

Proposed Rules

Federal Register

Vol. 68, No. 91

Monday, May 12, 2003

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 02-041-1]

Veterinary Services User Fees; Fee for Use of Animal Ramp at Miami International Airport

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a user fee for a Government-owned ramp at Miami International Airport used to move animals off of and onto airplanes. Under the present user fee schedule we can recover the cost of labor in supervising and assisting importers and exporters in the ramp's use, but we currently must absorb all other costs associated with the ramp. The proposed new user fee would ensure that we recover costs incurred by the ramp's purchase and use and would shift the cost of the ramp to those who receive benefits from its use.

DATES: We will consider all comments that we receive on or before July 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-041-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-041-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-041-1" on the subject line.

You may read any comments that we receive on this docket in our reading

room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations for Veterinary Services, contact Ms. Inez Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737-1231, (301) 734-7517. For information concerning rate development of the proposed user fee, contact Ms. Kris Caraher, Accountant, User Fees Section, Financial Management Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232, (301) 734-8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). APHIS receives no directly appropriated funds to provide these services; our ability to provide them depends on user fees.

APHIS has purchased a ramp that is used to move animals on and off airplanes at APHIS's Animal Import/Export and Plant Inspection Station at Miami International Airport. The ramp is used to move approximately 5,000 to 6,000 animals per year. Last year, approximately 117 users (brokers or livestock owners) required the aid of the ramp to either load or unload their animals. The animals moved using this ramp were cattle (75 percent), sheep (10 percent), goats (10 percent), and horses and other animals (5 percent).

Both the purchase and maintenance of this ramp are costly; however, because there is no specific user fee for the

ramp's use under the current regulations, APHIS can only recover some of the labor costs incurred by its use through its current hourly rate user fee. We are, therefore, proposing to amend the regulations to establish a user fee of \$151 per use to importers and exporters who use the animal ramp, so that APHIS may recover its costs. This would ensure that the importers and exporters who use the ramp pay for the benefits they receive.

Calculation of the User Fee

Costs excluded from this calculation. We began our calculation of the appropriate user fee for the APHIS animal ramp at Miami International Airport by identifying the services APHIS provides while the ramp is being used for which we already charge user fees. Under § 130.30, "Hourly rate and minimum user fees," APHIS currently charges for services such as sweeping the ramp, fully cleaning and disinfecting the ramp, supervising the use of the ramp, driving the ramp to and from the service site, and assisting with the use of the ramp. We omitted fees for these services in the calculation of the proposed ramp fee. We are proposing to charge the proposed ramp fee in addition to the fees for the labor associated with the ramp's use that we currently charge. Such labor fees would be charged to the ramp user at the existing applicable hourly rate user fee, or premium hourly rate user fee if the service is provided outside the normal tour of duty of the employee(s), for these services.

Equipment costs. The ramp assembly consists of the ramp itself, a truck on which the ramp is moved, and piston equipment. This assembly costs \$45,100 and has an expected useful life of 5 years before it will need to be replaced. The cost of purchasing the ramp was therefore spread over 5 years to arrive at an annual figure for the cost of its purchase. This figure is \$9,020.

Labor costs not covered under § 130.30. We estimated that a mechanic at the GS 9, step 5, salary level would spend 7 percent of his or her time maintaining the ramp. The benefit (e.g., health insurance, etc.) costs included in the total cost of this labor were set at 20.42 percent of salary. To arrive at our final figure for the labor cost of maintenance, we used the actual salary figure for fiscal year (FY) 2002 and

included cost-of-living salary increases in fiscal years 2003 and 2004, as described in the President's FY 2003 budget. Based on this approach, we estimate the direct labor cost of the maintenance on the ramp to be \$3,926.17 per year.

Administrative support costs not covered under § 130.30. Administrative support costs include the cost of local clerical and administrative activities, indirect labor hours, travel and transportation for personnel, supplies, equipment, and other necessary items, training, general office supplies, rent, equipment capitalization, utilities, and contractual services. Indirect labor hours include supervision of personnel and time spent doing work that is not directly connected with use of the ramp but which is nonetheless necessary for its use, such as repairing other equipment. Rent is the cost of using the space required to perform this work. Billing costs are the costs of managing user fee accounts for our customers who wish to receive monthly invoices for the services they receive from APHIS. Collection expenses include the costs of managing customer payments and ensuring that those payments are accurately reflected in our accounting system. Utilities include water, telephone, electricity, gas, and heating oil. Contractual services include security service, maintenance, trash pickup, and other such services. To estimate these costs, we used the standard APHIS administrative support costs rate of 62.31 percent of direct labor costs. Thus, we estimate administrative support costs for this service to be \$2,818.49 per year.

Agency overhead not covered under § 130.30. Agency overhead is the pro-rata share, attributable to this service, of the Agency's management and support costs. Management and support costs include the costs of providing budget and accounting services, regulatory services, investigative and enforcement services, debt-management services, personnel services, public information services, legal services, liaison with Congress, and other general program and agency management services provided above the local level. We estimate agency overhead to be \$1,089.26 per year.

Departmental charges not covered under § 130.30. Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the United States Department of Agriculture. Services the Department provides centrally include the Federal Telephone Service, mail, National Finance Center processing of payroll and other money management,

unemployment compensation, Office of Workers Compensation Programs, and central supply for storing and issuing commonly used supplies and department forms. The Department notifies APHIS of how much it owes for these services. We estimate the pro-rata share of these departmental charges attributable to these services to be \$358.01 per year.

Reserve funds. We added an amount that would provide for a reasonable balance, or reserve, in the Veterinary Services user fee account. All user fees contribute to the reserve proportionately. A reserve ensures that we have sufficient operating funds in cases of bad debt, customer insolvency, and fluctuations in the volume of activity. We intend to monitor the balance of the reserve closely, and we will propose adjustments in our fees as necessary to ensure a reasonable balance. We have included \$409.60 per year as this fee's proportional contribution to the reserve.

Conclusion

The sum of the above items, \$17,621.53, represents our calculation of the annual cost for the purchase, use, and maintenance of the ramp. The number of importers and exporters expected to use the ramp each year is about 117. Thus, the expected cost per user of the ramp is \$17,621.53 divided by 117, or \$150.6114; rounded to the nearest whole dollar, this is \$151. We are therefore proposing a fee of \$151 for use of the animal ramp at Miami International Airport.

This fee would apply regardless of the length of time the ramp is used or the number of animals being transported across it. The fees charged for the hourly labor APHIS provides while the ramp is being used, of course, would vary with the length of time the ramp is used.

We believe that this fee would adequately cover the cost of providing the ramp to importers and exporters of animals. As is the case with all APHIS user fees, we intend to review the user fee proposed in this document on an annual basis. We will publish any necessary adjustments to the fee in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would establish a user fee of \$151 for the animal ramp

APHIS operates at Miami International Airport.

Though the fee is \$151 per use regardless of the number of animals being moved across the ramp, in the past clients have moved, on average, approximately 50 animals per ramp use. Thus the average cost per animal for use of the ramp would be approximately \$3. This is a negligible fee compared to the market value of the breeding animals and other upper-end livestock that are transported by air and that may be moved using the ramp. For example, the average import/export price per head of purebred cattle in 2001 was \$1,186, while the price of purebred horses was \$9,653. Our customers, usually brokers, are likely to pass this fee on to their clients.

This proposed user fee is also similar to the fees charged for the use of similar ramps elsewhere. For example, O'Hare International Airport in Chicago charges approximately \$150 for use of its ramp, while one private horse-transporting entity charges approximately \$800 for the use of the ramp it owns.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has published criteria for determining which economic entities meet the definition of a small business. The entities affected by this proposed fee are most likely to be brokers and livestock owners importing or exporting animals. The SBA considers an entity engaged in importing and exporting live animals, poultry, and birds to be small if its total sales are less than \$5 million annually. The total revenue of livestock brokers who transport animals through Miami International Airport is not available, but we expect that a majority of these brokers can be classified as small entities. While the majority of entities affected by the proposed user fee may be small, this proposed rule is not expected to have a significant impact on them, due to the fact that the average fee per animal is quite small in comparison to the value of the livestock being transported.

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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed 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 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

2. Section 130.8 would be amended by adding a new paragraph (b) to read as follows:

§ 130.8 User fees for other services.

* * * * *

(b) The user fee for the transport ramp used to move animals on or off aircraft at APHIS's Animal Import/Export and Plant Inspection Station at Miami International Airport is \$151 per use. For labor services associated with the ramp, the hourly user fees in § 130.30 will apply.

* * * * *

Done in Washington, DC, this 6th day of May, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11707 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142605–02]

RIN 1545–BB47

Administration Simplification of Section 481(a) Adjustment Periods in Various Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to regulations under sections 263A and 448 of the Internal Revenue Code. The amendments apply to taxpayers changing a method of accounting under the regulations and are necessary to conform the rules governing those changes to the rules provided in general guidance issued by the IRS for changing a method of accounting. Specifically, the amendments will allow taxpayers changing their method of accounting under the regulations to take any adjustment under section 481(a) resulting from the change into account over the same number of taxable years that is provided in the general guidance.

DATES: Written or electronic comments must be received by July 11, 2003. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for August 13, 2003, at 10 a.m. must be received by July 23, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–142605–02), room 5226, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions of comments may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–142605–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet direct to the IRS Internet site at <http://www.irs.gov/regs>. The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christian Wood, 202–622–4930. Concerning the hearing, contact Sonya Cruse, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 263A and 448. These amendments pertain to the period for taking into account the adjustment required under section 481 to prevent duplications or omissions of amounts resulting from a change in method of accounting under section 263A or 448.

Section 263A (the uniform capitalization rules) generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer. Section 263A also requires the capitalization of direct costs and indirect costs properly allocable to real property and personal property acquired by a taxpayer for resale.

Section 448(a) generally prohibits the use of the cash receipts and disbursements method of accounting by C corporations, partnerships with a C corporation partner, and tax shelters. Section 448(b), however, provides exceptions to this general rule in the case of farming businesses, qualified personal service corporations, and entities with gross receipts of not more than \$ 5,000,000.

Section 446(e) generally provides that a taxpayer that changes the method of accounting on the basis of which it regularly computes its income in keeping its books must, before computing its taxable income under the new method, secure the consent of the Secretary.

Section 481(a) generally provides that a taxpayer must take into account those adjustments that are determined to be necessary solely by reason of a change in method of accounting in order to prevent amounts from being duplicated or omitted. Sections 481(c) and 1.446–1(e)(3)(ii) and 1.481–4 provide that the adjustment required by section 481(a) shall be taken into account in determining taxable income in the manner and subject to the conditions agreed to by the Commissioner and the taxpayer.

Rev. Proc. 97–27, 1997–1 C.B. 680 (as modified and amplified by Rev. Proc. 2002–19, 2002–13 I.R.B. 696, and modified by Rev. Proc. 2002–54, 2002–35 I.R.B. 432), provides procedures under which taxpayers may apply for the advance consent of the Commissioner to change a method of accounting. Rev. Proc. 2002–9, 2002–3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002–19, amplified, clarified, and modified by Rev. Proc. 2002–54, and modified and clarified by Announcement 2002–17, 2002–8 I.R.B.