

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 5. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

■ 6. Amend § 1653.3 by revising the third sentence of paragraph (b) introductory text to read as follows:

§ 1653.3 Processing retirement benefits court orders.

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(b) * * * Retirement benefits court orders should be submitted to the TSP record keeper at the current address as provided at <http://www.tsp.gov>. * * *

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■ 7. Amend § 1653.13 by revising the third sentence of paragraph (b) introductory text to read as follows:

§ 1653.13 Processing legal processes.

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(b) * * * Legal processes should be submitted to the TSP record keeper at the current address as provided at <http://www.tsp.gov>. * * *

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PART 1690—THRIFT SAVINGS PLAN

■ 8. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

■ 9. Amend § 1690.1 by removing the definition of *Thrift Savings Plan Service Office or TSPSO* and by revising the definition of *ThriftLine* to read as follows:

§ 1690.1 Definitions.

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ThriftLine means the automated voice response system by which TSP participants may, among other things, access their accounts by telephone. The ThriftLine can be reached at (877) 968-3778.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 354

[Docket No. APHIS 2006-0096]

RIN 0579-AC06

Agricultural Inspection and AQI User Fees Along the U.S./Canada Border

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the foreign quarantine and user fee regulations by removing the exemptions from inspection for imported fruits and vegetables grown in Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers entering the United States from Canada. As a result of this action, all agricultural products imported from Canada will be subject to inspection, and commercial conveyances, as well as airline passengers arriving on flights from Canada, will be subject to inspection and user fees. We are taking this action in part because we are not recovering the costs of our current inspection activities at the U.S./Canada border. In addition, our data show an increasing number of interceptions on the U.S./Canada border of prohibited material that originated in regions other than Canada that presents a high risk of introducing plant pests or animal diseases into the United States. These findings, combined with additional Canadian airport preclearance data on interceptions of ineligible agricultural products approaching the U.S. border from Canada, strongly indicate that we need to expand and strengthen our pest exclusion and smuggling interdiction efforts at that border. In order to do this and to recover the costs of our existing inspection activity, we need to collect user fees for inspection of commercial conveyances and international air passengers entering the United States from Canada.

DATES: This interim rule is effective November 24, 2006. We will consider all comments we receive on or before November 24, 2006.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant

Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2006-0096 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0096.

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

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alan S. Green, Executive Director, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737; (301) 734-8261.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. Similarly, the regulations in 9 CFR subchapter D prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of pests or diseases of livestock. The regulations in 7 CFR part 354 provide rates and requirements for overtime services relating to imports and exports and for user fees.

The existing regulations in "Subpart-Fruits and Vegetables" (§§ 319.56 through 319.56-8) require, with very few exceptions, a specific written permit for the importation of fresh fruits or vegetables into the United States. The imported fruits and vegetables are

subject to inspection and, if necessary, cleaning and/or treatment at the first port of arrival in the United States. Also, the owner or the owner's agent must make full disclosure of the type, quantity, and country of origin of the fruits and vegetables at the time the fruits and vegetables are presented for inspection.

Current § 319.56–2(c), however, provides that, with the exception of potatoes from specified areas in Canada, fruits and vegetables grown in Canada may be imported without restriction under the regulations. Canada has been treated more leniently than other countries because, at the time the policy was implemented, products from Canada were produced in Canada and, in most cases, did not harbor plant pests or animal diseases of concern to the United States. In addition, we had reviewed Canada's import requirements and determined that they were sufficient to ensure that Canada would keep out agricultural commodities from other countries that could present plant or animal pest or disease risks if those commodities were subsequently exported from Canada to the United States. In the two final rules (the first published in the **Federal Register** on April 12, 1991 (56 FR 14837–14846, Docket No. 91–026) and the second on January 9, 1992 (57 FR 755–773, Docket No. 91–135)) in which we first established agricultural quarantine and inspection (AQI) user fees for commercial conveyances and international air passengers, we exempted conveyances and passengers from Canada from those fees. Because it was our understanding at the time that such conveyances and passengers posed little risk of introducing plant or animal pests or diseases into the United States, we did not need to routinely provide AQI services for them and, therefore, could not justify imposing user fees on them.

Recent trends have led us to reevaluate our AQI inspection regime at the U.S./Canada border. The North American Free Trade Agreement has had a significant impact on agricultural trade between the United States and Canada. Between 1995 and 2005, Canadian exports to the United States of vegetables and fruits and nuts increased by 80 percent. In addition, a huge demand created by Canada's growing cultural diversity has led to an ever-increasing variety of agricultural products from all over the world being imported into Canada. Canadian re-exports of vegetables and fruits and nuts to the United States increased by 336 percent during the same 10-year period. Being situated entirely in cool to cold

ecoregions, Canada imposes fewer phytosanitary requirements than does the United States on imports of plant products from most countries where tropical or subtropical pests are present. Of the 402 species on the U.S. regulated plant pest list as of December 2001, 349, or 87 percent, were not regulated pests in Canada. Therefore, most commodities that are refused entry into the United States, or are admitted only after certain phytosanitary requirements have been met, can be imported into Canada without any impediments.

Canada's import requirements for many foreign plant products allow Canada to offer a greater availability of such products than can the United States. This greater availability, which may result in lower prices, combined with the lack of routine inspection at U.S. ports of entry of agricultural products labeled as products of Canada and of international air passengers at the Canada/U.S. border, creates an incentive for people to bring agricultural commodities that may not be eligible for U.S. import into the United States from Canada. Some commodities that fall into this category are mangoes, litchis, guava, and lemon grass.

Responding to this incentive, commercial importers can circumvent U.S. phytosanitary regulations by having agricultural commodities shipped to Canada, having them re-labeled there as products of Canada, and then having them shipped to the United States, taking advantage of the exemption in § 319.56–2(c) referred to above. Interceptions at the border, including one in Detroit in 2004 of Spanish oranges and Dutch peppers manifested as products of Canada, provide evidence of this practice. There have also been instances of flowers grown in a third country being mixed into bouquets with Canadian-grown flowers and then shipped to the United States. Hydrangea plants from third countries have been cut into small rooted cuttings, labeled as Canadian products, and then shipped across the border to the United States. In 2005, approximately 14,000 hydrangea plants from Japan entered the United States via Canada. Importation into the United States of hydrangeas from Japan is prohibited due to the possibility that they could introduce the quarantine-significant rust *Puccinia glyceriae* (anam. *Aecidium hydrangeae-paniculatae* Dietel) into this country. There have been frequent interceptions of litchis and longans that originated in Asian countries, were taken out of their original boxes, re-labeled, and then shipped across the border from Canada. A 3,000-pound shipment of untreated

longans, which was part of a mixed load, was intercepted at Blaine, WA, in 2003. A shipment of litchis was seized as recently as July 2006, also at Blaine.

Further confirmation of these practices was provided by the results of three extensive inspection operations along the U.S./Canada border (two in Buffalo, NY, and a third at Blaine, WA). The inspections resulted in numerous interceptions of unauthorized material produced in regions other than the United States and Canada.

Prohibited articles found during these inspections included untreated citrus fruit, mangoes, and other tropical fruit; meat; live birds; and plants in pots with soil. The prohibited plants, plant products, birds, and animal products intercepted originated in regions throughout the world and presented a high risk of introducing plant pests or animal diseases into the United States. In fact, according to our interception records, a number of exotic plant pests were found during these inspections, including fruit flies and mealybugs on cherimoyas; aphids, mites, and scale insects on litchis; white flies and fruit flies on guavas; and scale insects and mealybugs on mangoes.

Additional interception records compiled by APHIS' Plant Protection and Quarantine (PPQ) program have documented a number of potential risk factors associated with imports of agricultural products from Canada. Materials with the potential for carrying foot-and-mouth disease (FMD) have been found to approach the border regularly from Canada. Solid wood packing material, a pathway for the Asian and citrus longhorned beetles, *Sirex noctilio*, pine shoot beetle, emerald ash borer, and other pests and diseases, is estimated to be present in some 70 percent of all Canadian rail containers. We view both the packing materials and the railway conveyances in which they are carried as more significant risk pathways than we did when we first established AQI user fees. Fruit flies have been intercepted at U.S. entry ports on mangoes from Mexico and Morocco, longans and litchis from various Asian countries, citrus from Spain, *Spondia* spp. from Mexico, *Acanthocereus* spp. from China, and *Musa* spp. from India that were shipped from those countries to the United States via Canada.

Results of our AQI preclearance activities at Canadian airports have demonstrated that air passengers from Canada represent another pest pathway. The number of air passengers entering the United States from Canada has increased over 70 percent in the last 14 years, from 35 million in 1992 to a

projected 60 million in 2006. AQI monitoring of this pathway was first implemented in FY 1996 at Vancouver International Airport, with permanent staffing placed at that airport in FY 2001. The preclearance program was then expanded to include Toronto, Montreal, and Calgary. Table 1 below provides data on interceptions of animal products prohibited U.S. entry that were

carried by preclearance passengers at Vancouver International Airport in FYs 2000 and 2001. Imports of animal products from the countries listed in the table may present a risk of introducing FMD or other animal diseases into the United States. The interception totals were higher in FY 2001 because of the permanent staffing we had in place during that year. Regrettably, in

subsequent years, staffing shortfalls elsewhere resulted in AQI personnel being reassigned from this location, increasing the possibility that prohibited animal products may not be intercepted at Vancouver International Airport prior to entering the United States.

TABLE 1.—INTERCEPTIONS OF PROHIBITED ANIMAL PRODUCTS DURING PRECLEARANCE PASSENGER INSPECTIONS AT VANCOUVER INTERNATIONAL AIRPORT

Passenger origin	Animal product interceptions	
	FY 2000	FY 2001
Canada	3	8
China	2	41
Hong Kong	0	11
Japan	0	3
South Korea	0	1
Philippines	0	5
Singapore	0	1
United Kingdom	0	1
Spain	1	0
Taiwan	2	0

Source: Work Accomplishment Data System, APHIS, PPQ.

Table 2 below presents approach rates for FYs 2001 through 2004 for samples of preclearance passengers at the four Canadian airport locations—Calgary, Montreal, Toronto, and Vancouver—at

which we have had an AQI presence. The approach rate is the percentage of passengers carrying agricultural items prohibited entry into the United States. For example, in FY 2001, there were

5,433 passengers sampled, of whom 358 were found to be carrying prohibited materials, which were then seized, resulting in an approach rate of 6.6 percent.

TABLE 2.—APPROACH RATES FOR PRECLEARANCE PASSENGERS AT CANADIAN AIRPORTS

Fiscal year	Passengers sampled	Quarantined material interceptions	Approach rate (percent)
2001	5,433	358	6.6
2002	4,386	160	3.6
2003	18,285	901	4.9
2004	19,496	1,520	7.8
Average	11,900	735	6.2

Source: APHIS, PPQ, Agricultural Quarantine Inspection Monitoring Program.

In FY 1999, the last year for which we have complete data on the number of air passengers precleared in Canada for entry into the United States, the total exceeded 10 million passengers. As shown in table 2, the average yearly approach rate for such passengers is 6.2 percent. This means that approximately 620,000 prohibited agricultural commodities may be carried by air passengers attempting to enter the United States from Canada each year. When surveys and blitzes were conducted on passenger baggage at destination airports in the United States, significant amounts of prohibited agricultural materials were found.

In addition to all the conventional risk pathways discussed above, in the wake of the terrorist attacks of September 11, 2001, bioterrorism has become a much greater source of concern to us than it was in the past. The U.S./Canada border, which stretches over 3,985 miles from the Pacific to the Atlantic Ocean, is the longest undefended border in the world. Our current dearth of inspection activity at that border could potentially leave the United States vulnerable to bioterrorism. A successful bioterrorist attack could, in addition to causing death and illness, undermine Americans' confidence in the safety of

their food system and have a devastating impact on U.S. agriculture.

In order to safeguard U.S. agriculture, we have recently augmented our inspection activities at the U.S./Canada borders. The Bureau of Customs and Border Protection (CBP) of the U.S. Department of Homeland Security, which now conducts agricultural inspections pursuant to APHIS' regulations, currently has agricultural inspector positions along the U.S./Canadian land border stretching from Maine to Washington State. Busy corridors, such as Buffalo, NY, Detroit, MI, and Blaine, WA, have had the most inspectors. In recent years, agriculture

inspectors have been assigned to ports that previously did not have coverage for agricultural products, such as those in Maine, Minnesota, North Dakota, Montana, and Idaho. In addition to the border inspectors, there are the CBP agricultural inspectors located at preclearance stations at the larger Canadian airports of Toronto, Vancouver, and Montreal.

Inspectors at the border check and verify import permits and conduct inspection of agricultural products, such as cut flowers and produce, that are arriving on commercial conveyances, when those products are not of Canadian origin or when paperwork is lacking. Such commodities as meat and solid wood packing material have also been subject to inspection. In addition, the inspectors have been conducting some passenger vehicle inspections, which have resulted in the seizure of prohibited foreign agricultural commodities, such as untreated Asian and Latin American fruits that are eligible to enter Canada without the treatment necessary for importation into the United States.

Lack of funding and personnel have hampered our border inspection efforts, however. Because we have not charged user fees for inspecting commercial vessels (100 net tons or more), commercial trucks, commercial railroad cars, commercial aircraft, or international air passengers that enter the United States from Canada, we have not been recovering the costs of the inspections that we have been conducting. CBP staffing shortages have prevented us from augmenting our inspection activities to the extent that we deem necessary. At some of the newly staffed border locations referred to earlier, there is only one inspector to cover multiple points of entry.

Based on all the findings discussed above regarding conventional risk pathways, as well as our concerns about bioterrorism, we have determined that we need to expand and strengthen our pest exclusion efforts at the U.S./Canadian border. CBP concurs with this determination.

To sum up then, this interim rule has a threefold purpose:

- Closing the inspection exemption loophole for fruits and vegetables entering the United States from Canada;
- Recovering the costs of AQI services we are already providing at the U.S./Canada border; and
- Recovering the costs of new, expanded AQI services at the U.S./Canada border.

To address the risks posed by agricultural products agricultural products that originate in a third

country and are shipped through Canada to the United States, we are amending § 319.56–2(c), which, as noted above, provides that, with the exception of potatoes from specified areas in Canada, fruits and vegetables grown in Canada may be imported without restriction under the regulations in “Subpart-Fruits and Vegetables.” Specifically, we are amending that paragraph to provide that such fruits and vegetables will be subject to the requirements in § 319.56–6 for inspection at the port of first arrival. There are no specific inspection exemptions in other APHIS regulations for commodities from Canada. Agricultural commodities from Canada other than fruits and vegetables, such as cut flowers and nursery stock, are already subject to inspection, though such inspections have not been conducted with a frequency commensurate with the level of risk now associated with such imports.

We are also removing the exemptions from AQI user fees in § 354.3 for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers¹ entering the United States from Canada. Removing these exemptions will enable us to recover the both costs of our current inspection activities and the costs associated with implementing an augmented inspection regime for these conveyances and passengers.

The additional resources generated by the user fees will enable us to hire sufficient personnel to help target existing agricultural risk pathways for adequate pest exclusion and conduct compliance checks for all entrants from Canada. Adequate staffing is also vital to the effort to uncover currently unknown pathways. In addition, more inspectors are necessary to properly conduct verification of exit for transiting commodities at land borders. At Canadian airports, additional personnel will enable us to increase inspections of passengers determined to be at high risk for carrying restricted or prohibited animal products and produce. Anticipated personnel and other costs resulting from this interim rule are discussed below in the summary of the economic analysis, as well as in the full analysis.

Our amendments to § 354.3 entail removing or amending those paragraphs in the section that provide specific exemptions for conveyances or

passengers arriving from Canada or that have moved solely between the United States and Canada. In the paragraphs that provide for the prepayment of user fees for commercial trucks and commercial railroad cars, which have applied only to such trucks and railroad cars from Mexico due to the exemptions discussed previously for those conveyances arriving from Canada, we have removed the words “from Mexico” so those prepayment provisions will apply to conveyances arriving from both Canada and Mexico.

This interim rule does not establish any new user fees. Rather, the same AQI user fees that apply to commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers from every other nation arriving at ports in the customs territory of the United States will now apply to Canada as well.

In an interim rule published in the **Federal Register** on December 9, 2004 (69 FR 71660–71683, Docket No. 04–042–1), and effective on January 1, 2005, we amended the user fee regulations in § 354.3 by adjusting these fees. The fee adjustments were needed to recover the costs of increased inspection activity necessitated by the events of September 11, 2001, and to account for routine inflationary increases in the cost of doing business. The December 2004 interim rule contained adjusted AQI user fees for fiscal years (FYs) 2005 through 2010.

We develop user fees by determining the total annual costs to administer each individual AQI program activity for air passengers, commercial aircraft, trucks, railroad cars, and maritime vessels, including direct costs for providing inspection services, and indirect costs, such as agency overhead; the administrative costs of developing, collecting, and monitoring AQI user fees; and an amount to maintain a reasonable balance in reserve. We divide the total costs for each individual program activity by the estimated volume of airline passengers and commercial conveyances in that program activity arriving from all destinations to calculate each individual program’s user fees. Depending on the type of commodity or the agricultural risks associated with the region from which a conveyance or passenger originates, the inspection process may take only a few minutes or it can be quite extensive. These factors vary considerably from port to port and season to season; however, our fees do not. The number of variables which determine the amount of service or length of time required to provide service is virtually infinite. A system

¹ Fees charged air passengers are collected by the airlines and transmitted to APHIS. We have used appropriated funds to cover AQI costs attributable to pedestrians and private vehicular traffic.

that attempted to account for all these variables would be unwieldy and expensive to administer and would require that additional expenses be included in the fee calculations.

AQI user fees are spent only on AQI-related activities—in this case, establishing a workforce on the U.S./Canadian border commensurate with the volume of traffic that is sufficient to implement and maintain an inspection program on that border. Internal recordkeeping ensures that revenues received from air passengers and each mode of transportation are properly recorded and utilized. While AQI revenues all go into one AQI account, they are applied to specific activities. Revenues from AQI fees collected from international air passengers are only used for expenses associated with providing AQI services for those passengers. Similarly, revenues from AQI fees for each type of conveyance are only used for expenses associated with providing AQI services for that type of conveyance. Any excess collections will be used to rebuild the AQI reserve balances for the various service categories, which have been depleted in part because we have not been recovering the costs of even the limited inspection activities we have been conducting on the U.S./Canada border. As APHIS assesses its user fees, it will initiate rulemaking to increase or decrease the fees as necessary.

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a, referred to below as the FACT Act), as amended by section 917 of the Federal Agricultural Improvement and Reform Act of 1997 (Pub. L. 104–127), authorizes APHIS to collect user fees for AQI services. These include an amount sufficient to maintain a reasonable balance, *i.e.*, a reserve fund, in the AQI User Fee Account for each service category. The reserve fund serves two purposes. First, it ensures that the Agency has access, through the AQI User Fee Account, to funds for normal operating expenses for each AQI service category. Second, the reserve fund ensures that the Agency has sufficient operating funds to carry on with AQI activities in each service category in cases of bad debt, carrier insolvency, or fluctuations in activity volumes.

The aftermath of the events of September 11, 2001, shows the importance and necessity for such a reserve. For a time, airline business stopped completely, and it is still at lower levels than it was before September 11, 2001. Many airlines have either filed for bankruptcy or simply stopped flying into the United States.

Further, some U.S. passengers are wary of traveling abroad, and some foreign travelers have the same fears of traveling to the United States. Without the reserve, AQI operations would have been severely disrupted.

Emergency Action

This rulemaking, which removes the exemption from inspection for imported fruits and vegetables grown in Canada and subjects all air passengers and commercial vessels, trucks, railroad cars and aircraft from Canada to AQI user fees, is necessary on an emergency basis to prevent the introduction of plant pests and animal diseases into the United States via conventional pathways or through bioterrorism and to recover the cost of the needed inspections. Under these circumstances, the Administrator has determined that there is good cause under 5 U.S.C. 553 for issuing this rule as an interim rule rather than by publishing a notice of proposed rulemaking. We are making this rule effective 90 days after publication in the **Federal Register** in order to allow adequate time for the transfer of inspectors to the U.S./Canada border, the establishment of new inspection protocols, and the implementation of collection procedures by those who must collect user fees.

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

Executive Order 12866 and Regulatory Flexibility Act

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

For this interim rule, we have prepared an economic analysis. The economic analysis, which provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act, is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects associated with their rules on small entities, which include small businesses, small not-for-profit organizations, and small governmental jurisdictions. We do not have enough data for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this rule. We are inviting comments about this rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs as a result of this rule and the economic effects of those benefits or costs.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, means of conveyance, and other articles to prevent the introduction into or dissemination within the United States of plant pests and diseases and noxious weeds. Similarly, under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation or entry into the United States of any animal, animal product, means of conveyance, or other article to prevent the introduction into or dissemination within the United States of any pest or disease of livestock. Also, under the FACT Act, the Secretary of Agriculture is authorized to prescribe and collect fees that will cover the cost of providing import- and export-related AQI inspection services in connection with the arrival of international passengers, commercial vessels, commercial aircraft, commercial trucks, and railroad cars in the customs territory of the United States or their preclearance at a site outside the customs territory of the United States.

This interim rule removes exemptions from AQI inspection for Canadian-grown fruits and vegetables imported from Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and air passengers moving into the United States from Canada. As a result of this action, fruits and vegetables grown in Canada and imported into the United States will be subject to inspection, and commercial vessels, trucks, railroad cars, and aircraft, as well as airline passengers coming into the United States from Canada, will be subject to inspection and user fees. We are taking this action because we are not recovering the costs of our current

inspection activity at the U.S./Canada border and because our data show an increasing number of interceptions on the border of prohibited material that originated in regions other than Canada. These findings, combined with our increased concerns about the threat of bioterrorism, make it imperative that we expand and strengthen our pest exclusion efforts at the U.S./Canada border and that we have the funds available to support both our existing and expanded activity.

Affected Entities and User Fee Revenues

This interim rule will affect entities that move commodities into the United States from Canada. Broadly, these include commercial surface, waterborne, and air conveyances.

Surface Conveyances

For commercial freight trucking, the Small Business Administration (SBA) defines a small entity as one having not more than \$23.5 million in annual receipts. According to the 2002 Economic Census (the most recent available), there were 29,321 general long-distance freight trucking establishments in the United States (North American Industry Classification System [NAICS] code 484121). A total of 403 of these establishments, or less than 2 percent, had annual receipts of \$21.5 million or more, the largest revenue category identified. Thus, more than 98 percent of trucking establishments in the United States are small entities. We do not know the number or size of trucking establishments that transport products across the border from Canada, but can reasonably assume that they are also mostly small entities.

For commercial railroad transportation, the SBA defines a small business entity as one having not more than 1,500 employees for long-haul railroads (NAICS code 482111) and not

more than 500 employees for short-line railroads (NAICS code 482112). Of the 571 firms operating as railroad transportation companies in the United States according to the 2002 Economic Census, 18 firms employed more than 500 workers. Therefore, approximately 97 percent of commercial railroad companies in the United States could be considered small entities. We assume that this percentage applies to railroad companies that transport products into the United States from Canada.

Under this interim rule, all commercial trucks and trains, except those exempt from payment under 7 CFR 354.3(d)(2), entering the United States from Canada will be subject to AQI user fees. A user fee of \$5.25 per crossing or \$105 for the year will be charged to each truck (table 3) in FYs 2006 and 2007. A user fee of \$7.50 per crossing will be charged to each loaded rail car in FY 2006. In FY 2007, the fee will be \$7.75. Trucks, trains, and all other surface modes of conveyance transported approximately \$458 billion worth of goods across the U.S./Canada border in 2005.² While agricultural shipments are expected to be the focus of the border inspections, all commercial conveyances crossing the border are subject to inspection and the user fee.

Waterborne Conveyances

For commercial water transportation, the SBA defines a small business entity as one having not more than 500 employees. According to 2002 U.S. Census data for Transportation and Warehousing, there were 1,334 firms that operated in the United States for the entire year providing “deep sea, coastal, and Great Lakes water transportation” (NAICS codes 483111 and 483113). Twelve of these firms employed 500 to 999 workers, and 10

firms employed 1,000 or more workers. Thus, over 98 percent of water transportation firms in the United States employed fewer than 500 workers and could be considered small.

Under this interim rule, all commercial vessels of 100 net tons or more entering the United States from Canada in FY 2006, unless exempt from payment under § 354.3(b)(2), will be charged a user fee of \$488 per vessel (table 3). The fee rises slightly to \$490 in FY 2007. All waterborne trade with Canada in 2005 was valued at \$14 billion.³ Approximately 1,895 vessels were used to move cargo from Canada to the United States in 2005; however, it is not known how many of these vessels carried agricultural goods.⁴

Air Conveyances

For commercial air transportation, the SBA defines a small business entity as one having not more than 1,500 employees. According to the 2002 U.S. Economic Census for Transportation and Warehousing, there were 1,674 firms in the United States classified under “scheduled freight air transportation” (NAICS code 481112), of which only 13 firms employed more than 1,000 workers. Thus, over 99 percent of all air transportation firms in the United States could be considered small.

Under this interim rule, commercial aircraft arriving in the United States from Canada in FY 2006 will be charged a user fee of \$70.25 per arrival, unless exempt from payment under § 354.3(e)(2). In FY 2007, the fee will be \$70.50 per arrival. The interim rule also requires that air passengers coming to the United States from Canada (10.1 million in FY 2005) be charged a user fee of \$5.00 each (table 3) in both FYs 2006 and 2007, unless exempt from payment under § 354.3(f)(2).

TABLE 3.—AGRICULTURAL INSPECTION (AQI) USER FEES FOR CONVEYANCES ENTERING THE UNITED STATES

Conveyance	User fee per crossing (FY 2006)	User fee per crossing (FY 2007)	Prepaid user fee decal (FY 2006)	Prepaid user fee decal (FY 2007)
Maritime vessels	\$488.00	\$490.00	N/A	N/A
Trucks*	5.25	5.25	\$105.00	\$105.00
Railroad cars	7.50	7.75	N/A	N/A
Aircraft	70.25	70.50	N/A	N/A
Air passengers (per passenger)	5.00	5.00	N/A	N/A

*Truck operators will have a choice of paying per crossing or per year (decal).

² Bureau of Transportation Statistics. U.S. Surface Transportation Trade with Canada, 2006.

³ Bureau of Transportation Statistics. U.S. Surface Transportation Trade with Canada, 2006.

⁴ Bureau of Transportation Statistics. U.S. Surface Transportation Trade with Canada, 2006.

Economic Effects of Changes

Regardless of what goods they carry, unless exempt, commercial trucks, vessels of 100 net tons or more, railroad cars, and aircraft are subject to inspection and will be charged a user

fee. Table 4 shows the revenues that we project will be generated by applying the FY 2006 and FY 2007 user fees to conveyances arriving from Canada, assuming similar Canadian conveyance volumes to the averages recorded for FYs 2003 through 2005. We estimate

that vessel entities would be required to pay about \$925,000 in user fees in FY 2006 and \$938,000 in FY 2007; truck entities, about \$14.6 million in FY 2006 and \$14.8 million in FY 2007; and rail entities, about \$6.2 million in FY 2006 and \$6.5 million in FY 2007.

TABLE 4.—VALUE OF USER FEES BY TYPE OF CONVEYANCE

Conveyance	User fees (FY 2006)	User fees (FY 2007)	Estimated volumes (FY 2006)*	Projected revenue (FY 2006)	Projected revenue (FY 2007)**
Maritime vessels	\$488.00	\$490.00	1,895	\$924,760	\$937,836
Trucks	5.25	5.25	982,765	5,159,516	5,211,111
Trucks with decal	105/year	105/year	90,256	9,476,880	9,571,649
Rail car	7.50	7.75	827,793	6,208,448	6,479,550
Total fees				21,769,604	22,200,146

* Estimated volumes for FY 2006 are based on average FY 2003-FY 2005 border crossings.

** Projected revenues for FY 2007 are based on FY 2006 estimated volumes plus a slight increase in general trade volumes of 1 percent.

Source: Figures derived from APHIS' Financial Management Division.

Projected revenue from user fees for air passengers from Canada would total approximately \$50.4 million in FY 2006

and \$50.9 million in FY 2007, and the figures for commercial aircraft entities would be approximately \$4.9 million in

both of those years. Table 5 shows these revenues.

TABLE 5.—AIR PASSENGERS AND AIRCRAFT USER FEES

Entity entering the United States from Canada	User fees (FY 2006)	User fees (FY 2007)	Estimated volumes* (FY 2006)	Projected revenue (FY 2006)	Projected revenue (FY 2007)**
Air passenger	\$5.00	\$5.00	10,078,551	\$50,392,755	\$50,896,683
Aircraft	70.25	70.50	69,398	4,875,210	4,941,485
Total fees				55,267,965	55,838,168

* Estimated volumes from FY 2006 are based on average FY 2003-FY 2005 border crossings.

** Projected revenues for FY 2007 are based on FY 2006 estimated volumes plus a slight increase in general trade volumes of 1 percent.

Source: Figures derived from APHIS' Financial Management Division.

Based upon our projected totals in tables 4 and 5, the total projected revenues for surface and air conveyances and airline passengers from Canada come to \$77 million in FY 2006 and \$78 million in FY 2007. Any amounts collected in excess of our actual expenditures would remain in a no-year account as a reserve until expended on AQI services in future years.

Federal Government Costs

We have estimated that to implement an AQI program for Canada, 136 full-time employees will need to be deployed along the U.S./Canada land border to inspect ground conveyances (passenger vehicles, trucks, and trains),⁵ and 65 full-time employees will be required at 7 different Canadian airport locations to inspect air passengers and

cargo.⁶ CBP concurs with these estimates. It is likely that new hiring and implementation will be phased in over time.

The annual cost for 136 staff along the entire U.S.-Canadian border is expected to be about \$22.45 million. The annual cost of the 65 pre-clearance airport staff will be approximately \$46 million. The total direct cost to the Federal Government of providing inspection services associated with this rule, based on the estimated cost of 136 positions on the Canadian land border and the 65 airport pre-clearance positions, is \$68.5 million.

Indirect costs associated with the AQI program include support costs (e.g., expenses of maintaining regional and headquarters staff and offices, developing detection methods, preparing risk assessments, enforcing

the regulations, and providing communications, budget, and accounting services); administrative costs of developing, collecting, and monitoring AQI user fees; and APHIS' share of the costs incurred by the U.S. Department of Agriculture (USDA) in providing centralized services (e.g., telephone and mail service) to USDA agencies. The indirect costs associated with this rule are estimated at \$6.3 million, as shown below in table 6. The total estimated annual costs associated with this rule, i.e., the direct and indirect costs of conducting inspections and collecting user fees, are then \$74.8 million, assuming full implementation of the program.

TABLE 6.—TOTAL ESTIMATED ANNUAL COSTS OF INSPECTIONS AND USER FEE COLLECTIONS UNDER THIS RULE

Direct costs	\$68,466,469
Indirect costs:	
Agency support (7.47 %) ..	5,114,445

⁵ Eastern Region Staffing Plan and Western Region Staffing Plan for Canadian Border, October 26, 2001.

⁶ PPQ pre-clearance AQI staffing report for 7 Canadian airport locations, April 9, 2003. (To be consistent with the eastern and western land border staffing reports, salaries and benefits are based on the 2006 general Federal pay rate for airport staff.)

TABLE 6.—TOTAL ESTIMATED ANNUAL COSTS OF INSPECTIONS AND USER FEE COLLECTIONS UNDER THIS RULE—Continued

Departmental charges (1.52 %)	1,040,690
Administrative costs (0.26 %)	178,013
Total indirect costs	6,333,148
Total costs	74,799,617

In addition to the estimated costs detailed above, we may incur costs for additional staff that may be required at both maritime ports and airports to inspect waterborne cargo and air cargo arriving from Canada. Since Canadian vessels and aircraft can use any U.S. maritime port or airport, it is not yet clear whether additional positions may be needed at these locations or, if so, how many.

Along with the costs of hiring additional staff for maritime ports, airports, and the U.S./Canada land border, there will be other costs because the current infrastructure will need to be expanded to accommodate workers and inspection bays. At this time, we have not determined the cost of these staffing and infrastructure requirements. As we have discussed above, we

anticipate that the costs of implementing and maintaining an AQI program at the U.S./Canada border will be fully recovered through the collection of AQI user fees.

Alternatives

One alternative to this rule would be to make no changes to the current regulations. However, as we have already discussed, data showing an increasing number of interceptions on the U.S./Canada border of prohibited material that originated in regions other than Canada indicate to us that increased pest exclusion efforts are needed at the U.S./Canada border to prevent the introduction of plant pests and animal diseases via unauthorized importations into the United States through Canada. Increasing our border inspection activities is also necessary to protect U.S. agriculture from bioterrorism. Removing the Canadian exemption from AQI user fees is necessary to recover the costs of our existing inspection activities and to implement an expanded inspection program.

Another alternative to this rule would be to limit user fees to commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft,

i.e., to exclude international air passengers entering the United States from Canada. However, as we discussed earlier, data from our preclearance inspections at Canadian airports indicate that air passengers attempt to carry tropical and exotic fruits and vegetables, as well as prohibited animal products, from Canadian markets into the United States. We would not be able to prevent or control the movement of such regulated articles into the United States if we did not increase our passenger-inspection activities, along with our conveyance-inspection activities, at the U.S./Canada border and would not be recovering the costs of passenger inspections if we did not charge passengers AQI user fees. We are already unable to recover the costs of inspecting passengers crossing the border in private vehicles because collecting user fees from such passengers would not be cost effective and would be administratively complex.

One other alternative would be to only charge AQI user fees for inspections of commercial conveyances transporting agricultural goods (table 7). We estimate that between 5 and 20 percent of commercial conveyances are moving agricultural goods.

TABLE 7.—VALUE OF USER FEES BY TYPE OF CONVEYANCE ASSUMING ONLY 5 TO 20 PERCENT OF CONVEYANCES WOULD BE CHARGED A USER FEE (FY 2006)

Conveyance	User fee	Number of conveyances	5 percent	20 percent
Maritime vessel	\$488.00	1,895	\$46,238	\$184,952
Truck	5.25	982,765	257,975	1,031,903
Truck with yearly decals	105.00	90,256	473,844	1,895,376
Rail car	7.50	827,793	310,422	1,241,690
Commercial aircraft	70.25	69,398	243,760	975,041
Total revenue	1,332,241	5,328,963

This option would eliminate the costs to commercial conveyances not transporting agricultural goods because those entities would not be required to pay a user fee. As we noted earlier, however, both the conveyances and packing material that they may be carrying are potential pest pathways that must be addressed. APHIS experts familiar with the Canadian border crossings have determined that all commercial conveyances need to be inspected.

We also considered developing user fees specific to inspections of air passengers and commercial conveyances from Canada. We chose not to do so because it is important that user fees be consistent for all users. Developing user fees for air passengers

and commercial conveyances from Canada that would differ from user fees for air passengers and commercial conveyances from other places could be confusing for the public and commercial carriers.

Costs and Benefits

This interim rule will impose costs on commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and air passengers entering the United States from Canada. While the costs these entities will have to pay in the form of user fees are readily apparent, other costs are not so clearly defined. For example, CBP inspectors will be required to inspect commercial trucks while maintaining a steady traffic flow. The possibility of border delays

occurring as a result of this interim rule due to increased inspection activity was considered; however, APHIS and CBP do not foresee that happening, since CBP will have additional employees and resources to conduct inspections. The public is invited to comment on the issue of whether border delays may result because of AQI inspections and the potential cost of these delays for affected commercial transportation entities.

While certain entities will incur costs as a result of this rule, the potential benefits of excluding pests and diseases that could be introduced through unauthorized imports from Canada may

be enormous. As discussed previously, AQI inspectors along the U.S./Canada border have confiscated numerous prohibited fruits and other articles that can harbor pests and diseases. Interception of infested hosts helps to minimize the chances that the pests and diseases will become established in the United States and prevents the costs associated with eradicating them.

This rule contains no information collection requirements (see "Paperwork Reduction Act" below).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 354

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

Accordingly, we are amending 7 CFR parts 319 and 354 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–2 [Amended]

2. In § 319.56–2, paragraph (c) is amended by adding the words “, except that they are subject to the inspection and other requirements in § 319.56–6” after the word “subpart”.

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

3. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

4. Section 354.3 is amended as follows:

- a. In paragraph (b)(2)(i), by removing the words “other than in Canada” both times they appear.
- b. In paragraph (b)(2)(iv), by adding the word “and” after the semicolon.
- c. In paragraph (b)(2)(v), by removing the word “; and” and adding a period in its place.
- d. By removing paragraph (b)(2)(vi).
- e. In paragraph (c)(1), by revising the first sentence to read as set forth below.
- f. By removing and reserving paragraph (c)(2).
- g. In the introductory text of paragraph (c)(3)(i), by removing the words “from Mexico”.
- h. By removing and reserving paragraph (d)(2)(i).
- i. In paragraph (d)(4)(i), by removing the words “from Mexico”.
- j. By removing and reserving paragraphs (e)(2)(i) and (f)(2)(i).
- k. In paragraph (f)(2)(v), by removing the words “other than Canada”.
- l. By revising paragraph (f)(3) to read as set forth below.

§ 354.3 User fees for certain international services.

* * * * *

(c) * * *

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

* * * * *

(f) * * *

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

(i) When through tickets or travel documents are issued indicating travel to the customs territory of the United States that originates in any foreign country; and

(ii) When passengers arrive in the customs territory of the United States in transit from a foreign country and are inspected by APHIS or Customs.

* * * * *

Done in Washington, DC, this 21st day of August 2006.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E6–14128 Filed 8–24–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[Doc. No. FV–05–702 FR]

Amendments to the Potato Research and Promotion Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with correcting changes, an interim final rule to increase the assessment rate on handlers and importers of potatoes from 2 cents to 2.5 cents per hundredweight. The increase is authorized under the Potato Research and Promotion Plan (Plan). The Plan is authorized by the Potato Research and Promotion Act (Act). In order to sustain the three major programs currently conducted by the National Potato Promotion Board (Board), International Marketing, Domestic Marketing (which includes retail marketing), and a nutrition campaign at their present levels beyond June 2006, additional revenue is required.

DATES: This rule is effective September 25, 2006.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0244, Washington, DC 20250–0244; telephone (202) 720–5976 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This rule is issued under the Potato Research and Promotion Plan (Plan) [7 CFR Part 1207], as amended. This rule will increase the assessment rate by ½ cent for handlers and importers. The Plan is authorized by the Potato Research and Promotion Act (Act) [7 U.S.C. 2611–2627].

Executive Order 12988

This rule has been reviewed under the Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with