

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. APHIS–2021–0052]

RIN 0579–AE67

Process for Establishing Rates for Veterinary Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning user fees that we charge for veterinary diagnostic services and for certain import-related and export-related services for live animals, animal products and byproducts, birds, germplasm, organisms, and vectors. We are proposing to remove the tables providing the individual fees from the regulations and post them on an Animal and Plant Health Inspection Service (APHIS) website instead. The regulations would instead specify the methodology (formula) used to calculate the fees (including imputed costs), and APHIS would update the fees using a notice-based process. Replacing the current user fee listings with a standardized methodology would increase transparency in the process of setting fee rates, align the regulations with other Departmental practices, and allow us to streamline processes and reduce the number of rules needed in order to update the fees.

DATES: We will consider all comments that we receive on or before December 2, 2022.

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

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2021–0052 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- *Postal Mail/Commercial Delivery:*

Send your comment to Docket No. APHIS–2021–0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at www.regulations.gov or in our reading room, which is located in room 1620 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) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Slimmer, User Fee Financial Team Manager, Veterinary Services Money Management, 920 Main Campus Drive, Raleigh, NC 27606; (919) 855–7253.

SUPPLEMENTARY INFORMATION:

Background

The regulations covering user fees to reimburse the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import/export related services for live animals, animal products and byproducts, birds, germplasm, organisms, and vectors are contained in 9 CFR part 130 (referred to below as the regulations or the user fee regulations). These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (21 U.S.C. 136a(c)), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of providing import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors, and for veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

Since fiscal year (FY) 1992, APHIS has received no directly appropriated funds to cover the cost of certain veterinary diagnostics or to provide import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors. Our ability to provide these services depends on user

fees. User fees associated with providing services for live animal, animal product, bird, and germplasm imports and exports fund, among other things, quarantine services, the processing of import permit applications, port of entry inspections, inspections and approvals of import/export facilities and establishments, endorsements of export certificates, and services related to emergency situations that arise during the export or import process.

The work of veterinary diagnostics is performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and, if so, to identify those organisms or agents. Services in this category include, among other things, performing laboratory (identification, serology, and pathobiology) tests and providing diagnostic reagents and other veterinary diagnostic materials and services. The National Veterinary Services Laboratories provide diagnostic goods and services.

User fees recover the cost of operating a public system by charging those members of the public who use the system, rather than the public as a whole, for its operation. Financing certain veterinary diagnostic and import/export related services and products by directly charging the users of those services internalizes those costs to those who require the service and benefit from it.

In the past, APHIS' rulemaking established user fee rates for 5-year periods of time. Individual fees would typically adjust annually and were specific to given fiscal years. The rulemaking process is lengthy and so, to establish 5 years of fees at one time, APHIS Veterinary Services (VS) had to forecast customer needs and Agency costs 6 to 7 years into the future. Even though VS based its cost estimates on the best data available, such forecasting has proven difficult, and we have found these long-range estimates unreliable for setting fees to recover the costs of providing desired goods and services without over- or undercharging our customers. For example, the user fee rates established in 2011 and 2012 used the best available data during 2009 for those years and did not anticipate the high level of investment in information technology that would be needed to

meet customer demand to conduct business with VS in the coming decade.

In order to provide both transparency and predictability to the industries served and to allow VS to effectively plan for staffing, investments in infrastructure, and other resources, we are proposing to remove specific user fees from the regulations and establish a standardized methodology by which VS will calculate fees annually. VS would post the fee rates on www.aphis.usda.gov/business-services/vs-vd-fees. (Please note that this site does not yet exist; it would be developed should this rule be finalized.) The components (costs) APHIS would use to calculate the fee rates would be the same components currently used to calculate rates, with the addition of imputed costs. These imputed costs include U.S. Department of Labor, U.S. Office of Personnel Management, and the U.S. Department of State (State Department) costs to provide retirement, health, life insurance, worker's compensation, legal defense, and other benefits to the Agency and employees who provide the services covered by the fees. In accordance with the Office of Management and Budget (OMB) Circular A-25, User Charges, APHIS must compensate the Treasury General fund for these costs, so they are not borne by the taxpayer. Accordingly, to comply with OMB Circular A-25, we must include imputed costs in our calculations.

Under the proposed approach, APHIS would update its fees each calendar

year. Each year, prior to the beginning of the following calendar year, APHIS would propose actual fee rates through publication of a notice in the **Federal Register**. The annual notice would provide information regarding the basis for any fee change, including cost of living, information technology investment, facilities capital requirements, and inflation rates. We would also describe any cost-saving measures the agency is undertaking. The notices would take public comment. Following the comment period, we would issue a subsequent (final) notice providing the final rates. This notice would respond to any comments received on the initial notice. When the final notice is issued, APHIS would update the fee rates found at www.aphis.usda.gov/business-services/vs-vd-fees.

This approach would reduce the number of regulations published for user fee rate setting. It would, also, shorten the time required to update user fees for these services and products, provide greater transparency to our customers concerning the way in which we derive our user fees, avoid financial crises that may occur when APHIS does not collect sufficient funds, reduce the potential of APHIS collecting funds over the amounts needed to cover costs, and ensure user fees cover the full APHIS cost to provide a given service (as intended by these types of fees).

At this time, we are not proposing to adjust the fee rates through this rulemaking. However, we anticipate

that, since APHIS' import/export and veterinary diagnostics user fees have not been updated for more than 10 years, there will be a change in the fees when APHIS applies this new approach and issues our first notice in the **Federal Register** under the approach. These changes would be the result of using current economic data, staff processing time, increased complexity of work, and cost estimates to calculate the fees; current import/export and veterinary diagnostics fees are based on data from FY 2012 and FY 2011, respectively.

Finally, it should be noted that the proposed change in the method by which we update our user fees and the removal of user fee tables from the regulations in favor of maintaining a listing of specific user fee rates online at www.aphis.usda.gov/business-services/vs-vd-fees would not affect the table of overtime rates currently found in § 130.50(b)(3)(i) charged in addition to certain flat rate user fees. The user fees listed in that paragraph merely reproduce those found in 9 CFR 97.1(a) to improve ease of use for regulated entities and individuals. These rates impact other entities within APHIS and are adjusted periodically through separate rulemaking.

Development of Formulas

The components (costs) we would use to calculate user fee rates are the same costs used in calculating past rates with the exception of imputed costs, which are discussed in detail below:

COMPARISON OF CURRENT VERSUS PROPOSED COMPONENTS
[Costs]

Current charges	Proposed charges
Direct labor	Direct pay (on-board and in the hiring process, and including benefits), Cost of living.
Local support	Direct operating costs (travel, training, equipment, rent, facility maintenance, supplies and materials, service contracts, information technology system operations, maintenance, and development), Consumer price index.
Program and Agency support	Department, Agency, and Program support.
Departmental charges	Department support.
Reserve	Imputed costs (new) Reserve.

We calculate our user fees to cover the full cost of providing the services for which we charge the fee. The cost of providing a service includes these components, which are described in more detail below. In addition, in proposed § 130.1, we are adding the following terms and their definitions in order to provide additional clarity: *Consumer price index, cost of living, direct operating costs, direct pay (including benefits), imputed costs,*

reserve, program, agency, and department support.

We are proposing to add *consumer price index* (CPI) to read as the measure of the average change over time in prices paid by urban consumers for a market basket of consumer goods and services. This would be determined by the Bureau of Labor Statistics (BLS), and

APHIS would use BLS' annual average for the CPI.¹

We are proposing to add *cost of living* to read as the adjusted annual rate used to determine the cost of maintaining a certain standard of living based on the economic assumptions in OMB's Presidential Economic Assumptions (PEA). The PEA outlines the economic assumptions undergirding the

¹ The CPI is not calculated by the program, it can be found using the following link: <https://www.bls.gov/cpi/news.htm>.

President's budget for a particular fiscal year, and includes several projections related to cost of living, including anticipated inflation rates and consumer price indices.

We are proposing to add *direct operating costs* to the definitions. The term would include: Travel and transportation for personnel; materials, supplies and other necessary items; training; general office supplies; rent; facility maintenance; equipment purchase and maintenance; utilities; contractual services; and information technology systems operations, maintenance, and development costs. Materials and supplies include items like animal food and bedding, chemicals, and medicine as well as materials needed to conduct laboratory tests.

Within direct operating costs, rent and facility maintenance are the costs of using the space we need to perform veterinary diagnostic services or import- or export-related work. If space is used for veterinary diagnostic services or import- or export-related work and other Agency work, only that portion of the costs associated with the veterinary diagnostic services or import- or export-related work is included in the user fees. Equipment purchases and maintenance costs include repair and replacement of existing equipment, in addition to purchase of new equipment, and are necessitated when issues arise. Maintenance may also be determined by recurring maintenance schedules for existing equipment. Utilities include water, telephone, electricity, and heating costs. Contractual services include security service, maintenance, trash pickup, and similar services. Finally, a number of information technology systems support APHIS' import/export and veterinary diagnostics services. There are annual costs with operating and maintaining those systems as well as development costs to enhance and add new features that support import/export and veterinary diagnostic services. The type, amount, and cost of direct operating costs vary with the type of good or service provided.

We are proposing to add *direct pay (including benefits)* to read as the wage labor costs (on board and in the hiring process), including benefits, for employees who specifically support and provide the required service. For example, at APHIS' Animal Import Centers, animal caretakers and veterinarians prepare for the arrival of animals or birds to be quarantined in the center, care for them (provide feed and 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. If the service is inspecting an animal, the direct pay costs include the time spent by the inspector to conduct the inspection. Direct pay also includes the wage labor costs, including benefits, of employees providing direct administrative support in the field for these activities such as those who assist with the review of export documents and those who complete and process billing paperwork. The costs vary with the type of service provided and with the pay rate of the employee who performs the service and support.

We are adding a definition for *imputed costs* that would read Office of Workers' Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; Office of Personnel Management and State Department costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs.

APHIS will forward to the Department of Treasury (U.S. Treasury) fee revenue collected based on imputed costs of other Agencies. APHIS will not retain that revenue. These costs were previously paid at the Agency level but must now be included in user fee calculation in accordance with OMB Circular, A-25 "User Charges," and Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards, Number 55, "Amending Inter-entity Cost Provisions."

We are adding a definition of *Program, Agency, and Department support* to read indirect or direct costs of the program, including supporting services provided to the industry. Agency and Department support costs are calculated as a pro-rata share of total direct labor and direct operating costs and are added to each fee. Agency and Department support costs include the costs of providing budget and accounting services, information technology services, regulatory services, investigative and enforcement services, debt-management services, personnel services, public information services, legal services, working with Congress, and other general program and agency management services provided above the local level.

We are adding a definition for *reserve* to read funds above expected obligations that are required to effectively manage uncertainties in demand and timing to ensure sufficient operating funds in cases of bad debt,

customer insolvency, fluctuations in activity volumes, information technology development costs, cash flow, facilities capital needs, or fluctuations in activity volumes caused by unforeseen global and national events.

All user fees would contribute to the reserve proportionately. The more a program depends on fees to fund its activities, the more vulnerable it is to revenue instability. Fully funded fee programs do not necessarily see a proportional decline in costs when there is a drop in collections. The reserve would ensure that we have sufficient operating funds in cases of bad debt, customer insolvency, information technology development costs, cash flow, facilities capital needs, or fluctuations caused by unforeseen global and national events.

The reserve component would be estimated as follows: At the time annually when we would calculate our proposed user fee rates, we would estimate cash flow needs, as we currently do, by estimating 25 percent or 90 days of annual expenditures, whichever is greater. We would then forecast information technology and facilities capital needs and investments, including any major purchases or improvement of equipment or systems, for the next 5 fiscal years, and assign an estimated date at which we anticipate these costs to be actualized. Based on the expected date of cost actualization within that 5-year forecast, we would add a prorated component of that cost to the above cash flow needs. Finally, this sum would be offset by the existing amount in the reserve, and the difference calculated into each user fee.

Reserve levels would be set at a level meant to reflect the forecasted needs, as articulated above, but would be monitored and adjusted annually as needs or costs change. We intend to closely monitor the operations and operating environment including demand, costs changes, administrative policies, investment needs and the economic environment closely and propose adjustments, as needed, in our fees annually to ensure an adequate reserve balance.

We are also proposing to remove a number of definitions from the regulations because, based on the revisions we are proposing, the terms themselves would no longer appear in part 130. Specifically, we are proposing to remove: *Approved establishment, biosecurity level three laboratory, breeding animal, domestic animal, game cock, grade animal, load, miniature horse, nonstandard care and handling, nonstandard housing,*

registered animal, slaughter animal, State animal health official, zoo animal, zoo bird, zoo equine. To the extent that the terms would still be used on tables that would now appear on APHIS' website, the terms would be annotated accordingly on the website to explain what they mean, instead.

Proposed Formulas for User Fees

VS user fees are collected for activities and products that fall into four broad categories: Supervision and inspection services; housing; export health certificates; and veterinary diagnostic services and reagents. As stated previously, the regulations would specify the methodology used to calculate and implement the fees charged by VS user-funded programs. APHIS would publish the fee rates on its website, and it will publish a notice on an annual basis in the **Federal Register** to propose changes to the user fee rates.

Direct pay, direct operating costs, and most costs used in the formulas would be based on the prior fiscal year's (or applicable accounting period or historical data) actual costs and hours. Currently, some fees are charged on a per unit basis and others are charged on a per hour basis. To maintain consistency, APHIS would continue to provide fees based on a per hour and per unit basis as currently specified.

The steps we would use to generate new fees are:

1. APHIS would prorate the total inspection, certification, or laboratory service program personnel direct pay (adjusted for vacancies and including benefits) for the previous fiscal year to each fee based upon the direct time factor percentage of employee's time to perform and complete each fee code process and then multiply by the next year's percentage of cost of living increase.
2. APHIS would prorate total direct operating costs for the previous fiscal year based upon the direct time factor percentage of employee's time to perform and complete each fee code process to each fee and then multiply by the anticipated percentage of inflation for the next year.
3. APHIS would add estimates for Program, Agency, and Department support costs, imputed costs, and reserve by applying a percentage based on information from Program, Agency, and Department officials and the U.S. Treasury to the sum of the direct pay plus operating costs.
4. Steps 1–3 would be added and then we would create the new base fee rate by rounding up to the next \$0.25 for all fees less than \$10 or round up or down

to the nearest dollar for all fees greater than \$10.

Fees calculated using this approach would cover inflation and national and locality pay raises but would not support any new budgetary initiative. In the event of any such budgetary changes, such as the OMB Circular's, A–25 "User Charges" (requiring inclusion of imputed costs into user fee calculations), we would include an explanation of the new cost component and the method by which it is determined in the annual notice.

The foregoing would be the general formula that we would use in order to calculate the fees. However, we do recognize that there are some fees for which the formula would not be germane.

For any category of fees, if there is no identifiable volume in the previous year for the service provided by the fee, if the fee is rarely charged, or if we cannot readily identify level of effort, we would calculate the fee based on the last available historic data that encompasses multiple instances of use and add any intervening inflation, program and support costs, imputed costs, and reserve.

Fees for the exclusive use of space in animal import centers currently found in § 130.3 are unique and would be calculated somewhat differently. APHIS would calculate the fees using direct employees average time (with benefits), and then adding a prorated portion of currently identifiable expenses (facilities, rent, support cost, and admin support costs), program and support expenses, imputed costs, and reserve. These costs are combined to determine the monthly cost of providing the service within the animal import center. The costs of different spaces within the Animal Import Center are calculated based on the square footage of the location.

Miscellaneous Change

Removal of the specific tables of user fees from the regulations in favor of listing them online at www.aphis.usda.gov/business-services/vs-vd-fees necessitates reorganization of the text currently found in §§ 130.2 through 130.51. In some cases, the only text in a given section is a reference to the table and would therefore need to be removed. In other cases, extra stipulations and clarifying information would be retained but reorganized in light of the streamlined regulations; however, the information presented remains the same.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov website (see **ADDRESSES** above for instructions for accessing Regulations.gov).

APHIS Veterinary Services (VS) is proposing to amend the regulations in 9 CFR part 130 to provide for a set of standardized formulas by which import/export and veterinary diagnostic user fees would be calculated. The proposed regulations would specify the methodology used to calculate and implement the user fees and would remove tables showing specific fees. VS would instead post the fee rates on its website and annually issue a notice providing all fees calculated for the upcoming year using formulas contained in the regulations and request public comment.

VS charges user fees to recover the costs of inspection and certification services for imports and exports of live animals and animal products and byproducts and for providing veterinary diagnostic goods and services. VS does not receive appropriated funding to support these activities.

While we do not expect the proposed rule to result in cost savings for affected entities, the proposed methodology would provide a transparent, streamlined approach to user fee calculations. The change to annual fee revisions using formula-based calculations based on previous year costs would enable APHIS to avert potential funding shortfalls. Increased confidence that rate adjustments would closely match revenue requirements would benefit financial planning by both the private sector and the Agency.

The component costs that VS would use to calculate user fee revisions would be the same as at present, with the exception of imputed labor costs, such as:

- Direct pay (including benefits)
- Cost of living
- Direct operating costs (travel, training, equipment, rent, facility maintenance, supplies and materials, service contracts)
- Consumer price index

- Program, Agency, and Department support costs
- Reserve
- Imputed costs

The user fee rates would also include imputed labor costs to ensure that the full cost of providing user fee services is captured. Imputed labor costs include Department of Labor, Office of Personnel Management, and State Department costs to provide retirement, health, life insurance and other benefits to employees.

The annual regularity of the proposed VS user fee revisions would be in contrast to current circumstances. At present, VS establishes fees for 5 years at a time through rulemaking, and this process can be lengthy. VS has had to project costs 6 to 7 years into the future, which can result in unforeseen funding needs not being accounted for. For example, VS did not anticipate the high level of technological investment that has been necessary in order to meet the needs of customers.

APHIS' animal health import and export user fees cover significant activities across the country, including at border locations and quarantine facilities. These fees support personnel, brick and mortar facilities, and information technology systems. The veterinary diagnostic user fees support activity at the National Veterinary Services Laboratories facilities in Ames, IA, and Plum Island, NY.

The last rate increase went into effect October 2012 and import/export user fee revenue has been flat, on average, since 2015, at \$44 million. Veterinary diagnostic user fee revenue has also been flat at \$6 million, on average, since the last veterinary diagnostic user fee rate increase went into effect October 2011. The cost of providing services has continued to increase.

USDA's Agricultural and Marketing Service and Food Safety and Inspection Service have recently implemented noticed-based processes for annual user fee revisions that are very similar to the APHIS proposed process. The two agencies and their stakeholders have benefited from increased program efficiency and transparency.

A large number of the entities that would benefit from this rule are small. The import/export user fees provide for inspection and other services at the ports or point of entry. Users of these services and products include importers, exporters, non-APHIS veterinarians, commercial laboratories and pharmaceutical manufacturers, State laboratories, universities, and foreign governments.

The Small Business Administration (SBA) ² has established guidelines for determining which entities are to be considered small. Importers and exporters of live animals are identified within the broader wholesaling trade sector of the U.S. economy. A firm primarily engaged in wholesaling animals or animal products and byproducts is considered small if it employs not more than 100 persons. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers).

Veterinary testing laboratories are identified within the broader veterinary services trade sector. A firm providing veterinary services is considered small if it generates \$6.5 million or less in annual sales. The criterion for a small pharmaceutical manufacturing firm is one with 750 or fewer employees.

The number of entities that use VS diagnostic services and materials and qualify as small by SBA standards has not yet been determined. However, more than 91 percent of the firms in the NAICS Livestock Wholesale category and Other Farm Product Raw Material Wholesale category can be considered small. In addition, more than 99 percent of veterinary services firms (including veterinary diagnostic testing laboratories) are small.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

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

² Data Sources: Economic Census, Small Business Administration, APHIS Veterinary Service.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to revise 9 CFR part 130 to read as follows:

PART 130—USER FEES

Sec.	
130.1	Definitions.
130.2	Basis for fees and rates.
130.3	Operating details.
130.4	Hourly rate and minimum user fees.
130.5	Exemptions.
130.6	Payment of user fees.
130.7	Penalties for nonpayment or late payment.

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 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, and Miami, Florida.

APHIS representative. An individual, including, but not limited to, an animal health technician or veterinarian, authorized by the Administrator to perform the services for which the user fees in this part are charged.

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

Consumer price index. The measure of the average change over time in prices paid by urban consumers for a market basket of consumer goods and services, as determined by the Bureau of Labor Statistics annually.

Cost of living. The adjusted annual rate used to determine the cost of maintaining a certain standard of living based on the economic assumptions in the Office of Management and Budget's Presidential Economic Assumptions.

Diagnostic reagent. Substances used in diagnostic tests to detect disease

agents or antibodies by causing an identifiable reaction.

Direct operating costs. Costs attributed to travel and transportation for personnel; materials, supplies, and other necessary items; training; general office supplies; rent; facility maintenance; equipment purchase and maintenance; utilities; contractual services; and information system operations, maintenance, and development.

Direct pay (including benefits). The wage labor costs (on board and in the hiring process), including benefits, for employees who specifically support and provide the required service.

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

Export health certificate. An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests.

Feeder animal. Any animal imported into the United States under part 93 of this chapter for feeding.

Germplasm. Semen, embryos, or ova.

Import compliance assistance. Services provided to an importer whose shipment arrives at a port of entry without the necessary paperwork or with incomplete paperwork and who requires assistance to meet the requirements for entry into the United States. Fees for import compliance assistance are charged in addition to the flat rate user fees.

Imputed costs. Office of Workers' Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; Office of Personnel Management and Department of State (State Department) costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs.

In-bond animal. Any animal imported into the United States under a United States Customs Service bond, as described in 19 CFR part 113.

National Veterinary Services Laboratories (NVSL). The National Veterinary Services Laboratories of the Animal and Plant Health Inspection Service, located in Ames, Iowa.

National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL). The National Veterinary Services Laboratories, Foreign Animal Disease

Diagnostic Laboratory, located in Greenport, New York.

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

Pet birds. Birds, except hatching eggs and ratites, that are imported or exported for the personal pleasure of their individual owners and are not intended for resale.

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

Privately operated permanent import-quarantine facility. Any permanent facility approved under part 93 of this chapter to quarantine animals or birds, except facilities operated by APHIS.

Program, Agency, and Department support. Indirect or direct costs of the program, including supporting services provided to the industry.

Reserve. Funds above expected obligations that are required to effectively manage uncertainties in demand and timing to ensure sufficient operating funds in cases of bad debt, customer insolvency, fluctuations in activity volumes, information technology development costs, cash flow, facilities capital needs, or fluctuations in activity volumes caused by unforeseen global and national events.

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

Test. A single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed.

United States. The several States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

§ 130.2 Basis for fees and rates.

(a) Except as set forth in paragraphs (b) through (d) of this section, for setting fee rates for each calendar year based upon the previous fiscal year, APHIS will calculate the rates for services as follows:

(1) APHIS will prorate the total inspection, certification, or laboratory service program personnel direct pay (on board and in hiring process including benefits) for the previous fiscal year to each fee based upon the direct time factor percentage of employee's average time to perform and complete each fee code process and

then multiply by the next year's percentage of cost of living increase.

(2) APHIS will prorate total direct operating costs for the previous fiscal year based upon the direct time factor percentage of employee's average time to perform and complete each fee code process to each fee and then multiply by the anticipated percentage of inflation for the next year.

(3) APHIS will add estimates for Program, Agency, and Department support costs, imputed costs, and reserve by applying a percentage based on information from Program, Agency, and Department officials and the Department of Treasury to the sum of the direct pay plus direct operating costs.

(4) The amounts derived via the process described in paragraphs (a) through (c) of this section will be added and then APHIS will round up to the next \$0.25 for all fees less than \$10 or round up or down to the nearest dollar for all fees greater than \$10 to develop the new rate for each code.

(b) If there is no identifiable volume in the previous year for the service provided by the fee, if the fee is rarely charged, or if APHIS cannot readily identify level of effort, APHIS will calculate the fee based on the last available historic data encompassing multiple instances of use and add any intervening inflation, overhead and support costs, imputed costs, and reserve.

(c) Fees for the exclusive use of space in animal import centers will be calculated using the following formula:

(1) APHIS will calculate fees by using direct employee average time (with benefits) and adding a prorated portion of currently identifiable expenses (facilities, rent, support cost, and admin support costs), program and support expenses, imputed costs, and reserve.

(2) APHIS will combine the costs to determine the monthly cost of providing the service at a single location within the animal import center.

(3) APHIS will calculate the costs of the other locations within the animal import center based on the square footage of the location.

(d) Services listed in § 130.4 will be charged an hourly rate-based user fee in accordance with the provisions of that section.

§ 130.3 Operating details.

(a) **General standards.** (1) User fee rates may be found online at www.aphis.usda.gov/business-services/vs-vd-fees or by contacting LAIE@usda.gov. Changes in rates will be proposed annually in the following manner:

(i) APHIS will propose changes to the fee rates found at www.aphis.usda.gov/business-services/vs-vd-fees through publication of a notice in the **Federal Register**. The notice will provide information regarding the basis for any fee change and will take public comment.

(ii) Following the comment period, APHIS will issue a subsequent notice in the **Federal Register** providing the final rates. The notice will respond to comments received on the initial notice.

(iii) When this subsequent notice is issued, APHIS will update the fee rates found at www.aphis.usda.gov/business-services/vs-vd-fees accordingly.

(2) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees in accordance with this section.

(b) *User fees for individual animals and certain birds quarantined in the APHIS-owned or—operated quarantine facilities, including APHIS Animal Import Centers.* (1) Each user fee is assessed per animal or bird quarantined by APHIS. Special requirements may be requested by the importer or required by an APHIS representative. Certain conditions or traits, such as pregnancy or aggression, may necessitate special requirements for certain birds or poultry.

(2) For any animal or bird that requires a diet other than standard feed, 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 APHIS owned or operated Animal Import Center or quarantine facility.

(c) *User fees for exclusive use of space at APHIS Animal Import Centers.* (1) An importer may request to exclusively occupy a space at an APHIS Animal Import Center. Any importer who occupies space for more than 30 days must pay 1/30th of the 30-day fee for each additional day or part of a day.

(2) Unless the importer cancels the reservation for exclusive use of space in time to receive a refund of the reservation fee in accordance with §§ 93.103, 93.204, 93.304, 93.404, or 93.504 of this chapter, as appropriate, the 30-day user fee will be effective as of the first day for which the importer has reserved the space, regardless of whether the user occupies the space on that date or not.

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

(i) Species of animals and birds to be quarantined;

(ii) Ages of animals and birds to be quarantined; and

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

(4)(i) APHIS personnel at the Animal Import Center will determine, based on the information provided by the importer under paragraph (b)(3) of this section, and on routine husbandry needs, the maximum number of animals and birds permitted in the requested building.

(ii) If APHIS personnel at the Animal Import Center determine the number of animals and birds requested by the importer can be housed in the space requested, but two animal health technicians cannot fulfill the routine husbandry needs of the number of animals or birds proposed by the importer, then the importer must either:

(A) Pay for additional services on an hourly basis; or

(B) Reduce the number of animals or birds to be quarantined to a number which APHIS personnel at the Animal Import Center determine can be handled by two animal health technicians.

(iii) If the importer requests additional services, then APHIS will calculate the user fees for any service rendered by an APHIS representative at the hourly rate user fee found online at www.aphis.usda.gov/business-services/vs-vd-fees for each employee required to perform the service.

(iv) The importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility, for any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish.

(d) *User fees for inspection of live animals at land border ports along the United States-Canada border.* If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee found online at www.aphis.usda.gov/business-services/vs-vd-fees.

(e) *User fees for pet birds.* (1) Based on the information provided to APHIS personnel, APHIS personnel at the Animal Import Center or other APHIS owned or supervised quarantine facility will determine the appropriate number of birds that should be housed per isohette.

(2) If the importer requests additional services, then APHIS will calculate the

user fees for those services at the hourly rate user fee found online at www.aphis.usda.gov/business-services/vs-vd-fees for each employee required to perform the service.

(f) *User fees for endorsing export certificates.* (1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are found online at www.aphis.usda.gov/business-services/vs-vd-fees. APHIS will calculate the user fees to apply to each export health certificate endorsed ¹ for animals and birds based on the number of animals or birds covered by the certificate and the number of tests or vaccinations required. However, there will be a maximum user fee of 12 times the hourly rate user fee.

¹ An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

(2) If an export certificate covers more than one animal, but the number of tests required for different animals are not the same, the user fee for the certificate is the fee which would be due if all the animals on the certificate required the same number of tests as the animal which requires the greatest number of tests.

(3) The user fees referenced in this section will not apply to an export health certificate if:

(i) An APHIS veterinarian prepares the certificate for endorsement completely at the site of the inspection in the course of performing inspection or supervision services for the animals listed on the certificate; and

(ii) An APHIS user fee is payable under § 130.4 for the inspection or supervision services performed by the veterinarian.

(4) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

(g) *User fees for inspection services outside the United States.* (1) If inspection services (including inspection, testing, and supervision services) are performed outside the United States, in accordance with this title, and the regulations do not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee.

(2) Any person who wants APHIS to provide inspection services outside the

United States must contact the Animal and Plant Health Inspection Service, Veterinary Services, Strategy and Policy, Live Animal Imports at LAIE@usda.gov, to make an agreement.

(3) All agreements for inspection services outside the United States must include:

- (i) Name, mailing address, and telephone number of either the person requesting the inspection services, or his or her agent;
- (ii) Explanation of inspection services to be provided, including the regulations in this chapter which provide for the services;
- (iii) Date(s) and time(s) the inspection services are to be provided;
- (iv) Location (including street address) where inspection services are to be provided;
- (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 inspection services;
- (vii) 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
- (viii) 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.

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

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

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

§ 130.4 Hourly rate and minimum user fees.

(a) *Services subject to hourly rate user fees.* User fees for import- or export-related veterinary services listed in paragraphs (a)(1) through (18) of this section, except those services covered by flat rate user fees, will be calculated at the hourly rate found online at www.aphis.usda.gov/business-services/vs-vd-fees, for each employee required to perform the service. The person for whom the service is provided and the

person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.6 and 130.7.

(1) Providing services to live animals for import or entry at airports, ocean ports, and rail ports.

(2) Conducting inspections, including inspections of laboratories and facilities (such as biosecurity level two facilities), required either to obtain import permits for animal products and byproducts, aquaculture products, or organisms or vectors, or to maintain compliance with import permits. This hourly rate does not apply to inspection and approval of import/export facilities and establishments.

(3) Obtaining samples required to be tested, either to obtain import permits or to ensure compliance with import permits.

(4) Providing services for imported birds or ratites that are not subject to quarantine, such as monitoring birds—including but not limited to pet birds—between flights.

(5) Supervising the opening of in-bond shipments.

(6) Providing services for in-bond or in-transit animals to exit the United States.

(7) Inspecting an export isolation facility and the animals in it.

(8) Supervising animal or bird rest periods prior to export.

(9) Supervising loading and unloading of animals or birds for export shipment.

(10) Inspecting means of conveyance used to export animals or birds.

(11) Conducting inspections under part 156 of this chapter.

(12) Inspecting and approving an artificial insemination center or a semen collection center or the animals in it.

(13) Import or entry services for feeder animals including, but not limited to, feeder goats and feeder bison not covered by a flat rate user fee in connection with activities described in § 130.3(d).

(14) Export-related bird banding for identification.

(15) Export-related inspection and approval of pet food facilities, including laboratories that perform pet food testing.

(16) Export-related services provided at animal auctions.

(17) Various export-related facility inspections, including, but not limited to, fertilizer plants that utilize poultry waste, rendering plants, and potential embarkation facilities.

(18) Providing other import-or export-related veterinary services for which no flat rate user fee is specified.

(b) *When do I pay an additional amount for employee(s) working*

overtime? You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. Instead of paying the hourly rate user fee, you pay the rate found online at www.aphis.usda.gov/business-services/vs-vd-fees for each employee needed to get the work done.

§ 130.5 Exemptions.

(a) *Veterinary diagnostics.* APHIS will not charge user fees for veterinary diagnostic services under the following conditions:

(1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases);

(2) When veterinary diagnostic services are provided in support of zoonotic disease surveillance when the Administrator has determined that there is a significant threat to human health; and

(3) When veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases.

(b) [Reserved]

§ 130.6 Payment of user fees.

(a) *Who must pay APHIS user fees?*

Any person for whom a service is provided related to the importation, entry, or exportation of an animal, article, or means of conveyance or related to veterinary diagnostics, and any person requesting such service, shall be jointly and severally liable for payment of fees assessed.

(b) *Associated charges.* (1)

Reservation fee. Any reservation fee paid by an importer under part 93 of this chapter will be applied to the APHIS user fees described in § 130.3(b) and (c) for animals or birds quarantined in an animal import center.

(2) *Special handling expenses.* The user fees in this part do not include any costs that may be incurred due to special mail handling, including, but not limited to, express, overnight, or foreign mailing. If any service requires special mail handling, the user must pay all costs incurred, in addition to the user fee for the service.

(3) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. You pay the amount specified in paragraphs (b)(3)(i), (ii), or (iii) of this section as relevant, for

each employee needed to get the work done.

(i) *What additional amount do I pay if I receive a flat rate user fee service?* In addition to the flat rate user fee(s),

you pay the overtime rate listed in the following table for each employee needed to get the work done:

TABLE 1—OVERTIME FOR FLAT RATE USER FEES^{1 2}

Service provided	Outside of the employee's normal tour of duty	Overtime rates by hour		
		Nov. 2, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities ³ .	Monday through Saturday and holidays.	\$75	\$75	\$75
	Sundays	99	99	100
Rate for commercial airline inspection services ⁴ ..	Monday through Saturday and holidays.	64	65	65
	Sundays	85	86	86

¹ APHIS will charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

² When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)

³ See § 97.1(a) of this chapter or 7 CFR 354.3 for details.

⁴ See § 97.1(a)(3) of this chapter for details.

(ii) *What amount do I pay if I receive an hourly rate user fee service?* Instead of paying the normal hourly rate user fee described in § 130.4(a), you pay the premium rate described in § 130.4(b) for each employee needed to get the work done:

(c) *When are APHIS user fees due?*—

(1) *Animal and bird quarantine and related tests.* User fees for animals and birds in an Animal Import Center or privately operated permanent or temporary import quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid prior to the release of those animals or birds from quarantine.

(2) *Supervision and inspection services for export animals, animal products and byproducts.* User fees for supervision and inspection services described in § 130.4 must be paid when billed, or, if covered by a compliance agreement signed in accordance with this chapter, must be paid as specified in the agreement.

(3) *Export health certificates.* User fees for export health certificates described in § 130.3(f) must be paid prior to receipt of endorsed certificates. If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(4) *Veterinary diagnostics.* User fees specified for veterinary diagnostic services, such as tests on samples submitted to NVSL or FADDL, diagnostic reagents, slide sets, tissue sets, and other veterinary diagnostic services, must be paid when the veterinary diagnostic service is requested. If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(5) *Other user fee services.* User fees for import or entry services for land border ports along the United States-Mexico or United States-Canada border, inspection of germplasm being exported, release from export agricultural hold, and other services described in § 130.4 must be paid when service is provided (for example when live animals are inspected when presented for importation at a port of entry). If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(d) *What payment methods are acceptable?* Payment must be for the exact amount due and may be paid by:

(1) Cash will be accepted only during normal business hours if payment is made at an APHIS office or an Animal Import Center;

(2) All types of checks, including traveler's checks, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA;

(3) Money orders, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA; or

(4) Credit cards (VISA™ and MasterCard™) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.

§ 130.7 Penalties for nonpayment or late payment.

(a) *Unpaid debt.* If any person for whom the service is provided fails to pay when due any debt to APHIS, including any user fee due under 7 CFR chapter III or this chapter, then:

(1) *Subsequent user fee payments.* Payment must be made for subsequent

user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due; or

(ii) For billed fees, the user fee is unpaid 60 days after date of bill; or

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(2) *Resolution of difference between estimate and actual.* APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the additional amount due.

(3) *Prepayment form.* The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) *Denied service.* Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after date the pertinent regulatory provision indicates payment is due; or

(ii) For billed fees, the user fee is unpaid 90 days after date of bill; or

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) *Unpaid debt during service.* 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) *Animals or birds in quarantine.* If an APHIS user fee is due for animals or birds in quarantine at an animal import center or at a privately operated import quarantine facility, APHIS will not release them.

(2) *Export health certificate.* If an APHIS user fee specified is due for an export health certificate, APHIS will not release the certificate.

(3) *Veterinary diagnostics.* If an APHIS user fee is due for a veterinary diagnostic test or service, APHIS will not release the test result, any endorsed certificate, or any other veterinary diagnostic service.

(c) *Late payment penalty.* In addition to the actions described in paragraph (b) of this section, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717 for:

(1) Unbilled user fees, if the user fees are unpaid 30 days after the date the pertinent regulatory provisions indicate payment is due; or

(2) Billed user fees, if the user fees are unpaid 30 days after the date of the bill.

(d) *Dishonored payment penalties.* User fees paid with dishonored forms of payment, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with 31 U.S.C. 3717. Administrative charges will be assessed at \$20.00 per dishonored payment to be paid in addition to the original amount owed. Payment must be in guaranteed form, such as cash, money order, or certified check.

(e) *Debt collection management.* In accordance with the Debt Collection Improvement Act of 1996, the following provisions apply:

(1) *Taxpayer identification number.* APHIS will collect a taxpayer identification number from all persons, other than Federal agencies, who are liable for a user fee.

(2) *Administrative offset.* APHIS will notify the Department of Treasury of debts that are over 180 days delinquent for the purposes of administrative offset. Under administrative offset, the Department of Treasury will withhold funds payable by the United States to a person (*i.e.*, Federal income tax refunds) to satisfy the debt to APHIS.

(3) *Cross-servicing.* APHIS will transfer debts that are over 180 days delinquent to the Department of Treasury for cross-servicing. Under cross-servicing, the Department of Treasury will collect debts on behalf of

APHIS. Exceptions will be made for debts that meet certain requirements, for example, debts that are already at a collection agency or in payment plan.

(4) *Report delinquent debt.* APHIS will report all unpaid debts to credit reporting bureaus.

(f) *Animals or birds abandoned after quarantine at an animal import center.* 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. APHIS 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 and from persons liable for user fees under § 130.6(a).

Done in Washington, DC, this 15th day of September 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–21030 Filed 9–30–22; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

[NCUA–2022–0132]

RIN 3133–AF51

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 15, 2022, Congress enacted the Credit Union Governance Modernization Act of 2022 (Governance Modernization Act). Under the statute, the NCUA has 18 months following the date of enactment to develop a policy by which a federal credit union (FCU) member may be expelled for cause by a two-thirds vote of a quorum of the FCU's board of directors. The NCUA Board (Board) is now proposing to amend the standard FCU bylaws (FCU Bylaws) to adopt such a policy.

DATES: Comments must be received by December 2, 2022.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF51, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. The docket number for this proposed rule is NCUA–2022–0132. Follow the instructions for submitting comments.

- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier:* Same as mail address.

Public inspection: You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Roberson, Deputy Director, Office of Consumer Financial Protection; Paul Dibble, Consumer Access Program Officer, Office of Credit Union Resources and Expansion; or Rachel Ackmann, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Lisa Roberson can also be reached at (703) 548–2466, Paul Dibble can be reached at (703) 664–3164, and Rachel Ackmann can be reached at (703) 548–2601.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Credit Union Act (FCU Act) and standard FCU Bylaws, there are currently only two ways a member may be expelled: (1) A two-thirds vote of the membership present at a special meeting called for that purpose, and only after the individual is provided an opportunity to be heard; and (2) for non-participation in the affairs of the credit union, as specified in a policy adopted and enforced by the board.¹ These requirements are set out in the standard FCU Bylaws in

¹ 12 U.S.C. 1764.