

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 98-073-1]

RIN 0579-AB05

User Fees; Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fee regulations by adjusting the fees charged for certain agricultural quarantine and inspection services we provide in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The adjusted fees would cover fiscal years 2000 through 2002. We have determined that the fees must be adjusted to reflect the anticipated actual cost of providing these services through FY 2002.

DATES: We invite you to comment. We will consider all comments that we receive by October 8, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-073-1, Regulatory Analysis and Development, PPD, APHIS, suite 3CO3, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-073-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning program Operations, contact Mr. Jim Smith, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 60,

Riverdale, MD 20737-1236, (301) 734-8295. For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FSSB, BASE, ABS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232, (301) 734-8351.

SUPPLEMENTARY INFORMATION:

Background

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a), referred to below as the FACT Act, authorizes the Animal and Plant Health Inspection Service (APHIS) to collect user fees for agricultural quarantine and inspection (AQI) services. The FACT Act was amended by § 504 of the Federal Agricultural Improvement and Reform Act of 1996 (Pub. L. 104-127), on April 4, 1996.

The FACT Act, as amended, authorizes APHIS to collect user fees for providing AQI services in connection with the arrival, at a port in the customs territory of the United States, of:

- Commercial vessels,
- Commercial trucks,
- Commercial railroad cars,
- Commercial aircraft, and
- International airline passengers.

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

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

Introduction

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

APHIS has had to provide AQI services beyond what we anticipated when the currently scheduled fees were set in 1997. The increases in services stem from an increase in international trade and travel, necessitating more inspections at ports of arrival, changes

in our regulations that result in our having to inspect additional imported articles, and enhanced efforts to crack down on the smuggling of agricultural commodities. These increases in service are discussed in more detail below, under the heading "*New AQI Program Costs.*"

In this document, we are proposing to amend those fees for fiscal years 2000 through 2002 in order to compensate for increased AQI program costs and to reestablish a reasonable reserve in the AQI account.

Because rulemaking takes time, we anticipate that the revised user fees will not take effect until at least the second quarter of FY 2000. Therefore, some of the calculations on the following pages, which assume an implementation date of October 1, 1999, will have to be revised when the final rule is published.

We 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.

We also intend to monitor our fees throughout each year and look closely at adjustments to fees that may be needed in future years. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will publish lower fees in the **Federal Register** and make them effective as quickly as possible. If it becomes necessary to increase any fees because reserve levels are being drawn too low, we will publish, for public comment, proposed fee increases in the **Federal Register**.

New AQI Program Costs

APHIS is continually requested to process international airline passengers faster, although we need to inspect passengers and their baggage thoroughly to safeguard against the introduction of harmful pests and diseases of animals and plants. We are committed to processing passengers as quickly as possible, without jeopardizing the success of AQI, whose purpose is to prevent the introduction of foreign plant and animal pests and diseases which are harmful to this country's agriculture; however, faster processing requires more officers, additional canine teams, and the purchase of state-of-the-art high definition x-ray machines at the medium and large ports throughout the country. The new high definition x-ray machines, estimated to cost \$600,000

each, will greatly enhance the processing of passengers and reduce further need for more inspectors. Due to the expense involved, we plan to purchase these machines for the busiest ports to make optimal use of the machines.

New and expanding airport terminals are also increasing the demand for AQI services at areas in airports where we do not currently have officers located. In the past, we were able to quickly clear passengers, because most passengers arrived in the same general area of the airport. Not only is the number of passengers increasing, but additional international terminals are being built in new locations, requiring additional officers and canine teams to keep up with demand for service.

At the same time, we are trying to meet the constant demands from brokers and shippers to clear cargo faster at various locations. In many instances, in order to move cargo quickly, we must conduct both initial and final inspections. Since we cannot hold cargo up at the port to conduct a full inspection, we inspect a sampling of cargo at the port of first arrival and conduct a more thorough inspection at the final destination when the cargo is off-loaded. This requires additional officers at the port of first arrival to cover the increasing numbers of inspection locations, and new officers at final destination points to conduct additional inspection services.

Further, inspection activities have increased as a result of recent rulemakings. For example, additional inspections are necessary to implement new regulations intended to prevent the introduction of pests in imported solid wood packing material (see 63 FR 50100-50111 and 63 FR 69539-69543).

AQI services related to enforcing our regulations have also expanded. APHIS compliance officers work in teams with local authorities to detect, investigate, and prosecute violators. Recent

increased efforts include both border blitzes and market surveys.

Border blitzes involve unannounced, targeted inspections, as well as random searches of cargo containers entering the United States where no AQI staffing exists, at times when staffing is not usually provided, or where existing staff must be supplemented. Market surveys consist of searches in grocery stores, plant stores, and fruit and vegetable markets for prohibited items.

When prohibited items are detected, follow-up investigations are conducted to identify the item's origin and the responsible shippers, importers, and brokers. Previous shipments and their destination points are researched, located, and investigated for other prohibited items and infested materials. This information is being used to develop a violation database to help the teams target specific commodities and importers who have a history of smuggling prohibited commodities, and allow legitimate importers and exporters to move their products through commerce without undue delay.

These activities are supported by many agricultural industries, who see them as positive steps toward detecting and eliminating plant and animal pests and diseases before they can become established in the United States.

Projected AQI Program Costs for Fiscal Years 1999-2002

The following table shows the total projected costs of administering the AQI program for fiscal years 1999 through 2002. When we projected costs for fiscal years 1999 through 2002, we began with the base need of \$130,001,000 for Plant Protection and Quarantine (PPQ), the APHIS unit that administers the AQI program in the United States. The base need of PPQ is an increase of approximately \$3.6 million in PPQ's base need as identified in the July 14, 1997, final rule, and is due to unanticipated personnel compensation of \$1.6 million for additional Civil

Service Retirement assessments, higher overtime costs of approximately \$1.4 million, and additional pay cost increases of \$600,000. (The base need of PPQ simply reflects the cost required for APHIS to be prepared to provide AQI services at all international ports in the United States, without taking into account the additional annual costs shown in the following table. The base need is not affected by projected changes in the volumes of each category of service.)

We then added new annual costs associated with increased PPQ activities in the United States to project the total AQI program costs to PPQ for fiscal years 1999 through 2002.

International Services is the APHIS program that administers the AQI program in foreign regions. We projected the annual costs to International Services of providing international preclearance services for fiscal years 1999 through 2002 based on FY 1998 program costs plus new costs associated with preclearance activities in Bermuda and the Bahamas. The projected International Services annual costs were then added to PPQ's annual costs to arrive at projected AQI annual program cost subtotals.

We then added agency support costs and departmental charges to the projected annual costs for PPQ and International Services to arrive at projected annual AQI program costs.

The projected annual program costs take into account the costs of providing AQI services only. They do not contain a reserve-building component. The projected cost for each fiscal year simply reflects the amount we anticipate it will cost to run the AQI program for that year.

As shown in the following table, we are proposing to phase in new AQI services over fiscal years 1999 through 2002 in order to supplement our existing work force at expanding and new ports.

AGRICULTURAL QUARANTINE INSPECTION (AQI) PROGRAM PROJECTED COSTS FY 1999-2002

| Basis for calculating funding need | FY 1999 estimate | FY 2000 estimate | FY 2001 estimate | FY 2002 estimate |
|--|------------------|------------------|------------------|------------------|
| Plant Protection and Quarantine (PPQ) | | | | |
| Base Need (FY 1998 costs + FY 1999 pay costs) | \$130,001,000 | \$130,001,000 | \$130,001,000 | \$130,001,000 |
| Personnel Increase: | | | | |
| 116 New positions @ 2 months | 2,779,000 | ..... | ..... | ..... |
| 315 New positions + 116 in FY 99 ..... | ..... | 32,149,000 | ..... | ..... |
| 40 New positions + 116 in FY 99; + 315 in FY 00 ..... | ..... | ..... | 41,003,000 | ..... |
| 40 New positions + 116 in FY 99; + 315 in FY 00; + 40 in FY 01 ..... | ..... | ..... | ..... | 50,027,000 |
| Automation/Maintenance | 1,900,000 | 4,500,000 | 4,500,000 | 1,000,000 |
| Upgrade/Replace X-Ray Equipment: | | | | |
| 20 machines | 1,540,000 | ..... | ..... | ..... |
| 20 machines ..... | ..... | 1,540,000 | ..... | ..... |
| 16 machines ..... | ..... | ..... | 1,232,000 | ..... |

AGRICULTURAL QUARANTINE INSPECTION (AQI) PROGRAM PROJECTED COSTS FY 1999–2002—Continued

| Basis for calculating funding need | FY 1999 estimate | FY 2000 estimate | FY 2001 estimate | FY 2002 estimate |
|---|------------------|------------------|------------------|------------------|
| New X-Ray Equipment: | | | | |
| 5 machines | 3,000,000 | ..... | ..... | ..... |
| 10 machines ..... | ..... | 6,000,000 | ..... | ..... |
| 5 machines ..... | ..... | ..... | 3,000,000 | ..... |
| 5 machines ..... | ..... | ..... | ..... | 3,000,000 |
| New and Replacement Vehicles: | | | | |
| 50 vehicles | 800,000 | ..... | ..... | ..... |
| 50 vehicles ..... | ..... | 800,000 | ..... | ..... |
| 50 vehicles ..... | ..... | ..... | 800,000 | ..... |
| 32 vehicles ..... | ..... | ..... | ..... | 512,000 |
| New and Expanding Facility Costs: | | | | |
| JFK (NY); Laredo IV and Eagle Pass II (TX) | 500,000 | ..... | ..... | ..... |
| Miami and Sanford (FL); Atlanta (GA), Brownsville, El Paso, and Los Tomates (TX); Santa Teresa (NM) ..... | ..... | 1,900,000 | ..... | ..... |
| PPQ Subtotal | 140,520,000 | 176,890,000 | 180,536,000 | 184,540,000 |
| International Services (IS) | 1,099,072 | 1,826,112 | 1,991,918 | 2,132,275 |
| Program Subtotal | 141,619,072 | 178,716,112 | 182,526,918 | 186,672,275 |
| Support Costs: | | | | |
| Agency Overhead & Departmental Charges @ 10.63% | 16,838,508 | 21,249,346 | 21,702,451 | 22,195,333 |
| AQI Program Cost | 158,457,580 | 199,965,458 | 204,229,369 | 208,867,608 |

Reserve Funds

In order to provide adequate AQI services, we have been forced to use reserve funds to cover our costs for fiscal years 1997 through 1999. This has reduced our reserve levels at an alarming rate. Since the current fees do not contain a reserve component, the potential to run out of reserve funds entirely could become a reality in FY 2001 if we do not add a reserve component to the fees. The following table shows our use of reserve funds to recover costs that were higher than available user fee collections in FY 1998.

FY 1998 RESERVE USAGE

| | |
|--|---------------|
| Total user fee collections | \$150,804,661 |
| Unavailable collections ¹ | – 13,829,975 |
| Available fee collections | 136,974,686 |
| Cost of AQI program administration | – 140,094,753 |
| Funding shortage | – 3,120,067 |
| FY 1998 available reserve | +17,785,662 |

FY 1998 RESERVE USAGE—Continued

| | |
|---------------------------------|------------|
| FY 1999 available reserve | 14,665,595 |
|---------------------------------|------------|

¹ These collections were unavailable to pay for services provided in FY 1998 because they were either not collected until after the close of FY 1998, or are unavailable for expenditure until FY 2003 under certain provisions of the FACT Act.

Further, for FY 1999, we are projecting the need to cover \$10.2 million in costs from our reserve. As a result, the reserve would contain a balance of less than \$3.9 million at the start of FY 2000 (2 percent of the cost of running the program for that year), as shown in the following table.

AQI USER FEE PROJECTED RESERVE—CASH BASIS ACCOUNTING METHOD

| | Fiscal Year | | | | |
|--|---------------|---------------|---------------|---------------|---------------|
| | 1998 | 1999 | 2000 | 2001 | 2002 |
| Fee Collections | \$150,804,661 | \$159,727,857 | \$201,066,541 | \$214,822,796 | \$217,421,963 |
| Unavailable collections ¹ | 13,829,975 | 12,000,000 | 5,000,000 | ..... | ..... |
| Available collections | 136,974,686 | 147,727,857 | 196,066,541 | 214,822,796 | 217,421,963 |
| AQI Program Cost | 140,094,753 | 158,457,580 | 199,965,458 | 204,229,369 | 208,867,608 |
| Shortage/surplus | – 3,120,067 | – 10,729,723 | – 3,898,917 | 10,593,427 | 8,554,355 |
| Projected available reserve BEGIN FY | 17,785,662 | 14,665,595 | 3,935,872 | 36,955 | 10,630,382 |
| Projected available reserve END FY | 14,665,595 | 3,935,872 | 36,955 | 10,630,382 | 19,184,737 |
| Unavailable until FY 2003 ¹. | | | | | |
| FY 1997 carry-over | 2,000,000 | ..... | ..... | ..... | ..... |
| Annual | 13,829,975 | 12,000,000 | 5,000,000 | ..... | ..... |

AQI USER FEE PROJECTED RESERVE—CASH BASIS ACCOUNTING METHOD—Continued

| | Fiscal Year | | | | |
|------------------|-------------|------------|------------|------------|------------|
| | 1998 | 1999 | 2000 | 2001 | 2002 |
| Cumulative | 15,829,975 | 27,829,975 | 32,829,975 | 32,829,975 | 32,829,975 |

¹ These collections are unavailable to pay for services provided because they were either not collected until after the close of the fiscal year in which they were earned, or are unavailable for expenditure until FY 2003 under provisions of the FACT Act.

Rebuilding the Reserve

While our spending authority is on a fiscal year basis, the accounting method used by the Department of Treasury for user fee collections is based on the date the funds are received and recorded in the Treasury (cash basis—see the table above), not when they are earned (accrual basis). The final amount that is available to us from the AQI account each year is based on the amount collected and recorded in the account between October 1 and September 30 of each fiscal year. Since most of the fourth quarter payments are not due and therefore not received until after the fiscal year is over, we are not able to use those funds to pay for providing services in the fiscal year when they are earned.

In the July 1997 final rule, we explained that it is necessary to maintain a reasonable reserve balance in the AQI account in order to account for

fees earned for providing AQI services in a given fiscal year that were not received until after that fiscal year ended. The reserve also provides us with a means to ensure the continuity of AQI service in cases of bad debt, carrier insolvency, and fluctuations in activity volumes.

When we set the current user fees, we did not include a reserve-building component in them because we believed that the reserve levels would be maintained with fees we collected in excess of the program costs. Although our user fees are designed to recover the cost of providing services, in some instances, due to the fact that fees are rounded up to the nearest quarter or nickel, we may collect additional funds that are applied to the individual activity reserve balances. The reserve levels have been maintained in the past through such additional collections.

However, due to increasing costs, we cannot maintain our reserve with the current user fees. Therefore, we are proposing to include a reserve-building component in the user fees to rebuild the reserve levels for each activity over fiscal years 2000 through 2002. Under this proposal, the reserve levels for each category of service have been calculated to reflect approximately 25 percent of each activity's annual cost. The proposed reserve component would gradually rebuild the reserve balance to a reasonable level of approximately 25 percent of the AQI annual program costs to ensure that the reserve is fully funded by fiscal year 2002.

The table below shows the final annual cost of the AQI program once costs to rebuild the reserve are added. The final annual costs are the figures on which we based our proposed fees. The fees are designed to recover the full cost of the AQI program.

TOTAL AQI PROGRAM COSTS

| | FY 2000 | FY 2001 | FY 2002 |
|--------------------------------------|-------------|-------------|-------------|
| Cost of AQI program services | 199,965,458 | 204,229,369 | 208,867,608 |
| Cost of rebuilding the reserve | 17,125,000 | 17,550,000 | 21,480,000 |
| (% of total program cost) | (8.56%) | (8.59%) | (10.28%) |
| Total AQI program costs | 217,090,458 | 221,779,369 | 230,347,608 |

Calculation of Fees

Once we established the total annual costs to administer the AQI program, including an amount to rebuild the AQI account reserve to a reasonable level, we began the calculation of our proposed fees.

Volumes

First, we estimated the annual volume for each category of service that would be subject to inspection. The estimates were based on annual rates of activity for each service category shown in our FY 1992 through FY 1997 collection history.

In our commercial aircraft, commercial vessel, and commercial truck service categories, we calculated the percentage of change in volume between FY 1995 and FY 1996, and FY 1996 and FY 1997. Then we calculated

the average percentage of change for those years. We used this average percentage of change to project volumes for fiscal years 1999 through 2002. We have collection data for FY 1998 available, but decided not to use it in our calculations because numerous adjustments to the FY 1998 collection data could be made through the end of FY 2000 (i.e., we will have to account for funds for overpaid vessels and adjustments to aircraft fees remittances resulting from audit findings). Therefore, we will review the FY 1998 collection data prior to publishing a final rule and make necessary adjustments to the calculations.

For commercial trucks, however, we had to revise our projected volume for FY 1998 because the actual volume appeared to be much higher. The average percentage of change from FY

1995 to FY 1996, and from FY 1996 to FY 1997, was -1.27 for commercial trucks. The actual volume for FY 1998 shows a 10.22 percent increase over the volume in FY 1997. Nevertheless, we believe the volume increase for FY 1998 is misleading. During the first quarter of FY 1998, the wrong fee was originally assessed for individual border crossings (\$2.00 instead of \$4.00). In many cases, the corrected fee was eventually collected, but was recorded in the system as an individual crossing, thus inflating the actual volumes for FY 1998. Furthermore, a review of commercial truck volumes for fiscal years 1993 through 1997 shows that the percentage of change ranged from 2.59 percent to -2.77 percent. Based on these relatively stable but slightly negative changes in volume, we are projecting commercial truck volumes for fiscal

years 1999 through 2002 based on the percentage of change we calculated for fiscal years 1995 through 1997 (–1.27

percent). These volumes are shown in the following table:

VOLUMES/PERCENTAGE OF CHANGE FROM PREVIOUS YEAR

| Fiscal Year | Commercial aircraft | | Commercial vessel | | Commercial truck | |
|---|---------------------------------|--------|---------------------------------|--------|------------------------------------|--------|
| | Volume | Change | Volume | Change | Volume | Change |
| 1995 | 361,657 | ..... | 48,098 | ..... | 612,743 | ..... |
| 1996 | 351,989 | –2.67% | 47,655 | –0.92% | 614,214 | 0.24% |
| 1997 | 380,911 | 8.22% | 48,758 | 2.31% | 597,173 | –2.77% |
| 1998 | 391,469 | 2.77% | 51,098 | 4.80% | 658,204 | 10.22% |
| Average: FY 1996 & FY 1997 percentage of change | $(-2.67\% + 8.22\%)/2 = 2.77\%$ | | $(-0.92\% + 2.31\%)/2 = 0.70\%$ | | $(0.24\% + (-2.77\%))/2 = -1.27\%$ | |
| Fiscal year | Projected volume | Change | Projected volume | Change | Projected volume | Change |
| 1999 | 402,320 | 2.77% | 51,454 | 0.70% | 649,863 | –1.27% |
| 2000 | 413,472 | 2.77% | 51,813 | 0.70% | 641,628 | –1.27% |
| 2001 | 424,933 | 2.77% | 52,173 | 0.70% | 633,498 | –1.27% |
| 2002 | 436,711 | 2.77% | 52,537 | 0.70% | 625,471 | –1.27% |

In our commercial truck decal service category, we found that the volume of users continued to increase, but at a decreasing rate. We determined that the volume would most likely continue to increase slightly, but that the increase in the number of decals would most likely be limited to new or additional growth in trade. The decal program has been in operation for several years now, and we believe that the companies interested in buying them are doing so now. Therefore, we are projecting a modest 5 percent growth increase for each year, as shown in the following table:

VOLUMES OF COMMERCIAL TRUCK DECALS/PERCENTAGE OF CHANGE FROM PREVIOUS YEAR

| Fiscal year | Volume | Percentage of change |
|------------------------|--------|----------------------|
| 1992 | 9,256 | ..... |
| 1993 | 12,403 | 34.00% |
| 1994 | 13,476 | 8.66% |
| 1995 | 14,317 | 6.24% |
| 1996 | 15,758 | 10.07% |
| 1997 | 18,003 | 14.24% |
| 1998 | 19,298 | 7.20% |
| 1999 (projected) | 20,263 | 5.00% |
| 2000 (projected) | 21,276 | 5.00% |
| 2001 (projected) | 22,340 | 5.00% |
| 2002 (projected) | 23,457 | 5.00% |

In our international air passenger service category, we found that the volume of users continued to increase each fiscal year 1992 through 1998, but at a decreasing rate. Using the international air passenger volumes listed below, we estimated percentage of increase in volume for FY 1999 in the following manner:

1. First, we subtracted the percentage of change in volume from FY 1996 to FY 1997 (4.39%) from the percentage of change in volume from FY 1997 to FY 1998 (3.28%), yielding a rate of decline of –1.11.

2. We then divided this figure by the percentage of change in volume from FY 1996 to FY 1997 (4.39%) to obtain a rate of decline from FY 1996 to FY 1997 of –25.28.

3. We then multiplied this rate of decline by the percentage of change in volume from FY 1997 to FY 1998 (3.28%), yielding a rate of decline of –0.8293.

4. Finally, we added this result to the percentage of change in volume from FY 1997 to FY 1998 (3.28%), yielding a projected increase in volume of 2.45 percent for FY 1999.

This process was repeated to estimate growth for each fiscal year from 2000 through 2002. These volumes are shown in the table below.

VOLUMES OF INTERNATIONAL AIR PASSENGERS/ PERCENTAGE OF CHANGE FROM PREVIOUS YEAR

| Fiscal year | Volume | Percent change |
|-------------|------------|----------------|
| 1992 | 35,442,923 | ..... |
| 1993 | 39,630,213 | 11.81% |
| 1994 | 41,784,350 | 5.44% |
| 1995 | 44,710,181 | 7.00% |
| 1996 | 48,296,322 | 8.02% |
| 1997 | 50,414,566 | 4.39% |

VOLUMES OF INTERNATIONAL AIR PASSENGERS/ PERCENTAGE OF CHANGE FROM PREVIOUS YEAR—Continued

| Fiscal year | Volume | Percent change |
|------------------------|------------|----------------|
| 1998 | 52,068,452 | 3.28% |
| 1999 (projected) | 53,346,102 | 2.45% |
| 2000 (projected) | 54,325,203 | 1.84% |
| 2001 (projected) | 55,070,989 | 1.37% |
| 2002 (projected) | 55,636,477 | 1.03% |

The volumes in our loaded railroad car service category increased from 74,006 in 1994 to 102,265 in 1995 to 147,315 in 1996 as a result of the North American Free Trade Agreement. The volume decreased in 1997, but for 1998, there was a slight increase in volume over 1996. However, one of the five railroad companies transiting goods across the U.S.-Mexican border has ceased operations indefinitely. In addition, due to recent business consolidations, the number of railroad companies crossing the border has decreased from five to three. Since our fee is assessed to loaded railroad cars only, we do not anticipate much increase in individual loaded railroad cars, but better utilization of the cars by railroad companies. We believe that future increases above the FY 1998 level will be minimal, and are projecting a zero percent increase each fiscal year through 2002. We will watch the railroad car volumes carefully, and if our volume assumption is incorrect, we will take steps immediately to adjust the fees accordingly. The volumes are shown in the following table.

VOLUMES OF LOADED RAILROAD CAR/PERCENTAGE OF CHANGE FROM PREVIOUS YEAR

| Fiscal year | Volume | Percent change |
|------------------------|---------|----------------|
| 1992 | 56,688 | ..... |
| 1993 | 64,023 | 12.94% |
| 1994 | 74,006 | 15.59% |
| 1995 | 102,265 | 38.18% |
| 1996 | 147,315 | 44.05% |
| 1997 | 141,717 | -3.80% |
| 1998 | 148,300 | 4.65% |
| 1999 (projected) | 148,300 | 0.00% |
| 2000 (projected) | 148,300 | 0.00% |
| 2001 (projected) | 148,300 | 0.00% |
| 2002 (projected) | 148,300 | 0.00% |

Distribution of Costs

Next, we projected the direct costs of providing AQI services in fiscal years 1999 through 2002 for each category of service: Commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. The cost of providing these services in prior fiscal years served as a basis for calculating our projected costs.

In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs. We published a detailed description of these procedures in the **Federal Register** on December 31, 1992 (57 FR 62468-62473, Docket No. 92-148-1), as part of a document amending some of our user fees.

As part of our accounting procedures, we established distinct accounting codes to record costs that can be directly related to each inspection activity. At the State level and below, the following costs are direct-charged to the AQI User Fee Account: Salaries and benefits for inspectors and canine officers, supervisors (such as port directors) and clerical staff; equipment used only in connection with services subject to user

fees; contracts; and large supply items such as x-ray equipment or uniforms.

Other costs that cannot be directly charged to individual accounts are charged to "distributable" accounts established at the State level. 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 the ratio of the costs that are directly charged to each activity divided by the total costs directly charged to each account at the field level. For example, if a State office performs work on domestic programs, AQI user fee programs, and AQI appropriated programs, the costs are distributed among the programs, based on the percentage of the direct costs for that activity at the field level that are charged to that activity. Costs incurred at the regional-, headquarters program staff-, and agency-level support offices are also prorated to the separate AQI activities based on the percentage of the costs that were directly charged to each

activity at the field level, as discussed above.

Using these accounting procedures, we calculated the total cost of providing AQI services in each past fiscal year by determining the amounts in each direct-charge account, then adding the pro rata share of the distributable accounts maintained at the State, regional, headquarters, and agency levels.

We then projected total costs to provide each category of service during each future fiscal year. Each projection included the costs of program delivery, which are incurred at the State level and below. Also included was a pro rata share of the program direction and support costs, as explained above, which include items at the regional and headquarters program staff levels. Finally, each projection included a pro rata share of agency-level support costs, as discussed above, which includes activities that support the entire agency, such as recruitment and development, legislative and public affairs, regulations development, regulatory enforcement, budget and accounting services, and payroll and purchasing services. Costs for billing and collection services, legal

counsel, and rate development services that are directly related to user fee activities are directly added to the user fee activities they support and are not included in the proration of agency-level costs.

User Fee Calculation

The following tables show our user fee calculations. To calculate the user fees, we divided the sum of the costs for each service by the projected volume subject to inspection for that service,

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 enough revenue to maintain a reasonable reserve. Any excess collections due to rounding would be 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 large volume of passengers, if we rounded up to the nearest quarter we would recover far more than is necessary. Therefore, we rounded the passenger user fee up to the nearest nickel.

AQI USER FEE CALCULATIONS, FY 2000

| AQI activity | Estimated total costs ¹ | Projected volume | Raw fee | Rounded fee | Projected revenue |
|-------------------------------------|------------------------------------|------------------|---------|-------------|-------------------|
| Commercial vessel | 24,115,749 | 51,813 | 465.44 | 465.50 | 24,118,952 |
| Commercial truck ² | 4,442,247 | 1,067,156 | 4.16 | 4.25 | 4,535,413 |
| Loaded railroad cars | 977,907 | 148,300 | 6.59 | 6.75 | 1,001,025 |
| Commercial aircraft | 26,397,363 | 413,472 | 63.84 | 64.00 | 26,462,208 |
| Airline passengers | 161,157,192 | 54,325,203 | 2.97 | 3.00 | 162,975,609 |
| Total | 217,090,458 | ..... | ..... | ..... | 219,093,206 |

¹ Total program costs include the cost of rebuilding the AQI account available reserve.

² Decals could be purchased at 20 times the individual crossing rate, or \$85.00 per decal, and would be valid from January 1 through December 31, 2000.

AQI USER FEE CALCULATIONS, FY 2001

| AQI activity | Estimated total costs ¹ | Projected volume | Raw fee | Rounded fee | Projected revenue |
|-------------------------------------|------------------------------------|------------------|---------|-------------|-------------------|
| Commercial vessel | 24,755,100 | 52,173 | 474.48 | 474.50 | 24,756,089 |
| Commercial truck ² | 4,832,670 | 1,080,302 | 4.47 | 4.50 | 4,861,359 |
| Loaded railroad cars | 1,018,647 | 148,300 | 6.87 | 7.00 | 1,038,100 |
| Commercial aircraft | 27,476,799 | 424,933 | 64.66 | 64.75 | 27,514,412 |
| Airline passengers | 163,696,152 | 55,070,989 | 2.97 | 3.00 | 165,212,967 |
| Total | 221,779,368 | ..... | ..... | ..... | 223,382,926 |

¹ Total program costs include the cost of rebuilding the AQI account available reserve.

² Decals could be purchased at 20 times the individual crossing rate, or \$90.00 per decal, and would be valid from January 1 through December 31, 2001.

AQI USER FEE CALCULATIONS, FY 2002

| AQI activity | Estimated total costs ¹ | Projected volume | Raw fee | Rounded fee | Projected revenue |
|-------------------------------------|------------------------------------|------------------|---------|-------------|-------------------|
| Commercial vessel | 25,242,791 | 52,537 | 480.48 | 480.50 | 25,244,029 |
| Commercial truck ² | 5,046,927 | 1,094,614 | 4.61 | 4.75 | 5,199,417 |
| Loaded railroad cars | 1,024,546 | 148,300 | 6.91 | 7.00 | 1,038,100 |
| Commercial aircraft | 28,402,958 | 436,711 | 6.504 | 6.525 | 28,495,393 |
| Airline passengers | 170,630,386 | 55,636,477 | 3.07 | 3.10 | 172,473,079 |
| Total | 230,347,608 | ..... | ..... | ..... | 232,450,016 |

¹ Total program costs include the cost of rebuilding the AQI account available reserve.

² Decals could be purchased at 20 times the individual crossing rate, or \$95.00 per decal, and would be valid from January 1 through December 31, 2002.

Current and Proposed User Fees

Our current user fees for AQI services for fiscal years 1999 through 2002 and the user fees we are proposing to charge for these services for FY 2000 through FY 2002 are shown in the table below. Also, below, we describe each AQI service, and explain additional activities and costs as they pertain to each service individually.

AGRICULTURAL QUARANTINE INSPECTION (AQI) USER FEES

| Service | Current FY 1999 | Currently scheduled FY 2000 | Proposed FY 2000 | Currently scheduled FY 2001 | Proposed FY 2001 | Currently scheduled FY 2002 | Proposed FY 2002 |
|------------------------------|--------------------|-----------------------------------|---------------------|-----------------------------------|---------------------|-----------------------------------|---------------------|
| Commercial Vessel | 454.50 | 461.75 | 465.50 | 471.25 | 474.50 | 480.25 | 480.50 |
| Commercial Truck | 4.00 | 4.00 | 4.25 | 4.00 | 4.50 | 4.25 | 4.75 |
| Commercial Truck Decal | 80.00 | 80.00 | ¹ 85.00 | 80.00 | ¹ 90.00 | 85.00 | ¹ 95.00 |
| Loaded Railroad Car | 6.50 | 6.75 | 6.75 | 6.75 | 7.00 | 7.00 | 7.00 |
| Commercial Aircraft | 59.75 | 60.25 | 64.00 | 61.25 | 64.75 | 62.25 | 65.25 |
| Airline Passenger | 2.00 | 2.05 | 3.00 | 2.10 | 3.00 | 2.15 | 3.10 |

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

Commercial Vessels

We inspect commercial vessels of 100 net tons or more arriving at ports of entry into the customs territory of the United States. Vessels pay a user fee for the first 15 arrivals at ports. The US Customs Service (Customs) collects this user fee for APHIS.

The proposed fees for fiscal years 2000, 2001, and 2002 are approximately 0.8, 0.7, and 0.05 percent higher than the respective currently scheduled fees. The proposed fees would allow us to recover increased costs attributed to:

- Anticipated new hires in fiscal years 1999 and 2000 of at least 51 inspection personnel at seaports throughout the United States, including Miami, FL; Elizabeth, NJ; San Juan, PR; and Charleston, SC.

- New and replacement vehicles, equipment, and additional x-ray equipment.

- The addition of a reserve component to the fees to gradually rebuild the vessel reserve to a reasonable level of approximately 25 percent of annual operating costs by the end of FY 2002.

For fiscal years 2001 and 2002, the proposed fees are less than one half of one percent higher than the currently scheduled fees. This is attributed to conducting the increased volume of vessel inspections with the same number of personnel and new and improved technology.

Commercial Trucks

We inspect commercial trucks arriving at land ports in the customs territory of the United States from Mexico.¹ Customs also collects our truck user fees.

The proposed fees for fiscal years 2000, 2001, and 2002 are approximately 6.25, 12.5, and 11.8 percent higher than the respective currently scheduled fees. The proposed fees would allow us to recover increased costs attributed to:

- Anticipated new hires in fiscal years 1999 through 2002 of approximately 39 additional inspection personnel at various land border ports, including Brownsville and El Paso, TX, and Santa Teresa, NM.

- New and replacement vehicles, equipment, and additional x-ray equipment.

- The addition of a reserve component to the fees to gradually rebuild the depleted truck reserve to a reasonable level of approximately 25 percent of the annual operating costs by the end of FY 2002.

The regulations currently require that commercial trucks pay the APHIS user fee each time they enter the customs territory of the United States from Mexico at the same time they pay the Customs user fee. Our regulations also allow commercial trucks to prepay the APHIS user fee; however, this only applies if they are prepaying the Customs user fee. In that case, the required APHIS user fee is 20 times the user fee for each arrival, and is valid for an unlimited number of entries during the calendar year (see 7 CFR 354.3(c)(3)(i) of the regulations). The truck owner or operator, upon payment of the APHIS and the Customs user fees, receives a decal to place on the truck windshield. This is a joint decal, indicating that both the Customs and APHIS user fees for the truck have been paid for that calendar year.

Commercial Railroad Cars

We inspect loaded commercial railroad cars arriving at land ports in the customs territory of the United States from Mexico.² The fees for this service are calculated and remitted by the individual railroad companies within 60 days after the end of each calendar month.

The proposed fee for fiscal year 2001 is approximately 3.7 percent higher than the currently scheduled fee. The fees for

fiscal years 2000 and 2002 will not change. The proposed fees would allow us to recover increased costs attributed to:

- Anticipated new hires in fiscal years 2000 through 2002 of approximately 18 additional inspection personnel at various land border ports, including Los Tomates and Brownsville, TX, and Nogales, AZ.

- New and replacement vehicles and equipment.

- The addition of a reserve component to the fees to gradually rebuild the railroad car reserve to a reasonable level of approximately 25 percent of the annual operating costs by the end of FY 2002.

Commercial Aircraft

We also 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 proposed fees for fiscal years 2000, 2001, and 2002 are approximately 6.2, 5.7, and 4.8 percent higher than the respective currently scheduled fees. The proposed fees would allow us to recover increased costs attributed to:

- Anticipated new hires in fiscal years 1999 through 2002 of approximately 137 additional inspection personnel at various existing and expanding or new airport facilities, including Miami, Orlando, and Ft. Lauderdale, FL; Atlanta and Savannah, GA; Chicago, IL; JFK International Airport, NY; Dallas, San Antonio, and Houston, TX; Los Angeles and San Francisco, CA; Honolulu, HI; and San Juan, PR.

- New and replacement vehicles, equipment, and additional x-ray equipment.

- The addition of a reserve component to the fees to gradually rebuild the commercial aircraft reserve to a reasonable level of approximately 25 percent of the annual operating costs by the end of FY 2002.

¹ 7 CFR 354.3(c)(2)(i) of the regulations exempts commercial trucks entering the customs territory of the United States from Canada from paying this APHIS user fee.

² Section 354.3(c)(2)(i) of the regulations exempts loaded commercial railroad cars entering the customs territory of the United States from Canada from paying the APHIS user fee.

In addition, we are working closely with Customs on the development and installation at major airports of a joint automated cargo tracking system, which would greatly improve the paper tracking cargo system currently used at most airports.

International Airline Passengers

We also inspect international airline passengers arriving at airports in the customs territory of the United States.

Millions of travelers pass through U.S. airports daily. APHIS' overall goal is a timely, seamless inspection process, integrated with clearance processes of other agencies in the Federal Inspection Service (FIS) that will ensure the fastest passenger clearance time while safeguarding against the introduction of harmful pests and diseases of animals and plants. Our joint goal is to improve enforcement and regulatory processes in order to clear most international air passengers through the FIS inspection process in 30 minutes or less. In partnership with the airline industry, advanced information will be obtained on 80 percent of international air passengers through the use of the Advance Passenger Information System to expedite the overall processing of passengers with no loss in enforcement.

To accomplish these goals and to ensure adequate coverage, we anticipate additional costs that would result from:

- Hiring approximately 216 additional inspection personnel in fiscal years 1999 through 2002 at various new and expanding airport facilities, including Miami, Sanford, and Tampa, FL; New Orleans, LA; Atlanta and Savannah, GA; Chicago, IL; JFK International Airport and Brooklyn, NY; Dallas, Houston, San Antonio, El Paso, Galveston, and Brownsville, TX; Los Angeles, Fresno, Sacramento, and San Francisco, CA; Honolulu and Maui, HI; San Juan, PR; Bermuda, and the Bahamas.
- Purchasing new and replacement vehicles, equipment, and additional x-ray equipment.
- Purchasing and installing new high definition x-ray machines with luggage tracking and marking capability at most of the larger airports throughout the country.
- Adding about 50 new canine teams (one officer and one dog per team) at airports throughout the country, including JFK International Airport, NY; Newark, NJ; Chicago, IL; Honolulu, HI; Miami and Ft. Lauderdale, FL; Atlanta, GA; Houston, Dallas, Pharr, Laredo, and El Paso, TX; Los Angeles, Oakland, and San Francisco, CA.
- The addition of a reserve component to the fees to gradually

rebuild the international airline passenger reserve to a reasonable level of approximately 25 percent of the annual operating costs by the end of FY 2002.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The economic analysis prepared for this proposed rule provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of economic effects on small entities as required by the Regulatory Flexibility Act. The analysis is summarized below. Copies of the full analysis are available by contacting Ms. Donna Ford at the address listed under **FOR FURTHER INFORMATION CONTACT**.

Introduction

APHIS is proposing to revise existing agricultural quarantine and inspection (AQI) user fees to recover additional and unanticipated program costs and to rebuild the AQI reserve. The proposed AQI user fee revisions would become effective in the first quarter of FY 2000 and would be in effect through FY 2002.

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

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

Need for Regulation

The purpose of AQI inspections at United States ports of entry is to prevent international travelers and conveyances from introducing harmful plant and animal pests that could damage U.S. agriculture and cause substantial economic losses to domestic producers, consumers, exporters, and to a range of allied agricultural industries. In the case

of AQI user fees, those international travelers or conveyances who may carry agricultural pests or diseases from abroad are required to pay for AQI program activities.

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

Composition of Proposed Fees

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

Direct Program Costs

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

Program Support Costs

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

Agency-level Costs

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

Administrative Costs

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

The Reserve Fund

The FACT Act allows for a reasonable balance in the AQI User Fee Account. The reserve serves several purposes. The reserve insures that the Agency has access, through the AQI User Fee Account, to funds for normal operating expenses. Second, the reserve fund will insure that the Agency has sufficient

operating funds in cases of bad debt, carrier insolvency, or fluctuations in activity volumes. Further, in the July 1997 final rule, we explained that it is also necessary to maintain a reasonable reserve balance in the AQI account in order to account for fees earned for providing AQI services in a given fiscal year that were not received until after that fiscal year ended.

Regulatory Flexibility Analysis

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

Commercial Vessels

We are proposing to amend the scheduled user fees for inspecting commercial vessels by increasing the fees by \$3.75 in FY 2000, by \$3.25 in FY 2001, and by \$0.25 in FY 2002. APHIS inspects vessels of 100 net tons or more arriving from all foreign ports, except Canada. Typically, APHIS inspects (and charges) dry cargo vessels operating between the United States and foreign ports. At the beginning of 1996 there were 192 U.S. dry cargo vessels.

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

Anecdotal information suggests that many of the companies that are subject to AQI inspections are not U.S. firms. Further, it is unclear how many of the 125 U.S. firms would actually be affected by the increase in AQI user fees, and how many of the affected firms would be small entities. We do know that total daily operating costs for dry cargo vessels idle in port average between \$23,600 and \$26,800. The

proposed user fee increases of \$3.75 in FY 2000, \$3.25 in FY 2001, and \$0.25 in FY 2002 are very insignificant fractions of daily operating costs, suggesting that the proposed fee revision will not have a significant economic impact on small firms operating vessels.

Commercial Trucks

APHIS inspects trucks entering the United States from Mexico. It is unclear how many of these trucks entering the United States from Mexico are owned and operated by U.S. firms. According to a recent General Accounting Office report, roughly 11,000 trucks cross the border each week day (a total of 3,113,091 in FY 1996) from Mexico into the United States. The bulk (93 percent) of northbound truck traffic comes through seven major customs ports: Otay Mesa, California; Calexico, California; Nogales, Arizona; El Paso, Texas; Laredo, Texas; McAllen, Texas; and Brownsville, Texas. Many of these trucks are owned and operated by Mexican firms. At present, trucks from Mexico are limited to commercial zones along the border and many make multiple daily crossings. Mexican brokers tend to control much of the truck traffic at some border locations. Reliable data on future traffic patterns are not available.

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

If we assume that any small U.S. trucking firm that regularly transports freight from Mexico would purchase an APHIS truck decal, which is good for an unlimited number of entries during the calendar year, the proposed increase in user fees could cost a small firm, at most, an additional \$5 per truck or an estimated \$55 per firm in FY 2000; and \$10 per truck or an estimated \$110 per firm in FY 2001 and FY 2002. This estimate is based on the assumption that a small firm owns a maximum of 11 trucks. There are no official statistics on the fleet size of small trucking firms

either for selected border States, or for the United States as a whole. This assumption is based on private sector trucking industry data on 256,223 U.S. trucking firms representing a combined fleet of over 2.3 million vehicles. This data shows that 91 percent of firms own 11 or fewer trucks.

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

Loaded Commercial Railroad Cars

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

Commercial Airlines

We are proposing to amend the scheduled user fees for inspecting commercial aircraft by increasing the fees by \$3.75 in FY 2000, \$3.50 in FY 2001, and \$3.00 in FY 2002. International scheduled and unscheduled (chartered) air passenger, air cargo, and air courier carriers arriving at U.S. customs ports are subject to AQI inspections. Bureau of the Census data compiled by the SBA show that there were a total of 6107 firms in the U.S. air transportation industry in 1995, and that more than 5893 (or more than 96.5 percent) would have met the SBA criteria for small entity (employing fewer than 1500 employees). The typical small firm in the air transportation industry had 15 employees, an annual payroll of \$398 thousand, and estimated annual receipts of \$2.1 million.

APHIS regulations affect international flights, many of which are operated by foreign-owned firms. Those U.S. air transport firms that do not operate international flights are not subject to the proposed rule. Agency records show that, in 1995, only 123 of the 6107 firms in the air transportation industry were subject to AQI inspections because they

operated international flights. This data suggests that the increased user fees will not affect a substantial number of small air transportation companies. Even if all 123 U.S. airline firms were small entities (which they are not), the proposed fee revision would be applicable to only 2 percent of small firms in the industry. Using information on the number of firms inspected, the number of projected inspections, and the assumption that firms subject to inspection are distributed by size in a fashion consistent with the industry as a whole, we can develop very rough estimates of impact on small firms.

Each of the 123 U.S. companies would have had an airplane inspected between 1600 and 1700 times per year if inspections were prorated equally between large and small firms. In practice, small firms with fewer aircraft would probably have substantially fewer annual inspections, so we are overestimating the impact of fee revisions on small firms. Given the assumptions above, the increased fees listed above would translate into additional costs per firm of between \$5,000 and \$6,000 per year, which are less than three tenths of one percent of estimated annual receipts for the average small air transportation firm.

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

Other Costs and Benefits

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

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

The administrative cost involved in obtaining these savings would be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place, and since this

proposal would simply update existing user fees, increases in administrative costs would be small. Because the savings are sufficiently large, and the administrative costs would be small, it is likely that the net gain in reducing the burden on taxpayers as a whole would outweigh the cost of administering the revisions of the user fees.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 354

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

Accordingly, we propose to amend 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 would continue to read as follows:

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

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

§ 354.3 User fees for certain international services.

* * * * *

(b) * * *

(1) * * *

| Effective dates | Amount |
|--|--------|
| October 1, 1998 through September 30, 1999 | 454.50 |
| October 1, 1999 through September 30, 2000 | 465.50 |
| October 1, 2000 through September 30, 2001 | 474.50 |
| October 1, 2001 through September 30, 2002 | 480.50 |

* * * * *

(c) * * *

(1) * * *

| Effective dates | Amount |
|--|--------|
| October 1, 1998 through September 30, 1999 | 4.00 |
| October 1, 1999 through September 30, 2000 | 4.25 |
| October 1, 2000 through September 30, 2001 | 4.50 |
| October 1, 2001 through September 30, 2002 | 4.75 |

* * * * *

(d) * * *

(1) * * *

| Effective dates | Amount |
|--|--------|
| October 1, 1998 through September 30, 1999 | 6.50 |
| October 1, 1999 through September 30, 2000 | 6.75 |
| October 1, 2000 through September 30, 2001 | 7.00 |
| October 1, 2001 through September 30, 2002 | 7.00 |

* * * * *

(e) * * *

(1) * * *

| Effective dates | Amount |
|--|--------|
| October 1, 1998 through September 30, 1999 | 59.75 |
| October 1, 1999 through September 30, 2000 | 64.00 |
| October 1, 2000 through September 30, 2001 | 64.75 |
| October 1, 2001 through September 30, 2002 | 65.25 |

* * * * *

(f) * * *

(1) * * *

| Effective dates | Amount |
|--|--------|
| October 1, 1998 through September 30, 1999 | 2.00 |
| October 1, 1999 through September 30, 2000 | 3.00 |
| October 1, 2000 through September 30, 2001 | 3.00 |
| October 1, 2001 through September 30, 2002 | 3.10 |

* * * * *

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

Done in Washington, DC, this 30th day of July 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-20113 Filed 8-6-99; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 207, 607, and 807

[Docket No. 98N-1215]

Foreign Establishment Registration and Listing; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 60 days the comment period for the proposed rule that appeared in the **Federal Register** of May 14, 1999 (64 FR 26330). The proposed rule would require foreign establishments whose products are imported or offered for import into the United States to register with FDA and to identify a U.S. agent. The proposal would also describe some of the agent's responsibilities. FDA is taking this action in response to a request from the Canadian Embassy.

DATES: Written comments by October 8, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3380.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 14, 1999 (64 FR 26330), FDA published a proposed rule that would require foreign establishments whose products are imported or offered for import into the United States to register with FDA. The proposal would also require foreign establishments to identify a U.S. agent and would describe some of the agent's

responsibilities. FDA issued the proposed rule in order to implement section 417 of the Food and Drug Administration Modernization Act of 1997. Interested persons were given until July 28, 1999, to comment on the proposed rule.

On July 23, 1999, the Government of Canada requested an extension of the comment period, stating that the proposed requirement could present significant cost and compliance burdens to small and medium-sized Canadian establishments. The Canadian Government requested the extension so that it could: (1) Ensure that affected Canadian establishments are aware of the proposal and (2) prepare informed comments. The requested extension was 60 days.

The agency considered the Canadian Government's request and because the request was submitted too late to permit an extension of the comment period the agency is reopening the comment period until October 8, 1999.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the proposed rule and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 1, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99-20363 Filed 8-6-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 870, 888, and 890

[Docket No. 99N-2210]

Cardiovascular, Orthopedic, and Physical Medicine Diagnostic Devices; Reclassification of the Cardiopulmonary Bypass Accessory Equipment, Goniometer Device, and the Electrode Cable Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the cardiopulmonary bypass accessory equipment device that

involves an electrical connection to the patient, the goniometer device, and the electrode cable from class I into class II. FDA is also proposing to exempt these devices from the premarket notification requirements. This classification is being proposed on FDA's own initiative based on new information. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices.

DATES: Written comments by November 8, 1999. See section IX of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94-295), the SMDA (Public Law 101-629), and the FDAMA (Public Law 105-115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices