DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 04–042–1]

RIN 0579–AB88

User Fees for Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the user fee regulations by adjusting the fees charged for certain agricultural quarantine and inspection (AQI) services that are provided 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. Existing user fees have not been adjusted since October 1, 2001. Due to the events of September 11, 2001, and the resulting increased security concerns, a greater volume and variety of cargo entering the United States is being inspected. The fee adjustments are needed to recover the costs of this increased inspection activity and to account for routine inflationary increases in the cost of doing business. The adjusted AQI user fees will cover fiscal years 2005 through 2010.

DATES: This interim rule is effective January 1, 2005. We will consider all comments that we receive on or before February 7, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- *EDOCKET:* Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–042–1, 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. 04–042–1.
- *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. 04–042–1'' on the subject line.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: 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.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Ms. Jennifer Lemly, Staff Officer, Quarantine Policy, Analysis and Support Staff, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8372. For information concerning rate development, contact Ms. Donna Ford, Branch Chief, Financial Services Branch, FMD, MRPBS, APHIS, 4700 River Road, Unit 55, Riverdale, MD 20737–1232, (301) 734–5901.

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 on April 4, 1996, and May 13, 2002.

The FACT Act, as amended, authorizes APHIS to collect user fees for AQI services provided 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.

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

- Providing the AQI services for the conveyances and the passengers listed above,
- Providing preclearance or preinspection at a site outside the customs territory of the United States to international airline passengers, commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft, and
- Administering the user fee program.

Introduction

On November 16, 1999, we published in the **Federal Register** (64 FR 62089–62096, Docket No. 98–073–2) a final rule that amended the user fee regulations in § 354.3 by adjusting the fees charged for certain AQI 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 did this to ensure that we recovered the anticipated actual cost of providing these services. That rulemaking established the user fees for these services for fiscal years (FYs) 2000 through 2002.

Subsequent rulemaking, culminating in a final rule published in the **Federal Register** on January 24, 2003 (68 FR 3375, Docket No. 02–085–2), extended those adjusted user fees beyond FY 2002 until the fees could be revised again.

Subsequently, in an interim rule that was published in the **Federal Register** and effective on September 3, 2002 (67 FR 56217–56218, Docket No. 02–085–1), we extended those adjusted user fees beyond FY 2002 until the fees could be revised again.

In addition to the routine increases in the cost of providing AQI services, due to inflation, replacement of equipment, etc., the events of September 11, 2001, have had a profound impact on costs and revenues. Following the attacks, there was a sharp drop in the number of international passengers entering the United States. While international air traffic has rebounded, it has not returned to its pre-September 11 levels. We estimate that due to the decreases in the volume of passenger and cargo traffic entering the United States since September 11, 2001, revenues generated through AQI user fees are more than $135 million lower than they otherwise would have been. Despite the drop in traffic, we have had to step up our AQI inspection activities, rather than curtail them, due to increased post-September 11 security concerns, which include the threat of bioterrorism. Since FY 2001, AQI staffing has increased by approximately one-third. Inspectors are

now inspecting a greater volume of cargo entering the United States and a greater variety of types of cargo than they did before September 11, 2001. Such operations are very personnel-intensive and costly.

Following the terrorist attacks of September 11, 2001, certain AQI functions, but not the laws or regulations upon which they are premised, were transferred from APHIS to the Customs and Border Protection (CBP) bureau of the Department of Homeland Security (DHS). Together with certain U.S. Customs Service and Immigration and Naturalization Service employees, APHIS agricultural inspectors were brought into the newly created CBP bureau in an effort to secure our borders and ports of entry while still facilitating the movement of legitimate trade and travelers. The creation of a consolidated border inspection organization has allowed for unprecedented information sharing, cross-training among specialists, and the use of innovative techniques that were not possible when border inspection functions were spread across three separate agencies.

Because our AQI programs are funded solely through user fee collections, it is imperative that we adjust the fees upward to cover our increased program costs. We estimate that, absent the necessary fee adjustments, the AQI account would be in deficit status by July 19, 2005, meaning that APHIS and CBP could be forced to lay off significant numbers of employees and cut back on services. Such cutbacks would increase the potential for animal and plant pests and diseases to enter the United States and could disrupt trade if inspectors were not available to inspect and clear cargo on a timely basis.

In this interim rule, therefore, we are amending our AQI user fee regulations in order to cover our increased costs. Specifically, we are establishing fees to be charged for FYs 2005 through 2010 for each of the types of conveyances or persons to whom AQI services are provided: Commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. However, because commercial truck inspection has separate fees for trucks with and without decals, we are actually adjusting a total of six fees. These adjustments are designed to recover our full costs for providing these AQI services and are based on an analysis of our costs for providing services in recent years, as well as our best projections of what it will cost us to provide these services in FYs 2005 through 2010.

These user fee adjustments are necessary to prevent plant and animal diseases and pests from entering the United States and to protect against the growing threat of bioterrorism.

By projecting our flat-rate AQI user fees 6 years into the future, we are allowing our customers to make necessary business plans. We will review our fees annually and, if necessary, undertake rulemaking to amend them if the published fees do not properly recover our costs. We also 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.

AQI User Fee Accounting

In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs from all other costs. We published a detailed description of these procedures in the **Federal Register** on December 31, 1992 (57 FR 62469–62471, Docket No. 92–148–1), as part of an interim rule amending some of our user fees. We maintain all AQI fees we collect in distinct accounts, carefully monitor the balances in these accounts, and only use these funds to pay for our actual costs for providing these distinct services. Any surplus in these accounts carries forward from year to year, is not subject to appropriation by Congress, and is available until expended to fund AQI activities.

Types of AQI Program Costs

As part of our accounting procedures, we maintain separate accounting codes to record costs that can be directly related to an inspection activity. These are referred to as ''direct-charge costs.'' At the State (*i.e.*, field) level and below, we direct-charge the following costs to the AQI account: Salaries and benefits for inspectors and canine officers, supervisors (such as officers-in-charge), and clerical staff; equipment used only in connection with services subject to user fees; contracts; and large supply items such as x-ray equipment and uniforms.

Other program-delivery-related costs, at the State level and below, that cannot be directly charged to individual accounts are charged to ''distributable'' accounts established at the State level and are referred to as ''distributable costs.'' The following types of costs are charged to distributable accounts: Utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are prorated (or distributed) among all the activities that benefit from the expense, based on a formula under which the costs that are directly charged to each activity are divided by the total costs directly charged to each account at the field level. For example, if a work unit performs work on domestic programs, AQI user fee programs, and AQI-appropriated programs, the costs are distributed among each of these programs, based on the percentage of the direct costs for that activity at the field level that is charged to that activity.

AQI program costs also include program direction and support costs we incur at the regional and headquarters level, as well as Agency-level support costs. Headquarters-level costs include salaries and benefits for employees of APHIS' Plant Protection and Quarantine and International Services programs who are based at the programs' headquarters in Riverdale, MD, and Washington, DC. We incur Agency-level support costs through activities that support the Agencies (*i.e.*, APHIS and CBP), such as recruitment and development; legislative and public affairs; regulation development; regulatory enforcement; and budget, accounting, payroll, purchasing, billing, and collection services.

Departmental charges are assessed for various AQI program costs including Federal telephone service, mail, processing of payroll and money management, unemployment compensation, Office of Workers Compensation Programs, and central supply for storing and issuing commonly used supplies and forms.

In order to identify properly our actual total AQI program costs in prior fiscal years, we first identified the direct-charge costs. We then added to this the pro-rata share costs of the distributable accounts maintained at the State, regional, headquarters, Agency, and departmental levels.

Cost Projections for FY 2005 Through FY 2010

We used the prior year (FY 2004) costs of $327 million and added inflationary factors to project our costs for FY 2005 through FY 2010. Based on the 2005 Mid-Session Review—Economic Assumptions, a factor of 1.5 percent has been added for pay increases and general inflation cost increases (*i.e.*, all of the AQI costs other than pay increases) for FYs 2005 through 2010. Since the percentage increase was the same for both factors, a flat 1.5 percent has been applied to all costs. We then added a reasonable amount (25 percent of AQI program costs) to contribute to a reserve in the AQI account to identify our total

anticipated costs for those years. We split our total costs for each fiscal year into six AQI service categories (costs for the inspection of trucks with and without prepaid decals were calculated separately), performed extensive volume analyses to project volumes of use for each fee category in the out-years, divided our projected costs per fee category by our projected volumes of users per fee category, and rounded each projected fee to obtain the final fees we are establishing. More detailed information about each of these steps follows.

Projected AQI Program Costs for Fiscal Years 2005 Through 2010

Table 1 shows the total projected costs of administering the AQI program for FYs 2005 through 2010. In projecting these costs, we began with a FY 2004 base need of $133 million for APHIS' AQI work and $194 million for CBP's AQI work, for a total FY 2004 AQI cost of $327 million. This figure takes into account only the cost of providing AQI services for FY 2004 and does not include a reserve component. Similarly, the projected annual program costs for FYs 2005 through 2010 reflect only the costs we anticipate for providing AQI services for each of those fiscal years. The reserve-building component for each is shown separately.

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Table 1.–Total projected cost of administering the AQI program, FYs 2005 to 2010

Basis for calculating funding need	FY 2004	FY 2005	FY 2006	FY 2007	FY2008	FY2009	2010
APHIS program needs	$133,000,000	$134,995,000	$137,019,925	$139,075,224	$141,161,352	$143,278,773	$145,427,954
CBP program needs	194,000,000	196,910,000	199,863,650	202,861,605	205,904,529	208,993,097	212,127,993
Total program costs	327,000,000	331,905,000	336,883,575	341,936,829	347,065,881	352,271,870	357,555,947
Reserve component	---	23,733,753	23,733,753	23,733,753	23,733,753	23,733,753	23,733,753
Total costs	327,000,000	355,638,753	360,617,328	365,670,582	370,799,634	376,005,623	381,289,700

Reserve Fund

We need to maintain a reasonable reserve balance in the AQI account of 25 percent of the AQI program costs. We are including a reserve-building component in the user fees for each activity for FYs 2005 through 2010. Each fee contributes to the reserve proportionately.

The reserve fund provides us with a means to ensure the continuity of AQI services in cases of fluctuations in activity volumes, bad debt, carrier insolvency, or other unforseen events, such as those of September 11, 2001, which, as noted earlier, resulted in substantial cost increases for the AQI programs and lower-than-anticipated revenues. Maintaining an adequate reserve fund is, therefore, essential for the AQI program. We intend to monitor the reserve balance closely and propose adjustments in our fees as necessary to ensure a reasonable balance. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will undertake rulemaking to lower the fees as quickly as possible. Conversely, if it becomes necessary to increase any fees because reserve levels are being drawn too low, we will undertake rulemaking to increase the fees.

Volumes

In order to calculate our costs and fees, we needed to estimate the annual number of users in each category of AQI services that would be subject to inspection in FYs 2005 through 2010. These estimates are based on our review of actual volumes for each service category shown in our FY 1999 through FY 2003 collection history, as well as factors that have affected these volumes in recent years, such as changes in airline passenger volumes as a result of the terrorist attacks on the United States on September 11, 2001. We calculated our projected changes in volumes in the out-years for each of the six AQI user fee categories (commercial trucks with decals and without decals are listed as separate categories) based on an individual analysis of each user fee service category.

Commercial Vessel Volumes

We reviewed actual commercial vessel volumes for FYs 1999 through 2003, as well as year-to-date data for FY 2004. The volumes for all 5 fiscal years fluctuated between 51,007 and 53,421 commercial vessels, with no statistically significant trends identified. The year-to-date data for FY 2004 suggest that the volume for the year will fall within the same range. Based on our assumption of general trade increases each fiscal year, we anticipate a slight increase in commercial vessel volumes of 1 percent per year for FYs 2005 through 2010. We used this percentage to estimate volumes for FYs 2005 through 2010.

Commercial Truck Volumes (Individual Crossings and Decals)

We reviewed actual commercial truck and commercial truck decal volumes in FYs 1999 through 2003, as well as year-to-date data for FY 2004. The volumes of individual truck crossings for all 5 fiscal years fluctuated between 534,586 and 726,677 commercial truck crossings, with no statistically significant trends identified. The numbers of truck decals distributed in FYs 1999 through 2003 fluctuated between 23,094 and 45,607, with no statistically significant trends identified. The year-to-date data for FY 2004 suggest that individual truck crossing and truck decal volumes will remain within these ranges. Using the average percentage change in the past 3 fiscal years, we detected slight increases in the individual commercial truck crossing volumes of 0.55 percent and in the truck decal volumes of 1 percent. These slight increases in volumes are consistent with our assumption of general trade increases each fiscal year. We used these percentages to estimate the respective volumes for individual crossings and decals for FYs 2005 through 2010, as shown in table 2. Projected volumes are one component we use in the calculation of user fees. In estimating the commercial truck user fees for FYs 2005 through 2010, we relied only on the 0.55 percent figure associated with individual crossings because the truck decal fee is not calculated separately but is set at 20 times the individual crossing fee.

Commercial Railroad Car Volumes

We reviewed actual commercial railroad car volumes in FYs 1999 through 2003, as well as year-to-date data for FY 2004. The volumes for the 5 fiscal years fluctuated between 146,809 and 224,269 loaded commercial railroad car crossings, with no statistically significant trends identified. The year-to-date data for FY 2004 suggest that FY 2004 volumes will remain within this range. Based upon the average percentage change in the past 3 fiscal years, we detected a slight increase in loaded commercial railroad car volumes of 1.35 percent per year, and we used this percentage to estimate the volumes for FYs 2005 through 2010. This small increase in volumes is consistent with our assumption of general trade increases each fiscal year.

Commercial Aircraft Volumes

We reviewed actual commercial aircraft volumes for FYs 1999 through 2003, as well as year-to-date data for FY 2004. The volumes in these years ranged between 317,240 and 439,618 commercial aircraft. Although there was a decrease in volumes in FY 2002, the fiscal year following the September 11, 2001, attacks, the commercial aircraft volumes started to rebound in FY 2003, but they did not return to their pre-September 11 levels. Year-to-date data for FY 2004 indicate that the commercial aircraft volumes continue to increase at a rate of about 1.18 percent, which has been the average volume increase for the last 5 fiscal years (FYs 1999 through 2003). Based on this figure, we used an estimated percentage increase in volumes of 1.18 percent per year to project commercial aircraft volumes in FYs 2005 through 2010.

International Airline Passenger Volumes

We reviewed actual international airline passenger volumes for FYs 1999 through 2003, as well as year-to-date data for FY 2004. The volumes in these years ranged between 44,552,311 and 66,609,081 passengers. Although there was a decrease in passenger volumes in FY 2002, the fiscal year following the attacks of September 11, 2001, the passenger volumes began to rebound in FY 2003 but did not return to pre-September 11 levels. The year-to-date data for FY 2004 indicate that passenger volumes continue to increase at a rate of about 1.18 percent, which has been the average volume increase for the last 5 fiscal years (FYs 1999 through 2003). Based on this figure, we used an estimated percentage increase in volumes of 1.18 percent per year to project international airline passenger volumes for FYs 2005 through 2010.

Estimated volumes for each category of AQI services for FY 2004 and projected estimated volumes for FYs 2005 through 2010 are shown in table 2. Estimated costs for each category of AQI services for FYs 2005 through 2010 are shown in tables 3 through 8.

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Table 2.--Volumes by AQI service category for FYs 2004 through 2010

Service category	Est. 2004 volume	Est. 2005 volume	Est. 2006 volume	Est. 2007 volume	Est. 2008 volume	Est. 2009 volume	Est. 2010 volume
Commercial vessels (Increase over prior year)	51,007	51,517 (1%)	52,032 (1%)	52,553 (1%)	53,078 (1%)	53,609 (1%)	54,145 (1%)
Commercial trucks (Increase over previous year)	573,760	576,915 (0.55%)	580,087 (0.55%)	583,277 (0.55%)	586,484 (0.55%)	589,709 (0.55%)	592,951 (0.55%)
Commercial truck decals (Increase over prior year)	24,188	24,430 (1%)	24,674 (1%)	24,921 (1%)	25,170 (1%)	25,422 (1%)	25,676 (1%)
Commercial railroad cars (Increase over prior year)	177,375	179,763 (1.35%)	182,183 (1.35%)	184,635 (1.35%)	187,120 (1.35%)	189,639 (1.35%)	192,192 (1.35%)
Commercial aircraft (Increase over prior year)	421,493	426,467 (1.18%)	431,499 (1.18%)	436,591 (1.18%)	441,742 (1.18%)	446,955 (1.18%)	452,229 (1.18%)
International airline passengers (Increase over prior year)	58,748,166	59,441,394 (1.18%)	60,142,803 (1.18%)	60,852,488 (1.18%)	61,570,547 (1.18%)	62,297,080 (1.18%)	63,032,185 (1.18%)

Calculation and Rounding of User Fees

Once we established the total annual costs to administer the AQI program, including the amount necessary to maintain the AQI account reserve at a reasonable level, we began the calculation of our fees. In calculating the user fees, we divided the sum of the costs of providing each service by the projected number of users subject to inspection (*i.e.*, the volume of use), thereby arriving at ''raw'' fees. We then rounded the raw fees. As in the past, we rounded raw fees up, rather than down, to ensure that we collect enough revenue to cover the costs of providing services and to maintain a reasonable reserve balance. Any excess collections due to rounding are added to the reserve balance for each individual fee category. If an increase in volume results in additional revenue from user fees, this revenue would not necessarily increase the reserve because the additional money would be used to service the increased volume. We rounded all user fees up to the nearest quarter, except for the international airline passenger user fee. Given the sheer volume of passengers, if we rounded up to the nearest quarter we would recover far more than is necessary. Therefore, we rounded these passenger user fees up to the nearest nickel. Tables 3 through 8 contain data on projected costs, including the amounts necessary to maintain reasonable reserve levels; volumes of use; raw and rounded fees; and projected revenues for FYs 2005 through 2010.

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Table 3.--AQI user fee rates–FY 2005

AQI activity	Est. total costs	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessels	$25,036,968	51,517	$485.99	$486.00	$25,037,262
Commercial trucks[1]	2,880,674	576,915	4.99	5.00	2,884,575
Commercial truck decals	2,442,883	24,430	99.99	100.00[1]	2,443,000
Loaded railroad cars	1,347,871	179,763	7.49	7.50	1,348,223
Commercial aircraft	29,838,091	426,467	69.96	70.00	29,852,690
Airline passengers	294,092,266	59,441,394	4.94	4.95	294,234,900
Total	355,638,753	.....	.....	.....	355,800,650[2]

[1]Decals may be purchased at 20 times the individual crossing rate, or $100 per decal.

[2]The figure of $355.8 million represents the revenue that would be collected if the adjusted fee were in effect for the entire fiscal year. It is likely, however, that the adjusted fee will only be in effect for three-fourths of the fiscal year, in which case the projected revenue is $327.6 million. The reserve fund will be used to cover the anticipated shortfall.

Table 4.--AQI user fee rates–FY 2006

AQI activity	Est. total costs	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessels	$25,387,460	52,032	$487.92	$488.00	$25,391,616
Commercial trucks[1]	2,921,000	580,087	5.03	5.25	3,045,457
Commercial truck decals	2,477,080	24,674	100.39	105.00[1]	2,590,770
Loaded railroad cars	1,366,740	182,183	7.50	7.50	1,366,373
Commercial aircraft	30,255,794	431,499	70.11	70.25	30,312,805
Airline passengers	298,209,254	60,142,803	4.96	5.00	300,714,015
Total	360,617,328	.....	.....	.....	363,421,036

[1]Decals may be purchased at 20 times the individual crossing rate, or $105 per decal.

Table 5.--AQI user fee rates–FY 2007

AQI activity	Est. total costs	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessels	$25,743,209	52,553	$489.85	$490.00	$25,750,970
Commercial trucks[1]	2,961,932	583,277	5.07	5.25	3,062,204
Commercial truck decals	2,511,791	24,921	100.79	105.00[1]	2,616,705
Loaded railroad cars	1,385,892	184,635	7.51	7.75	1,430,921
Commercial aircraft	30,679,762	436,591	70.27	70.50	30,779,666
Airline passengers	302,387,996	60,852,488	4.96	5.00	304,262,440
Total	365,670,582	.....	.....	.....	367,902,906

[1]Decals may be purchased at 20 times the individual crossing rate, or $105 per decal.

Table 6.--AQI user fee rates–FY 2008

AQI activity	Est. total costs	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessels	$26,104,294	53,078	$491.81	$492.00	$26,114,376
Commercial trucks[1]	3,003,477	586,484	5.12	5.25	3,079,041
Commercial truck decals	2,547,023	25,170	101.19	105.00[1]	2,642,850
Loaded railroad cars	1,405,331	187,120	7.51	7.75	1,450,180
Commercial aircraft	31,110,089	441,742	70.42	70.50	31,142,811
Airline passengers	306,629,420	61,570,547	4.98	5.00	307,852,735
Total	370,799,634	.....	.....	.....	372,281,993

[1]Decals may be purchased at 20 times the individual crossing rate, or $105 per decal.

Table 7.--AQI user fee rates–FY 2009

AQI activity	Est. total costs	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessels	$26,470,796	53,609	$493.77	$494.00	$26,482,846
Commercial trucks[1]	3,045,646	589,709	5.16	5.25	3,095,972
Commercial truck decals	2,582,783	25,422	101.59	105.00[1]	2,669,310
Loaded railroad cars	1,425,061	189,639	7.51	7.75	1,469,702
Commercial aircraft	31,546,872	446,955	70.58	70.75	31,622,066
Airline passengers	310,934,465	62,297,080	4.99	5.00	311,485,400
Total	376,005,623	.....	.....	.....	376,825,296

[1]Decals may be purchased at 20 times the individual crossing rate, or $105 per decal.

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Table 8.--AQI user fee rates–FY 2010

AQI activity	Est. total costs	Projected volume	Raw fee	Rounded fee	Projected revenue
Commercial vessels	$26,842,795	54,145	$495.76	$496.00	$26,855,920
Commercial trucks[1]	3,088,447	592,951	5.20	5.25	3,112,993
Commercial truck decals	2,619,079	25,676	102.00	105.00[1]	2,695,980
Loaded railroad cars	1,445,088	192,192	7.51	7.75	1,489,488
Commercial aircraft	31,990,206	452,229	70.73	70.75	31,995,202
Airline passengers	315,304,086	63,032,185	5.00	5.00	315,160,925
Total	381,289,701	.....	.....	.....	381,310,508

[1]Decals may be purchased at 20 times the individual crossing rate, or $105 per decal.

Table 9 shows the AQI user fees in effect prior to the effective date of this interim rule and the projected user fees for FYs 2005 through 2010. Also, below, we describe each AQI service and explain additional activities and costs as they pertain to each service individually.

Table 9.--Rounded AQI user fees–FYs 2004-2010

Service	Previous user fee	FY 2005 user fee	FY 2006 user fee	FY 2007 user fee	FY 2008 user fee	FY 2009 user fee	FY 2010 user fee
Commercial vessels	$480.50	$486.00	$488.00	$490.00	$492.00	$494.00	$496.00
Commercial trucks	4.75	5.00	5.25	5.25	5.25	5.25	5.25
Commercial truck decals[1]	95.00	100.00	105.00	105.00	105.00	105.00	105.00
Commercial railroad cars	7.00	7.50	7.50	7.75	7.75	7.75	7.75
Commercial aircraft	65.25	70.00	70.25	70.50	70.50	70.75	70.75
International airline passengers	3.10	4.95	5.00	5.00	5.00	5.00	5.00

[1]Commercial truck decals are issued on a calendar year basis. Decal rates will be effective on January 1 of each year.

Commercial Vessel User Fee

We inspect commercial vessels of 100 net tons or more arriving at ports of entry in the customs territory of the United States. Vessel owners/operators pay a user fee for the first 15 arrivals at ports. CBP collects this user fee on our behalf.

The AQI user fee for commercial vessel inspection prior to this interim rule was $480.50. That fee became effective on October 1, 2001, and had not been adjusted prior to this rulemaking. The user fee from the effective date of this interim rule until the end of FY 2005 is $486.00. User fees for subsequent years are as follows: $488 in FY 2006, $490 in FY 2007, $492 in FY 2008, $494 in FY 2009, and $496 in FY 2010.

Commercial Truck and Truck Decal User Fees

We inspect commercial trucks arriving at land ports in the customs territory of the United States from Mexico. CBP collects these user fees on our behalf.

Commercial trucks crossing at land border ports are also required to pay CBP user fees; therefore, our regulations provide that commercial truck owners/operators must prepay our user fee if they are prepaying the CBP user fee. In this case, our required prepaid user (decal) fee is 20 times the user fee for each single arrival. This fee covers an unlimited number of entries during the calendar year. Upon payment, the truck owner or operator receives a decal to place on his or her truck windshield. This is a joint decal that indicates that both the Customs (now part of DHS) and APHIS user fees for the truck have been paid for that calendar year.

Prior to this rulemaking, the commercial truck user fee was $4.75 for a single crossing and $95 for a decal. This interim rule raises the fee to $5 for a single crossing and $100 for a decal until the end of FY 2005. User fees for FYs 2006 through 2010 are $5.25 for a single crossing and $105 for a decal.

Commercial Railroad Car User Fee

We inspect loaded commercial railroad cars arriving at land ports in the customs territory of the United States. The fees for this service are calculated and remitted by the individual railroad companies within 60 days after the end of each calendar month. If a railroad company chooses to prepay our fees, the fee is 20 times the individual arrival fee for each loaded rail car. This prepaid user fee covers 1 calendar year's worth of AQI inspections. Our user fee prior to this interim rule was $7 per commercial loaded railcar. The fee from the effective date of this interim rule until the end of FY 2005 is $7.50. User fees for subsequent years are as follows: $7.50 in FY 2006 and $7.75 in FYs 2007 through 2010.

Commercial Aircraft User Fee

We inspect international commercial aircraft arriving at airports in the customs territory of the United States. The fees for this service are calculated and remitted by the individual airline companies within 31 days after the end of each calendar quarter. The user fee for commercial aircraft inspection prior to this interim rule was $65.25. This interim rule raises the fee for commercial aircraft inspection to $70 from the effective date of the rule until the end of FY 2005. User fees for subsequent years are as follows: $70.25 in FY 2006, $70.50 in FYs 2007 and 2008, and $70.75 in FYs 2009 and 2010.

International Airline Passenger User Fee

We inspect international airline passengers arriving at airports in the customs territory of the United States. Millions of travelers pass through U.S. airports daily. Our overall goal, keeping in mind airport security, is a timely, seamless inspection process that is integrated with the clearance processes of other Federal agencies with inspection responsibilities, that will ensure the fastest passenger clearance time while at the same time safeguard against the introduction of pests and diseases of animals and plants. Our joint goal is to enhance security and improve enforcement and regulatory processes in order that international air passengers are cleared through the entire Federal inspection process as quickly as possible without jeopardizing our security requirements. In partnership with the airline industry, we obtain advance information on international air passengers through the use of an Advance Passenger Information System to expedite the overall processing of passengers with no loss in enforcement of security requirements.

Prior to this interim rule, the user fee for international airline passenger clearance was $3.10 per passenger; the fee from the effective date of this interim rule until the end of FY 2005 will be $4.95 per passenger. The user fee for FYs 2006 through 2010 will be $5 per passenger. We wish to point out that, under the regulations, it is the user fee in effect at the time the fee is collected—in most cases, at the time the ticket is purchased—that applies; therefore, passengers who purchased a ticket and paid a user fee prior to the effective date of this rule would not have to pay an additional $1.85 if their date of departure came after the effective date of this rule.

Miscellaneous

In addition to the substantive changes described above, we are making a number of editorial changes to § 354.3. Previously, there were various addresses given for remittances of AQI user fees and for the submission of statements and other information. This interim rule provides a single new address for these purposes. The new address is as follows: U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181. Where reference was made in § 354.3 to ''APHIS user fees'' and ''APHIS permits,'' we now refer to ''AQI user fees'' and ''AQI permits.'' We have also updated the definition of *Customs* to read as follows: ''The Bureau of Customs and Border Protection, U.S. Department of Homeland Security.'' In § 354.3(b)(2)(vi), we have updated a reference to an obsolete Customs form. The amended paragraph refers to ''the Vessel Entrance or Clearance Statement, CBP Form 1300.'' Additionally, for the sake of clarity, we have made an editorial change to the introductory text that precedes the table in § 354.3(b), changed the paragraph heading of § 354.3(d)(4) from *Remittance and statement procedures* to *Statement procedures*, and added the heading *Remittance procedures* to § 354.3(d)(5). Further, in § 354.3(e)(3)(i), we have replaced the word ''vessel'' with the word ''aircraft,'' also for the purpose of clarification. Though there are some paragraphs of § 354.3 that remain unchanged, in the rule portion of this document, we have reprinted the section in its entirety so that it will be available to users of the regulations when this interim rule is published.

Emergency Action

This rulemaking, which adjusts our flat-rate AQI user fees, is necessary on an emergency basis to ensure the adequate funding and continued operation at necessary levels of CBP and APHIS activities vital to preventing the introduction of plant and animal pests and diseases into the United States. Under these circumstances, the Administrator has determined that there is good cause under 5 U.S.C. 553 for issuing this rule as an interim rule rather than by publishing it as a notice of proposed rulemaking. We are making this rule effective on January 1, 2005, to provide adequate notice of our adjusted fees.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this interim rule on small entities, as required under the Regulatory Flexibility Act. The economic analysis is summarized below. The full analysis is available on the EDOCKET Web site (see **ADDRESSES** above). Copies of the full analysis may also be obtained by contacting Ms. Donna Ford, Branch Chief, Financial Services Branch, FMD, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737–1232, (301) 734–5901.

In this interim rule, we are amending the user fee regulations by adjusting the fees charged for certain AQI 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 fees are being updated to enable us to recover the cost of providing those services.

The volume and intensity of inspection activities have increased dramatically in recent years, particularly since the events of September 11, 2001. Consequently, the cost of providing AQI services has increased, significantly outpacing user fee collections. In addition, the funding required to maintain even the current level of services has increased as well, due to pay raises and inflation.

Increasingly open and more extensive international trade brings with it the need for increased vigilance against threats to the agricultural resources of the United States. In addition, bioterrorism is a new and serious threat. Therefore, the need exists for more cargo inspection, both in the sheer number of inspections and in the range of commodities inspected. Broader and more intensive passenger screening has also become necessary. As shown in table 10, had APHIS continued to collect user fees in FY 2005 through FY 2010 at the rates in effect prior to this interim rule, total collections would have amounted to approximately $1.502 billion. Program costs are expected to be about $2.210 billion over the same period. This $708 million difference demonstrates the magnitude of the shortfall in cost recovery that would have occurred absent the changes.

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Table 10.--Comparison of FY 2004 and new AQI user fee revenues (in millions of dollars)

Fiscal year	2005	2006	2007	2008	2009	2010
Estimated total program costs (including reserve component)	$355.6	$360.6	$365.7	$370.8	$376.0	$381.3
Projected revenues from FY2004 user fees	243.2	246.0	248.8	251.7	254.6	257.5
Projected shortfall with 2004 user fees	(112.5)	(114.6)	(116.9)	(119.1)	(121.4)	(123.8)
Projected revenues from new user fees	327.6[1]	363.4	367.9	372.3	376.8	381.3

[1]The figure of $327.6 million in projected revenues for FY 2005 is based on our assumption that the new fees will only be in effect for three-fourths of that fiscal year. Since we are projecting that the total program costs in FY 2005 will be $355.7 million, we anticipate that there will be a shortfall that will have to be covered by the AQI reserve fund. Were the new fees to be in effect for all of FY 2005, however, projected revenue would total $355.8 million.

Benefits

The chief benefit associated with AQI services is the prevention of losses that could be incurred as a result of plant and animal pests and diseases entering the United States. Such potential losses include reductions in yield and productivity of affected hosts, costs to governmental and private entities of pest or disease control and eradication, and losses in export revenues due to trade embargoes. The harm to American agriculture associated with the introduction of plant and animal pests and diseases can be immense. For example, the eradication efforts associated with an outbreak of exotic Newcastle disease in the western United States that began in October of 2002 cost U.S. taxpayers, both State and Federal, in excess of $180 million. In addition, the total direct value of the export restrictions which were in place from October 2002 though December 2003 has been estimated at $167 million.[1]

The primary benefit of increasing AQI user fees is to assure that the program operates at a level considered sufficient to minimize the risk of introduction of agricultural pests and diseases. If the AQI user fees do not accurately reflect costs, services cannot be adequately provided. Without the fee increases, the reserve fund would be depleted, and the program would be in a deficit status, potentially forcing layoffs of significant numbers of employees and cutbacks in services. As a result, the potential for foreign pests and diseases to enter the United States could be increased. In addition, trade could be disrupted if inspectors were not available to inspect and clear cargo on a timely basis.

While the expected benefits of this interim rule are not quantified, they are likely to exceed the costs.

Costs

International airline passengers and the operators of commercial aircraft, commercial vessels, commercial trucks, and commercial railroad cars will be affected by this rule. Taken collectively, the changes in user fees contained in this rule appear very large, amounting to more than $100 million per fiscal year in increased revenues. Estimates of changes in demand for commercial vessel, aircraft, truck, and railroad car inspections attributable to the changes in user fees are hindered by the difficulty in choosing appropriate prices and elasticities of demand; however, the fee increases represent very small portions of the overall costs related to the AQI activities in all categories, so the economic impacts on passengers and conveyances affected by this interim rule are likely to be very small. These impacts are discussed in greater detail in the paragraphs that follow.

Impact on International Air Passengers

AQI fees are charged for the inspection of passengers on commercial aircraft upon arrival from outside the United States, with certain limited exceptions. International air passenger user fees will increase by $1.85, or 60 percent, in FY 2005, and by an additional $0.05 in FY 2006, with no further increases projected through FY 2010. The total increase, therefore, is $1.90, or 61 percent. These revised fees are expected to generate a substantial increase in program revenues—an additional $120 million by 2010—because of the volume of international air travel. In fact, the bulk of increased program revenues from the fee revisions—more than 80 percent—will come from this category.

The increases in the AQI user fees for this category are larger, in percentage terms, than those for the other service categories. As noted earlier, due to the events of September 11, 2001, and the resulting increased security concerns, we are inspecting a greater volume of international airline passengers arriving in the United States than we did before. Additional personnel and additional inspection measures have been needed to clear passengers through the Federal inspection process in a timely manner while at the same time ensuring that post-September 11 security concerns, which include the threat of bioterrorism, are addressed. These increased inspection operations are very personnel-intensive and costly, but a very necessary part of the process.

The individual fee increases, while high in percentage terms, are very small relative to international airfares. In 2002, overseas visitors[2] to the United States paid an average of $1,317 in international airfare, and U.S. residents visiting overseas destinations paid an average of $1,409 in international airfare.[3] The FY 2005 user fee of $4.95 amounts to less than 0.4 percent of the average international air fare, and the overall increase is less than 0.1 percent.

Fare increases can affect passenger demand and, therefore, affect the airlines. The impact of increased user fees on the volume of international air passengers will depend on the price elasticity of demand for international air travel. Because there are no close substitutes for international air travel, it can be assumed that demand is relatively inelastic. When demand is relatively inelastic, the percentage decrease in quantity of trips demanded will be less than the percentage increase in price attributable to increased user fees. This, combined with the fact that the user fee increase is very small relative to the price of an international air ticket, should make the impact very small.

Impact on Commercial Aircraft

Certain international scheduled and unscheduled (chartered) air passenger, air cargo, and air courier carriers arriving at U.S. customs ports are subject to AQI inspections. AQI user fees are charged for these inspections. These regulations affect international flights, many of which are operated by foreign-owned firms. Agency records show that about 43 percent of the aircraft clearance user fees collected in FY 2003 were from foreign airlines. More than 2,000 domestic firms operate in air transportation; however, the vast majority do not operate international flights and, therefore, are not subject to the fees. According to Agency records, 15 major air carriers, 20 national carriers, and 18 large regional carriers[4] were responsible for about 87 percent of the aircraft clearance fee collections in FY 2003.

Commercial aircraft user fees increase by $4.75, or 7 percent, in FY 2005 and by $0.25 in FYs 2006, 2007, and 2009, respectively, for a total increase of $5.50, or 8 percent, over the period covered by this interim rule. Based on the expected volume, the increase in user fees generates additional revenues ranging from $1.5 million in FY 2005, when the adjusted fee is expected to be in effect for only three-fourths of the fiscal year, to $2.5 million in FY 2010. We anticipate that there will be more than 400,000 aircraft needing clearance annually during the period covered by this interim rule.

The impact of the increases in this user fee should be small. The fee increases are very small relative to the overall operating costs of air carriers. About 57 percent of the aircraft cleared are owned by U.S. carriers, and about 87 percent of those aircraft are owned by

[1] *Economic Impact of Poultry Export Restrictions.* USDA–APHIS, CEAH.

[2] ''Overseas'' refers to all countries except Canada and Mexico.

[3] Survey of International Air Travelers. Office of Travel and Tourism Industries, International Trade Administration, U.S. Department of Commerce.

[4] Department of Transportation (DOT), Bureau of Transportation Statistics (BTS), Office of Airline Information, Air Carrier Groupings. Carriers are grouped according to operating revenue boundaries: Major air carriers—over $1 billion; national air carriers—over $100 million to $1 billion; large regional air carriers—$20 million to $100 million; and medium regional air carriers—under $20 million.

major carriers, national carriers, or large regional carriers. In 2002, 13 domestic major air carriers had operating expenses of $79 billion, 30 domestic national air carriers had operating expenses of $6 billion, and domestic large regional air carriers had operating expenses of $670 million.[5] The total increase in the fee over the entire period covered by this rule, applied to all annual inspections, will represent an increase in operating expenses of 0.007 percent on average for a major carrier, 0.01 percent on average for a national carrier, and 0.6 percent on average for a large regional carrier.[6]

Impact on Commercial Vessels

The user fee for inspecting commercial vessels increases by $5.50, or 1 percent, per vessel inspected in FY 2005 and by a total of $15.50, or 3 percent, over the period covered in this interim rule. The additional revenues collected are estimated to be $0.2 million in FY 2005 and $0.8 million in FY 2010. The impact of the increases in this user fee should be small. The fee increases represent an extremely small proportion of the operating costs of bulk vessels. The total daily operating costs of dry bulk vessels in the year 2001 averaged $14,769,[7] placing the total increase in this user fee at 0.1 percent of a single day's operating expenses.

Impact on Commercial Trucks

AQI user fees are charged for the inspection of commercial trucks arriving in the United States. The fee for single truck inspections increases by $0.25, or 5 percent, in FY 2005 and by $0.50, or 11 percent, in total over the period covered in this interim rule. The truck decal user fee, which is set at a level equal to 20 times the single crossing fee, increases by $5 in FY 2005 and by $10 in total. Additional collections from both commercial truck sources (single entry user fees and multiple entry truck decals) will be $0.3 million in FY 2005. In FY 2010, additional collections from single-entry fees and multiple-entry decals will total an estimated $0.6 million.

If we assume that any U.S. trucking firm that regularly transports freight across the U.S./Mexican border will purchase an APHIS decal, which is good for an unlimited number of entries during the calendar year, the proposed increase in user fees in FY 2005 could cost a firm, at most, an additional $5 per truck decal or an estimated $325 for a firm operating 65 trucks.[8] This increase is insignificant when compared to the annual receipts of the typical trucking firm, representing only 0.02 percent of the average U.S. trucking firm's year 2000 operating revenues of $1.8 million.

Impact on Loaded Railroad Cars

AQI user fees are charged for the inspection of loaded railroad cars entering the United States from Mexico. Loaded railcar user fees will increase by $0.50, or 7 percent, in FY2005, and by a total of $0.75, or 11 percent, over the period covered in this interim rule. The annual volume of loaded railroad cars arriving in the United States from Mexico is estimated at about 200,000. The additional revenues from the increases in this user fee are expected to be $0.1 million in FY 2005 and to total $0.7 million over the period covered in the rule.

The impact of the increase in fees should be small. The total increase in this user fee over the entire time frame covered in this rule of $0.75 per railcar represents only about 0.06 percent of the average freight revenue per carload for Class I railroads (those with 2002 operating revenue of at least $272 million) in 2003.[9] Even the full fee in FY 2005 of $7.50 represents only 0.6 percent of the average freight revenue per carload.

Administrative Cost Estimates

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. Similarly, additional reporting burdens associated with cargo inspection fees on vessel, aircraft, railcar, and truck operators resulting from a revision of user fees are likely to be very small as mechanisms are already in place for collecting fees.

Alternatives

One alternative to this interim rule would have been to leave the regulations unchanged. In that case, the fees would have remained unchanged. However, in addition to routine increases in the cost of providing AQI services due to inflation, replacement of equipment, and mandated increases in pay costs, the events of September 11, 2001, have had a profound impact on costs and revenues. Revenues have diminished due, in large part, to reduced passenger loads, conveyance arrivals, and cargo volumes. On the other hand, new security concerns regarding international travel have led us to adopt an inspection process that is much more extensive than before and is very personnel-intensive. Therefore, AQI program costs have not declined, but rather have increased considerably. In fact, the program's cost has significantly outpaced user fee collections. If APHIS were to continue to collect user fees at the rates in effect prior to this interim rule during the period from FY 2005 through FY 2010, total collections would be more than $708 million short of projected program costs. As noted earlier, such a shortfall could result in AQI service cutbacks, which would increase the potential for animal and plant pests and diseases to enter the United States and could disrupt trade if inspectors were not available to inspect and clear cargo on a timely basis. Therefore, this alternative was rejected.

Another alternative to this rule would have been to leave the AQI user fees unchanged and request that Congress cover the additional AQI program costs through appropriations. Since FY 1992, however, APHIS has received no directly appropriated funds to provide AQI services. The shift to funding AQI programs through user fees rather than through appropriations provided a more equitable way of matching program costs to program users or beneficiaries. The implementation of user fees is based on the premise that the beneficiaries or users of a public system should pay for its operation, rather than the public at large. The use of appropriations to cover the growth in the cost of AQI activities would shift some of the burden of paying for the AQI system back to U.S. taxpayers and away from the users of that system. Therefore, this alternative was rejected.

A third alternative to this rule would have been to simplify the fee increases by using a set percentage increase for the out-years of the proposal. This approach would have involved increasing the fees to cover the cost

[5] Air Carrier Profile. National Transportation Statistics 2003. DOT/BTS.

[6] Based on the number of inspections in FY 2003 (APHIS records) and operating expenses for air carriers for 2002 (DOT/BTS).

[7] Ruth K. DeVelbis, Transportation Industry Analyst, Office of Financial and Rate Approvals, Maritime Administration, personal communication May 2004.

[8] This estimate is based on the assumption that a firm owns 65 trucks, the average number of truck registrations per trucking establishment. (DOT/BTS).

[9] Based on data from *Class I Railroad Statistics*. Association of American Railroads, Policy and Economics Department. Freight revenue per ton-mile ($0.02283 in 2003) × average length of haul (862.4 miles in 2003) = freight revenue per haul ($19.70). Freight revenue per haul × average tons per carload (62.3 in 2003) = average freight revenue per carload ($1,226.60).

increases in FY 2005, followed by fee increases of 1.5 percent per year in FYs 2006 through 2010.[10] However, the annual number of users in each category of service and trends in those numbers affect the level at which each fee should be set to properly recover the cost of providing the corresponding service. These volumes fluctuate over time, and those fluctuations also vary by user fee service category. While developing the needed fee increases, APHIS performed a review of factors affecting volumes for each service category shown in our collection history. This review showed that a set percentage increase in the fees would eventually result in an excess of revenues flowing into the reserve fund because we do anticipate general volume increases. A 1.5 percent across-the-board fee increase, which does not take into account volume fluctuations and variations between categories, would result in additional reserve contributions of $26 million in 2010, exceeding our planned reserve level. Moreover, a single rate of increase for all service categories would have users of one service subsidizing fees paid by users of another service. Therefore, we rejected this alternative.

Impact on Small Entities

The Regulatory Flexibility Act requires that the Agency specifically consider the economic impact of its rules on small entities. The fee changes will directly affect commercial maritime vessels of 100 net tons or more, commercial trucks, commercial railroad cars, and commercial aircraft arriving at ports in the customs territory of the United States. Some of the firms affected will be foreign-owned firms, and some will be U.S.-owned firms. The fee changes will also affect international airline passengers arriving in the customs territory of the United States, but passengers are not included in the discussion here because the Regulatory Flexibility Act does not cover individuals.

The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. For air transportation, the SBA defines a small business entity as having 1,500 or fewer employees. For water transportation, a small business entity is defined as having 500 or fewer employees. The definition for small business entity in truck transportation is one having $18.5 million or less in annual receipts. For railroad transportation, the SBA defines a small business entity as having 500 or fewer employees.

According to 1997 Economic Census data for air transportation (North American Industry Classification System [NAICS] code 481; not including large certificated passenger carriers),[11] only 13 of the 1,868 firms that operated for the entire year employed more than 1,000 workers. Thus approximately 99 percent (1,855 firms) of these air transportation firms employed fewer than 1,500 workers. However, the vast majority of these firms are not operating internationally and are therefore not affected by this rule. In 2002, approximately 65 percent of the 72 major, national, and large and medium regional air carriers would have been considered small by SBA standards. All of the major air carriers, and 12 of 30 nationals, would be considered large. In FY 2003, those large air carriers accounted for more than 78 percent of the aircraft clearance inspections for which user fees were collected.

Data on deep-sea coastal water transportation (NAICS code 4831) from the 1997 Economic Census show that of the 487 firms that operated for the entire year, 40 firms employed 100 or more workers. Thus, at least 92 percent of affected water transportation firms would be considered small. Data on truck transportation (NAICS code 484) from the 1997 Economic Census show that of the 70,044 firms that operated for the entire year, 1,614 firms had annual receipts in excess of $10 million. Thus, approximately 97.7 percent (68,830 firms) of all truck transportation firms had less than $10 million in annual receipts. Based on information from the Association of American Railroads (AAR),[12] of the 571 firms that operated for all of 2001 in railroad transportation (NAICS code 4011), only 18 firms employed more than 500 workers. Thus approximately 97 percent (553 firms) of all line-haul railroads employed fewer than 500 workers.

From the above it can be expected that a considerable number of those entities affected by this rule can be considered small. However, as we have noted in our discussions of the individual transportation sectors, the impacts of the user fee changes represent a small portion of overall operating costs on transportation entities, whether small or large, and should therefore have a small impact.

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.)

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been designated by the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, 5 U.S.C. 801–808). Under SBREFA, major rules, in general, cannot take effect until 60 days after the rule is published in the **Federal Register**. However, section 808(2) of SBREFA states that agencies may waive this effective date requirement for ''good cause'' and establish an earlier effective date. As explained above, this rule is necessary on an emergency basis to ensure the adequate funding and continued operation at necessary levels of CBP and APHIS activities vital to preventing the introduction of plant and animal pests and diseases into the United States, and the Administrator has determined that there is good cause for issuing this rule as an interim rule rather than by publishing it as a notice of proposed rulemaking. For these same reasons, there is ''good cause'' under section 808(2) of SBREFA to make this rule effective on a date earlier than would otherwise be required under that Act.

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

[10] As a policy, USDA is using an inflation factor of 1.5 percent when estimating increases in salaries and other economic factors, in accordance with the Mid-Session Review—Economic Assumptions.

[11] U.S. Census Bureau, U.S. Department of Commerce. The Economic Census does not cover large certificated passenger carriers that report to the DOT's Office of Airline Statistics. Data from the 2002 Economic Census are not yet fully available, and data from the *National Transportation Statistics 2003*, DOT/BTS do not contain information on firm size.

[12] The Economic Census does not cover railroads.

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

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

■ Accordingly, we are amending 7 CFR part 354 as follows:

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

■ 1. The authority citation for part 354 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.3 is revised to read as follows:

§ 354.3 User fees for certain international services.

(a) *Definitions.* Whenever in this section the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

APHIS. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Arrival. Arrival at a port of entry in the customs territory of the United States, or at any place served by a port of entry as specified in 19 CFR 101.3.

Calendar year. The period from January 1 to December 31, inclusive, of any particular year.

Commercial aircraft. Any aircraft used to transport persons or property for compensation or hire.

Commercial purpose. The intention of receiving compensation, or making a gain or profit.

Commercial railroad car. A railroad car used or capable of being used for transporting property for compensation or hire.

Commercial shipment. A shipment for gain or profit.

Commercial truck. A self-propelled vehicle, designed and used for transporting property for compensation or hire. Empty trucks and truck cabs without trailers fitting this description are included.

Commercial vessel. Any watercraft or other contrivance used or capable of being used as a means of transportation on water to transport property for compensation or hire, with the exception of any aircraft or ferry.

Customs. The Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

Customs territory of the United States. The 50 States, the District of Columbia, and Puerto Rico.

Designated State or county inspector. A State or county plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties as to the phytosanitary condition of plant products inspected under the Plant Protection Act.

Export certificate for processed plant products. A certificate (PPQ Form 578) issued by an inspector, describing the plant health condition of processed or manufactured plant products based on inspection of submitted samples and/or by virtue of the processing received.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

Phytosanitary certificate. A certificate (PPQ Form 577) issued by an inspector, giving the phytosanitary condition of domestic plants or unprocessed or unmanufactured plant products based on inspection of the entire lot or representative samples drawn by a Federal or State employee authorized to conduct such sampling.

Phytosanitary certificate for reexport. A certificate (PPQ Form 579) issued by an inspector, giving the phytosanitary condition of foreign plants and plant products legally imported into the United States and subsequently offered for reexport. The certificate certifies that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products are considered to conform to the current phytosanitary regulations of the receiving country and have not been subjected to the risk of infestation or infection during storage in the United States. Plants and plant products which transit the United States under Customs bond are not eligible to receive the phytosanitary certificate for reexport.

(b) *Fee for inspection of commercial vessels of 100 net tons or more.* (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 agricultural quarantine and inspection (AQI) user fee. The AQI user fee for each arrival, not to exceed 15 payments in a calendar year (i.e., no additional fee will be charged for a 16th or subsequent arrival in a calendar year), is shown in the following table. The AQI user fee shall be collected at each port of arrival.

Effective dates	Amount
January 1, 2005, through September 30, 2005	$486.00
October 1, 2005, through September 30, 2006	488.00
October 1, 2006, through September 30, 2007	490.00
October 1, 2007, through September 30, 2008	492.00
October 1, 2008, through September 30, 2009	494.00
October 1, 2009, through September 30, 2010	496.00

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

(i) Foreign passenger vessels making at least three trips a week from a port in the United States to the high seas (including ''cruises to nowhere'') and returning to the same port in the United States, not having touched any foreign port or place other than in Canada, or taken on any stores other than in Canada;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Vessels used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the vessel is not carrying persons or merchandise for commercial purposes;

(iv) Vessels arriving in distress or to take on bunkers, sea stores, or ship's stores;

(v) Tugboats towing vessels on the Great Lakes; and

(vi) Any vessel which sails only between United States and Canadian ports, when the Master of such vessel arriving from Canada certifies, in the ''Particulars of Voyage'' block of the Vessel Entrance or Clearance Statement, CBP Form 1300, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

(c) *Fee for inspection of commercial trucks.* (1) Except as provided in paragraph (c)(2) of this section, the driver or other person in charge of a commercial truck that is entering the customs territory of the United States and that 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 AQI user fee for each arrival, as shown in the following table:

Effective dates	Amount
January 1, 2005, through September 30, 2005	$5.00
October 1, 2005, through September 30, 2006	5.25
October 1, 2006, through September 30, 2007	5.25
October 1, 2007, through September 30, 2008	5.25
October 1, 2008, through September 30, 2009	5.25
October 1, 2009, through September 30, 2010	5.25

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

(i) Trucks entering the customs territory of the United States from Canada.

(ii) [*Reserved*]

(3) Prepayment.

(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 AQI permit for the same calendar year. Applicants must apply to Customs for prepaid AQI permits.[1] The following information must be provided, together with payment of an amount 20 times the AQI user fee for each arrival:

(A) Vehicle make, model, and model year.

(B) Vehicle Identification Number (VIN).

(C) License numbers issued by State, Province, or country.

(D) Owner's name and address.

(ii) No credit toward the prepaid AQI permit will be given for user fees paid for individual arrivals.

(d) *Fee for inspection of commercial railroad cars.* (1) Except as provided in paragraph (d)(2) of this section, an AQI 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 AQI user fee. The AQI user fee for each arrival of a loaded railroad car is shown in the following table. If the AQI user fee is prepaid for all arrivals of a commercial railroad car during a calendar year, the AQI user fee is an amount 20 times the AQI user fee for each arrival.

Effective dates	Amount
January 1, 2005, through September 30, 2005	$7.50
October 1, 2005, through September 30, 2006	7.50
October 1, 2006, through September 30, 2007	7.75
October 1, 2007, through September 30, 2008	7.75
October 1, 2008, through September 30, 2009	7.75
October 1, 2009, through September 30, 2010	7.75

(2) The following categories of commercial railroad cars are exempt from paying an AQI user fee:

(i) Commercial railroad cars entering the customs territory of the United States from Canada;

(ii) Any commercial railroad car that is part of a train whose journey originates and terminates in the United States, if—

(A) The commercial railroad car is part of the train when the train departs the United States; and

(B) No passengers board or disembark from the commercial railroad car, and no cargo is loaded or unloaded from the commercial railroad car, while the train is within any country other than the United States; and

(iii) Locomotives and cabooses.

(3) Prepayment.

(i) Railroad companies may, at their option, prepay the AQI user fee for each commercial railroad car for a calendar year. This payment must be remitted in accordance with paragraph (d)(5) of this section.

(ii) No credit toward the calendar year AQI user fee will be given for AQI user fees paid for individual arrivals.

(4) Statement procedures. The Association of American Railroads (AAR), and the National Railroad Passenger Corporation (AMTRAK), shall file monthly statements with the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181, within 60 days after the end of each calendar month. Each statement shall indicate:

(i) The number of loaded commercial railroad cars entering the customs territory of the United States from Mexico during the relevant period;

(ii) The number of those commercial railroad cars pulled by each railroad company; and

(iii) The total monthly AQI user fee due from each railroad company.

(5) Remittance procedures. Individual railroad companies shall remit the AQI user fees calculated by AAR, and AMTRAK shall remit the AQI user fees it has calculated, within 60 days after the end of each calendar month in which commercial railroad cars entered the customs territory of the United States. AQI user fees, together with monthly statements, must be remitted to the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181.

(6) Compliance. AAR, AMTRAK, and each railroad company responsible for making AQI user fee payments must allow APHIS personnel to verify the accuracy of AQI user fees collected and remitted and otherwise determine compliance with 21 U.S.C. 136a and this paragraph. The AAR, AMTRAK, and each railroad company responsible for making AQI user fee payments must advise the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181, of the name, address, and telephone number of a responsible officer who is authorized to verify AQI user fee calculations, collections, and remittances, as well as any changes in the identifying information submitted.

(e) *Fee for inspection of commercial aircraft.* (1) Except as provided in paragraph (e)(2) of this section, an AQI 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 Bureau of Customs and Border Protection ''Permit to Proceed,'' as specified in 19 CFR 122.81 through 122.85, or an ''Agricultural Clearance or Safeguard Order'' (PPQ Form 250), used pursuant to § 330.400 of this chapter and 9 CFR 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 AQI user fee. The AQI user fee for each arrival is shown in the following table:

Effective dates	Amount
January 1, 2005, through September 30, 2005	$70.00
October 1, 2005, through September 30, 2006	70.25
October 1, 2006, through September 30, 2007	70.50
October 1, 2007, through September 30, 2008	70.50
October 1, 2008, through September 30, 2009	70.75
October 1, 2009, through September 30, 2010	70.75

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

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

(i) Any aircraft moving solely between the United States and Canada;

(ii) Any aircraft used exclusively in the governmental services of the United States or a foreign government, including any Agency or political subdivision of the United States or a foreign government, as long as the aircraft is not carrying persons or merchandise for commercial purposes;

(iii) Any aircraft making an emergency or forced landing when the original destination of the aircraft was a foreign port;

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

(v) Any aircraft moving from the United States Virgin Islands to Puerto Rico; and

(vi) Any aircraft making an intransit stop at a port of entry, during which the aircraft does not proceed through any portion of the Federal clearance process, such as inspection or clearance by APHIS or the Bureau of Customs and Border Protection, no cargo is removed from or placed on the aircraft, no passengers get on or off the aircraft, no crew members get on or off the aircraft, no food is placed on the aircraft, and no garbage is removed from the aircraft.

(3) Remittance and statement procedures. (i) Each carrier must remit the appropriate fees to the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181, for receipt no later than 31 days after the close of the calendar quarter in which the aircraft arrivals occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3717).

(ii) The remitter must mail with the remittance a written statement to the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181. The statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port; and

(F) Amount remitted.

(iii) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to ''The Animal and Plant Health Inspection Service.''

(4) Compliance. Each carrier subject to this section must allow APHIS personnel to verify the accuracy of the AQI user fees remitted and to otherwise determine compliance with 21 U.S.C. 136a and this paragraph. Each carrier must advise the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181, of the name, address, and telephone number of a responsible officer who is authorized to verify AQI user fee calculations and remittances, as well as any changes in the identifying information submitted.

(5) Limitations on charges. (i) Airlines will not be charged reimbursable overtime for inspection of aircraft if the aircraft is subject to the AQI user fee for arriving aircraft as prescribed by this section.

(ii) Airlines will not be charged reimbursable overtime for inspection of cargo from an aircraft if:

(A) The aircraft is subject to the AQI user fee for arriving aircraft as prescribed by this section; and

(B) The cargo is inspected between 8 a.m. and 4:30 p.m., Monday through Friday; or

(C) The cargo is inspected concurrently with the aircraft.

(f) *Fee for inspection of international passengers.* (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 AQI user fee. The AQI user fee for each arrival is shown in the following table:

Effective dates[1]	Amount
January 1, 2005, through September 30, 2005	$4.95
October 1, 2005, through September 30, 2006	5.00
October 1, 2006, through September 30, 2007	5.00
October 1, 2007, through September 30, 2008	5.00
October 1, 2008, through September 30, 2009	5.00
October 1, 2009, through September 30, 2010	5.00

[1] Persons who issue international airline tickets or travel documents are responsible for collecting the AQI 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 AQI 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.

(2) The following categories of passengers are exempt from paying an AQI user fee:

(i) Passengers arriving from Canada whose journey originates in Canada;

(ii) Crew members who are on duty on a commercial aircraft;

(iii) Airline employees, including ''deadheading'' crew members, who are traveling on official airline business;

(iv) Diplomats, except for United States diplomats, who can show that their names appear on the accreditation listing maintained by the United States Department of State. In lieu of the accreditation listing, an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government;

(v) Passengers departing and returning to the United States without having touched a foreign port or place other than Canada;

(vi) Passengers arriving on any commercial aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the United States Department of Defense (DOD) are exempted if they have been precleared abroad under the joint DOD/APHIS Military Inspection Program;

(vii) Passengers arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign port;

(viii) Passengers transiting the United States and not subject to inspection; and

(ix) Passengers moving from the United States Virgin Islands to Puerto Rico.

(3) AQI user fees shall be collected under the following circumstances:

(i) When through tickets or travel documents are issued indicating travel to the customs territory of the United

States which originates in any location other than Canada;

(ii) When through tickets or travel documents are issued in Canada indicating an arrival in the customs territory of the United States following a stopover (layover) in a location other than Canada; and

(iii) When passengers arrive in the customs territory of the United States in transit from a location other than Canada and are inspected by APHIS or Customs.

(4) *Collection of fees.* (i) Any person who issues tickets or travel documents on or after May 13, 1991, is responsible for collecting the AQI user fee from all passengers transported into the customs territory of the United States to whom the AQI user fee applies.

(A) Tickets or travel documents must be marked by the person who collects the AQI user fee to indicate that the required AQI user fee has been collected from the passenger.

(B) If the AQI user fee applies to a passenger departing from the United States and if the passenger's tickets or travel documents were issued on or after May 13, 1991, but do not reflect collection of the AQI user fee at the time of issuance, then the carrier transporting the passenger from the United States must collect the AQI user fee upon departure.

(C) AQI 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. AQI 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 AQI 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.

(5) *Remittance and statement procedures.* (i) The carrier whose ticket stock or travel document reflects collection of the AQI user fee must remit the fee to the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181. The travel agent, United States-based tour wholesaler, or other entity, which issues its own non-carrier related ticket or travel document to a passenger who is subject to an AQI user fee under this part, must remit the fee to APHIS, unless by contract the carrier will remit the fee.

(ii) AQI user fees must be remitted to the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181, for receipt no later than 31 days after the close of the calendar quarter in which the AQI user fees were collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3717). Refunds by a remitter of AQI user fees collected in conjunction with unused tickets or travel documents shall be netted against the next subsequent remittance.

(iii) The remitter must mail with the remittance a written statement to the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181. The statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

(iv) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to ''The Animal and Plant Health Inspection Service.''

(6) Carriers contracting with United States-based tour wholesalers are responsible for notifying the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181, of all flights contracted, the number of spaces contracted for, and the name, address, and taxpayer identification number of the United States-based tour wholesaler, within 31 days after the close of the calendar quarter in which such a flight occurred; *except that,* carriers are not required to make notification if tickets, marked to show collection of the AQI user fee, are issued for the individual contracted spaces.

(7) *Compliance.* Each carrier, travel agent, United States-based tour wholesaler, or other entity subject to this section must allow APHIS personnel to verify the accuracy of the AQI user fees collected and remitted and to otherwise determine compliance with 21 U.S.C. 136a and this paragraph. Each carrier, travel agent, United States-based tour wholesaler, or other entity must advise the U.S. Bank, United States Department of Agriculture (USDA), APHIS, AQI, P.O. Box 952181, St. Louis, MO 63195–2181, of the name, address, and telephone number of a responsible officer who is authorized to verify AQI user fee calculations, collections, and remittances, as well as any changes in the identifying information submitted.

(8) *Limitation on charges.* Airlines will not be charged reimbursable overtime for passenger inspection services required for any aircraft on which a passenger arrived who has paid the airline passenger AQI user fee for that flight.

(g) *Fees for export certification of plants and plant products.* (1) For each certificate issued by APHIS personnel, the recipient must pay the applicable AQI user fee at the time and place the certificate is issued, or, in the case of a block of certificates, at the time the certificates are given to the shipper.

(2) There is no AQI user fee for a certificate issued by a designated State or county inspector.

(3) If a designated State inspector issues a certificate, the State where the certificate is issued may charge for inspection services provided in that State.

(4) Any State which wishes to charge a fee for services it provides to issue certificates must establish fees in accordance with one of the following guidelines:

(i) *Calculation of a ''cost-per-certificate'' fee.* The State must:

(A) Estimate the annual number of certificates to be issued;

(B) Determine the total cost of issuing certificates by adding together delivery,[2] support,[3] and administrative [4] costs; and

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[2] Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and user fee costs associated with maintaining field offices. Delivery hours are similar hours taken by inspectors, including travel time, inspection time, and time taken to complete paperwork.

[3] Support costs are costs at supervisory levels which are similar to delivery costs, and user fee costs such as training, automated data processing, public affairs, enforcement, legal services, communications, postage, budget and accounting services, and payroll, purchasing, billing, and collecting services. Support hours are similar hours taken at supervisory levels, as well as hours taken in training, automated data processing, enforcement, legal services, communication, budgeting and accounting, payroll purchasing, billing, and collecting.

[4] Administrative costs are costs incurred as a direct result of collecting and monitoring Federal phytosanitary certificates. Administrative hours are

(C) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a ''raw'' fee. The State may round the ''raw'' fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing; or

(ii) *Calculation of a ''cost-per-hour'' fee.* The State must:

(A) Estimate the annual number of hours taken to issue certificates by adding together delivery,[2] support,[3] and administrative [4] hours;

(B) Determine the total cost of issuing certificates by adding together delivery, support, and administrative costs; and

(C) Divide the cost of issuing certificates by the estimated number of hours taken to issue certificates to obtain a ''cost-per-hour'' fee. The State may round the ''cost-per-hour'' fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

(5) The AQI user fees are:

(i)(A) $50 for a certificate for a commercial shipment; or

(B) $23 for a certificate for a low-value commercial shipment, if the following criteria are met:

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

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

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

(ii) $23 for a certificate for a noncommercial shipment;

(iii)(A) $50 for a certificate for reexport of a commercial shipment; or

(B) $23 for a certificate for reexport of a low value commercial shipment, if the following criteria are met:

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

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

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

(iv) $50 for a processed product certificate for a commercial shipment; and

(v) $7 for reissuing any certificate or certificate for reexport.

(h) *Refunds of AQI user fees.* (1) A shipper who pays for a block of certificates to cover commercial shipments may obtain a refund or a credit against future AQI user fees under the following circumstances:

(i) If a certificate from the block is voided;

(ii) If a certificate from the block is returned unused;

(iii) If the shipper pays for inspection outside of normal business hours (8 a.m. to 4:30 p.m.) under § 354.1 of this part.

(iv) If a certificate from the block is used for a noncommercial shipment; or

(v) If a certificate from the block is used to reissue another certificate.

(2) The amount of any refund or credit will be the amount overcharged, less $7 to cover APHIS administrative expenses.

(i) *Payment methods.* For payment of any of the AQI user fees required in paragraph (g) of this section, we will accept personal checks for amounts less than $100, and checks drawn on commercial accounts, cashier's checks, certified checks, traveler's checks, and money orders for any amount. All payments must be for the exact amount due.

(j) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for any import or entry services listed below, of $56 per hour, or $14 per quarter hour, with a minimum fee of $14 for each employee required to perform the following services. If the services must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate as listed below applies, as well as the 2-hour minimum charge and a commuted traveltime period required by § 354.1(a)(2). If the services requested are performed on a Sunday, the hourly user fee rate will be $74, or $18.50 per quarter hour, with a $18.50 minimum. If the services requested are performed on a day other than Sunday outside the normal tour of duty of the employee providing the service, the hourly user fee rate will be $65, or $16.25 per quarter hour, with a $16.25 minimum:

(1) Conducting inspections, on vessels or in storage areas, of solid wood packing material or cargo when a shipment arrives without a certificate or exporter statement required under § 319.40–5(g) or § 319.40–5(h) of this chapter, or with an incomplete certificate or exporter statement; and

(2) Supervising the separation of cargo from solid wood packing material denied entry under this subpart and the destruction or reexportation of the solid wood packing material. (Approved by the Office of Management and Budget under control numbers 1651–0019, 0579–0094, or 0579–0052).

Done in Washington, DC, this 6th day of December 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

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hours taken as a direct result of collecting and monitoring Federal phytosanitary certificates.