

operated on coal, or to 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all, as set forth in the Certificates to Operate issued by NYSDEC on April 3, 1991. The SO₂ emission limit, monitoring and recordkeeping requirements pertaining to the SO₂ emissions are incorporated by reference into the Certificates to Operate.

[FR Doc. 91-18548 Filed 8-6-91; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-8

[FTR Amendment 19]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses in Special or Unusual Circumstances

AGENCY: Federal Supply Service, GSA.
ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation to provide for the establishment of a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period.

DATES: Effective date: This final rule is effective July 21, 1991 and applies for travel performed on or after July 21, 1991. Expiration date: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 301-8

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301-8 is amended as set forth below.

PART 301-8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

1. The authority citation for part 301-8 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301-8.3 is amended by revising paragraph (c) to read as follows:

§ 301-8.3 Maximum daily rates and reimbursement limitations.

(c) *Travel to an area within CONUS where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period.* (1) The provisions of paragraph (c)(2) of this section shall expire on October 1, 1994.

(2) The head of an agency may request establishment of a maximum daily rate for subsistence expenses above the maximum rate prescribed in paragraph (a) of this section for travel to an area within CONUS where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. Requests for a higher subsistence rate, with the exception of requests for travel to a Presidentially declared disaster area, shall be submitted at least 30 days in advance of the beginning of the recommended effective period unless otherwise adequately justified. The Administrator of General Services may establish an appropriate maximum daily rate, not to exceed 300 percent of the maximum per diem rate prescribed for the area under § 301-7.3, pursuant to a review of the justification supporting the request. Such higher established rate shall apply for all official travel to the area and will be effective for a period not to exceed 30 days. The Administrator of General Services may extend the period of effectiveness in increments of up to 30 days upon the request of the head of the agency originally requesting establishment of the higher rate. Requests should be submitted to the Administrator of General Services, Washington, DC 20405, and must contain the following information:

(i) A specification of the geographic area encompassed;

(ii) If the area is a Presidentially declared disaster area, a copy of the Presidential disaster declaration;

(iii) A recommended maximum daily rate not to exceed 300 percent of the maximum per diem rate prescribed for the area under § 301-7.3;

(iv) A description of the specific circumstances which justify the establishment of the recommended rate;

(v) An estimate of the cost impact of establishing a maximum daily rate for subsistence expenses above the maximum rate prescribed in paragraph (a) of this section.

(vi) A recommended time period for effectiveness of the maximum daily rate requested to be established under this paragraph.

Dated: July 9, 1991.

Richard G. Austin,
Administrator of General Services.
[FR Doc. 91-18711 Filed 8-6-91; 8:45 am]
BILLING CODE 6520-24-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89-01; Notice 10]

Passenger Automobile Average Fuel Economy Standards; Dutcher Motors, Inc.; Final Decision

AGENCY: National Highway Traffic
Safety Administration (NHTSA), DOT.
ACTION: Final decision.

SUMMARY: This decision is issued in response to a petition filed by Dutcher Motors, Inc. (Dutcher) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years (MY) 1993, 1994, and 1995 passenger automobiles, and that a lower alternative standard be established for it for each of these model years. This decision exempts Dutcher and establishes an alternate standard of 17.0 mpg for each of MYs 1993, 1994, and 1995. The decision was preceded by publication of a notice requesting public comments.

DATES: Effective date: September 23, 1991. This exemption and the alternative standards apply to Dutcher for MYs 1993, 1994, and 1995. Petitions for reconsideration must be submitted by September 6, 1991.

ADDRESSES: Petitions for reconsideration must be submitted to:

Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be provided.

FOR FURTHER INFORMATION CONTACT:

Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Dutcher from the generally applicable average fuel economy standard for 1993, 1994, and 1995 model year passenger automobiles and establishing alternative standards applicable to Dutcher for each of these model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

- (1) Technological feasibility;
- (2) Economic practicability;
- (3) The effect of other Federal motor vehicle standards on fuel economy; and
- (4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Dutcher should be exempted from the generally applicable MY 1993, 1994, and 1995 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 17.0 mpg should be established for Dutcher for each of these model years (56 FR 21653, May 10, 1991). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel

economy level for Dutcher in each of MYs 1993, 1994, and 1995 is 17.0 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts Dutcher from the generally applicable passenger automobile average fuel economy standard for the 1993, 1994, and 1995 model years and establishes an alternative standard of 17.0 miles per gallon for Dutcher for each of these years.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Dutcher. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant." The principal impact of this exemption is that Dutcher will not be required to pay civil penalties if it achieves a CAFE level equivalent to the alternative standard established in this notice. Since this decision sets an alternative standard at the level determined to be Dutcher's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which limit the amount of emissions per mile traveled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Dutcher's MY 1993, 1994, and 1995 automobiles cannot achieve better fuel economy than 17.0 mpg, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Dutcher. It does relieve the company from having to pay civil penalties for noncompliance with the generally applicable standard for MYs 1993, 1994, and 1995. Since the price of 1993, 1994, and 1995 Dutcher automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. Section 531.5 is amended by revising paragraph (b)(11); the introductory text of paragraph (b) is republished to read as follows:

§ 531.5 Fuel economy standards.

- (b) The following manufacturers shall comply with the standards indicated below for the specified model years:

(11) Dutcher Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1986	16.0
1987	16.0
1988	16.0
1992	17.0
1993	17.0
1994	17.0
1995	17.0

Issued on: August 1, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-18667 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register

Vol. 56, No. 152

Wednesday, August 7, 1991

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

Political Activity of Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to grant Federal Government employees in Calvert County, Maryland, a partial exemption from the political activity restrictions of 5 U.S.C. 7324. This proposal reflects OPM's determination that Calvert County meets the criteria described in 5 U.S.C. 7327 and 5 CFR 733.124(b) for a partial exemption to issue.

DATES: Written comments must be received on or before October 7, 1991.

ADDRESSES: Comments may be mailed to Jaime Ramon, General Counsel, room 7355, United States Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, Office of Personnel Management. (202) 606-1920.

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7324, *et seq.*, controls the political activity of Federal employees and individuals employed by the District of Columbia. 5 U.S.C. 7324 generally prohibits Federal employees from taking an active part in political campaigns. Section 7327 of title 5, United States Code, however, authorizes OPM to prescribe regulations permitting certain Federal employees to be politically active to the extent OPM considers it to be in their domestic interest.

Under the authority of 5 U.S.C. 7327, OPM may allow Federal employees to participate in political campaigns involving the municipality or political subdivision where they reside when two conditions relevant to the current

request for exemption exist. One condition is met if the municipality is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia. The second condition is met if OPM determines that, because of special or unusual circumstances, the domestic interest of the employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.124(b), OPM has designated municipalities and political subdivisions in which Federal employees may participate in local elections. At 5 CFR 733.124(c), OPM has established the following limitations on political participation by employees residing in these designated municipalities and subdivisions:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, an elective office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict or apparent conflict of interests.

In response to a request from the Board of Commissioners for Calvert County, Maryland, OPM proposes to designate that county as one in which Federal employees may participate in local elections subject to the limitations established by OPM. This proposal reflects OPM's determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in Calvert County to permit their local political participation in connection with independent candidacies. This determination is based on documentary material provided by the applicant as well as interviews of the County Administrator and a Federally employed resident of the County. Principal factors leading to OPM's determination are the proximity of Calvert County to the District of Columbia, the substantial portion of County residents who are Federal Government employees, and the rapid growth of the County within the past few years.

A copy of this notice will be published in two local newspaper serving Calvert County.

If this proposed rule is adopted, OPM will amend 5 CFR 733.124(b) by adding Calvert County to the list of designated Maryland municipalities and political

subdivisions in which Federal Government employees may participate in connection with independent candidates in local elections. The addition of Calvert County will be listed after Brentwood and before Capitol Heights, Maryland.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activity (Government employees).

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 733 as follows:

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

1. The authority citation for part 733 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 7301, 7321, 7322, 7323, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264, unless otherwise noted.

2. Section 733.124(b) is amended by adding Calvert County, Maryland, alphabetically to the list of designated Maryland municipalities and political subdivisions as set forth below.

§ 733.124 Political management and political campaigning; exception of certain elections.

* * * * *

(b) * * *

In Maryland

* * * * *

Calvert County

* * * * *

[FR Doc. 91-18729 Filed 8-6-91; 8:45 am]

BILLING CODE 5325-01-M

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 354****9 CFR Part 130**

[Docket No. 91-021]

RIN 0579-AA43

User Fees—Agricultural Quarantine and Inspection Services, Phytosanitary Certificates, Animal Quarantine Services, Veterinary Diagnostics, Export Health Certificates**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Proposed rule.

SUMMARY: We are proposing to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. These proposed user fees are authorized by sections 2509 (b) and (c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (21 U.S.C. 136a), or by 31 U.S.C. 9701.

The effect of these regulations would be to require certain persons to pay fees for services they receive.

DATES: Consideration will be given only to comments received on or before September 6, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-021. 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 agricultural quarantine and inspection (AQI), plant inspections, and additional inspections, contact Charles A. Havens, Chief Operations Officer, Port Operations, PPD, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

For information concerning animal imports and exports, contact Louise R. Lothery, Director, Resource Management Support Staff, VS, room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8590.

For information concerning veterinary diagnostics, contact Dr. Robert M. Nervig, Director, National Veterinary Services Laboratory, 1800 Dayton Road, P.O. Box 844, Ames, Iowa 50010, 515-239-8266.

SUPPLEMENTARY INFORMATION:**Background***User Fees Authorized Under the Farm Bill*

The Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (Budget Reconciliation Act), referred to below as the Farm Bill, authorizes the Secretary of Agriculture to prescribe and collect fees to cover the cost of providing certain agricultural quarantine and inspection services. The services are "agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States,¹ or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car" (section 2509 of the Farm Bill). We refer to these services as AQI services.

The Farm Bill establishes a fund in the Treasury of the United States, known as the "Agricultural Quarantine Inspection User Fee Account" (the Account) for the Secretary of Agriculture to use for fees collected for AQI services. All fees collected for agricultural quarantine and inspection services are to be deposited in the Account. Fees collected within a calendar quarter are to be deposited no later than 31 days after the close of that quarter. The Farm Bill further requires the Secretary of the Treasury to reimburse, from the Account, any appropriations accounts that incur costs associated with agricultural quarantine services for which the Secretary of Agriculture is authorized to collect user fees, if the amounts are provided in advance in appropriation acts. (See section 2509(a)(3)(B)(ii) of the Farm Bill)

The Farm Bill also authorizes the Secretary of Agriculture "to prescribe and collect fees to recover the costs of providing for the inspection of plants and plant products offered for export or transiting the United States and certifying to shippers and interested parties as to the freedom of such plants and plant products from plant pests according to the phytosanitary requirements of the foreign countries to

which such plants and plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States" (section 2509(b) of the Farm Bill). This section further provides that "[t]he Secretary of Agriculture shall, pursuant to regulations as prescribed by the Secretary of Agriculture, suspend performance of services to persons who have failed to pay such fees, late payment penalty and accrued interest."

In addition to the above authority, the Farm Bill authorizes the Secretary of Agriculture to "prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance." (section 2509(c)(1) of the Farm Bill).

Further, the Farm Bill authorizes the Secretary "to prescribe and collect fees to recover the costs of carrying out the provisions of (21 U.S.C. 114a, as amended) which relate to veterinary diagnostics." (section 2509(c)(2) of the Farm Bill) 21 U.S.C. 114a concerns control and eradication of livestock and poultry diseases. Section 2509(c) also provides procedures for the Secretary to follow in the case of non-payment, late payment penalties, or accrued interest. The section states that "[t]he Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest"

Section 2509(d) of the Farm Bill provides in addition that "[t]he Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of (section 2509)."

Finally, the Farm Bill authorizes the Secretary "in carrying out regulations prohibiting or restricting the entry of materials that may harbor pests, or diseases, . . . to enter into agreements with operators or owners of vessels or aircraft for the purpose of providing inspection services at points of entry in the United States in addition to the regular or on-call basis currently available in connection with such vessels or aircraft." The section states that such agreements "shall provide for the payment by the operator or owner of an amount determined by the Secretary to be necessary to defray the costs of providing additional service pursuant to such agreement." (Section 2508 of the Farm Bill)

User Fees Under Other Authority

We also have general authority to collect user fees under 31 U.S.C. 9701

¹ The Farm Bill defines "customs territory of the United States" as "[t]he 50 States, the District of Columbia, and Puerto Rico." (section 2509(f)(2))

(the User Fee Statute). This statute states, in part, that:

(a) It is the sense of the Congress that each service or thing of value provided by an agency . . . to a person (except a person on official business of the United States government) is to self-sustaining to the extent possible.

(b) The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency.

Each agency must deposit fees collected pursuant to 31 U.S.C. 9701 into the Treasury of the United States.

Under the User Fee Statute, we may charge for quarantine and inspection services we provide in connection with traffic departing certain domestic quarantine areas for other locations within the United States. Domestic quarantine areas are areas within the United States—Hawaii and Puerto Rico—which are quarantined because of the presence of various plant diseases or pests. Individuals and means of conveyance departing these areas for any other part of the United States are subject to inspection (see 7 CFR 318.13 and 318.58).

Under the Farm Bill we have authority to charge for AQI services "in connection with . . . preclearance" at a site outside the customs territory of the United States for various persons and means of conveyance. Because the United States Virgin Islands (U.S. Virgin Islands) are outside the customs territory of the United States, we have authority under the Farm Bill to charge a user fee for AQI services provided certain persons and means of conveyance departing the U.S. Virgin Islands for other parts of the United States. Because Hawaii and Puerto Rico are within the customs area of the United States we do not have authority under the Farm Bill to charge a user fee for persons and means of conveyance departing Hawaii and Puerto Rico, or other domestic quarantine areas, for other parts of the United States.

Previously Published Regulations

On February 27, we proposed to amend 7 CFR parts 318, 320, 330, 352 and 354 (56 FR 8148–8156), to establish user fees for services we provide in connection with airline passengers departing Hawaii and Puerto Rico for other parts of the United States, and in connection with the arrival at ports in the customs territory of the United States of commercial vessels, commercial trucks, commercial railroad

cars, and passengers on commercial aircraft.²

We made these regulations final in two separate documents. The first final rule was published April 12, 1991 (56 FR 14837–14846). It covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. We began charging user fees for these services May 13, 1991.

The second final rule was published April 23, 1991 (56 FR 18496–18502). It covered user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. We stated in this final rule that we would begin charging user fees for these services August 1, 1991. However, we have postponed the effective date of the second final rule (see 56 FR 36724, August 1, 1991) until October 1, 1991. We took this action because we determined that affected parties required additional time to address fee implementation concerns.

Regulations Proposed in this Document

We are now proposing to charge user fees for a variety of other services we provide. They fall into five categories.

The first category of services is the inspection services we provide to commercial aircraft, both aircraft arriving at a port within the customs territory of the United States and aircraft departing Hawaii or Puerto Rico for other locations within the United States.

The second category of services relates to the issuance of phytosanitary certificates for plants and plant product being exported from the United States. These certificates are issued in accordance with the regulations at 7 CFR 353.1. They certify agricultural products moving from one country to another as being "free from quarantine pests, and practically free from other injurious pests."

The third category includes services which relate to the export or import of animals or birds. In this category are: (1) Services provided in connection with animals or birds in quarantine facilities, including Animal Import Centers operated by APHIS and privately-operated facilities; (2) endorsing health certificates needed to export animals or

birds; (3) inspecting export isolation facilities for animals or birds; (4) inspecting animals and birds in isolation facilities; (5) supervising rest periods for animals and birds prior to export; and (6) supervising loading and unloading of animals or birds from a means of conveyance.

The fourth category of services relates to veterinary diagnostics. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism is present in body tissues or cells. The services in this category are: (1) Performing laboratory tests required to import or export animals or birds; (2) conducting diagnostic testing on tissue samples referred to APHIS by State animal health officials who want assistance in establishing or confirming a diagnosis (referred to in this document as reference assistance testing); (3) providing certain diagnostic reagents. Diagnostic reagents are substances used in diagnostic tests to detect disease antibodies by causing an identifiable reaction.

The fifth category of services includes inspection services provided, at the request of operators or owners of vessels or aircraft, in addition to regular or on-call services currently available at points of entry in the United States.

We have divided this document into two parts. Part 1 of this document covers user fees for agricultural quarantine and inspection services and phytosanitary export certification. These user fees, if adopted, would appear in title 7 of the Code of Federal Regulations. Part 2 covers user fees for animal quarantine services, testing, veterinary diagnostics, and export health certificates. These user fees, if adopted, would appear in title 9 of the Code of Federal Regulations.

Within each part we discuss what services we provide, how we calculated our proposed fees, the proposed user fees, and our proposed billing and payment requirements.

Part 1

User Fees for Inspection of International Commercial Aircraft (Proposed 7 CFR 354.3)

We inspect commercial aircraft arriving within the customs territory of the United States from places outside the United States. We also inspect aircraft which have arrived within the customs territory of the United States and which are proceeding from one United States airport to another under a United States Customs Service "Permit

² In the document of February 27, 1991, we also proposed to amend 7 CFR parts 318 and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. However, the authority for these proposed amendments to the regulations was 31 U.S.C. 9701, not the Farm Bill.

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. In this document we are proposing to charge user fees for these services.

The proposed user fees would cover inspection of the aircraft itself. The proposed user fees would also cover inspection of cargo and any associated services if: (1) Such services occur during regular hours of service (0800–1630, Monday through Friday); or (2) inspection of the cargo is concurrent with inspection of the aircraft. Associated services include monitoring garbage handling, and disinfecting aircraft. Cargo owners may request inspection outside of regular hours of service. In that case, they would pay reimbursable overtime under 7 CFR 354.1.

We are proposing to exempt commercial aircraft moving solely between the United States and Canada from paying user fees. These means of conveyance pose little animal or plant disease or pest risk to United States agriculture, and we do not provide AQI services for them. Therefore, we do not believe a user fee is justified.

We are also proposing to exempt aircraft used exclusively in the governmental service of the United States or a foreign government. Governments traditionally accord certain privileges to the property of other governments. One of these privileges is exemption from fees. However, to qualify for the exemption, the aircraft could not be carrying any persons or merchandise for commercial purposes.

Aircraft making an emergency or forced landing would also be exempt under our proposed regulations. In these situations, nothing may be removed or brought on board an aircraft except passengers in need of medical attention or equipment and parts for repair. In these circumstances, we believe there is little animal or plant disease or pest risk to United States agriculture and we do not conduct AQI inspections.

We are also proposing to exempt aircraft with 30 seats or fewer, which are not carrying cargo and which are not equipped to offer inflight food service. The passengers on these aircraft would already have paid a user fee under 7 CFR 354.3. Also, there would be no cargo or garbage requiring AQI services. As we would not be providing any services to these aircraft, we do not

believe an APHIS user fee would be justified.

Finally, we are proposing to exempt aircraft moving from the United States Virgin Islands to Puerto Rico. We do not provide any inspection services to these aircraft. Therefore, we do not believe charging a user fee is justified.

User Fees for Inspection of Domestic Commercial Aircraft (Proposed 7 CFR 354.4)

We inspect commercial aircraft moving from Hawaii and Puerto Rico to other parts of the United States. In this document we are proposing to charge user fees for these services.

The proposed user fees would cover inspection of the aircraft itself. The proposed user fees would also cover inspection of cargo and any associated services if: (1) such services occur during regular hours of service (0800–1630, Monday through Friday); or (2) inspection of the cargo is concurrent with inspection of the aircraft. Associated services include monitoring garbage handling, disinfecting aircraft, and preclearing cargo in Hawaii and Puerto Rico. Cargo owners may request inspection outside of regular hours of service. In that case, they would pay reimbursable overtime under 7 CFR 354.1.

We are proposing to exempt aircraft used exclusively in the governmental service of the United States or a foreign government from paying an APHIS user fee under our proposed regulations. Governments traditionally accord certain privileges to the property of other governments. One of these privileges is exemption from fees. However, to qualify for the exemption, the aircraft could not be carrying any persons or merchandise for commercial purposes.

We also propose to exempt aircraft transiting Hawaii or Puerto Rico and subject to inspection under 7 CFR part 330. These aircraft would be subject to paying an APHIS user fee under proposed 7 CFR 354.3.

Congress has expressed concern with regulations we previously adopted to charge user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States (see 56 FR 18496–18502 for those rules, and see discussion above concerning the effective date of the rules). Any action Congress takes on this subject may impact our proposed user fees for inspection of domestic commercial aircraft. Therefore, in our final rule we will include a discussion of Congressional action and any amendments we make pursuant to such action.

User Fees for Inspection of Domestic Commercial Maritime Vessels (Proposed 7 CFR 354.4)

We are proposing to charge a user fee for inspecting commercial maritime vessels moving from Hawaii and Puerto Rico to other parts of the United States.

The proposed user fees would cover inspection of the vessel itself. The proposed user fees would also cover inspection of cargo and any associated services if: (1) Such services occur during regular hours of service (0800–1630, Monday through Friday); or (2) inspection of the cargo is concurrent with inspection of the vessel. Associated services include monitoring garbage handling, disinfecting vessels, inspecting, and certifying cargo. Cargo owners may request inspection outside of regular hours of service. In that case, they would pay reimbursable overtime under 7 CFR 354.1.

Vessels used exclusively in the governmental service of the United States or a foreign government would also be exempt from paying a user fee under our proposed regulations. Governments traditionally accord certain privileges to the property of other governments. One of these privileges is exemption from fees. However, to qualify for the exemption, the vessel could not be carrying any persons or merchandise for commercial purposes.

We are proposing to exempt vessels transiting Hawaii or Puerto Rico and subject to inspection under 7 CFR part 330. We are proposing to exempt these vessels because they would be charged a user fee under 7 CFR 354.3.

As explained above, Congress has expressed concern with regulations we previously adopted to charge user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. Any action Congress takes on this subject may impact our proposed user fees for inspection of domestic commercial maritime vessels. Therefore, in our final rule we will include a discussion of Congressional action and any amendments we make pursuant to such action.

Remittance and Statement Procedures

We are proposing similar remittance and payment procedures to those we adopted in our previous fee regulations (see final rules published April 12, 1991 (56 FR 14837–14846) and April 23, 1991 (56 FR 18496–18502).) The procedures and the information required are needed to ensure that the correct user fees are remitted in full in a timely manner. The

requirements, including the taxpayer identification number, are also needed to ensure that the fees are properly credited.

Compliance

Under these proposed regulations, we must rely on others to remit fees for us. However, we are responsible for ensuring that the fees are correct and remitted in full and in a timely manner. To ensure this, we are proposing to require the party responsible for remitting the fees to allow APHIS personnel to verify the accuracy of the fees remitted, and otherwise determine compliance with the statute and regulations. We are therefore proposing to require that whoever is responsible for remitting fees must advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee remittances. In addition, we are proposing to require that we be promptly notified of any change in that information.

At this time we do not have the address to which user fees must be remitted and other information provided. However, if these proposed rules are adopted, we will insert the correct addresses in the final rule.

User Fees for Export Certification of Plants and Plant Products (Proposed 7 CFR 354.3)

We are proposing to adopt user fees for export certification of plants and plant products. Certificates are issued in accordance with the International Plant Protection Convention and regulations in 7 CFR part 353, and they certify agricultural products moving between countries as being free from quarantine pests, and practically free from other injurious pests. These certificates must be issued in accordance with 7 CFR part 353 to be accepted in international commerce.

APHIS inspectors issue many certificates directly to exporters. However, in some states, certain state employees are designated to issue federal certificates. In these situations, we provide state officials with blank certificates. Exporters in these states have the option of going to either state or federal officials to obtain a certificate. Designated state employees issue approximately 47 percent of all certificates. These state inspectors are vital to the success of our program. There are more state inspectors than APHIS inspectors, and in many instances they are able to provide services more efficiently, including at remote portions of the country.

We issue the following certificates:

1. Phytosanitary Certificate (PPQ Form 577); and
2. Phytosanitary Certificate for Re-Export (PPQ Form 579).
3. Processed Product Certificate (PPQ Form 578)

We do not issue processed product certificates at this time. However, we intend to begin issuing these certificates under 7 CFR 353.1 *et seq.* no later than October 1, 1991. Products covered by this document will include products such as plywood and pelletized plant materials, which are manufactured out of plants or plant materials in such a way that the manufacturing process itself destroys any plant pest organisms.

All certificates are designed to cover either commercial³ or non-commercial shipments. The phytosanitary certificate covers any plants or plant products being exported from the United States. The processed product certificate covers processed products being exported from the United States. The phytosanitary certificate for re-export covers plants and plant products which have entered the United States from another country, but which are being re-exported from the United States, in whole or in part.

Depending on the circumstances, issued certificates may be voided and/or reissued. All certificates are controlled documents. That is, they are numbered and we must keep track of them. If a certificate is issued, but it is filled out incorrectly or it is damaged, and it cannot be used, the person who received the certificate may have us reissue the certificate. In that case, we would void the first certificate, and complete a new certificate for the person. Some certificates are voided, but not reissued.

Under our proposal, we would charge different user fees for phytosanitary certificates issued for commercial shipments and for non-commercial shipments. We are proposing different user fees because the services provided are different. Issuing a certificate for a commercial shipment generally requires APHIS personnel to travel to the inspection site. It also generally requires them to inspect larger quantities of plants or plant products, which takes more time. Travel is not usually required for noncommercial shipments, because those exporters usually bring their plants to an APHIS office for inspection.

We are also proposing to charge a user fee for issuing processed product certificates for commercial shipments and for issuing phytosanitary certificates for re-export for commercial shipments. We are not proposing any

user fee for these certificates for non-commercial shipments. In the case of phytosanitary certificates for re-export, we have never issued such a certificate and do not anticipate any requests. We anticipate that there will similarly be no demand for processed product certificates for non-commercial shipments.

In addition, we are proposing to charge a user fee for reissuing certificates. However, our proposed fee for these services is less than that for issuing the original certificates. That is because our only cost is for administrative processing and tracking.

The user fees we propose to charge are:

Phytosanitary certificate:	
commercial shipment.....	\$30
non-commercial shipment.....	\$19
Phytosanitary certificate for reexport:	
commercial shipment.....	\$30
Processed product certificate:	
commercial shipment.....	\$30
Reissued certificate (all types).....	\$6

Many importers have asked us to issue certificates to cover processed products. However, at this time we have no data on the number of certificates which will actually be issued or the time that will be necessary to issue them. Based on the requests we have received, we estimate that the inspection and administrative time necessary to issue the certificates, or reissue them if appropriate, will be similar to that for other certificates covering commercial shipments. Therefore, we are proposing to charge the same \$30 APHIS user fee for issuing, and the same \$6 APHIS user fee for reissuing, as we are proposing to charge for phytosanitary certificates covering commercial shipments. We would perform an annual review of these fees based on the actual demand for the certificates and would publish any necessary cost adjustments in the Federal Register.

Currently, when designated state inspectors issue Federal certificates, we do not charge any fee for the federal certificate. However, some states charge a fee to recover their travel, transportation and inspection costs.

Under this proposal, when an APHIS employee conducts the inspection and signs the certificate, the user would be required to pay the applicable APHIS user fee. However, if a designated state employee conducts the inspection and signs the certificate, we would not charge the APHIS user fee because APHIS would not be providing any service to the user. However, the state, if it wished, could charge a state fee to cover the cost of providing its services. To charge such a fee, the state would

³ Our proposed regulations define a commercial shipment as a shipment for gain or profit.

have to calculate the cost of its services using the same factors that we use to calculate our user fees.

To establish its fee, the state would have to:

- (1) Estimate the annual number of certificates to be issued;
- (2) Determine the total cost of issuing certificates;
- (3) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee.

A state could round the "raw" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

When determining the total cost of issuing certificates, states could include delivery, support, and administrative costs. Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchases of specialized equipment, and all costs associated with maintaining field offices. Support costs are similar costs at supervisory levels, and costs such as training, automated data processing, public affairs, enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collection services. Administrative costs are any additional costs the states incur as a direct result of collecting and monitoring federal certificates.

As we explained above, state participation in the program is crucial to its success. We believe offering states the option of collecting a user fee based on the cost of providing their services would encourage them to continue participating.

Services Provided under Agreements (Proposed 7 CFR 354.4).

We are sometimes asked to provide inspection services at points of entry into the United States in addition to the regular or on-call basis currently available in connection with vessels or aircraft. We receive two types of requests:

- (1) that we open a permanent inspection station at a port we do not currently serve; and
- (2) that we provide one-time or occasional service at a location where we normally do not provide service.

We are willing to provide service in both these situations under authority of the Farm Bill. We are therefore proposing that owners or operators of vessels or aircraft, or their agents, may enter into agreements with us to provide these types of services. The agreements would include the location where inspection services would be provided, the times and dates when services would be provided, the types of services

that would be provided, and the total cost of providing the services. The owner or operator requesting the services would be required to deposit, at the time the agreement is signed, an amount covering the estimated cost of providing 6 months of service. In addition, the owner or operator requesting the service would be required to maintain, based on a monthly accounting conducted by APHIS, a deposit large enough to cover the estimated cost of providing 6 months of service. If the service was to be provided only once or occasionally, the amount would be for as many provisions of the service as we anticipated would occur within a 6-month period.

The deposit is necessary to ensure that services needed can be funded as they are provided. The standard billing cycle is 3 months. A 6-month deposit would provide enough money to fund services for 2 billing cycles and would allow adequate time to replenish the account if required.

Agreements could be terminated by either party upon 30 days written notice. In the case the agreement was terminated after less than 6 months, if occasional services were provided less frequently than anticipated, or if costs to provide the service were lower than anticipated, APHIS would refund any excess user fee paid.

Under these proposed agreements, we would recover the full cost of providing the requested services. In the case of a new inspection station, the fee would cover all costs of opening and operating the station. Costs to operate the facility would include personnel costs, overhead, and other operating costs such as we have explained above in connection with our other existing and proposed user fees. We would determine the total of these costs. However, because the facility would be open to the public, we would collect users fees for services provided there. Therefore, we would deduct the amount of user fees collected from the total cost of operating the facility. The resulting figure would be the amount payable by the owner or operator signing the agreement. If, after the inspection station was open for a time, user fees collected there were enough to cover the full cost of operating the facility, then the amount payable under the agreement would drop to zero.

In the case of one-time or occasional services, our costs to provide the service would include any existing APHIS user fee that applied to the service, plus, as appropriate, reimbursable overtime, travel, transportation, and per diem. If no existing APHIS user fee applied to the service, then the amount would be

the full cost of providing the service, calculated as we have for our other proposed user fees. That is explained elsewhere in this document. For example, if the agreement covered vessel inspection services 500 miles from a port of entry, then the user fee under the agreement would include the APHIS vessel inspection fee plus reimbursable overtime, if applicable, and travel, transportation, and per diem.

Calculation of Proposed User Fees for AQI Services, and Phytosanitary Certificates

We are proposing to require user fees to cover the cost of certain agricultural quarantine and inspection (AQI) services and for issuance of phytosanitary certificates.

For each category of service, we have estimated the annual number of means of conveyance that would be subject to inspection, or, as appropriate, the annual number of phytosanitary certificates to be issued. Our estimates include services relating to persons and means of conveyance which would be exempt from paying the proposed user fees. Our estimates are based on our Work Accomplishment Data System.

For each category of service, we have determined the total cost of providing service. Included in the total cost are delivery costs, program support costs, and agency-level support costs. Delivery costs include, but are not limited to, employee salary and benefits, travel, purchase of specialized equipment, and all costs associated with maintaining field offices. Program support costs include these same items at the regional and headquarters level. Agency-level support costs include, but are not limited to, training, legislative and public affairs, regulatory enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collection services. We have also included administrative expenses we would incur by adopting these proposed regulations.

In the case of AQI services for aircraft arriving within the customs territory of the United States, we have also included in the proposed fee an amount which would provide for a reasonable reserve in the Account. The proposed fee is designed so that the balance would be approximately 3 months operating expenses, or \$5,487,000. Since the majority of the fees would be remitted in arrears, a sufficient reserve must be maintained to meet current expenses. In addition, we believe that a reserve of this size would be necessary to ensure that sufficient funds are available to carry out agricultural quarantine and

inspection activities because the number of aircraft may deviate from the anticipated volume upon which our fees are based. The anticipated volume of activity could fluctuate greatly due to changes in travel and trade. The reserve would also be used to offset any uncollectible debts that result from clients are unwilling or unable to pay for our services. We would monitor the balance closely and propose adjustments in our fees as necessary to ensure a reasonable balance.

Our final step in calculating our proposed fees for services was to divide the cost of providing service by either the anticipated number of means of conveyance subject to inspection, or by the number of phytosanitary certificates to be issued, as appropriate. In this manner we arrived at a "raw" fee.

To determine the fees we are proposing to charge, we raised the "raw" fees up to the nearest quarter. We did round to the next dollar for user fees adopted to cover various other agricultural quarantine and inspection

services (see 56 FR 14837-14846, April 12, 1991, and 56 FR 18496-18502, April 23, 1991.) However, we do not believe that is necessary for the user fees proposed in this document. We do not need to establish a reserve fund for any services other than the agriculture quarantine and inspection services. Therefore, we do not need to generate more revenue than needed to cover costs. Also, we do not need to generate more revenue than needed to cover costs. Also, we do not need to coordinate our collection system with that of any other entity. Our existing user fees will be collected for us by the United States Customs Service. Partly because they collect fees only in whole dollars, we adopted user fees which were rounded up to the next dollar. However, the user fees proposed in this docket will be paid directly to us, and not collected by the United States Customs Service.

We have proposed to round these fees up, rather than down, in order to ensure that we collect enough revenue to cover

the costs of providing these services. If we were to round down, many fees would be lower than the cost of the service.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We would propose any necessary cost adjustments in the Federal Register.

Below is a table showing the categories of service, the cost of providing service in each category, including, in the case of airline inspection, a reasonable balance in the account, the number of means of conveyance subject to inspection or the anticipated number of certificates to be issued (labeled "volume"), the "raw" fee, and the proposed fee. Additional supporting data and computations are available for inspection at the Animal and Plant Health Inspection Service, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

CALCULATION OF USER FEES

Activity	Total cost plus reserve (in thousands)	Volume	"Raw" fee	Proposed fee
AQI Services				
Airport operations:				
Commercial aircraft	\$28,880	246,001	\$117.40	\$117.50
International	1,115	29,719	37.52	37.75
Domestic				
Maritime Operations:				
Commercial vessels	79	713	110.80	111.00
Domestic				
Other Services				
Phytosanitary certificates, and phytosanitary certificates for reexport, and				
Commercial	2,865	95,998	29.84	30.00
Noncommercial	183	9,643	18.98	19.00
Reissued	71	11,863	5.98	6.00
Processed product certificates ⁴				30.00
Reissued processed product certificates				6.00

⁴ As explained above in this document, we have no data at this time showing the total cost or volume of processed product certificates.

The fees adopted would be periodically reexamined and any further adjustments necessary to reflect costs of providing services would be included in a future rulemaking proceeding.

Collection and Billing Procedures (Proposed 7 CFR 354.3)

We propose to collect the proposed APHIS user fees for phytosanitary certificates as follows:

Some commercial exporters receive APHIS services on a continuous or repeated basis. Under certain circumstances we give blocks of phytosanitary certificates to these exporters. They complete and return the certificate to us to be endorsed. Under

our proposal, these exporters would have to pay the full required APHIS user fee for each certificate. Payment would have to be made at the time we issue the block of certificates to them.

Commercial exporters who are given and pay up front for a block of certificates would be issued a receipt. They could return voided and unused certificates to us for a partial refund or credit. They would choose whether they preferred a refund or credit. Credits would be applied to future user fee charges. The refund or credit would be the amount of the APHIS user fee already paid, minus \$6 to cover administrative costs we incur to issue, track, and process these certificates.

Commercial exporters who are given and pay up front for a block of certificates could also get a partial refund or credit under certain other circumstances. The APHIS user fee for certificates would include any necessary inspections, if they are conducted during normal business hours (8 a.m. to 4:30 p.m.). Exporters could request that inspections be conducted at other times. However, they would be charged reimbursable overtime under 7 CFR 354.1 for that service, in addition to the user fee. A shipper who requested inspection for a certificate outside of normal business hours, would be paying twice for the inspection—once in the

APHIS user fee and once under reimbursable overtime. Therefore, we are proposing, if this situation occurs, that we, at the shipper's option, would reimburse them the amount of any overcharge, or give them a credit against future APHIS user fees.

We also propose that commercial exporters who are given and pay up front for a block of certificates could get a partial refund or credit if they use any of the certificates to cover a non-commercial shipment. The proposed user fee for a non-commercial shipment is less than that for a commercial shipment. As commercial exporters issued a block of certificates would have paid the commercial user fee, they would have overpaid if the shipment was non-commercial. In this situation also, we would, at the shipper's option, either reimburse them the amount of the overcharge, or give them a credit against future APHIS user fees.

Many commercial exporters ship only occasionally. We do not give them blocks of certificates. They and all noncommercial exporters would be required, under our proposal, to pay the user fee for each certificate at the time it is issued.

Payment Methods

We are proposing to accept checks, including personal checks, checks drawn on commercial accounts, money orders, traveler's checks, and cashier's checks. However, we would not accept personal checks from individuals, for amounts over \$100.00. We cannot determine whether a personal check is good until after we have provided our services. Therefore, we are limiting personal checks in order to limit our losses. Based on our experience, other types of payment do not pose this problem. Therefore, we are not proposing to limit them.

Penalties for Non-Payment or Late Payment

We are proposing to add a new § 354.5 to impose penalties for non-payment or late payment of APHIS user fees. If payment for an APHIS user fee is past due by more than 30 days, APHIS would impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

If a person is delinquent in paying any APHIS user fee, or delinquent in paying any interest due on any APHIS user fee, we would provide no further services requiring a user fee to that person.

In addition, if an APHIS user fee is due in a situation where we are still in the process of providing the service, but the fee has not been paid within the time allowed, or the payment is inadequate

or unacceptable, we would not finish providing the services. For example, if payment was due for a phytosanitary certificate, we would not release the certificate.

Part 2

User Fees for Birds and Poultry in APHIS Animal Import Centers (Proposed 9 CFR 130.2)

We are proposing to charge a user fee for each bird or poultry quarantined in an Animal Import Center. The proposed fee would be assessed daily. Different fees would be assessed for birds and poultry of different sizes, with further adjustments for non-standard feed, housing, and care and handling required. The different fees reflect the varying costs of quarantining different birds and poultry.

Size is a major component of quarantine costs. Feed costs are higher for larger birds and poultry. The larger a bird or poultry is, the more space it occupies. More cages must be used, which must be cleaned and taken care of. Labor costs are therefore greater for larger birds and poultry.

The proposed user fee for each category includes water and standard feed, housing, care and handling. We consider standard feed to be seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not. Examples of standard diets are: regular medicated pelleted feed for psittacine birds, canary/finch mix for canaries and finches, and corn mixture for game cocks. We consider standard housing to be any suitable housing, other than individual housing, which is normally available at the facility. Individual housing, housing constructed or purchased at the request of an importer, and housing with blinds, dense foliage or plants, or temperature-regulated housing are not considered "standard." Non-standard care and handling would include hand-feeding, more than one feeding a day, frequent observation, and any handling or observation which requires personnel to attend to the birds or poultry outside of normal business hours.⁵

Non-standard feed, housing, and care and handling are sometimes required, and sometimes requested by the importer. Some birds and poultry must be fed a special diet. For example, some birds are fruit eaters. But special diet requirements do not necessarily apply to every bird or poultry in a category. For example, some pigeons require a fresh

fruit diet, but most do not. Some birds and poultry must also be housed individually. Game cocks, for example, are too aggressive to be housed together. Certain varieties of hummingbirds are also so aggressive they must be separated. Special care and handling is also sometimes required. Baby birds have to be hand-fed. Some birds may need to be observed to ascertain their eating patterns, to check their adjustment to an artificial environment, to detect undue stress and make suitable adjustments, or to try to reduce mortality.

APHIS is prepared to provide non-standard feed, housing, care and handling, whether it is required or provided at the request of the importer. However, under the proposed user fee system, the costs of these services must be recovered.

Therefore, we are proposing to charge for special diets. These can be extremely costly, and the cost can vary widely from one area of the United States to another. Feed for seed-eating birds ranges from approximately \$0.04 per day for a small bird to \$0.64 for a large bird. Feed for seed-eating birds is also fairly uniform in price throughout the United States and is easily obtainable in all locations and at all times of the year. In comparison, fruit, such as mangoes and papayas, may cost \$1.23 per day for a medium bird. Special feeds are also not always readily available. They vary widely in price. For example, papayas in Hawaii are considerably less expensive than papayas in New York State, depending both on location and season of the year. Because of differences in feed costs for seed-eating birds and poultry, and for birds and poultry on special diets, we are proposing to require importers to either provide special feed for their birds or poultry, or pay for it on an actual cost basis. Actual cost basis would include not only the cost of the feed, but also any delivery costs. The importer would be able to choose which method he or she preferred.

We are also proposing to require that any bird or poultry which is housed in non-standard housing, and any bird or poultry which receives non-standard care and handling, must pay the maximum user fee for birds or poultry, as appropriate. The higher charge would apply whether the non-standard treatment was to maintain good husbandry practices, or because the importer requested it. As an example of how the charge would work, small birds would be charged \$0.75 per day for quarantine under this proposal, while large birds would be charged \$6.50 per

⁵ Normal business hours at the Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

day. A hummingbird is a small bird. However, certain species of hummingbirds must be housed individually. Therefore, under this proposal we would charge \$6.50 per day for quarantining one of these hummingbirds in an Animal Import Center. Likewise, if an importer requested that an animal be housed individually when we would not normally do that, we would charge the higher fee.

Fee for Zoo Animals and Zoo Birds in Animal Import Centers (Proposed 9 CFR 130.2)

We are proposing a daily user fee for all zoo animals, except equines, birds, and poultry. Zoo animals, which include poultry but not birds, are defined in the proposed regulations as "any animal, including poultry intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes." Zoo birds are defined in the proposed regulations as "birds intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals or birds for recreational or educational purposes."

We have determined that it is not necessary to charge different user fees for different zoo animals, except equines, birds, and poultry. This is because, with the exception of equines, poultry, and birds, the handling and care requirements for all zoo animals are virtually the same, and the diseases requiring quarantine are comparable.

For zoo equines, zoo birds, and zoo poultry, we are proposing to charge the same user fees as we propose to charge for other equines, birds, and poultry.

All equines are quarantined in accordance with the regulations in 9 CFR part 92. Generally this will result in a 3, 7, or 60 days quarantine, whether they are zoo equines or not. Zoo equines are handled the same as other equines. Therefore, a different user fee for quarantining them is not justified.

Similarly, all birds and poultry are dealt with the same in quarantine, whether they are zoo birds and zoo poultry, or not. Therefore, there is no reason to charge a different user fee for quarantining them.

However, we do charge a reservation fee for space at APHIS Animal Import Centers (see 9 CFR part 92). Under this proposal, we would apply the reservation fee paid by the importer or his or her agent against the user fees due for services provided at an Animal Import Center.

Fee for Equines in Animal Import Centers (Proposed 9 CFR 130.2)

We are proposing to charge a daily user fee for each equine, including zoo equines. The rates we propose are \$128.50 for this 1st day through the 3rd day, \$93.25 for the 4th day through the 7th day, and \$79.00 for the 8th and later days. All equines being imported into the United States are quarantined for either 3 days, 7 days, or 60 days, depending on what tests must be performed on the equine and how long it takes to get test results. What tests are conducted depends in turn on the country from which the equine is being imported and the diseases which are present in that country.

All animals and birds which require quarantine, except equines, are quarantined for a standard 30-day period. As explained above, equines are quarantined for either 3, 7, or 60 days. The difference between quarantine periods is the time it takes to observe the different animals or birds for signs of various diseases. The diseases prevalent in the country of origin dictate what diseases we are concerned about. For example, equines from countries infected with African horse sickness must be quarantined for 60 days, as it takes that long to be sure that they are not infected with African horse sickness.

For certain activities, necessary for quarantining a horse, the costs are fixed in terms of labor and materials. These include setting up stalls and providing bedding before a horse arrives at the Animal Import Center, then identifying it, taking blood samples, and taking its temperature and inspecting it for ectoparasites such as ticks when it arrives, and finally cleaning and disinfecting its stall after the horse leaves the Animal Import Center. The greater the length of quarantine, the lower the cost per day for these activities because the costs are spread over more days.

We do charge a reservation fee for space at APHIS Animal Import Centers (see 9 CFR Part 92). Under this proposal, we would apply the reservation fee paid by the importer, or his or her agent, against the user fees due for services provided at an Animal Import Center.

Fee for Domestic Animals in Animal Import Center (Proposed 9 CFR 130.2)

With regard to domestic animals, other than equines, we are proposing one rate for camels, cattle, bison and buffalo, and another rate for all other domestic animals. Compared with other domestic animals, camels, cattle, bison and buffalo require either more space or

more handling, or both, while in quarantine. Therefore, we are proposing to charge a higher rate.

We are proposing to charge a single user fee for the "all others" category of domestic animals. Though there is some variation in feed, space, and handling required by different animals in this category, the variations are not sufficiently significant to warrant multiple categories.

We do charge a reservation for space at APHIS Animal Import Centers (see 9 CFR part 92). Under this proposal, we would apply the reservation fee paid by the importer, or his or her agent, against the user fees due for services provided at an Animal Import Center.

Fee for Use of Entire Quarantine Building at Animal Import Centers (Proposed 9 CFR 130.3)

We are also proposing to allow importers, at their option, to utilize an entire Animal Import Center quarantine building and pay a single user fee. Any animals or birds could be imported under this fee.

However, only designated buildings at our Newburgh, NY, and Honolulu, HI, facilities would be available on this basis. Not all quarantine buildings in Honolulu and Newburgh are suitable, and no buildings in Miami are suitable.

We are proposing to designate only those buildings which are inappropriate for "multiple use." Some buildings at our facilities are designed to be used concurrently for quarantining different types of animals. For example, birds and horses can be quarantined at the same time in the same building. These are known as "multiple use" buildings. However, if one importer controls the entire building, no other animals or birds could be housed in it during the month it was reserved. We do have other buildings which are inappropriate for multiple use. If any animals or birds are quarantined in them, no other type of bird or animal can be housed there. We are proposing to designate only buildings which are inappropriate for multiple use. In this way, we maximize the available quarantine space. Designating multiple use buildings would severely and unnecessarily restrict the available quarantine space.

We would charge a monthly user fee for use of the entire building. The fee would cover all costs of the quarantine except feed.

The costs included in our proposed user fees cover labor and utilities and all associated costs, such as trash removal and incineration. We calculated labor costs by determining the average salary for one animal caretaker, who

would be assigned exclusively to the building for the month. The figure is different for our New York and Hawaii facilities, in part, because the New York facility is open 8 hours a day and the Hawaii facility is open 4 hours a day. Utility and associated costs were calculated for each facility, and the total for each facility was divided by the number of square feet of animal quarantine space at that facility. The resulting cost per square foot was applied to the designated buildings. The resulting figures are different for the New York and Hawaii facilities because basic costs are different. For example, trash and incineration costs are substantially higher at the New York facility than in Hawaii. Heating is a major expense at the New York facility, but negligible in Hawaii.

The importer would have to provide feed, or pay for it on an actual cost basis, including cost of delivery. The importer would be allowed to utilize the building as he or she wished. However, we would limit the number of animals and birds to the maximum number which could be cared for without jeopardizing their health. In determining the maximum number, the veterinarian in charge of the Animal Import Center would consider the species, size and age of the animals, sanitation, and ability to conduct tests, inspections, and support procedures. The maximum allowable number would vary with every lot. When an importer determined what species, sizes and ages of animals and birds he or she wished to import, he or she would call for a reservation and request to use an entire building. At that time we would determine, and inform the importer of, the maximum number of animals and birds to be permitted.

We have decided to offer this option for two reasons. First, importers often request a more favorable rate, based on economy-of-scale savings, for very large shipments. Second, importers occasionally demand extraordinary space for their animals or birds, beyond routine husbandry needs. Offering an entire quarantine building as an option would satisfy both types of requests.

A large number of animals can be quarantined for less cost per head than a small number of animals. However, the cost varies with the species, size, ages and number of animals and birds and the building in which they are housed. Because of the variation, we cannot calculate a standard user fee for large shipments. We can, however, calculate the cost of offering an entire building for use. Under this method, regardless of the number of animals and birds housed in the building, we recover

our costs. In turn, the importer may obtain a lower per-head cost than by paying our proposed standard daily user fee.

As to requests for extraordinary space, we cannot afford to offer extra space if we cannot recover its cost. Under this proposal, we can recover our costs and the importer can have as much space as he or she wants for his or her animals and birds.

User Fee for Animals in Privately Operated Permanent Quarantine Facilities (Proposed 9 CFR 130.4)

We propose to charge importers separate user fees for inspection services and for testing services, for animals in permanent privately operated quarantine facilities.⁶ We considered an hourly rate for inspection services. However, APHIS veterinarians must supervise shipments belonging to many different importers, with varying numbers of animals in each shipment. To allocate daily costs to each importer would be impossible. Therefore, we have calculated the cost of providing services at these facilities. We determined annual labor and support costs, and divided the total by the annual number of quarantine days (each day an animal is in quarantine is a quarantine day; 40 animals in quarantine for 1 day is 40 quarantine days). The resulting figure is our proposed user fee.

User Fee for Animals in Privately Operated Temporary Quarantine Facilities (Proposed 92 CFR 130.5)

We are proposing to charge a user fee for each hour of service provided by an APHIS veterinarian or Animal Health Technician during the time the quarantine facility is in operation. We would estimate the total fee when the request for approval of the temporary quarantine facility is made under 9 CFR part 92. It would be based on the anticipated number of hours of service, whether service would be provided by an APHIS veterinarian or Animal Health Technician, or both, and on the hourly rate for that service. The person requesting approval of the facility would be billed for actual services at the end of the quarantine. Our proposed fees are: \$33.50 per hour for service performed by an APHIS veterinarian and \$21.75 per hour for service performed by an APHIS Animal Health Technician.

⁶ Permanent privately operated quarantine facilities are authorized under 9 CFR 92.309.

User Fee for Endorsing Export Health Certificates (Proposed 9 CFR 130.6)

Many animals, poultry, and hatching eggs are exported from the United States each year. The importing countries often require that the animals, birds, or hatching eggs be accompanied by an export health certificate. This is a certificate, issued by APHIS, that states that the animals, birds, or hatching eggs being exported are free of certain diseases that the importing country is concerned about. Different countries have different requirements as to the number and kind of tests required and the number of animals, birds, or hatching eggs which can be covered by one certificate. For example, Canada is the only country that requires that no more than one non-slaughter horse be covered by an export health certificate. Other countries allow an unlimited number of animals to be covered by one certificate.

We are proposing to charge user fees for endorsing export health certificates. We are proposing to charge different fees, depending in part on the number of animals, birds, or hatching eggs covered by the certificate and the number of different tests recorded on the certificate.

There are many costs associated with endorsing the certificates. These costs are less for certificates covering animals as a group which do not require tests. Costs are higher for certificates which cover individually-identified animals which require tests. In the latter case, the greater the number of animals, and the larger the number of tests, the more time consuming it is for APHIS personnel to issue export health certificates. Costs include time to review health certificates, to confirm that the importing country's requirements have been met, to verify laboratory test results if tests are required, and to endorse, or sign, the certificates. Other costs include administrative support (area office rent, utilities, supplies, etc.), agency overhead, and Departmental charges. Our proposed fees would recover these costs.

User Fees for Other Export Animal and Export Bird-Related Inspection and Supervision Services Within the United States (Proposed 9 CFR 130.7)

With regard to export animals and birds, APHIS personnel often conduct inspections and provide supervision for these animals and birds within the United States that is different than or in addition to the service discussed above. For example, APHIS personnel supervise rest periods for export

animals and the loading and unloading of animals at export isolation facilities. We are proposing to charge a user fee for these services. The proposed fees, which cover all costs, include travel costs, are: \$33.50 per hour for services provided by an APHIS veterinarian and \$21.75 per hour for services provided by an APHIS Animal Health Technician. Some services can be performed only by a veterinarian. The proposed user fees would apply to the entire period of time the veterinarian or Animal Health Technician is providing a service, including travel time to and from the work site.

User Fees for Inspection Services Outside the United States (Proposed 9 CFR 130.8)

We must at times provide inspection services outside the United States. These are inspections, usually to approve facilities from which animals or birds will be exported to the United States, required under various regulations in title 9, Code of Federal Regulations.

Most of these inspection services are paid for by the users under trust fund agreements. However, some of our regulations do not provide any means for payment. Therefore, we are proposing to establish standard regulations, which would apply to all inspection services provided outside the United States, except those for which the regulations already provide a trust fund or other payment method.

Under our proposal, we would require any person who wishes to receive inspection services outside the United States to enter into an agreement with APHIS. The agreement would include the location where the services would be provided, the times and dates when services would be provided, the types of services that would be provided, and the total cost of providing the services. The person requesting the inspection services would be required to deposit, at the time the agreement is signed, the estimated cost, as calculated by APHIS, of providing 6 months of service. In addition, the person requesting the services would be required to maintain, based on a monthly accounting conducted by APHIS, a user fee deposit large enough to cover the estimated cost of providing 6 months of service. The assessed fee would cover the amount of inspection service it is estimated the person would require over a 6-month period. This account is necessary to ensure that services needed can be funded as they are provided. The standard billing cycle is 3 months. A 6-month account would provide enough money to fund services for 2 billing

cycles and would allow adequate time to replenish the account if required.

Agreements could be terminated by either party upon 30 days written notice. In the case the agreement was terminated after less than 6 months, if inspection services were provided less frequently than anticipated, or if costs to provide the services were lower than anticipated, APHIS would refund any excess user fee paid.

Under these proposed agreements, we would recover the full cost of conducting site visits. Personnel costs, travel and transportation, per diem, reimbursable overtime, overhead, direct materials, and other operating costs such as we have explained above in connection with our other proposed user fees, would be included. We would determine the total of these costs. The resulting figure would be the user fee payable by the entity signing the agreement.

If user fees were payable for off-site services provided in conjunction with the site visit, user fees for those services would be in addition to the user fee for the site visit.

User Fees for Tests (Proposed 9 CFR 130.9, 130.10, and 130.11) and Diagnostic Reagents (Proposed 9 CFR 130.12)

We are also proposing to charge a user fee for: (1) All laboratory tests we perform in connection with the importation or exportation of animals and birds; (2) all laboratory test we perform in as part of reference assistance testing; and (3) certain diagnostic reagents. The proposed user fees have been calculated to recover the cost of performing each test or supplying the diagnostic reagent.

Laboratory tests are required to import or export animals or birds and as part of reference assistance testing. Reference assistance tests are tests requested by veterinarians, State cooperators, or universities. The request may be to either establish or confirm a diagnosis.

The user fee for import or export-related tests would be the cost of the test requested. The user fee for reference assistance testing would be the total cost of the tests performed. In reference assistance testing to establish a diagnosis, we cannot predict in advance what tests will be required. The user fee must, therefore, be based on the cost of the tests actually performed. However, in reference assistance testing to confirm a diagnosis, we are requested to perform specific tests.

The fees would include all the costs explained earlier in this document: direct labor, direct materials, pro-rata shares of administrative support,

equipment capitalization, overhead and Departmental charges.

The proposed user fees for some reference assistance tests are higher than the proposed user fees for the same tests for import or export purposes. The reason for this is that when we perform a test for import or export purposes, we simply complete the requested test and report the result. In reference assistance testing, we take whatever steps are necessary to confirm our results. These confirming steps, which can include repeating a test or conducting additional, different tests, add to the cost of reference assistance testing.

To arrive at proposed user fees for laboratory tests, we determined the amount of time, in hours, needed to perform the test. If 400 tests could be done in 1 hour, the time per test would be $\frac{1}{400}$ th of an hour. We then multiplied the number of hours per test by the average hourly salary of personnel in the laboratory where the test is performed, plus support costs, Departmental charges, and Agency overhead. The resulting cost figure is covered by our proposed user fee.

To arrive at proposed user fees for diagnostic reagents, we determined the amount of time needed to produce a batch of reagent. We multiplied the number of hours needed by the average hourly salary of personnel in the laboratory where the reagent is produced, plus support costs, Departmental charges, and Agency overhead. We then divided the total by the number of milliliters of reagent in the batch, to arrive at a cost per milliliter. The proposed user fee is the cost per milliliter multiplied by the number of milliliters of reagent in a standard unit of that reagent.

Calculation of Proposed User Fees for Quarantine Services, Testing, Veterinary Diagnostics, and Export Health Certificates

We are proposing to charge a specific dollar amount for each individual service we provide. Each fee has been calculated to cover the full cost of providing that service. The cost of providing a service includes direct labor and direct material costs. It also includes administrative support, equipment capitalization, agency overhead, and Departmental charges.

Direct labor costs are the costs of employee time spent specifically to provide the service. For example, at APHIS's Animal Import Centers, animal caretakers and veterinarians prepare for the arrival of animals or birds to be quarantined in the Center, care for them (feed, water, clean cages or stalls) while

they are quarantined, observe them while they are quarantined, release them from quarantine, and clean the quarantine area afterwards. These are all direct labor costs. For other services, the direct labor costs would be different. For example, if the service is testing a tissue sample for disease-causing organisms, then direct labor costs include the time spent by laboratory personnel to prepare the sample, conduct the test, and read the test. Or, if the service is inspecting an aircraft, the direct labor costs include the time spent by the inspector to conduct the inspection. Direct labor costs vary with the type of service provided.

Direct materials costs include the cost of any materials needed to supply the service. For example, among other things, animals in quarantine need feed, water and bedding, disinfectants, and pharmaceuticals (for preparation of any needed tranquilizers). These are all direct materials costs. Again, direct materials costs are different for different services. For example, direct materials costs for conducting a laboratory test would include animals, eggs, glassware, chemicals, and other supplies necessary to perform the test.

Administrative support costs include local clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the service but which is nonetheless necessary, such as repairing equipment); travel and transportation for personnel, supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contractual services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; chemicals and glassware, and utilities (such as water, trash pickup, telephone, electricity, natural and propane gas, heating and diesel oil). Some administrative support items may be contractual or not, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. As with direct labor and direct materials costs, the type, amount and cost of administrative support vary with the type of service provided.

Equipment capitalization is the annualized cost to replace equipment. We determine this by establishing the life expectancy, in years, of equipment we use to provide a service and by establishing the cost to replace the equipment at the end of its useful life. We subtract any money we anticipate receiving for selling used equipment.

Then we divide the resulting dollar figure by the life expectancy of the equipment. The result is the annual cost to replace equipment.

Agency overhead is the pro-rata share, attributable to a particular service, of the management and support cost for all agency activities. Included are the cost of providing budget and accounting services, management support, including the Administrator's office and support at the regional level, personnel services, public information service, and liaison with Congress.

The final cost item included in the calculation, Departmental charges, is APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the Department of Agriculture (Department). Services the Department provides centrally include the Federal Telephone Service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Department forms. The Department notifies APHIS how much the agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributes to a particular service, in our fee calculations. An outline of the basic process is shown below. The actual components, quantities, and costs used to calculate the fee are different for each service.

The basic steps in the calculation, for each particular service, are:

1. Determine the following costs:

Direct labor;
Direct materials;
Pro-rata share of administrative support;
Pro-rata share of equipment capitalization;
Pro-rata share of agency overhead; and
Pro-rata share of Departmental charges;

2. Add all costs;

3. Estimate, based on past experience, the frequency of service, that is, the number of times the service will be performed in one year; and

4. Divide the total of all costs by the frequency of service.

The result of these calculations is the total cost of provide a particular service one time.

Rounding

We are proposing to round our proposed user fees up to the nearest quarter. This is consistent with the other APHIS user fees proposed in this docket. We did round to the next dollar for user fees adopted to cover various agricultural quarantine and inspection

services (see 56 FR 14837-14846, April 12, 1991, and 56 FR 18496-18502, April 23, 1991.) However, that is not necessary for these proposed fees covering animal quarantine, testing, export health certificates, and veterinary diagnostics. We do not need to establish a reserve fund for these services. Also, rounding up to the nearest dollar would generate more revenue than needed to cover costs, and fees would be the same for markedly different services.

We have proposed to round these fees up, rather than down, in order to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many fees would be lower than the cost of the service. As we would not have a reserve fund, there would be no funds for us to draw on to make up the deficiency.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We will publish an necessary adjustments in the Federal Register.

Payment Procedures (See Proposed 9 CFR 130.50)

We propose to implement several different billing and collection methods to accommodate those who use our services.

At our Animal Import Centers and at privately operated permanent quarantine facilities, we proposed to collect for all APHIS services at the time we release the animals or birds from quarantine. We would collect user fees at the time for both quarantine services and diagnostic tests performed on the animals or birds. As explained above, we would apply the reservation fee already paid by the importer against the user fee charges. At privately-operated temporary quarantine facilities, the person requesting approval of the facility would be billed for our services at the end of the quarantine.

We are proposing to accept cash at Animal Import Centers. VISA and MasterCard credit cards would also be accepted, but only at locations which are equipped to handle credit card payments. These locations are the Animal Import Centers in Newburgh, NY and in Miami, FL, and the USDA, APHIS, VS, office at John F. Kennedy International Airport, Jamaica, NY. Other credit cards cannot be accepted as the United States Department of the Treasury accepts credit card payments made only through VISA or MasterCard.

With regard to hourly user fees for miscellaneous supervision and inspection services, we propose to bill users monthly for services provided. All

forms of payment, except cash, would be accepted. We cannot accept cash because we do not have facilities either to make change or to safely keep cash.

We propose to collect for endorsing export health certificates at the time we provide the service. If that is at an area office,⁷ we would collect the user fee when the certificate is endorsed. We would accept all forms of payment at area offices, including, cash, checks, money orders, traveler's checks, and credit cards if we endorse export health certificates at Canadian or Mexican border ports, we would also collect the user fees when we endorse the certificate. However, we would not accept cash at these locations. Port veterinarians do not have proper facilities for keeping cash or making change.

We propose to collect user fees for tests, other than testing conducted on animals and birds in quarantine and reference assistance testing to establish a diagnosis, at the time the test request is sent to the National Veterinary Services Laboratories in Ames, Iowa. Payment would have to be enclosed with the test request. As explained above, we would collect payment for tests performed on quarantined animals and birds at the time they are released from quarantine. With regard to reference assistance testing to establish a diagnosis, we propose to bill users for the actual tests and procedures performed, as soon as they are determined. Users would have to pay for these tests before we would release the results. We would accept any form of payment except cash. As explained above, we do not have facilities for keeping cash or making change.

We propose to collect user fees for diagnostic reagents at the time a request for the reagent is made. Payment would have to be enclosed with the request. We would not release any diagnostic reagent without complete payment. Payment could be made by any means except cash, for the reasons given above.

Penalties for Non-payment or Late Payment (Proposed Section 130.51)

We are proposing to impose penalties for non-payment or late payment of APHIS user fees. If payment for an APHIS user fee is past due by more than 30 days, APHIS will impose interest charges in accordance with 31 U.S.C. 3717. If a person is delinquent in paying

any APHIS user fee, or delinquent in paying any interest due on any APHIS user fee, we would provide that person no further services for which an APHIS user fee is assessed.

In addition, if an APHIS user fee is due in a situation where we are still in the process of providing the service, but the fee has not been paid within the time allowed, or the payment is inadequate or unacceptable, we would not finish providing the services. For example, if an animal was still in quarantine at an Animal Import Center, we would not release it from quarantine, or if we had completed a test but not informed the user of the results, we would withhold the results.

If animals or birds are left in quarantine at an Animal Import Center for longer than 30 days after the close of the required quarantine, we would consider them to be abandoned. If they could be released from quarantine, we would do so, seize them, and sell or otherwise dispose of them. We would recover the costs of handling the animals or birds from the proceeds. If the animals or birds could not be released from quarantine, we would dispose of them, as determined by the Administrator, and would recover the cost of handling them from the proceeds.

We believe these penalties would help ensure that users pay APHIS user fees promptly and in full. Prompt and full payment is necessary if we are to recover the costs of providing services. Without payment, we cannot continue to provide services.

Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This proposed rule is one of several rules which concern requiring certain persons to pay user fees for APHIS services they receive. We have already published, in two separate documents, final rules adopting user fees for various passengers and means of conveyance. One final rule covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. It was published April 12, 1991 (56 FR 14837-14846), and was effective May 13, 1991. The other final rule covered user fees for passengers on commercial airlines departing Hawaii and Puerto for other parts of the United States. It was published April 23, 1991 (56 FR 18496-18502). As explained above, its effective date, originally scheduled for August 1,

1991, has been postponed until October 1, 1991.

These rules, together with the regulations proposed in this document, are expected to provide total savings to taxpayers of \$132 million annually. The discounted value of this amount is estimated at about \$1.3 billion into perpetuity. The fees on the four categories of service proposed in this rule are expected to contribute 30 percent of the total savings.

Total administrative costs associated with implementing the three rules are estimated as \$2 million annually, a discounted value of about \$20 million. Only 20 percent of this amount is expected to be incurred in implementing the fees proposed in this rule.

The preliminary impact analysis indicates that the implementation of user fees for the four categories affected by this proposed rule is expected to save taxpayers over \$38 million per year. The total discounted value is estimated to be roughly \$380 million into perpetuity. Total administrative costs to the Department associated with fee collection (for the inspection of commercial vehicles and the issuance of phytosanitary certificates) are estimated to be \$510,000 annually, a discounted cost of about \$5 million.

The implementation of user fees for the inspection of commercial aircraft and commercial vessels is expected to provide tax savings of \$30 million a year (\$300 million discounted value). User fees for the issuance of phytosanitary certificates are expected to accrue savings of at least \$3 million annually (\$30 million discounted value).

Administrative costs associated with the inspection of these commercial vehicles are estimated as \$209,000 annually. A discounted cost of about \$2 million is estimated. Costs relating to the issuance of phytosanitary certificates are estimated as \$301,000 a year, or \$3 million discounted into perpetuity.

The implementation of user fees for services related to the export and import of animals or birds is expected to yield savings to taxpayers of \$4 million per year (\$40 million discounted value). User fees for services relating to veterinary diagnostics are expected to accrue annual savings of over \$1 million (a discounted value of \$10 million).

The two final user fee rules that have already been published (one for international air passengers and commercial trucks, rail cars and foreign vessels, and one for domestic air travel) were estimated to have a combined annual impact of \$93 million in the form of savings to taxpayers. The savings

⁷ A list of the locations of area offices can be obtained from the Office of the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

estimated to accrue from the first rule on international air passengers and commercial vehicles comprise 83 percent of this total while the remaining 17 percent in savings is attributed to passenger fees for domestic travel.

This proposed action may also have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities, and we invite comments on these impacts. In particular, we are interested in determining the number and kind of small entities which may incur benefits or costs from the implementation of users fees. These small entities, among others, include: commercial aircraft or sea companies; importers, traders, and wholesalers of agricultural commodities; animal importers and brokers; pet owners; veterinarians; commercial testing laboratories, and State or local government agencies.

Our preliminary Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or by telephoning (202) 382-1368.

Executive Order 12606

We have analyzed these regulations in accordance with the Executive Order 12606, and have determined that this rule has no potential impact on the family well-being. We have determined that this rule: Does not affect the stability of the family, and particularly, the marital commitment; does not affect the authority and rights of parents in the education, nurture, and supervision of their children; does not help or hinder the family to perform its functions; does not substitute governmental activity for family functions; and does not affect family earnings. We have also determined that the benefits of this action justify any impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included

in this proposed rule will be submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

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.)

List of Subjects

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Phytosanitary certificate, Plants (agriculture), Quarantine, and Transportation

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, and Tests.

Accordingly, we are proposing to amend 7 CFR part 354 and 9 CFR chapter I as follows:

7 CFR PART 353—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; 31 U.S.C. 9701; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

§ 354.3 [Amended]

2. In § 354.3, paragraph (a) would be amended to add, in alphabetical order, the following definitions:

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

Commercial shipment. A shipment for gain or profit.

Designated state inspector. A state employee designated by APHIS to conduct inspections for phytosanitary

export certification and to sign certificates on behalf of APHIS.

Phytosanitary certificate. A document certifying that agricultural products moving from one country to another are free from quarantine pests, and practically free from other injurious pests.

Phytosanitary certificate for reexport. A document certifying that agricultural products which moved into the United States from another country and which are now moving from the United States to another country, remained free from quarantine pests, and practically free from other injurious pests while in the United States.

Processed product certificate. A document certifying that processed agricultural products moving from the United States are believed to be free from injurious plant pests.

3. In § 354.3, paragraph (e) would be redesignated as paragraph (f), and a new paragraph (e) would be added to read:

§ 354.3 User fees for certain international services.

(e) *Fee for inspection of commercial aircraft.* (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 is \$117.50 for each arrival.

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

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

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

(iii) Any aircraft making an emergency or forced landing when the

original destination of the aircraft was a foreign port;

(iv) Any aircraft with 30 or fewer seats, which is not carrying cargo and which is not equipped to offer inflight food service; and

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

(3) *Remittance and statement procedures.* (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, * * *, for receipt no later than 31 days after the close of the calendar quarter in which the aircraft arrivals occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a written statement to the United States Department of Agriculture, * * * the statement must include the following information:

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

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

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port; and

(F) Amount remitted.

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

(4) *Compliance.* Each carrier subject to this section must allow APHIS personnel to verify the accuracy of the APHIS user fees remitted and to otherwise determine compliance with 21 U.S.C. 136a and this paragraph. Each carrier must advise the United States Department of Agriculture, * * *, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations and remittances. The United States Department of Agriculture, * * *, must be promptly notified of any changes in the identifying information submitted.

§ 354.3 [Amended]

4. In § 354.3(f)(1), the words "paragraph (e)(2)" would be removed and "paragraph (f)(2)" would be added in its place.

5. In § 354.3, new paragraphs (g), (h), and (i) would be added to read as follows:

§ 354.3 User fees for certain international services.

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

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

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

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

(i) The state must:

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

(B) Determine the total cost of issuing certificates by adding together delivery,² support,³ and administrative⁴ costs; and

(C) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee.

(ii) The state may round the "raw" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

(5) The APHIS user fees are:

(i) \$30 for a certificate for a commercial shipment;

(ii) \$19 for a certificate for a non-commercial shipment;

(iii) \$30 for a certificate for reexport of a commercial shipment;

(iv) \$6 for reissuing any certificate or certificate for reexport;

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

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

² Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and all costs associated with maintaining field offices.

³ Support costs are costs at supervisory levels which are similar to delivery costs, and costs such as training, automated data processing, public affairs, enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collecting services.

⁴ Administrative costs are costs incurred as a direct result of collecting and monitoring federal phytosanitary certificates.

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

(iii) If the shipper pays for inspection outside of normal business hours (8:00 a.m. to 4:30 p.m.) under § 354.1 of this part.

(iv) If a certificate from the block is used for a non-commercial shipment; or

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

(2) The amount of any refund or credit will be the amount over charged, less \$6 to cover APHIS administrative expenses.

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

6. In § 354.4, new paragraphs (c), (d), and (e) would be added to read as follows:

§ 354.4 User fees for certain domestic services.

(c) *Fee for inspection of commercial aircraft from Hawaii and Puerto Rico.*

(1) Except as provided in paragraph (c)(2) of this section, an APHIS user fee will be charged for each commercial aircraft which is subject to inspection under § 318.13-8 or § 318.58-8 of this chapter. Each such carrier is responsible for paying the APHIS user fee, which is \$37.75 for each aircraft departing Hawaii or Puerto Rico.

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

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

(ii) Aircraft transiting Hawaii or Puerto Rico and subject to inspection under part 330 of this chapter.

(3) *Remittance and statement procedures.* (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, * * *, for receipt no later than 31 days after the close of the calendar quarter in which the aircraft departures occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a

written statement to the United States Department of Agriculture, * * * the statement must include the following information:

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

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

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port of entry; and

(F) Amount remitted.

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

(4) *Compliance.* Each carrier subject to this section, must allow APHIS personnel to verify the accuracy of the APHIS user fees remitted and to otherwise determine compliance with 31 U.S.C. 9701 and this section. Each carrier must advise the United States Department of Agriculture, * * *, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations and remittances. The United States Department of Agriculture, * * *, must be promptly notified of any changes in the identifying information submitted.

(d) *Fee for inspection of commercial vessels from Hawaii and Puerto Rico.*

(1) Except as provided in paragraph (d)(2) of this section, each commercial vessel which is subject to inspection under § 318.13-9 or § 318.58-9 of this chapter, must pay an APHIS user fee. Each such carrier is responsible for paying the APHIS user fee, which is \$111.00 for each vessel departing Hawaii or Puerto Rico.

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

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

(ii) Any vessel transiting Hawaii or Puerto Rico and subject to inspection under part 330 of this chapter.

(3) *Remittance and statement*

procedures. (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, * * *, for receipt not later than 31 days after the close of the calendar quarter in which the aircraft departures occurred. Late payments will be subject to interest,

penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a written statement to the United States Department of Agriculture, * * *, the statement must include the following information:

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

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

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port of entry; and

(F) Amount remitted.

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

(4) *Compliance.* Each carrier subject to this section, must allow APHIS personnel to verify the accuracy of the APHIS user fees remitted and to otherwise determine compliance with 31 U.S.C. 9701 and this paragraph. Each carrier must advise the United States Department of Agriculture, * * *, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations and remittances. The United States Department of Agriculture, * * *, must be promptly notified of any changes in the identifying information submitted.

(e) *Individual agreements for inspection services at ports of entry.* (1) Operators and owners of vessels or aircraft, or their agents, may enter into agreements with APHIS to receive, at points of entry in the United States, inspection services in addition to the regular or on-call services available in connection with such vessels or aircraft.

(2) Agreements may be made to cover the following types of services:

(i) Opening and operating a new inspection station at a port of entry; and

(ii) Providing one-time or occasional inspection services at a location where APHIS does not normally provide such services.

(3) Owners and operators of vessels or aircraft, or their agents, must contact the Regional Director, USDA, APHIS, Plant Protection and Quarantine,¹ for

¹ A list of the Regional Directors, USDA, APHIS, Plant Protection and Quarantine and the states for which they are responsible, may be obtained from the Deputy Administrator, Plant Protection and Quarantine, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

the state where they want APHIS to provide services, to make an agreement⁴

(4) All agreement must include the following:

(i) Name, mailing address, and telephone number of the operator or owner of the vessel or aircraft, or, if applicable, the operator's or owner's agent;

(ii) Explanation of inspection services to be provided;

(iii) Date(s) and time(s) inspection services will be provided;

(vi) Location (street address, port of entry, berth, dock, gate, etc.) and if applicable, identify (identification number, name, etc.) of vessel or aircraft or other thing to be inspected;

(v) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(vi) A statement that APHIS agrees to provide the described inspection services;

(vii) A statement that the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months;

(viii) A statement that APHIS will credit an amount equal to all user fees received for services provided at the location to the owner or operator's account, until the total amount of user fees credited to the account is equal to the amount of money paid into the account by the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, at the time the agreement was entered into; and

(ix) A statement that the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, agrees to maintain a balance in the user fee payment account equal to the cost of providing the services described for 6 months, as calculated monthly by APHIS.

(5) APHIS will enter into an agreement only if qualified personnel can be made available to provide the services to be provided.

(6) An agreement can be terminated by either party on 30 days written notice.

(7) If, at the time an agreement is terminated, any unobligated funds remain in the user fee account, APHIS will return them to the owner or operator, or his or her agent.

7. In part 354, a new § 354.5 would be added to read as follows:

§ 354.5 Penalties for non-payment or late payment of user fees.

(a) If a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee due under either title 7 of title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested.

(b) If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is insufficient or not in compliance with the regulations in this part, then APHIS will take the following action:

(1) If an APHIS user fee is due for a certificate or a certificate for reexport, APHIS will not issue the certificate.

(2) If an APHIS user fee is past due by more than 30 days, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

9 CFR CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

8. Chapter I would be amended by redesignating subchapters F, G, H, I, J and K as subchapters G, H, I, J, K and L and all cross references would be revised accordingly and a new subchapter F consisting of part 130 would be added to read as follows:

SUBCHAPTER F—USER FEES

PART 130—USER FEES

- Sec.
- 130.1 Definitions.
- 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.
- 130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.
- 130.4 User fees for services at privately operated permanent quarantine facilities.
- 130.5 User fees for services at privately operated temporary quarantine facilities.
- 130.6 User fees for export health certificates.
- 130.7 User fees for inspection and supervision services provided within the United States for export animals and birds.
- 130.8 User fees for inspection services outside the United States.
- 130.9 User fees for tests performed at the National Veterinary Services Laboratories.
- 130.10 User fees for tests performed at the Foreign Animal Diseases Laboratory.
- 130.11 User fees for reference assistance testing.
- 130.12 User fees for diagnostic reagents.
- 130.13 through 49 [Reserved]
- 130.50 Payment of user fees.
- 130.51 Penalties for non-payment or late payment of user fees.

Authority: 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

§ 130.1 Definitions.

As used in this part, the following terms shall have the meaning set forth in this section.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal. All animals except birds, but including poultry.

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

Animal Import Center. Quarantine facilities operated by APHIS in Newburgh, New York; Miami, Florida; and Honolulu, Hawaii.¹

Animal product or by-product. Any material of animal origin, such as, but not limited to, meat, milk, organs, glands, extracts, secretions, fat, bones, blood, lymph, hides, skins, hair, wool, hoofs, hoof meal, horn meal, blood meal, meat meal, glue stock, and test specimens.

APHIS animal health technician. An animal health technician employed by APHIS, who is authorized to perform services required by title 9, Code of Federal Regulations, chapter I.

APHIS veterinarian. A veterinarian employed by APHIS, who is authorized to perform the services required by title 9, Code of Federal Regulations, chapter I.

Bird. Any member of the class aves, other than poultry.

Diagnostic reagent. Substances used in diagnostic tests to detect disease antibodies by causing an identifiable reaction.

Domestic animal. Any animal imported into the United States for any purpose other than exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.

Equine. Any horse, ass, mule, or zebra.

Export health certificate. An official document issued by an APHIS veterinarian or animal health technician, which, as required by the importing country, states that animals or birds to be exported from the United States are free of certain diseases and pests.

Game cock. Any chicken bred, trained, or imported for cock fighting.

Person. An individual, corporation, partnership, trust, association, or any

¹ The addresses of Animal Import Centers may be obtained from the Deputy Administrator, Veterinary Services, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

other public or private entity, or any officer, employee, or agent thereof.

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

Reference assistance testing. Tests conducted by APHIS at the request of a veterinarian, state cooperator, or university, to either establish or confirm a diagnosis.

Standard feed. Seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not.

Zoo animal. Any animal, including poultry, intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.²

Zoo bird. Any bird intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals or birds for recreational or educational purposes.³

Zoo equine. Any equine intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.⁴

§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.

(a) The following user fees, which include standard care, feed, and handling, must be paid for each animal or bird quarantined in an Animal Quarantine Facility:⁵

Animal or bird	Daily fee
Birds (including zoo birds):	
0-250 grams.....	\$0.75
251-1,000 grams.....	2.75
over 1,000 grams, and any bird in non-standard housing or receiving non-standard care and handling.....	6.50
Poultry (including zoo poultry):	
A. Doves, pigeons, quail.....	1.75
B. Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants.....	3.00
C. Game cocks, geese, swans, turkeys, and poultry housed in non-standard housing or receiving non-standard care and handling.....	7.00
Equines (including zoo equines):	
1st through 3rd day.....	128.50
4th through 7th day.....	93.25
8th and later days.....	79.00
Zoo animals (except equines, birds, and poultry).....	28.00
Domestic animals:	
Camels, cattle, bison, buffalo.....	49.00

² Regulations concerning approval of zoos and requirements for importing wild animals are found in part 92 of this chapter.

³ See footnote 2.

⁴ See footnote 2.

⁵ APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

Animal or bird	Daily fee
All others.....	13.00

(b) The importer may, at his or her option, request that birds or poultry be housed in non-standard housing. Non-standard housing is individual housing, any housing not normally available at the Animal Import Center, any housing constructed or purchased at the request of the importer, and housing with blinds, dense foliage, plants, or temperature regulation.

(c) The importer may, at his or her option, request that birds or poultry be given non-standard care and handling. Non-standard care and handling includes hand-feeding, more than one feeding a day, frequent observation, and any handling or observation which requires personnel to attend to the birds or poultry outside of normal business hours.⁸

(d) If any bird or poultry is fed a diet other than seed, including but not limited to diets of fruit, insects, nectar or fish, the importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the Animal Import Center.

(e) Any reservation fee paid by the importer under part 92 of this chapter, will be applied to the APHIS user fees due for animals or birds quarantined in an Animal Import Center.

§ 130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.

(a) An importer may, at his or her option, occupy entire quarantine buildings at the Animal Import Centers specified below. A user fee will be charged for each building as follows:

Animal Import center	Building size	Monthly fee
Honolulu, Hawaii.....	30 feet x 75 feet.	\$7,830
Newburgh, New York.....	72 feet x 82 feet.	39,450

(b) Users must provide APHIS personnel at the Animal Import Center, at the time they make a reservation for quarantine space, with the following information:

- (1) Species of animals and birds to be quarantined;
- (2) Ages of animals and birds to be quarantined; and

⁸ Normal business hours at the Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7:00 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

(3) Sizes of animals and birds to be quarantined.

(c) APHIS personnel at the Animal Import Center will determine, based on the information provided by the importer under paragraph (b) of this section, and on routine husbandry needs, the maximum number of animals and birds permitted in the requested building.

(d) The importer must provide feed, or pay for it on an actual cost basis, including cost of delivery to the Animal Import Center.

§ 130.4 User fees for services at privately operated permanent quarantine facilities.

A daily user fee of \$49.25 must be paid for each animal quarantined in a privately-operated permanent quarantine facility.

§ 130.5 User fees for services at privately operated temporary quarantine facilities.

(a) A user fee must be paid for each animal quarantined in a privately operated temporary quarantine facility.

(b) The user fees are:

- (1) \$33.50 per hour for service performed by an APHIS veterinarian;
- (2) \$21.75 per hour for service performed by an APHIS Health Technician.

§ 130.6 User fees for export health certificates.

(a) The following user fees must be paid for each export health certificate requested⁷ for the following types of animals, regardless of the number of animals covered by the certificate:

Type of animal	User fee
Slaughter animals, of any type, moving to Canada or Mexico.....	\$10.00
Non-slaughter horses to Canada.....	10.00
Poultry.....	2.00
Hatching eggs.....	2.00
Animal products and by-products.....	3.25
Other animals and birds.....	4.00

(b) The following user fees must be paid for each export certificate requested for animals and birds, depending on the number of animals or birds covered by the certificate and the number of tests required:

Number of tests required	Number of animals on certificate	Fee
1-2.....	First animal..... Each additional animal.	\$39.00 1.00

⁷ An export certificate may need to be issued for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS issues export certificates as a service to the public.

Number of tests required	Number of animals on certificate	Fee
3-6.....	First animal..... Each additional animal.	41.50 1.25
7 or more.....	First animal..... Each additional animal.	44.00 1.50

§ 130.7 User fees for inspection and supervision services provided within the United States for export animals or birds.

(a) A user fee must be paid for the following APHIS services provided within the United States for export animals or birds:

- (1) Inspect an export isolation facility;
- (2) Supervise animal or bird rest periods prior to export; and
- (3) Supervise loading or unloading of animals or birds for export shipment.

(b) The user fees are:

- (1) \$33.50 per hour for service performed by an APHIS veterinarian;
- (2) \$21.75 per hour for service performed by an APHIS Animal Health Technician.

§ 130.8 User fees for inspection services outside the United States.

(a) If an inspection is required in title 9, Code of Federal Regulations, to be performed outside the United States, and the regulation does not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee under this section.

(b) Any person who wants APHIS to provide inspection services outside the United States must contact the Import/Export Staff, USDA, APHIS, Veterinary Services, Federal Building, Hyattsville, MD 20782, to make an agreement.

(c) All agreements must include the following:

- (1) Name, mailing address, and telephone number of either the person requesting the inspection services, or his or her agent;
- (2) Explanation of inspection services to be provided, including the regulations in title 9, Code of Federal Regulations which provide for the services;
- (3) Date(s) and time(s) the inspection services are to be provided;
- (4) Location (including street address) where inspection services are to be provided;
- (5) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;
- (6) A statement that APHIS agrees to provide the inspection services;
- (7) A statement that the person requesting the inspection services, or, if

appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months; and

(8) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to maintain a user fee payment account equal to the cost of providing the described inspection services for 6 months, as calculated monthly by APHIS.

(d) APHIS will enter into an agreement only if qualified personnel can be made available to provide the inspection services.

(e) An agreement can be terminated by either party on 30 days written notice.

(f) If, at the time an agreement is terminated, any unobligated funds remain in the user fee payment account, APHIS will refund them to the person who requested the inspection services, or his or her agent.

§ 130.9 User fees for tests performed at the National Veterinary Services Laboratories.

The following user fees must be paid for each test performed at the National Veterinary Services Laboratories in connection with the importation or exportation of animals or birds:

Type of test	User fee
Agar gel immunodiffusion.....	\$4.75
Buffered acidified plant antigen presumptive.....	3.50
Card test.....	3.00
Competitive enzyme linked immunosorbent assay.....	3.75
Complement fixation.....	9.00
Complement fixation-ovis.....	3.75
Enzyme linked immunosorbent assay.....	2.75
Hemagglutination inhibition.....	7.50
Hemagglutination inhibition-5.....	2.00
Indirect fluorescent antibody.....	4.50
Latex agglutination.....	5.50
Mercaptoethanol.....	3.50
Microscope agglutination.....	6.25
Neutralization test.....	19.50
Plate test.....	1.25
Rivanol.....	2.25
Serum neutralization.....	7.50
Tube test.....	2.50
Tube agglutination melitensis.....	3.50

§ 130.10 User fees for tests performed at the Foreign Animal Diseases Laboratory.

The following user fees must be paid for each test performed at the Foreign Animal Diseases Laboratory in connection with the importation or exportation of animals:

Test	User fee
Blue tongue agar gel immunodiffusion.....	\$6.25
Foot and mouth virus infection associated antigen.....	12.00
Foot and mouth tissue culture virus neutralization/type A, O, and C.....	13.75
Rinderpest fluorescent antibody neutralization.....	27.25
Swine virus diarrhea tissue culture virus neutralization.....	13.75
Trypanosoma vivax indirect fluorescent antibody.....	27.25

§ 130.11 User fees for reference assistance testing.

The following APHIS user fees must be paid for each test performed as part of reference assistance testing to either establish a diagnosis or confirm a diagnosis:

Type of test	User fee
Agar gel immunodiffusion.....	\$5.00
Bacteria culture.....	2.00
Complement fixation.....	20.50
Hemagglutination inhibition.....	23.75
Histopathology.....	8.50
Indirect fluorescent antibody.....	7.50
Parasitology.....	9.00
Serum neutralization.....	15.50
Toxicology.....	139.00
Virus isolation.....	29.75

§ 130.12 User fees for diagnostic reagents.

(a) The following user fees must be paid for each diagnostic reagent obtained from the National Veterinary Services Laboratory:

Reagent	Unit (ml)	Fee/unit (dollars)
Avian Adenovirus 127:		
Antigen.....	5	\$39.50
Antiserum.....	5	21.75
Avian Encephalomyelitis:		
Virus.....	0.6	5.25
Antiserum.....	5	21.75
Avian Influenza:		
Antigen.....	2	7.75
Antiserum.....	6	121.50
Avian Paramyxovirus-2:		
Virus.....	0.6	5.25
Antiserum.....	5	21.75
Antigen.....	5	39.50
Avian Paramyxovirus-3:		
Virus.....	0.6	5.25
Antiserum.....	5	21.75
Antigen.....	5	39.50
Avian Reovirus:		
Virus.....	0.6	5.25
Bovine Coronavirus:		
Antiserum.....	2	83.50
Virus.....	0.6	5.25
Conjugate.....	1	19.25
Bovine Herpes Virus:		
Antiserum:		
Type 1.....	2	83.50
Type 2.....	2	83.50
Type 3.....	2	83.50
Conjugate:		
Type 1.....	1	19.25

Reagent	Unit (ml)	Fee/unit (dollars)
Type 2.....	1	19.25
Type 3.....	1	19.25
Positive Control Serum		
Type 1.....	2	4.50
Type 2.....	2	4.50
Virus:		
Type 1.....	0.6	5.25
Type 2.....	0.6	5.25
Type 3.....	0.6	5.25
Bovine Papular Stomatitis:		
Antiserum.....	2	83.75
Conjugate.....	1	19.25
Bovine Parvovirus:		
Antiserum.....	2	83.50
Conjugate.....	1	19.25
Positive Control Serum.....	1	4.50
Virus.....	0.6	5.25
Bovine Respiratory Syncytial Virus:		
Antiserum.....	2	3.50
Conjugate.....	1	19.25
Positive Control Serum.....	2	4.50
Virus.....	0.6	5.25
Bovine Rotavirus:		
Antiserum.....	2	83.50
Conjugate.....	1	19.25
Virus.....	0.6	5.25
Bovine Viral Diarrhea:		
Antiserum.....	2	83.50
Conjugate.....	1	19.25
Positive Control Serum.....	2	4.50
Virus.....	0.6	5.25
Brucella Canis:		
Antigen.....	25	134.00
Brucella Ovis:		
Antigen.....	25	22.50
Chlamydia Psittaci:		
Virus.....	0.6	5.25
Antigen.....	1	5.25
Conjugate.....	1	19.25
Antiserum.....	1	5.25
CF Modifying Factor.....	1	11.50
Modifying Factor.....	2	1.25
Contagious Ecthyma:		
Antiserum.....	1	5.25
CF Antigen.....	1	7.00
Antigen.....	5	3.75
Conjugate.....	1	19.25
Virus.....	0.6	5.25
Duck Viral Enteritis:		
Conjugate.....	1	31.25
Virus.....	0.6	5.25
Encephalomyocarditis:		
Antiserum.....	2	57.50
Conjugate.....	1	19.25
Virus.....	0.6	5.25
Positive Control Serum.....	2	6.25
Epizootic Hemorrhagic Disease:		
Antigen.....	1	16.50
Conjugate.....	1	19.25
Virus.....	0.6	5.25
Equine Adenovirus:		
Antiserum.....	5	48.25
Conjugate.....	1	24.00
Virus.....	0.6	5.25
Equine Herpes Type 1:		
Antiserum.....	5	48.25
Conjugate.....	1	24.00
Virus.....	0.6	5.25
Equine Herpes Type 2:		
Antiserum.....	5	23.75
Virus.....	0.6	5.25
Equine Herpes Type 3:		
Antiserum.....	5	22.25
Virus.....	0.6	5.25
Equine Influenza:		
Antiserum.....	5	21.75
Virus.....	0.6	5.25
Exotic Newcastle Disease:		
Antigen.....	100	39.50

Reagent	Unit (ml)	Fee/unit (dollars)
Antiserum	400	21.75
Virus	100	5.25
Hemagglutinating Encephalomyelitis:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25
Infectious Bronchitis Virus		
Virus	0.6	4.50
Antiserum	5	21.75
Infectious Bursal Disease:		
Virus	0.6	5.25
Antiserum	5	21.75
Antigen	1	6.00
Infectious Laryngotracheitis:		
Virus	0.6	5.25
Johnin:		
OT	10	12.25
PPD	2	10.75
Lepto IFA:		
Conjugate	1	19.25
Leptospira:		
Antigen	10	124.00
Antiserum	1	9.75
Lepto Transport Medium	10	3.00
Parainfluenza-3:		
Antiserum	2	6.25
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25
Pasteurella:		
Antigen	0.5	1.00
Antiserum	1	16.50
Porcine Adenovirus (AV):		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Porcine Parvovirus (PPV):		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25
Porcine Reovirus:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Porcine Rotavirus:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	14.25
Positive Control Serum	2	6.25
Pseudotubercle Herpes Virus:		
Antiserum—Standard	5	21.75
Virus	0.6	5.25
Conjugate	1	24.00
Quail Bronchitis Virus:		
Virus	0.6	5.25
Swine Influenza:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25
Transmissible Gastroenteritis:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25

§§ 130.13 through 130.49 [Reserved]

§ 130.50 Payment of user fees.

(a) All user fees must be paid as follows:

(1) User fees for reference assistance testing to establish a diagnosis must be paid when billed;

(2) User fees for reference assistance tests to confirm a diagnosis must be paid when the test(s) is requested;

(3) User fees for animals in Animal Import Centers or privately-operated permanent quarantine facilities must be paid at the time the animals are released from quarantine;

(4) User fees for animals in privately-operated temporary quarantine facilities must be paid when billed;

(5) User fees for supervision and inspection services specified in § 130.7 must be paid when billed; and

(6) User fees for export health certificates must be paid prior to receipt of endorsed certificates.

(b) User fees may be paid by the following methods:

(1) Cash, if payment is made at an area office^a or an Animal Import Center;

(2) All types of checks, including traveler's checks;

(3) Money orders; or

(4) Credit cards (VISA and Master Card) if payment is made at the Animal Import Centers in Newburgh, NY or in Miami, FL, or at the USDA, APHIS, VS, office at John F. Kennedy International Airport, Jamaica, NY.

§ 130.51 Penalties for non-payment or late payment of user fees.

(a) If a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee under either Title 7 or Title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested.

(b) If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) If an APHIS user fee is due for animals or birds in quarantine at an Animal Import Center or at a privately-operated quarantine facility, APHIS will not release them;

(2) If an APHIS user fee is due for an export health certificate, APHIS will not release the certificate;

(3) If an APHIS user fee is due for tests conducted by APHIS, APHIS will not release the test results; and

(4) If an APHIS user fee is due for a diagnostic reagent, APHIS will not release the reagent.

^a A list of APHIS Area Offices may be obtained from the Deputy Administrator, Veterinary Services, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(c) If user fees are paid later than 30 days after payment is due, APHIS will impose a late payment penalty and interest charges as in accordance with 31 U.S.C. 3717.

(d) Animals or birds left in quarantine at an Animal Import Center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation, and may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) If animals or birds abandoned in quarantine at an Animal Import Center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition.

Done in Washington, DC this 1st day of August 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18614 Filed 8-6-91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to amend the regulations governing the Conservation and Environmental Programs found at 7 CFR part 701, to change the definition of an eligible "State" to allow producers in American Samoa to participate in the Agricultural Conservation Program (ACP) and the Emergency Conservation Program (ECP). This change would allow certain producers in American Samoa to be eligible for cost-share assistance under the ACP and ECP.

DATES: Comments must be received by September 8, 1991 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: James R. McMullen, Director,