

Signed at Washington, D.C. on September 13, 1996.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service and Vice-President, Commodity Credit Corporation.

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Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 96-038-1]

RIN 0579-AA81

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. We are proposing to set user fees in advance for these services for fiscal years 1997 through 2002. We have determined that the fees must be adjusted to reflect the anticipated actual cost of providing these services through FY 2002.

DATES: Consideration will be given only to comments received on or before March 28, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-038-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-038-1. 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, BAD, APHIS, 4700 River Road Unit 54,

Riverdale, MD 20737-1232, (301) 734-5901.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as the "regulations") contain provisions for the collection of user fees for certain agricultural quarantine and inspection (AQI) services provided by the Animal and Plant Health Inspection Service (APHIS). In this docket, we are proposing to amend the user fees for servicing certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States from points outside the United States. (The customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.)

These user fees are authorized by section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a). This statute, known as the Farm Bill, was amended by section 504 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127), on April 4, 1996.

As amended, the 1990 Farm Bill provides that APHIS may prescribe and collect fees sufficient to cover the cost of providing AQI services in connection with the arrival, at a port in the customs territory of the United States, of commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. The Farm Bill also provides that APHIS may prescribe and collect fees sufficient to cover the cost of providing preclearance or preinspection at a site outside the customs territory of the United States to such passengers and vehicles. The Farm Bill further states that the fees should be sufficient to cover the cost of administering the fee program, and sufficient to maintain a reasonable balance in the Agricultural Quarantine Inspection User Fee Account (discussed below). In addition to user fees, the Farm Bill, as amended, authorizes APHIS to assess late payment penalties and interest charges if a person fails to pay a fee when due. The Farm Bill, as amended, establishes a no-year fund, known as the "Agricultural Quarantine Inspection User Fee Account" (Account), in the Treasury of the United States. All fees, late payment penalties, and interest charges collected by APHIS through fiscal year 2002 are to be deposited in the Account. For each fiscal year 1997 through 2002, funds in the Account are available to APHIS,

until expended, to cover the costs of providing AQI services and administering the AQI program.

For each of fiscal years 1997 through 2002, fees collected in excess of \$100 million may be used to cover the costs of providing AQI services and are automatically available.

This is a major change from the situation under our previous authority. Under our previous authority, reimbursement was controlled by spending limitations imposed through the annual congressional budget appropriations process. Since this spending authority was determined each year, it was not a dependable vehicle for funding long-term needs such as permanent personnel. This made it extremely difficult to keep pace with workload demands and be able to respond quickly to emergencies and unanticipated industry expansion.

Under the Farm Bill, as amended, we may spend all AQI user fees we collect in excess of \$100 million for the next 5 years, as long as we spend the money only to provide AQI services. Any money we do not spend must remain in the Account. After FY 2002, any unobligated balance in the Account and any other amounts collected but not disbursed will be credited to APHIS for future AQI activities.

We anticipate that this authority will have a major impact on the way APHIS administers its AQI user fees. Costs to provide services supported by user fees each year since fees were instituted in 1991 are shown in the following table. The cost of the AQI program exceeded \$100 million in FY 1995, and is projected to exceed \$100 million in FY 1996.

COSTS TO RUN THE AQI PROGRAM

FY 1991 ...	Appropriated funds for entire fiscal year (user fees collected were used to capitalize the AQI User Fee Account).
FY 1992 ...	\$ 85,922,000.00.
FY 1993 ...	83,362,000.00.
FY 1994 ...	98,257,160.00.
FY 1995 ...	105,907,999.00.
FY 1996 ...	127,027,001.00 (projected).

Since FY 1992, APHIS has received no directly appropriated funds to provide AQI services. Although the Farm Bill, as amended, speaks of "appropriations," the term does not mean money out of the general treasury to run the program, but only the dollar amount of user fees and other charges collected by APHIS that the Agency may spend on the AQI services.

We have always based our user fees on the actual costs to provide a service during the fiscal year. This means that

we did not begin calculating user fees for one fiscal year until the prior fiscal year ended. Further, our user fees are published in the Code of Federal Regulations. The process of amending the regulations does take time. The result of this process is that our user fees lag behind the level of current costs.

Our ability to provide AQI services is completely dependent on user fees. It is therefore extremely important that the user fees we set accurately reflect the actual cost of providing services at the time the services are provided. If our user fees do not accurately reflect costs, and we do not collect enough in fees and related charges to cover costs, we may be forced to curtail services. This could be very damaging to our customers and to international trade.

We are therefore proposing to set user fees in advance for AQI services for each fiscal year 1997 through 2002. This would help ensure that we fully recover the actual costs of providing services and that we can continue to provide at least the same level of service we now provide. In addition, setting user fees in advance would give our customers prior notice of fee changes. This would provide our customers with adequate time to make business plans, reprogram computers, and otherwise prepare for changing user fees. In the past, we have implemented new fees within 1 month of publishing a final notice. Users of our services have commented that better notification of fee changes would enable them to make better future business plans. 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.

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

Calculation of User Fees

To calculate the proposed user fees, we projected the direct costs of providing AQI services in FYs 1997 through 2002 for each category of service: commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international

airline passengers. The cost of providing these services in prior 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 62469-62471), as part of a document (Docket No. 92-148-1) 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 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 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 is 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.

Development of Estimated Spending Amounts

The estimated spending amounts for FYs 1997 through 2002 are based on the FY 1996 program level expenditures of \$106,188,000. The annual projections allow for potential promotions for PPQ Officers, plus annualized pay cost for FY 1996 new hires (217 new hires), plus estimated pay costs of 3.0% for FY 1997 and 3.1% annually for FYs 1998 through 2002, plus 30 new hires each year, plus cumulative new hire costs for FYs 1998 through 2002. We hired additional personnel in FY 1996; we anticipate additional new hiring in future years. This is because of projected increases in the number of conveyances and passengers subject to inspection. Our annual projected spending amount also includes the costs of additional preclearance activities in foreign locations (Bermuda, Bahamas, etc.), plus an allocation for agency support and departmental charges. In addition, in FYs 1997 and 1998, a one-time investment of \$3.175 million has been added for the complete national implementation of the Customs Service's Automated Cargo System (ACS) at all international ports of entry. While such an investment was planned for FY 1996, it was not accomplished. As a result, the FY 1997 spending estimate was developed as follows:

FY 1996 Base	\$106,188,000
Potential Promotions	1,500,000
Annualized Pay Cost—FY 1996 New Hires	4,400,000
Est. Pay Costs @ 3%	2,639,000
Additional 30 New Hire	1,500,000
International Preclearance ...	923,000
ACS Implementation	3,175,000
Subtotal	120,325,000
Agency Support @ 7.48% ...	10,027,000

Departmental Charges @ 2.8%	3,756,000
FY 1997 Total	\$134,108,000

A similar procedure was used to project the annual costs and the following table indicates the estimated spending amounts for FY 1997–2002.

Projected AQI user fee spending (in thousands)	Increase from previous fiscal year
FY 1997—\$134,108 ..	5.6 percent.
FY 1998—139,299	3.9 percent.
FY 1999—141,101	1.3 percent.
FY 2000—146,621	3.9 percent.
FY 2001—152,314	3.9 percent.
FY 2002—158,184	3.9 percent.

Volumes

We estimated the annual number of users, in each category of service, that would be subject to inspection. The estimates were based on our annual rates of increased activity for each service category shown in our FY 1992 through FY 1995 collection history. In our commercial aircraft, commercial

vessel, and commercial truck service categories, we used the average volume percentage change between FY 1994 and 1995 for all volume amounts. In our international air passenger and commercial truck decal service categories, we found that the volume continued to increase each year, but at a decreasing rate. Using the international air passenger volumes listed below, the estimated volume percentage increases were calculated in the following manner: (1) First, the volume percentage decline between FY 1994 and FY 1995 was determined by subtracting the volume percentage increase for FY 1994 (4.81%) from the volume percentage increase for FY 1995 (3.66%), yielding a negative 1.15%; (2) this figure was then divided by the volume percentage increase for FY 1994 (4.81%), which yields the volume percentage decline between FY 1994 and FY 1995 (i.e., -0.2391); (3) the volume percentage decline (-0.2391) was then multiplied by the volume percentage increase for FY 1995 (3.66%), yielding a negative 0.87505; (4)

finally, this result was added to the volume percentage increase for FY 1995, yielding a projected volume percentage increase of 2.78% for FY 1996. This process was repeated to find growth for FY 1997–20020.

Fiscal year	Volume	Percent change
1992	35,211,595	.....
1993	39,462,243	12.07
1994	41,361,521	4.81
1995	42,874,898	3.66

In our loaded railroad car service category, we determined that the volume increase from FY 1994 to FY 1995 (74,006 to 102,258) was a result of NAFTA and that future increases above the FY 1995 level will be minimal. Therefore, we are projecting a modest 2 percent increase each year. These rates of increase were then used to project activity volumes for each category of services for FY 1996 and beyond as shown in the following table.

Service Category	Actual 1995 volume	Estimated 1996 volume	Estimated 1997 volume	Estimated 1998 volume	Estimated 1999 volume	Estimated 2000 volume	Estimated 2001 volume	Estimated 2002 volume
Commercial Vessel	48,131	49,051	49,989	50,945	51,919	52,912	53,924	54,955
(Increase over prior year)		(1.91%)	(1.91%)	(1.91%)	(1.91%)	(1.91%)	(1.91%)	(1.91%)
Commercial Trucks	612,743	618,776	624,868	631,020	637,233	643,507	649,843	656,241
(Increase over prior year)		(0.98%)	(0.98%)	(0.98%)	(0.98%)	(0.98%)	(0.98%)	(0.98%)
Commercial Trucks—Decals	14,332	15,054	15,656	16,153	16,559	16,890	17,157	17,373
(Increase over prior year)		(5.04%)	(4.00%)	(3.17%)	(2.52%)	(2.00%)	(1.58%)	(1.26%)
Loaded Railroad Cars	102,258	104,303	106,389	108,517	110,687	112,901	115,159	117,462
(Increase over prior year)		(2.00%)	(2.00%)	(2.00%)	(2.00%)	(2.00%)	(2.00%)	(2.00%)
Commercial Aircraft	346,624	354,837	363,245	371,852	380,663	389,683	398,917	408,369
(Increase over prior year)		(2.37%)	(2.37%)	(2.37%)	(2.37%)	(2.37%)	(2.37%)	(2.37%)
Airline Passengers	42,874,898	44,068,934	45,002,791	45,728,430	46,289,479	46,721,624	47,053,518	47,307,853
(Increase over prior year)		(2.78%)	(2.12%)	(1.61%)	(1.23%)	(0.93%)	(0.71%)	(0.54%)

Fee Adjustments and Rounding of Fees

In calculating the adjusted user fees, we divided the sum of the costs of providing each service by the projected number of users subject to inspection, thereby arriving at “raw” fees. We then rounded the raw fees. All raw fees were rounded 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. The individual fees

no longer contain a reserve component. At the end of FY 1996, the AQI account is expected to have \$ 45.4 million in reserve, about 36 percent of annual operating costs. Any excess collections due to rounding would be added to the reserve balance for each individual fee category. At the end of FY 2002, the AQI account is projected to retain \$ 39.8 million in reserves, about 25 percent of the projected level of operating costs. 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 the passenger user fee up to the nearest nickel.

AQI activity	Est. total costs	Projected volume	Raw fee	Rounded fee	Projected revenue
PROPOSED AQI USER FEE RATES—FY 1997					
Commercial Vessel	\$22,335,718	49,989	\$446.81	\$447.00	\$22,345,083
Commercial Trucks ¹	3,476,174	937,988	3.71	3.75	2,969,495
Loaded Railroad Cars	674,482	106,389	6.34	6.50	691,529
Commercial Aircraft	21,466,674	363,245	59.10	59.25	21,522,266
Airline Passengers	86,154,952	45,002,791	1.91	1.95	87,755,442
Total	134,108,000	.....	.....	.....	135,283,815
PROPOSED AQI USER FEE RATES—FY 1998					
Commercial Vessel	23,144,561	50,945	454.30	454.50	23,154,503
Commercial Trucks ¹	3,610,728	954,080	3.78	4.00	3,816,320
Loaded Railroad Cars	700,590	108,517	6.46	6.50	705,361
Commercial Aircraft	22,186,158	371,852	59.66	59.75	22,218,157
Airline Passengers	89,656,963	45,728,430	1.96	2.00	91,456,860
Total	139,299,000	.....	.....	.....	141,351,201
PROPOSED AQI USER FEE RATES—FY 1999					
Commercial Vessel	23,585,032	51,919	454.27	454.50	23,597,186
Commercial Trucks ²	3,657,338	968,413	3.78	4.00	3,873,652
Loaded Railroad Cars	709,738	110,687	6.41	6.50	719,466
Commercial Aircraft	22,727,138	380,663	59.70	59.75	22,744,614
Airline Passengers	90,421,754	46,289,479	1.96	2.00	92,578,958
Total	141,101,000	.....	.....	.....	143,513,876
PROPOSED AQI USER FEE RATES—FY 2000					
Commercial Vessel	24,429,991	52,912	461.71	461.75	24,432,116
Commercial Trucks ²	3,800,416	981,307	3.87	4.00	3,925,228
Loaded Railroad Cars	737,504	112,901	6.53	6.75	762,082
Commercial Aircraft	23,469,623	389,683	60.23	60.25	23,478,401
Airline Passengers	94,183,466	46,721,624	2.02	2.05	95,779,329
Total	146,621,000	.....	.....	.....	148,377,156
PROPOSED AQI USER FEE RATES—FY 2001					
Commercial Vessel	25,405,975	53,924	471.14	471.25	25,411,685
Commercial Trucks ³	3,944,933	992,983	3.97	4.00	3,971,932
Loaded Railroad Cars	761,570	115,159	6.61	6.75	777,323
Commercial Aircraft	24,370,240	398,917	61.09	61.25	24,433,666
Airline Passengers	97,831,282	47,053,518	2.08	2.10	98,812,388
Total	152,314,000	.....	.....	.....	153,406,994
PROPOSED AQI USER FEE RATES—FY 2002					
Commercial Vessel	26,385,091	54,955	480.12	480.25	26,392,139
Commercial Trucks ³	4,096,966	1,003,701	4.08	4.25	4,265,729
Loaded Railroad Cars	806,738	117,462	6.87	7.00	822,234
Commercial Aircraft	25,356,895	408,369	62.09	62.25	25,420,970
Airline Passengers	101,538,310	47,307,853	2.15	2.15	101,711,884
Total	158,184,000	.....	.....	.....	158,612,956

¹ Except for FY 1997, decals could be purchased for 20 times the individual crossing rate. As explained elsewhere in this document, the decal rate would not be increased for FY 1997, although the individual crossing rate would be. Therefore, projected revenue for FY 1997 reflects 624,868 individual crossings @ 3.75 and 15,656 decal purchases @ 40.00 per decal.

² Decals could be purchased at 20 times the individual crossing rate, or 80.00 per decal.

³ Decals may be purchased at 20 times the individual crossing rate, or 85.00 per decal.

Current and Future User Fees

Our current user fees for AQI services and the user fees we are proposing to

charge for these services each fiscal year from 1997 through 2002 are shown

below. Each service and the user fee for it are discussed individually below.

AGRICULTURAL QUARANTINE INSPECTION (AQI) USER FEES

Service	Original user fee	Current user fee	Proposed user fees					
			FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Commercial Vessel	\$544.00	\$369.50	\$447.00	\$454.50	\$454.50	\$461.75	\$471.25	\$480.25

AGRICULTURAL QUARANTINE INSPECTION (AQI) USER FEES—Continued

Service	Original user fee	Current user fee	Proposed user fees					
			FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Commercial Truck	2.00	2.00	3.75	4.00	4.00	4.00	4.00	4.25
Commercial Truck Decal ...	40.00	40.00	40.00	80.00	80.00	80.00	80.00	85.00
Loaded Railroad Car	7.00	7.00	6.50	6.50	6.50	6.75	6.75	7.00
Commercial Aircraft	76.75	53.00	59.25	5.75	59.75	60.25	61.25	62.25
Airline Passenger	2.00	1.45	1.95	2.00	2.00	2.05	2.10	2.15

We have included in our explanation of each activity, the total fee increase percentage through FY 2002 and the average annual fee increase percentage. These percentages will differ among the activities depending on our projected costs and estimated volumes for each activity. As explained previously, each individual fee is set to reflect the actual cost of providing the specific service. Therefore, the percentage increase or decrease in a program is directly related to the actual volume and costs in that program in the past.

Commercial Vessels

One of the AQI services we provide is inspection of commercial vessels of 100 net tons or more. Our original user fee for this service was \$544.00, effective May 13, 1991. The current user fee—\$369.50—became effective on January 1, 1993, following publication of an interim rule in the Federal Register on December 31, 1992 (Docket No. 92-148-1, 57 FR 62468 *et seq.*, at 62472). This fee has not been adjusted since January 1, 1993, and the reserve will be depleted by the end of FY 1996.

Our proposed user fees for commercial vessels are: \$447.00, effective FY 1997; \$454.50, effective FY 1998; \$454.50, effective FY 1999; \$461.75, effective FY 2000; \$471.25, effective FY 2001; and \$480.25, effective FY 2002. Even though the fee increases over 6 years, it remains below the original level set in 1991.

Commercial Trucks

We also offer AQI services to commercial trucks. Our truck user fees are collected for us by the U.S. Customs Service (Customs).

The current truck user fees were established in FY 1991 (Docket 91-028, 56 FR 14837 *et seq.*, at 14844, effective May 13, 1991). The fees have not been adjusted since then. Unfortunately, when we established these user fees we underestimated personnel costs and overestimated the volume of trucks that would be crossing the U.S.-Mexican border. We have adjusted the decal portion of our collection system several times to make it more efficient. However, because of the mechanics of

issuing decals, we have had to wait over a year after each change to evaluate its effectiveness. In spite of the adjustments we have made, we did not collect enough money during FYs 1992, 1994, and 1995 to recover the steadily rising costs of providing AQI services to commercial trucks. We foresee that FY 1996 will result in a deficit of over \$1 million. Because our user fees are intended to recover full cost, our truck user fees must be raised.

The regulations currently provide that commercial trucks pay the APHIS user fee each time they enter the customs territory of the United States from Mexico¹. However, commercial trucks are also subject to Customs user fees. Our regulations therefore provide that commercial trucks must prepay the APHIS user fee 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 § 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.

The current truck user fee is \$2.00 for individual arrivals; \$40.00 for a decal. We are proposing to adopt an individual arrival fee of \$3.75 for FY 1997, \$4.00 for FYs 1998 through 2001, and \$4.25 in FY 2002. We are proposing decal fees of \$40.00 in FY 1997, \$80.00 FYs 1998 through 2001, and \$85.00 in FY 2002. These proposed fee increases would ensure that we recover the full cost of providing AQI services to commercial trucks, except in FY 1997.

With the exception of FY 1997, we are proposing to retain a prepaid truck user fee of 20 times the user fee for each arrival. For FY 1997 we are proposing a prepaid truck user fee of nearly 11 times the proposed user fee for each

¹ § 354.3(c)(2)(i) of the regulations states that commercial trucks entering the customs territory of the United States from Canada are exempt from paying an APHIS user fee.

arrival. This would result in a prepaid user fee for FY 1997 of \$40.00, the same as the current prepaid user fee for commercial trucks. The reason for this is that Customs has already printed decals for FY 1997. The cost of reprinting decals and replacing those which have already been issued is greater than the amount in fees that could be collected if replacement decals were printed.

Commercial Railroad Cars

Another AQI service we offer is inspection of commercial railroad cars. Our current user fee for this service is \$7.00 per loaded commercial railroad car for each arrival, or, if user fees are prepaid, an amount 20 times the individual arrival fee for each loaded rail car. Prepaid user fees cover one calendar year's worth of AQI inspections. These fees have not been adjusted since they were established in FY 1991 (Docket 91-028, 56 FR 14837 *et seq.*, at 14845, effective May 13, 1991).

We are proposing to adopt user fees of \$6.50, effective FYs 1997 through 1999; \$6.75, effective FYs 2000 and 2001; and \$7.00, effective FY 2002. These proposed user fees are all less than or equal to the current fee.

Commercial Aircraft User Fee

Our user fees also cover the cost of AQI services provided by APHIS in connection with the arrival of international commercial aircraft at ports in the customs territory of the United States.

The current user fee for international commercial aircraft became effective on March 1, 1996, following publication of a final rule in the Federal Register on January 29, 1996 (Docket No. 94-074-2, 61 FR 2660-2665). At that time the fee was reduced to \$53.00. This reduction was the second since the user fee was originally set at \$76.75, effective February 9, 1992. The other reduction was from \$76.75 to \$61.00, effective January 1, 1993 (Docket No. 92-148-1, 57 FR 62468-62473).

We are now proposing to amend the user fee for international commercial aircraft. The fee would be adjusted as

follows: \$59.25, effective FY 1997; \$59.75, effective FYs 1998 and 1999; \$60.25, effective FY 2000; \$61.25, effective FY 2001; and \$62.25, effective FY 2002. This user fee would remain in FY 2002 substantially below the \$76.75 level it was originally set at in 1992.

International Airline Passenger User Fee

Another service our user fees cover is the cost of AQI services provided by APHIS in connection with the arrival of international airline passengers at a port in the customs territory of the United States.

Our original user fee for international airline passengers was \$2.00, effective May 13, 1991. The current \$1.45 user fee became effective January 1, 1993, following publication of an interim rule in the Federal Register on December 31, 1992 (Docket No. 92-148-1, 57 FR 62468 *et seq.*, at 62472). This fee has not been adjusted in nearly 3 years, and the reserve has been reduced to 25.23 percent of annual operating costs. However, if this fee is not increased, the entire reserve will be depleted sometime in FY 1998.

We are proposing to raise the international air passenger user fee to \$1.95 in FY 1997, \$2.00 in FYs 1998 and 1999, \$2.05 in FY 2000, \$2.10 in FY 2001, and \$2.15 in FY 2002. Under our proposal, this user fee would increase in FY 1997 to \$1.95 and then increase to the original level and remain stable through FY 1999. In FYs 2000 through 2002 it would increase by approximately 2.5 percent per annum. Spread over 6 years, this is an average annual increase of less than 1 percent above the original level, and 48 percent above the current fee.

Most of the increase in this user fee would be in FY 1997. Over the last several years, increased level of passenger demand has led APHIS to expand the AQI program to improve service by reducing passenger delays and better safeguarding U.S. agriculture by reducing the risk of exotic pests entering the country. We have hired over 250 new officers and canine teams specifically to clear international airline passengers. The additional personnel will enable us to keep pace with workload demand, while performing high quality inspection services. However, hiring new personnel to reduce passenger delays and reduce the risk of exotic pests entering the country increases our costs to provide inspection services. This increase in costs (as well as eliminating further draw down in the reserve) is reflected in the initial fee increase.

Miscellaneous Amendments

We are also proposing to amend the regulations to clarify that all user fees collected from international passengers on behalf of APHIS are to be held in trust for the United States by each person collecting such user fees, by any person holding such fees, or by the person who is ultimately responsible for remittance of such fees to APHIS. By clarifying that the international passenger user fees are held in trust, we make it clear that the person collecting or possessing the fees shall hold only a possessory interest and not an equitable interest in such fees.

We will allow the person collecting or holding the fees to retain any interest earned on the fees between the time of collection and the time the fees are due to be remitted to APHIS. This would help offset the cost of collecting and remitting the fees to APHIS. All other provisions of our current regulations, such as the date and form of remittance, would remain the same.

Executive Order 12866 and Regulatory Flexibility Act

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

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

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

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

Commercial Vessels

According to the Bureau of the Census, there were 334 U.S. businesses

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

APHIS user fees for commercial vessels apply only to those of 100 net tons or more arriving from foreign ports, except ports in Canada. All of the United States' oceangoing fleet exceeds 100 net tons, but only a limited portion engages in foreign trade. Data from the Department of Transportation's Maritime Administration shows that there were 319 private oceangoing merchant vessels in the United States at the beginning of 1996. Of these vessels, 127 are tankers and the remainder are dry cargo vessels. The vast majority of the tankers operate nearly exclusively between United States ports. They are therefore not subject to the APHIS commercial vessel user fee. Those vessels subject to the APHIS user fee are mostly dry cargo vessels operating between the United States and foreign ports. We believe, however, that the impact of the proposed APHIS user fees on these vessels is likely to be minimal, whether a vessel is operated by a small or a large entity. Total daily operating costs for dry cargo vessels idle in port averages between \$23,600 and \$26,800. The proposed \$77.50 user fee increase for FY 1997 represents less than 0.4 percent of one day's operating costs of an average dry cargo vessel while in port, and remains \$97.00 below the original fee set in 1991.

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

Commercial Trucks

The SBA criterion for a small trucking firm is one whose annual receipts are less than \$18.5 million. We are unable to accurately estimate the number of U.S. firms that would be considered small by this criterion. However, we believe U.S. firms would be largely unaffected by the proposed fee changes. In 1991, transportation expenses for commercial U.S. trucks traveling from Mexico to the United States varied between \$85.00 and \$175.00 per trip for trucks carrying non-agricultural commodities. Assuming constant costs, adding \$2.00 to the user fee per truck,

per crossing, as we propose,² would represent an increase in operating expenses of between 1.1 and 2.4 percent for trucks carrying non-agricultural commodities. Transportation expenses for trucks hauling agricultural commodities ranged from \$300.00 to \$1,700.00 per trip in 1991. Again, assuming constant costs, our proposed user fee increases would represent operating expense increases of between 0.12 and 0.67 percent for trucks hauling agricultural goods. It therefore appears that the impact on small U.S. independent trucking firms would be insignificant.

Commercial Railroad Cars

There are 5 U.S. railroad companies currently transporting goods across the U.S.-Mexican border. These railroad companies would be directly affected by our proposal to reduce our user fee for this service. These railroad companies would also be directly affected by the subsequent fee increases we are proposing. However, we are not proposing to increase this fee until FY 2002, at which time the fee would increase to an amount equal to the current fee. We are not proposing to increase the user fee beyond the current rate. Proposed user fee changes would affect direct operating expenses. Two of these railroad companies met the SBA criterion for small entities (i.e., fewer than 1,500 employees). As of 1991, the most recent year for which figures are available, these small railroad companies were transporting between 960 and 2,000 loaded railroad cars into the United States from Mexico annually. These cars were all subject to the APHIS user fee. Assuming a similar number of cars subject to inspection in future years, in FY 1997 reduced user fees would result in a cost savings for these railroad companies of between \$480.00 and \$1,000.00. Specific data on the operating expenses or profit margins of these railroad companies is not available to us. However, we believe the proposed fee changes would not have any significant economic effect on small railroad companies.

Commercial Airlines

According to the latest figures available from the Bureau of the Census, domestic and international airlines employed a total of 707,148 employees in 1992. SBA criterion for a small airline is one that employs 1,500 or fewer employees. Although the size

distribution of air carriers affected by our user fees is unknown, we anticipate that the impact of the proposed fee increases will be minimal. The greatest proposed fee increase—\$6.25 per aircraft per entry in FY 1997—would, when applied to all aircraft subject to our fee, comprise less than 0.1 percent of the average operating costs of air carriers. In addition, the APHIS user fee would remain lower in FY 2002 than it was at its inception, despite increases starting in FY 1997.

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

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

Executive Order 12372

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

Executive Order 12988

This 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, 7 CFR part 354 would be amended 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 paragraphs (b)(1), (c)(1), (c)(3)(i) introductory text, (d)(1), (e)(1), and (f)(1) to read as follows, and by adding a new paragraph (f)(4)(i)(C) to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

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

Effective dates	Amount
[Effective date of docket] through September 30, 1997	\$447.50
October 1, 1997 through September 30, 1998	454.50
October 1, 1998 through September 30, 1999	454.50
October 1, 1999 through September 30, 2000	461.75
October 1, 2000 through September 30, 2001	471.25
October 1, 2001	480.25

* * * * *

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

Effective dates	Amount
[Effective date of docket] through September 30, 1997	\$3.75

² A decal is also available which allows unlimited border crossings per year for one fee. This decal is available only for trucks which prepay the U.S. Customs user fee which applies to them.

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

* * * * *

(3) * * *

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

* * * * *

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

Effective dates	Amount
[Effective date of docket] through September 30, 1997	\$6.50
October 1, 1997 through September 30, 1998	6.50
October 1, 1998 through September 30, 1999	6.50
October 1, 1999 through September 30, 2000	6.75
October 1, 2000 through September 30, 2001	6.75
October 1, 2001	7.00

* * * * *

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

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

Effective dates	Amount
[Effective date of docket] through September 30, 1997	\$59.25
October 1, 1997 through September 30, 1998	59.75
October 1, 1998 through September 30, 1999	59.75
October 1, 1999 through September 30, 2000	60.25
October 1, 2000 through September 30, 2001	61.25
October 1, 2001	62.25

* * * * *

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

Effective dates	Amount
[Effective date of docket] through September 30, 1997	\$1.95
October 1, 1997 through September 30, 1998	2.00
October 1, 1998 through September 30, 1999	2.00
October 1, 1999 through September 30, 2000	2.05
October 1, 2000 through September 30, 2001	2.10
October 1, 2001	2.15

* * * * *

(4) * * *

(i) * * *

(C) APHIS user fees collected from international passengers pursuant to paragraph (f) of this section shall be held in trust for the United States by the person collecting such fees, by any person holding such fees, or by the

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

* * * * *

Done in Washington, DC, this 21st day of January 1997.

Terry L. Medley,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-1892 Filed 1-24-97; 8:45 am]

BILLING CODE 3410-34-P

Farm Service Agency

7 CFR Part 723

RIN 0560-AF03

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Cigar-Binder (Types 42-44 and 53-55) Tobaccos

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture (the Secretary), is required to proclaim by March 1, 1997, national marketing quotas for fire-cured (types 21-23) and dark air-cured (types 35-36) tobaccos for the 1997-98, 1998-99, and 1999-2000 marketing years (MYs) and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22-23), dark air-cured (types 35-36), Virginia sun-cured (type 37), and cigar-filler and cigar-binder (types 42-44 and 53-55) kinds of tobacco for the 1997-98 MY. The public is invited to submit written comments, views, and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco and other related matters which are discussed in this proposed rule.