private oceangoing merchant vessels in the United States at the beginning of 1996. Of these vessels, 127 are tankers and the remainder are dry cargo vessels. The vast majority of the tankers operate nearly exclusively between United States ports. They are therefore not subject to the APHIS

commercial vessel user fee. Those vessels subject to the APHIS user fee are mostly dry cargo vessels operating between the United States and foreign ports. We believe, however, that the impact of the revised APHIS user fees on these vessels is likely to be minimal, whether a vessel is operated by a small or a large entity. Total daily operating costs for dry cargo vessels idle in port averages between $23,600 and $26,800. The $77.50 user fee increase for FY 1997 represents less than 0.4 percent of one day's operating costs of an average dry cargo vessel while in port, and remains $97.00 below the original fee set in 1991.

For subsequent years, there is either no fee increase (FY 1999) or much smaller increases ($7.50, FY 1998; $7.25, FY 2000; $9.50, FY 2001; and $9.00, FY 2002). Therefore, we believe the impact of our commercial vessel user fees on small businesses will be minimal.

Commercial Trucks

The SBA criterion for a small trucking firm is one whose annual receipts are less than $18.5 million. We are unable to accurately estimate the number of U.S. firms that would be considered small by this criterion. However, we believe U.S. firms will be largely unaffected by the proposed fee changes. In 1991, transportation expenses for commercial U.S. trucks traveling from Mexico to the United States varied between $85.00 and $175.00 per trip for trucks carrying non-agricultural commodities. Assuming constant costs, adding $2.00 to the user fee per truck, per crossing,[1] will represent an increase in operating expenses of between 1.1 and 2.4 percent for trucks carrying non-agricultural commodities. Transportation expenses for trucks hauling agricultural commodities ranged from $300.00 to $1,700.00 per trip in 1991. Again, assuming constant costs, our user fee increases will represent operating expense increases of between 0.12 and 0.67 percent for trucks hauling agricultural goods. It therefore appears that the impact on small U.S. independent trucking firms will not be significant.

Commercial Railroad Cars

There are five U.S. railroad companies currently transporting goods across the U.S.-Mexican border. These railroad companies will be directly affected by our reduced user fee for this service. These railroad companies will also be directly affected by the subsequent fee increases. However, we are not increasing this fee until FY 2002, at which time the fee will increase to an amount equal to the current fee. We are not increasing the user fee beyond the current rate. User fee changes will affect direct operating expenses. Two of these railroad companies met the SBA criterion for small entities (i.e., fewer than 1,500 employees). As of 1991, the most recent year for which figures are available, these small railroad companies were transporting between 960 and 2,000 loaded railroad cars into the United States from Mexico annually. These cars were all subject to the APHIS user fee. Assuming a similar number of cars subject to inspection in future years, in FY 1997 reduced user fees will result in a cost savings for these railroad companies of between $480.00 and $1,000.00. Specific data on the operating expenses or profit margins of these railroad companies is not available to us. However, we believe the fee changes will not have any significant economic effect on small railroad companies.

Commercial Airlines

We received a comment that suggested that there were basic flaws in our analysis of the impact on commercial airlines required by the Regulatory Flexibility Act. Specifically, the commenter suggested that the analysis should have analyzed the impact on the airline industry's component parts. In addition, the analysis should have taken into consideration that the impact will fall disproportionately on certain airlines.

In the Regulatory Flexibility Analysis prepared for the proposed rule, we used information available from the Bureau of the Census on domestic and international airlines. Our user fees are spread evenly across all incoming international flights, both domestic and international carriers are charged the same fee, regardless of size or location. Certain exceptions are specified in our regulations. All exemptions have been added over time based on suggestions and analysis that their pest risk is close to zero. In response to the comment, we have reviewed the available data and revised our analysis on commercial airlines.

In FY 1995, 241 different companies, both foreign and domestic, had accounts with APHIS to pay user fees for commercial aircraft inspections. The separation of these companies into large and small categories according to Small Business Administration size classifications cannot be determined. While the size distribution of these carriers that enter the continental United States and subject to the user fee[2] is unknown, APHIS still anticipates that the impact of the user fee increase will be small regardless of carrier size. The increase of $6.25 in the first year, and a total increase of $9.25 over the 6-year period should represent a very small portion of operating costs for an international flight arriving in the United States.

In addition to user fees paid directly by airlines for aircraft inspection, airlines collect user fees on our behalf from passengers. Airlines already have collection and disbursement systems in place for international passengers. We believe it is unlikely that there would be any significant increase in the costs of maintaining these systems as a result of our rule. Airlines will establish trust accounts for user fees collected from passengers. However, airlines may retain any interest earned by monies in such accounts.

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

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

[1] A decal is also available which allows unlimited border crossings per year for one fee. This decal is available only for trucks which prepay the Customs user fee which applies to them.

[2] The following are exempt from the user fee: aircraft moving solely between the United States and Canada, aircraft used exclusively in governmental purposes of the United States or a foreign government, aircraft making an emergency landing, any passenger plane with 64 or fewer seats not carrying cargo such as fresh fruit, aircraft moving from the U.S. Virgin Islands to Puerto Rico, and aircraft making an in transit stop at a port of entry, but not required to go through any portion of the federal clearance process.

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 paragraphs (b)(1), (c)(1), (c)(3)(i) introductory text, (d)(1), (e)(1), and (f)(1) and by adding a new paragraph (f)(4)(i)(C) to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(b) * * * (1) Except as provided in paragraph (b)(2) of this section, the master, licensed deck officer, or purser of any commercial vessel which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D, and which is either required to make entry at the customs house under 19 CFR 4.3 or is a United States-flag vessel proceeding coastwise under 19 CFR 4.85, shall, upon arrival, proceed to Customs and pay an APHIS user fee. The APHIS user fee for each arrival, not to exceed 15 payments in a calendar year, is shown in the following table. The APHIS user fee shall be collected at each port of arrival.

Effective dates	Amount
September 1, 1997 through September 30, 1997	$447.00
October 1, 1997 through September 30, 1998	454.50
October 1, 1998 through September 30, 1999	454.50
October 1, 1999 through September 30, 2000	461.75
October 1, 2000 through September 30, 2001	471.25
October 1, 2001	480.25

* * * * *

(c) * * * (1) Except as provided in paragraph (c)(2) of this section, the driver or other person in charge of a commercial truck which is entering the customs territory of the United States and which is subject to inspection under part 330 of this chapter or under 9 CFR, chapter I, subchapter D, must, upon arrival, proceed to Customs and pay an APHIS user fee for each arrival, as shown in the following table:

Effective dates	Amount
September 1, 1997 through September 30, 1997	$3.75
October 1, 1997 through September 30, 1998	4.00
October 1, 1998 through September 30, 1999	4.00
October 1, 1999 through September 30, 2000	4.00
October 1, 2000 through September 30, 2001	4.00
October 1, 2001	4.25

* * * * *

(3) * * *

(i) The owner or operator of a commercial truck, *if* entering the customs territory of the United States from Mexico *and* applying for a prepaid Customs permit for a calendar year, must apply for a prepaid APHIS permit for the same calendar year. Applicants must apply to Customs for prepaid APHIS permits.[1] The following information must be provided, together with payment of an amount 20 times the APHIS user fee for each arrival, *except*, that through September 30, 1997, the amount to be paid is $40.00:

* * * * *

(d) * * * (1) Except as provided in paragraph (d)(2) of this section, an APHIS user fee will be charged for each loaded commercial railroad car which is subject to inspection under part 330 of this chapter or under 9 CFR chapter I, subchapter D, upon each arrival. The railroad company receiving a commercial railroad car in interchange at a port of entry or, barring interchange, the railroad company moving a commercial railroad car in line haul service into the customs territory of the United States, is responsible for paying the APHIS user fee. The APHIS user fee for each arrival of a loaded railroad car is shown in the following table. If the APHIS user fee is prepaid for all arrivals of a commercial railroad car during a calendar year, the APHIS user fee is an amount 20 times the APHIS user fee for each arrival.

Effective dates	Amount
September 1, 1997 through September 30, 1997	$6.50
October 1, 1997 through September 30, 1998	6.50
October 1, 1998 through September 30, 1999	6.50
October 1, 1999 through September 30, 2000	6.75
October 1, 2000 through September 30, 2001	6.75
October 1, 2001	7.00

* * * * *

(e) * * * (1) Except as provided in paragraph (e)(2) of this section, an APHIS user fee will be charged for each commercial aircraft which is arriving, or which has arrived and is proceeding from one United States airport to another under a United States Customs Service ''Permit to Proceed,'' as specified in title 19, Code of Federal Regulations, §§ 122.81 through 122.85, or an ''Agricultural Clearance or Safeguard Order'' (PPQ Form 250), used pursuant to title 7, Code of Federal Regulations, § 330.400 and title 9, Code of Federal Regulations, § 94.5, and which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D. Each carrier is responsible for paying the APHIS user fee. The APHIS user fee for each arrival is shown in the following table:

Effective dates	Amount
September 1, 1997 through September 30, 1997	$59.25
October 1, 1997 through September 30, 1998	59.75
October 1, 1998 through September 30, 1999	59.75
October 1, 1999 through September 30, 2000	60.25
October 1, 2000 through September 30, 2001	61.25
October 1, 2001	62.25

* * * * *

(f) * * * (1) Except as specified in paragraph (f)(2) of this section, each passenger aboard a commercial aircraft who is subject to inspection under part 330 of this chapter or 9 CFR, chapter I, subchapter D, upon arrival from a place outside of the customs territory of the United States, must pay an APHIS user fee. The APHIS user fee for each arrival is shown in the following table:

Effective dates	Amount
September 1, 1997 through September 30, 1997	$1.95
October 1, 1997 through September 30, 1998	2.00
October 1, 1998 through September 30, 1999	2.00
October 1, 1999 through September 30, 2000	2.05
October 1, 2000 through September 30, 2001	2.10
October 1, 2001	2.15

* * * * *

(4) * * *

(i) * * *

[1] Applicants should refer to Customs Service regulations (19 CFR part 24) for specific instructions.

(C) APHIS user fees collected from international passengers pursuant to paragraph (f) of this section shall be held in trust for the United States by the person collecting such fees, by any person holding such fees, or by the person who is ultimately responsible for remittance of such fees to APHIS. APHIS user fees collected from international passengers shall be accounted for separately and shall be regarded as trust funds held by the person possessing such fees as agents, for the beneficial interest of the United States. All such user fees held by any person shall be property in which the person holds only a possessory interest and not an equitable interest. As compensation for collecting, handling, and remitting the APHIS user fees for international passengers, the person holding such user fees shall be entitled to any interest or other investment return earned on the user fees between the time of collection and the time the user fees are due to be remitted to APHIS under this section. Nothing in this section shall affect APHIS' right to collect interest for late remittance.

* * * * *

Done in Washington, DC, this 18th day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–19499 Filed 7–23–97; 8:45 am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 232, 239, 240, and 249

[Release Nos. 33–7431 and 34–38850; S7–15–96]

RIN 3235–AG80

Phase Two Recommendations of Task Force on Disclosure Simplification

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: In response to the Report of the Task Force on Disclosure Simplification, the Commission proposed for comment the elimination and amendment of certain forms and rules to simplify the disclosure process. After reviewing the comment letters received on the Commission's proposals, the Commission is rescinding two forms and one rule that are no longer necessary or appropriate for the protection of investors. The Commission also is adopting one rule and amending a number of rules and forms in order to eliminate unnecessary requirements and to streamline the disclosure process.

EFFECTIVE DATE: The new rule and amendments will become effective September 2, 1997. If the EDGAR programming on the amendments affecting Form 8–A (17 CFR 249.208a) and Rule 462(d) (17 CFR 230.462(d)) is not completed by this date, the Commission will select a later effective date for these two amendments and issue an appropriate notice of that date.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Division of Corporation Finance, at (202) 942–2990.

SUPPLEMENTARY INFORMATION: After considering certain recommendations of the Task Force on Disclosure Simplification, as well as the comment letters received by the Commission on its proposals to implement these recommendations, the Commission today is adopting amendments to Item 701 [1] of Regulation S–B,[2] Item 701 [3] of Regulation S–K,[4] Rule 401,[5] Rule 404,[6] Rule 424,[7] Rule 462,[8] Rule 463,[9] and Rule 497 [10] under the Securities Act of 1933 (''Securities Act'').[11] In addition, the Commission is rescinding Rule 101(c)(5) under Regulation S–T.[12] Amendments are being adopted to Form D,[13] Form SB–1,[14] Form SB–2,[15] Form S–1,[16] Form S–2,[17] Form S–3,[18] Form S–11,[19] Form S–4,[20] Form F–1,[21] Form F–2,[22] and Form F–4 [23] under the Securities Act. In addition, the Commission is rescinding Form SR [24] under the Securities Act, and Rule 13a–2 [25] and Form 8–B [26] under the Securities Exchange Act of 1934 (''Exchange Act'').[27] The Commission is adopting Rule 12a–8 [28] under the Exchange Act. In addition, amendments are being adopted with respect to the following Exchange Act rules and forms: Rule 12d1–2,[29] Rule 12g–3,[30] Rule 13a1,[31] Rule 15d–3,[32] Rule 15d–5,[33] Form 8–A,[34] Form 10,[35] Form 20–F,[36] Form 10–Q,[37] Form 10–QSB,[38] Form 10–K,[39] and Form 10–KSB.[40]

I. Background

In March 1996, the Commission's Task Force on Disclosure Simplification (''Task Force'') presented its Report [41] recommending the elimination or modification of many rules and forms, and proposing suggestions for simplifying significant aspects of securities offerings to the Commission. As a result of the Task Force Report, the Commission eliminated 44 rules and four forms last May.[42]

At the same time that the Commission adopted those changes, it issued a release proposing for comment the elimination or streamlining of additional requirements.[43] The proposals contained in that release were based on the Commission's further consideration of the Task Force recommendations.

After reviewing the comment letters received [44] and further considering the proposals, the Commission has determined to adopt most of the proposals, with certain modifications discussed below. Two of the proposals are not being adopted. First, the Commission had proposed that the Form D federal filing requirement be eliminated for the Regulation D and Section 4(6) exemptions. Filers would have had to continue to prepare Form D and retain it, but not file it with the

[1] 17 CFR 228.701.
[2] 17 CFR part 228.
[3] 17 CFR 229.701.
[4] 17 CFR part 229.
[5] 17 CFR 230.401.
[6] 17 CFR 230.404.
[7] 17 CFR 230.424.
[8] 17 CFR 230.462.
[9] 17 CFR 230.463.
[10] 17 CFR 230.497.
[11] 15 U.S.C. 77a *et seq.*
[12] 17 CFR 232.101(c)(5).
[13] 17 CFR 239.500.
[14] 17 CFR 239.9.
[15] 17 CFR 239.10.
[16] 17 CFR 239.11.
[17] 17 CFR 239.12.
[18] 17 CFR 239.13.
[19] 17 CFR 239.18.
[20] 17 CFR 239.25.
[21] 17 CFR 239.31.
[22] 17 CFR 239.32.
[23] 17 CFR 239.34.
[24] 17 CFR 239.61.
[25] 17 CFR 240.13a–2.
[26] 17 CFR 249.208b.
[27] 15 U.S.C. 78a *et seq.*
[28] 17 CFR 240.12a–8.
[29] 17 CFR 240.12d1–2.
[30] 17 CFR 240.12g–3.
[31] 17 CFR 240.13a–1.
[32] 17 CFR 240.15d–3.
[33] 17 CFR 240.15d–5.
[34] 17 CFR 249.208a.
[35] 17 CFR 249.210.
[36] 17 CFR 249.220f.
[37] 17 CFR 249.308a.
[38] 17 CFR 249.308b.
[39] 17 CFR 249.310.
[40] 17 CFR 249.310b.
[41] The Task Force Report is available for inspection and copying in the Commission's public reference room. The Report also is posted on the Commission's Internet web site (http://www.sec.gov).
[42] Release No. 33–7300 (May 31, 1996) [61 FR 30397].
[43] Release No. 33–7301 (May 31, 1996) [61 FR 30405] (''Proposing Release'').
[44] The eight comment letters received are available for inspection and copying in the Commission's public reference room. Refer to file number S7–15–96. Comment letters that were submitted via electronic mail may be viewed at the Commission's web site: http://www.sec.gov.