MARITIME EXCHANGE
for the Delaware River and Bay
Leading the Way to Port Progress

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Via Federal eRulemaking Portal

U.S. Department of Agriculture
Regulatory Analysis and Development, PPD, APHIS
Station 3A–03.8, 4700 River Road Unit 118
Riverdale, MD 20737–1238

Re: Docket No. APHIS–2022–0023 Proposed Rule Regarding AQI Fee Increases

Dear Sir or Madam:

This letter is to express concerns and oppose certain of the fees outlined in the above-referenced proposed rulemaking. As information, the Maritime Exchange for the Delaware River and Bay is a nonprofit trade association representing the interests of commercial port stakeholders in the tristate Delaware Valley.

The Maritime Exchange strongly supports APHIS and the Agricultural Quarantine Program. Exchange members join APHIS in its commitment to preventing the introduction of foreign pests into the U.S. ecosystem. We also recognize the severe financial constraints that have plagued the AQI program for the last several years, and our members have invested significant time and energy to work with APHIS personnel to identify innovative solutions to address the issue. Further, the Exchange and its members agree that reasonable fee increases are necessary from time to time.

We appreciate this opportunity to provide comment to the proposed rulemaking and look forward to working with APHIS to identify a rate structure that is both equitable and helps meet program needs. Following are key considerations we would ask program managers to evaluate prior to finalizing the new rate structure.

Vessel Fee

While we agree that APHIS must increase rates over time, a vessel fee increase of 290% year over year is not reasonable by any standard. And implementing it without sufficient advance notice for budget planning purposes will make a challenging transition close to impossible.

While it is clear that APHIS is attempting to adjust revenues not only to accommodate rising costs but also to grow personnel ranks to meet growing workload demands, we are highly concerned that the only identified solution is to inflict this burden so dramatically on the industry.

When APHIS proposed the current schedule implemented in 2015, the Maritime Exchange and many others questioned the steps the agency had taken to reduce expenses. Stakeholders have raised this question on numerous occasions since then, yet the rulemaking is silent on cost-cutting measures that may have been implemented, leading the regulated public to assume there have been none. We ask that APHIS provide additional information on efforts to reduce costs since the 2015 rulemaking and the resultant program savings, if any.

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The current rulemaking claims the increased cargo capacity of vessels calling U.S. ports has resulted in a significantly greater workload for AQI personnel. The first question to raise is how a 42% increase in container volumes translates into a need for a nearly 300% increase in revenues. Further, the text does not discuss the cost savings resulting from fewer ship visits.

In addition, additional opportunities may exist to substantially reduce some of the tasks outlined in the narrative through technology; for instance, manifest and document review could be minimized in favor of computer algorithms that identify high-risk shipments for targeting.

In short, the AQI program should be accountable to demonstrate that it has taken all possible steps to reduce costs before implementing such an oppressive fee increase. Beyond that, the USDA and Congress, recognizing that AQI services benefit U.S. consumers as a whole and not simply the ships that carry those goods or the importers who purchase them, should seek to fund increased staffing through the appropriations process rather than immediately turning to user fee increases. Approaching the shortfall in such a manner would allow APHIS to more gradually phase in fee adjustments and allow industry more time to prepare for them.

Allocate costs to workload – The "Updates to the ABC Model and Cost Calculations" section states that, "As a result of its review, Grant Thornton recommended options to more accurately allocate costs based on the activity and the output." Given that recommendation, it is unclear why APHIS plans to assess a single vessel fee rate for all ships and commodities. Clearly, the activity level involved in inspecting a container ship is far greater than that for a car or ore carrier, oil tanker, or vessel arriving empty to load cargo. Even within container ships is significant diversity; the largest container ships have a 20,000-24,000 TEU capacity and take far more time to inspect than the 1,000 TEU ships still calling some U.S. ports.

We encourage APHIS to consider applying a base rate to all vessels and an additional fee for extended service where needed or a tiered rate schedule tied to workload hours.

Treatment Fee

The narrative states that the responsible party will only be charged for actual monitoring time. To clarify, does this mean that travel time will not be charged to the RP and the invoice will reflect only the exact number of hours or quarter hours spent in directly overseeing the treatments?

As with the vessel fees, Exchange members question whether USDA has implemented all possible measures to improve efficiencies of the existing workforce and reduce costs. Do additional opportunities exist, such as trusted partner self-certification programs or remote monitoring? These types of programs have proven successful and could be extremely effective for treatment monitoring.

Further, because of the nature of the operation relating to perishable commodities and rapid cargo flow, applicators must provide daily accountings to their customers. With a per enclosure fee structure, accurately estimating AQI fees is possible; this is not the case with fees based on hourly rates. Accordingly, if APHIS implements the proposed program, it will be necessary to provide invoices within 12 hours of performing the service.

Additionally, we ask that APHIS consider the busy import season when determining its implementation schedule: applying new rates within the June-November time frame will alleviate mid-season changes that will cause havoc with service contracts based on previously agreed upon rates.

Further, the implementation plan must be provided at least a year in advance to allow for adequate budget planning.

For additional consequences surrounding treatment fees, the Maritime Exchange supports the comments submitted by Western Fumigation and asks APHIS to thoroughly consider the complexity of the operations and associated financial processing and the geographic disparities that may require a different approach.

In Closing

We appreciate the challenges APHIS faces in designing a fee structure that balances its own financial needs with the differing operations among U.S. ports. The Maritime Exchange and its members stand ready to assist APHIS to meet its critical mission. Once again, thank you for the opportunity to express our views on this very important matter.

Sincerely,

Lisa B. Himber

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President