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FOOD-RELATED SERVICES

Opportunities Exist to Recover Costs by Charging Beneficiaries

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The federal government spent nearly $1.6 billion in fiscal year 1995 to provide food-related services, such as inspecting, testing, grading, and approving agricultural commodities and products. In some cases, the individuals and companies benefiting from these services paid user fees for all or part of the cost of providing the service. In other cases, no user fees were charged. Consequently, in fiscal year 1995 the government incurred about $1.2 billion in food-related service costs that were funded through general fund appropriations.

Reducing the federal budget deficit has become a national priority. In this context, we identified and evaluated opportunities to increase the share of funding by beneficiaries for food-related services provided by the federal government. Specifically, we identified (1) the types of food-related services provided by federal agencies; (2) the extent to which beneficiaries currently pay for such services through user fees; and (3) potential opportunities for recovering more of the service costs through user fees, as well as arguments for and against doing so.

Results in Brief

Federal agencies provide individuals, firms, and industries such food-related services as (1) premarket reviews, including approving new animal drugs and food additives for use and grading grain and other commodities for quality, (2) compliance inspections of meat and poultry and domestic foods and processing facilities to ensure adherence to safety regulations, (3) import inspections and export certifications to ensure that food products in international trade meet specified standards, and (4) standard setting and other support services essential to these functions.

About one-quarter of the $1.6 billion spent by the federal government in fiscal year 1995 on food-related services was funded through user fees. The premarket service of quality grading of grains and agricultural commodities was the primary food-related service funded through user fees. Nearly three-quarters of the cost of food-related services was funded by general fund appropriations rather than user fees. Compliance activities, such as the inspection of meat and poultry, were the primary food-related activities funded through general fund appropriations.

On the basis of our review of selected food-related services, we determined that potentially about $723 million in additional user fees could have been charged for services provided in fiscal year 1995. According to the Office of Management and Budget's (OMB) criteria, additional user fees could have been assessed in three principal areas. First, additional user fees could have been charged for some federal services by including the full costs of providing the service, such as the cost of setting standards, in the fee calculations. Second, user fees currently charged for certain food-related services, such as agricultural inspections at the nation's borders and ports of entry, could have been consistently applied to similar types of services that are provided without charge. Finally, user fees could have been assessed on certain services, such as the inspection of meat and poultry, that are provided to identifiable beneficiaries without charge. Although the arguments for and against user fees vary with the agency and service in question, the arguments center on who benefits from the service—the general public or specific beneficiaries—and the impact the user fee would have on producers or consumers.

Background

User fees—charges individuals or firms pay for services they receive from the federal government—are not new but have begun to play an increasingly important role in financing federal programs, particularly since the Balanced Budget Act of 1985.[1] Increases and extensions of user fees could be used to help meet the nation's budget deficit reduction goals or increase the level of government services.

User fees may be established in various ways. General user fee authority was established under title V of the Independent Offices Appropriation Act (IOAA) of 1952. The IOAA gave agencies broad authority to levy user charges on identifiable beneficiaries by administrative regulation. Before its enactment, an agency generally imposed fees only if it had specific congressional authorization to do so.[2] User fee authority may also be granted through specific authorizing legislation. For example, the Congress mandated user fees in the authorizing legislation of a new program to certify agricultural products as organically grown. These fees

[1]Absent authority to do otherwise, user fees are deposited in the U.S. Treasury's general fund and are not credited to the agency or activities that generated the revenue. However, in many cases, particularly ones in which fees are charged for business-type activities, the Congress permanently authorizes that these fees be used by the agency or for a specific purpose.

[2]The Congress has prohibited the Food and Drug Administration from imposing user fees based on the general authority of the IOAA, requiring the agency to seek authority to charge fees on a case-by-case basis.

will be used to fund administrative and review activities necessary to the certification process. Agencies may also request approval to charge user fees by including proposals to do so in their annual budget submissions to the Congress.

The IOAA provides general guidance to agencies but is not specific enough to conclusively determine the appropriateness or amount of a user fee in a given situation. The federal Circuit Court of Appeals for the District of Columbia has interpreted the IOAA to mean that if a government service provides an "independent" public benefit, no user fee should be charged for that portion of the benefit.[3] Furthermore, according to the 1993 version of Circular A-25, the latest guidance by OMB, if private individuals or firms receive the primary benefits of the government service and public benefits are "incidental," then user fees could be charged for the full costs of providing the service.

Because the IOAA and OMB's guidance do not define "independent" or "incidental" public benefits, interpretations of these criteria have changed over time. For example, from the inception of the IOAA, the Food and Drug Administration (FDA) maintained that the public was the primary beneficiary of its services and that an independent public interest was involved, which precluded a user fee. However, FDA has recently argued that various identifiable private recipients are the primary beneficiaries of some of its services, for example reviewing applications for new human drugs, and that the existence of incidental public benefits does not preclude charging a user fee.[4]

To assist the agencies in determining when user fees are appropriate, in 1959 the Bureau of the Budget (now OMB) issued Circular A-25, which contained guidance for assessing user fees. The circular, last revised by OMB in 1993, states that "a user charge will be assessed against each identifiable recipient for special benefits derived from federal activities beyond those received by the general public." According to OMB, a special benefit will be considered to accrue, and a user charge will be imposed when the government service

[3]Central and Southern Motor Freight Tariff Association, Inc. v. United States, 777 F.2d 722 (D.C. Cir. 1985) and Engine Manufacturers Association v. Environmental Protection Agency, 20 F.3d 1177 (D.C. Cir. 1994).

[4]Disputes regarding the existence of independent versus incidental benefits have generally been resolved by the courts.

- enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, an insurance or guarantee provision, or a license to carry on a specific activity or business);

- provides business stability or contributes to public confidence in the business activity of the beneficiary; or

- responds to the request of or is provided for the convenience of the service recipient and is beyond the service regularly received by other members of the same industry or by the general public (e.g., receiving a passport, visa, or Custom's inspection after regular duty hours).

In determining the user fee amount, the circular states that "full costs" should be charged. Full costs include (1) direct and indirect personnel costs, including salaries and expenses for fringe benefits such as medical insurance and retirement; (2) physical overhead, consulting, and other indirect costs, including costs for utilities, insurance, travel, and rents; (3) management and supervisory costs; and (4) the costs of enforcement, research, regulation, and the establishment of standards.

In some cases, the government supplies a service that provides a special benefit to an identifiable recipient and also provides a benefit to the general public. According to Circular A-25, when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient the full costs of providing the service.

Food-Related Services Provided by Federal Agencies

The federal government provides food-related services in four general categories—premarket reviews, regulatory compliance, import or export activities, and essential support. These services are provided to individuals, firms, and industries by six federal agencies in three departments. Both producers and consumers of agricultural products and commodities, such as beef, seafood, grain, vegetables, food additives, and animal drugs, benefit from these services.

Categories of Services

The food-related services provided by the federal government can be grouped into four general categories.

- Premarket reviews encompass a number of activities that take place before a product or commodity can be sold to a wholesaler or consumer and include (1) product approvals that allow companies to market specific products, for example, animal drugs, after they have been determined to be safe and effective; (2) quality grading to determine that certain commodities such as grain, beef, and some fruits meet established standards for quality and condition; and (3) permit issuance for activities such as the use of experimental biotechnological techniques.

- Compliance inspections are aimed at ensuring that regulated firms adhere to all applicable laws and regulations regarding product safety. For example, federal agencies need to periodically inspect manufacturing facilities and procedures to ensure the safety of food-related products.

- Import inspections and export certifications are made so that the government can attest to the quality and safety of products in international trade. For example, some countries to which the United States exports seafood require that the product be accompanied with a health certificate. Food-related products that are imported into the United States are inspected to ensure that they are safe and free of agricultural diseases and pests.

- Essential support activities, such as standard setting and laboratory analysis, support the government's main inspection, grading, and compliance programs. Without these support activities, the programs could not fully operate. For example, to grade the quality of a food-related product requires a set of standards specifying the desired characteristics of the product. To analyze meat and poultry for the presence of pathogens and other contaminants requires laboratory services.

Agencies Providing Food-Related Services

Six federal agencies in three different departments provide food-related services. These agencies are FDA in the Department of Health and Human Services; the National Marine Fisheries Service (NMFS) in the Department of Commerce; and the Food Safety and Inspection Service (FSIS), Agricultural Marketing Service (AMS), Grain Inspection, Packers and Stockyards Administration (GIPSA), and Animal and Plant Health Inspection Service (APHIS) in the Department of Agriculture (USDA).

- FDA provides food-related services in two primary areas—premarket reviews and compliance inspections. The agency requires that new animal drugs are safe and effective for their intended use and that drug residues in animal tissue will not be harmful for human consumption. Food additives and colorings are reviewed primarily for safety. Before marketing a new animal drug, food additive,[5] or color additive,[6] sponsors are responsible for demonstrating the safety and, in the case of animal drugs, the effectiveness of their products by conducting studies and submitting data to FDA as part of a review process. FDA is responsible for reviewing these data and approving or denying the application. FDA also inspects domestic and imported food products (excluding meat, poultry, and some egg products) to ensure safety, wholesomeness, and accurate labeling.

  FDA performs a wide variety of compliance inspection activities. Among these activities, FDA periodically inspects the manufacturers and importers of food products such as cheese, canned food, and seafood to ensure that they are not contaminated with pesticides, filth, or pathogens, such as salmonella. Scientists analyze samples in FDA field laboratories, and compliance officers and others conduct enforcement actions when necessary.

- NMFS administers a voluntary seafood inspection and certification program. The purpose of the seafood inspection program is to facilitate consistent distribution of safe, wholesome, and properly labeled fishery products of designated quality. The inspection provides assurances of safety, wholesomeness, proper labeling, and quality of seafood to consumers and the seafood industry. NMFS conducts seafood inspection and grading activities for a wide variety of clients, including harvesters, processors, and retailers. Products inspected and certified by NMFS can bear one of several official marks, such as "U.S. Grade A."

- FSIS ensures that meat, poultry, and some egg products moving in interstate and foreign commerce are safe, wholesome, and correctly marked, labeled, and packaged. Meat and poultry slaughterhouses receive continuous carcass-by-carcass inspections, while processing plants are inspected daily. Egg products processing plants are also subject to

[5]Food additives are substances that are added intentionally or incidentally to food or that otherwise affect the characteristics of food, such as its flavor, texture, or shelf life. The additives may also be used in food packaging or processing equipment in such a manner that they inevitably become components of food.

[6]Color additives are substances that are added to foods, drugs, or cosmetics to impart color.

continuous federal inspection. Inspectors collect and send product samples to FSIS laboratories that test the samples for the presence of chemical residues or pathogens. The agency also inspects imported and exported meat, poultry, and egg products to ensure that they meet U.S. standards.

- AMS is responsible for inspecting and grading agricultural commodities and products, such as fruits, vegetables, meat, and poultry, as an aid in marketing these commodities. AMS also administers marketing agreements and orders that are designed to stabilize market conditions for milk and certain fruits and vegetables and improve producers' revenues. In addition, the agency promotes fair trading practices in the sale of fresh and frozen fruits and vegetables.

- GIPSA facilitates the marketing of grain, lentils, and related commodities by ensuring uniform inspection and weighing, establishing descriptive standards, and certifying quality. GIPSA also helps ensure fair business practices in the livestock, meat, and poultry industries by guarding against fraudulent practices and providing payment protection.[7]

- APHIS has responsibility for inspecting plants and animals within the country and those that are being imported to or exported from the United States to ensure that they do not spread agricultural pests and animal diseases. APHIS also regulates the development and use of genetically modified organisms and veterinary biological products by issuing permits and licenses for these activities. In addition, the agency is responsible for controlling the damage caused by wildlife to agricultural interests, natural resources, and human health, safety, and property.

One-Quarter of Food-Related Services Are Funded Through User Fees

Of the about $1.6 billion available to the six agencies in fiscal year 1995 for food-related services, about $411 million was provided by user fees. The other nearly $1.2 billion was provided through general fund appropriations. The percentage of user fee funding varied by agency and the type of service provided. Certain types of activities, for example grading, were generally funded through user fees, whereas the costs of other activities, such as compliance inspections, generally were funded through general fund appropriations.

[7]GIPSA's payment protection provides for the livestock seller's financial security by providing protection against a buyer's default on payment of a contract.

The percentage of an agency's food-related services funded through user charges, as shown in table 1, ranged from a high of 96 percent for NMFS to a low of 1 percent for FDA. Some agencies, such as NMFS, AMS, and GIPSA, received the majority of their funding from user fees while others, such as FDA and FSIS, did not. For example, in 1995 $116 million, or 67 percent, of AMS' funding came from user fees, mostly for grading services, while FSIS received about $84 million, or 14 percent, of its funds through user fees, mostly charges for overtime incurred on inspections of meat, poultry, and egg products.

Table 1: Six Federal Agencies' Funding for Food-Related Services in Fiscal Year 1995

Dollars in millions

Agency	User fees	General fund appropriations	Total program funding	Percentage funded from user fees
NMFS	$13.6	$0.6	$14.2[a]	96
AMS	116.0	57.3	173.3[b]	67
GIPSA	33.5	22.7	56.2	60
APHIS	160.6	313.2	473.8	34
FSIS	83.9	531.0	614.9	14
FDA	3.3	258.0	261.3	1
Total	**$410.9**	**$1,182.8**	**$1,593.7**	**26**

[a]NMFS also received $1.58 million in general fund appropriations for the National Seafood Inspection Laboratory; however, because the laboratory does not primarily provide services to the seafood inspection program, its funding is not included in the total.

[b]Includes funds for some services that are primarily food-related but also support other agricultural products such as cotton and tobacco.

Sources: Data from NMFS, AMS, GIPSA, APHIS, FSIS, and FDA.

Certain types of food-related service costs are generally funded through user fees, other types of service costs are sometimes funded by fees, and still other services are generally provided without charge to the service recipient. The costs of the federal premarket service of grading are the ones that are most likely to be funded through user fees. Drawing on the authority provided in the laws establishing the programs, AMS and GIPSA charge fees for the direct grading services they provide. For new product reviews, another premarket activity, fees are charged for the review of some products but not for others. For example, FDA charges some user fees for new human drug and color additive reviews but does not charge for new animal drug or food additive reviews. In addition, APHIS charges

for the inspection of imported animal products, but FDA and FSIS do not charge for their import inspections.

Mandatory compliance activities, conducted during regular duty hours, were the primary food-related activities not funded by user fees at the six agencies we reviewed. These activities include (1) inspecting the safety of meat and poultry, (2) monitoring the conditions under which food is manufactured, and (3) investigating violations of grain laws. (See app. I for the food-related services provided by each agency we reviewed and their funding sources during fiscal year 1995.)

Opportunities Exist to Increase the Share of Funding by Program Beneficiaries

Potentially about $723 million in additional user fees could have been charged to program beneficiaries in fiscal year 1995, according to our review of selected food-related services.[8] Applying OMB's criteria in Circular A-25, we determined that these user fees could have been assessed in three areas. For agencies that collect partial user fees for certain services, additional fees of about $22.5 million could have been charged to cover the full costs of providing the service. About $49 million could have been charged by assessing user fees consistently for similar services, and $651.5 million could have been charged for certain other services that are currently provided without charge.

Full Costs of Providing Services Are Not Always Recovered

For certain food-related services, the federal government charges user fees that are less than the full costs of providing the service. For example, some user fees are based on calculations that exclude the cost of activities essential to the service, such as the cost associated with developing program standards. For the food-related services that we reviewed, basing user fees on the full costs of providing the service would have allowed the federal government to charge about $22.5 million more in fiscal year 1995.

Circular A-25 states that agencies charging user fees should recover the government's full costs of providing the service, including both direct and indirect costs. According to the circular, indirect costs include among other things, essential support expenses for such things as establishing program standards. Establishing standards is essential to assessing the quality of an agricultural product or commodity. For example, in grading grain, GIPSA develops and maintains quality standards for water content,

[8]Of the about $1.2 billion in food-related services that were not funded through user fees in fiscal year 1995, we identified about $723 million in additional user fees that could have been charged. However, we did not review all of the food-related services at the six agencies where user fees may be appropriate.

hardness, protein content, and other factors that determine the value of the grain on the market.

In a 1981 report,[9] we stated that public funding for standard-setting activities for grading services is appropriate as long as the standards primarily benefit commodity marketing industries as a whole and not just those requesting grading services. This view was based on OMB's original 1959 version of Circular A-25, which stated that "no charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public." However, the guidance in the 1993 revision of the circular allows agencies to charge service beneficiaries the full costs of providing the service, even though the public receives incidental benefits. For example, if the grain industry as a whole obtains benefits that are not independent of, but rather incidental to the special benefits provided to grading customers, under A-25's guidance an agency should recover from these customers the full costs of providing the benefits.

While GIPSA includes the costs of its direct grading activities in its user fee calculations, it excludes the costs of developing and maintaining the necessary standards—about $4.8 million in fiscal year 1995. Believing that standard-setting costs should be included in its user fee calculations, GIPSA requested congressional authority to charge for these activities in the President's fiscal year 1997 budget. However, the Congress did not approve GIPSA's request. GIPSA has again proposed charging user fees for standard-setting activities in the fiscal year 1998 budget.

In opposition to GIPSA's proposal, the National Grain and Feed Association[10] said (1) standard-setting activities have broad societal benefits and therefore should receive public funds, (2) new user fees are likely to fall disproportionately on exporters and effectively become a tax on U.S. agricultural exports, and (3) new user fees would weaken the official inspection system because higher costs would drive some domestic grain inspection customers away from the system. The last two concerns relate to the fact that grain for export is required to be inspected by GIPSA's official grading system, but grain for the domestic market is not.

[9]Department of Agriculture Should Have More Authority to Assess User Charges (GAO/CED-81-49, Apr. 16, 1981).

[10]This trade association represents more than 1,000 grain, feed, and processing firms that process and export more than two-thirds of all U.S. grains and oilseeds.

GIPSA estimated that including standards development costs in its user fee calculations for grading services would increase the fees by about 13 percent, for example, from $31.50 per hour to $35.60 per hour. However, to lessen the burden on small firms, a fee schedule could be developed that would vary, for example, on the basis of the volume of grain inspected. According to a GIPSA official, for fiscal year 1995, including the cost of standard setting in the user fee calculations would increase the grain industry's total cost by less than 1 percent.

(App. II contains additional examples of programs with user fees that do not fully cover the costs of providing services.)

User Fees Are Not Applied Consistently to Similar Services

The federal user fee structure for food-related services is inconsistent among similar services. For example, user fees are charged for premarket review of human drugs but not for animal drugs. Furthermore, while most air passengers and commercial vehicles entering the United States are charged a user fee to cover the government's cost of agriculture inspections at the nation's borders, some are not. Eliminating disparities in how user fees are charged for similar services would have allowed the federal government to charge an additional $49 million in fees in fiscal year 1995.

Animal Drug Reviews

To protect public health and the nation's economic interests, federal review and approval is required on certain products before they can be marketed. FDA, for example, approves the efficacy and safety of human and animal drugs. The agency charges some user fees for new human drug reviews but does not charge for new animal drug reviews.

The general approaches used for reviewing and approving human and animal drugs are very similar. Sponsors of both new human and animal drugs are responsible for demonstrating the safety and effectiveness of their products by conducting studies and submitting data to FDA as part of the premarket review process. In animal drug studies, the sponsors are required to demonstrate safety both to the animal and to humans consuming edible tissue of the treated animal. FDA is then responsible for reviewing the safety and effectiveness data and approving or denying the application to market the new drugs. FDA reviews applications both for animal drugs intended for use in food-producing animals as well as drugs for pets and other non-food-producing animals.

In the Prescription Drug User Fee Act of 1992, the Congress approved some user fees for human drug reviews, stipulating that the revenues generated were to be used to help reduce the length of time needed to review new drug applications. In fiscal year 1995, FDA charged about $71 million in user fees for human drug reviews. However, no fees are charged for the review and approval of animal drugs. In fiscal year 1995, FDA received about $20.2 million in general fund appropriations to review new animal drugs.

FDA's review and approval of new animal drugs provides producers of these drugs economic benefits by (1) allowing them to market approved drugs and keeping unapproved animal drugs off the market, (2) increasing public confidence in the efficacy and safety of approved drugs, and (3) reducing the manufacturer's exposure to liabilities associated with unknown side effects.

By approving a firm's new animal drug application, the government gives the applicant in effect a "license" to sell its drug and potentially derive substantial profits. The approval also provides the public with assurances that the drug is safe and will not leave residues that are harmful to humans. In a 1990 report, the Department of Health and Human Services' Inspector General concluded that regulated industries, including the animal drug industry, should contribute to the cost of ensuring the safety and effectiveness of their products because they receive benefits from FDA's regulatory activities.[11]

In our 1992 report on the new animal drug review process,[12] we concluded that user fees could be charged for new animal drug reviews:

"In light of existing constraints on federal resources and the importance of regulating the safety and efficacy of animal drugs, providing FDA with specific authority to charge user fees for approving new animal drugs may be a viable alternative to appropriations for funding this program."

In a November 1994 study on the new animal drug review process, FDA found that by collecting some user fees the agency could accelerate the review process, which would result in speedier market entry and, therefore, increased financial benefit to the sponsors of new animal

[11]Implementing User Fees in the Food and Drug Administration: A Case Study, Department of Health and Human Services, Office of Inspector General (July 1990).

[12]Food Safety and Quality: FDA Needs Stronger Controls Over the Approval Process for New Animal Drugs (GAO/RCED-92-63, Jan. 17, 1992).

drugs.[13] The study estimated that the financial benefits to industry from an improved animal drug review process would range from $16 million to $55 million.

Since publishing its 1994 study, FDA has not proposed charging user fees for animal drug reviews, and the Congress has taken no action on the matter. According to FDA, some administrative and procedural changes are being made to reduce the time required to review and approve new animal drug applications. In addition, the animal health industry has come to believe that many improvements to the review process can be made without charging fees to hire additional reviewers. Finally, according to an OMB official, currently the Congress and FDA may view other potential candidates for user fees, such as medical device reviews, as a higher priority.

The Animal Health Institute, which represents the interests of manufacturers of animal health products, opposes user fees for the review of new animal drugs. In case user fees are considered, according to the Institute, the funds collected should be used only to meet specific goals for improving the review process. The Congress stipulated that goals for reducing review time should be established and met when it approved some user fees for human drug reviews.

Border Inspections

In addition to inconsistencies in user fees for premarket reviews, user fees are not charged consistently for agricultural inspection activities at the nation's borders and ports of entry. In 1991, APHIS began charging user fees to fund the inspection of international air passengers and commercial conveyances, such as aircraft, vessels, loaded railcars, and trucks, for the presence of plant pests and animal diseases.[14] All air passengers and commercial vehicles entering the United States are charged a user fee—except those originating in, and entering from, Canada. Because Canadian agricultural products posed less risk to U.S. agriculture and thus required less frequent inspections, air passengers and commercial vehicles entering from Canada were excluded from the user fee charges.

After reviewing the situation, in 1996 APHIS considered charging user fees for air passengers and commercial vehicles entering from Canada but did

[13]User Fee Feasibility Study, FDA, Center for Veterinary Medicine (Nov. 1994).

[14]Except for flights originating in Canada, air passengers pay $1.45 as part of their airfare, commercial aircraft pay $53.00 for each U.S. landing until all of the aircraft's cargo and passengers are off-loaded, vessels pay $369.50 per arrival for the first 15 arrivals per year, rail operators pay $7.00 for each loaded railcar crossing the Mexican border, and trucks pay $2.00 for each crossing of the Mexican border or $140 per year for a decal that allows unlimited crossings.

not go forward with such a proposal. According to APHIS officials, the proposal was not made because (1) agricultural products from Canada still constitute relatively little risk to U.S. agriculture, (2) the user fees would generate little revenue, and (3) the user fees may induce Canada to reciprocate by charging U.S. air passengers and commercial vehicles crossing into Canada a similar fee.

While we do not know whether or not the Canadian government would reciprocate, we noted in our review of APHIS' budget documents that risks to U.S. agriculture have increased and thus more inspections are required of products entering the United States from Canada. According to APHIS' explanatory notes for its fiscal year 1997 budget, "increased traffic of untreated Asian and European agricultural products into the United States through Canada has created the need for increased inspections to reduce the risk of introducing exotic agricultural pests into this country." Over the past 3 years, the value of agricultural imports from Canada has increased about 29 percent, from $5.2 billion to $6.7 billion.

We estimate that charging air passengers and commercial vehicles entering from Canada the same fees charged for entries from all other foreign countries would have generated approximately $15.1 million in new revenues from the 1995 border crossings. The costs of collecting such fees would be minimal because the collection mechanism is already in place. However, some of the new revenues may be offset by additional program costs related to increased inspections.

(App. III contains a discussion of other food-related services provided without charge that are similar to federal services for which user fees are charged.)

Some Services With Identifiable Beneficiaries Are Being Provided Without Charge

The federal government provides many food-related regulatory services at no cost to the beneficiaries. For example, FSIS does not charge user fees for compliance inspections of meat and poultry slaughter and processing plants conducted during regular duty hours. In addition, AMS does not charge user fees to producers of specific commodities such as milk, fruit, and vegetables for establishing and overseeing marketing agreements and orders. Federal marketing agreements and marketing orders, established at the request of producers, set parameters aimed at stabilizing market conditions and improving producers' revenues. Another $651.5 million in user fees could have been assessed in fiscal year 1995 if identifiable

beneficiaries had been charged for food-related services that are currently provided without charge.

Meat and Poultry Inspections

Federal agencies routinely inspect food firms to help ensure that foods and food-related products are safe, wholesome, and properly labeled, according to federal standards. In some cases, agencies base the frequency and intensity of these inspections on their resources and assessments of the public risk associated with the firm, process, or product. In others, the inspection frequency is legally mandated. For example, current federal law requires that federal inspectors (1) examine each meat and poultry carcass slaughtered and (2) visit each meat and poultry processing plant at least daily.

To meet these mandated inspection requirements in fiscal year 1995, FSIS inspected about 6,400 meat and poultry plants at a cost of about $523 million—the largest single federal food-related service cost.[15] Currently, FSIS provides meat and poultry inspections at no cost during regularly scheduled shifts, which at larger plants may mean two or three shifts per day. For unapproved and unscheduled shifts, FSIS has the authority to charge for overtime inspections. Under this authority, FSIS was able to recover about $77 million of the $523 million it spent on mandatory meat and poultry inspections in fiscal year 1995.

From 1986 to 1988, FSIS requested in its annual budget submissions the authority to charge user fees for all of its meat and poultry inspections. From 1994 to 1997, FSIS limited its request to the authority to charge user fees for any inspections beyond a single scheduled and approved primary shift. The Congress has not approved any of these requests. In its fiscal year 1998 budget submission, FSIS expanded its user fee proposal to charge for the salaries, benefits, and related costs associated with in-plant inspections of meat and poultry at all establishments inspected by the agency. FSIS estimated that it could charge about $381 million in fees for its direct inspection services. The proposal does not include user fees for indirect costs such as the agency's administrative, supervisory, and other overhead costs.

A variety of arguments have been raised in favor of charging user fees for mandated meat and poultry inspections. Those in favor of charging user fees argue that these inspections benefit industry by (1) providing inspected firms an economic advantage, (2) helping ensure public

[15]FSIS provided an additional $40.6 million in fiscal year 1995 to 27 states to fund state-conducted inspections of meat and poultry. No user fees were collected for these inspection activities.

confidence in the safety and wholesomeness of the product, (3) performing quality control activities that are generally thought of as a plant's responsibility, and (4) protecting against unfair competition from firms that might not otherwise perform adequate safety inspections in an attempt to lower their costs.

Meat and poultry firms are not charged for FSIS' inspections but benefit economically in several ways. First, firms must be federally inspected before they can market their products in interstate and foreign commerce. Second, firms marketing products that are not regulated by the meat and poultry acts, such as buffalo, venison, rabbit, emu, ostrich, and quail, must pay to receive an examination by FSIS and inspection stamp from USDA. (In fiscal year 1995, FSIS charged $1.1 million for these requested inspections.) Finally, FSIS officials believe that many people make their choice of meats based on the presence of a USDA stamp of inspection.

In a 1981 report,[16] we stated that "USDA's inspections of meat and poultry processing plant operations clearly provide broad public benefits; therefore, appropriations funding is appropriate." This view was based on OMB's original 1959 version of Circular A-25, which stated that "no charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public." However, the guidance in the 1993 revision of the circular allows agencies to charge service beneficiaries the full costs of providing the service even though the public receives incidental benefits. In the case of meat and poultry processors, the public benefit of safer meat and poultry, some believe, is incidental to the special economic benefits, such as increased marketability, that accrue to the processors.

In a February 1996 letter to the Chairman and Ranking Minority Member of the House Agriculture Committee, we noted that federal meat and poultry inspections benefit industry by helping ensure public confidence in the safety and wholesomeness of its products. For example, federal inspections benefit industry by reducing the adverse publicity and potential liability costs that accompany outbreaks of foodborne illness.[17] In its April 1996 report on FSIS' inspections,[18] USDA's Office of Inspector

[16]Department of Agriculture Should Have More Authority to Assess User Charges (GAO/CED-81-49, Apr. 16, 1981).

[17]Analysis of HACCP Costs and Benefits (GAO/RCED-96-62R, Feb. 29, 1996).

[18]Food Safety and Inspection Service Meat and Poultry Inspection Program Phase II, USDA, Office of Inspector General, Evaluation Report No. 24801-1-AT (Apr. 1996).

General also concluded that industry derived special benefits, including increased public confidence, from federal inspections of meat and poultry. The report recommended that FSIS recover the cost of these inspections through user fees.

Moreover, not charging for meat and poultry inspections also subsidizes plants' quality control activities. We and others have testified in congressional hearings that industry should be more responsible for ensuring the safety and quality of its products. In this regard, FSIS is now considering a plan to allow plant employees to conduct some inspection activities with FSIS' oversight.

Historically, the Congress has believed that meat inspection costs, with the exception of overtime costs and voluntary services, should be borne by the federal government, because the public was considered the primary beneficiary. In addition, the American Veterinary Medical Association and the American Meat Institute oppose user fees for meat and poultry inspection. Veterinary Association officials said that they believe the public is the primary beneficiary of federal meat and poultry inspections and therefore user fees for such services are not appropriate. A position paper endorsed by a coalition of groups,[19] including the Meat Institute, states, among other things, that user fees would (1) erode consumer confidence, (2) reduce the government's incentive for improving the efficiency of inspections, (3) place the meat and poultry industry at a competitive disadvantage with foreign countries, and (4) place a serious burden on small businesses.

However, other countries, including major meat producers and exporters such as New Zealand and Australia, charge for government meat inspection, and Canada plans to institute some user fees for meat and poultry inspections in 1997. Moreover, according to FSIS, if industry passed inspection costs along to consumers, the additional cost per pound would be negligible. FSIS estimated that a user fee covering all its inspection costs would increase consumer prices an average of 0.6 cents per pound. USDA's Inspector General reported in April 1996 that for the small plants it reviewed, the cost of inspection services would be about 5 cents per pound. However, according to FSIS officials, fee schedules could be developed that would lessen the burden on small plants.

Marketing Agreements and Orders

In addition to inspection activities at FSIS, the federal government provides a number of other food-related services without charge to identifiable

[19] Inspection Fees for Meat and Poultry: The New Food Safety Tax (Mar. 1995).

beneficiaries. One example is the marketing agreements and orders program at AMS. Milk marketing agreements and orders stabilize market conditions to ensure an adequate supply of milk by establishing the prices handlers pay to dairy producers. Fruit and vegetable marketing orders (1) promote adherence to quality and maturity standards, (2) establish orderly marketing through controls on the amount of a commodity available for sale, and (3) support appropriate research and development projects.

When growers or handlers submit a proposal for a new marketing order to USDA, AMS analyzes the proposal and, if it appears feasible, holds a public hearing. On the basis of AMS' analysis and the hearing evidence, USDA issues a recommended decision along with the proposed order. After considering any comments on the proposed order, USDA issues the final order. AMS then holds a referendum among the producers, two-thirds of whom must approve the order before it is put into effect. After marketing orders are approved and put into effect, AMS monitors the operation of each order by, among other things, processing formal and informal amendments to the order and promoting compliance with it by taking legal sanctions against violators. These activities were funded with $10 million in general fund appropriations in fiscal year 1995.

The day-to-day administration of marketing agreements and orders is conducted at the local level by boards, committees, and market administration officers. The costs of local administration are paid for through fees assessed on the producers and handlers covered under the agreements and orders.

AMS believes that marketing agreements and orders provide benefits to producers, handlers, and consumers. These benefits include stable markets, fair prices, and dependable supplies of milk and fruit. Nevertheless, marketing orders are provided at the request of particular groups of agricultural producers to benefit their members. According to OMB's Circular A-25, when a government service responds to the request of or is provided for the convenience of the service recipient, a special benefit will be considered to accrue and a user fee should be imposed.

AMS estimates that charging user fees for the approximately $10 million obligated annually for this program would have no significant impact on retail prices. While the user fees charged would vary among the numerous commodities covered, the total charges would represent about 0.05 percent of the commodities' sale value in 1995. For example, user fees

for milk marketing orders would amount to about 0.03 cents per gallon of milk.

Neither the Congress nor the affected industries have supported user fees for marketing orders. The Congress has denied AMS' request to charge user fees for these services for the last 14 years. Recently, AMS again requested user fee authority for these services in its fiscal year 1998 budget submission. The industry groups that we contacted either favored continued public funding or had no opinion on funding. For example, the National Milk Producers Federation, one of the many groups that represent growers and handlers covered by marketing agreements and orders, prefers public funding for the services. Only if user fees were necessary to continue the program, would the federation support them. The United Fresh Fruit and Vegetable Association had no position on who should pay for marketing agreements and orders.

(App. IV contains a discussion of other food-related services that benefit specific firms or industries but are provided without charge.)

Conclusions

Opportunities exist to charge additional user fees for some federal food-related activities. Such fees would (1) provide new federal revenues that could be used to help reduce the federal deficit or increase program services and (2) eliminate inconsistencies that currently exist in charging for federally provided services. In our view, given the guidance provided by Circular A-25, the case for charging user fees is the strongest where the government does not charge the full costs of providing the service and where current user fees are applied inconsistently. However, charging user fees for regulatory compliance inspections from which firms and industries derive specific benefits, such as mandated meat and poultry inspections, would produce the most revenue.

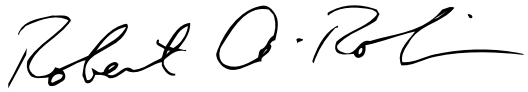
Concerns about the appropriateness of user fees for food-related services center on three primary issues. First, in addition to benefitting specific firms or industries, these services, for example, inspections of imported foods, often also benefit consumers. Second, increased user fees for certain food-related services could have an adverse economic impact on small producers. And third, some believe that the federal government should not charge for activities, such as meat and poultry inspections, that are required by law.

Agency Comments and Our Evaluation

We provided a draft of this report to NMFS, AMS, APHIS, FSIS, GIPSA, and FDA for review and comment. The Department of Commerce, commenting for NMFS, generally concurred with the accuracy of the report but indicated that funding for the National Seafood Inspection Laboratory should not be included in the seafood inspection program's funding because the laboratory is not an essential part of the inspection program (see app. V). We concur and have deleted discussion of the laboratory from the final report. We met with officials from AMS, APHIS, FSIS, and GIPSA to obtain their comments. Agency officials providing comments included (1) AMS' Assistant Deputy Administrator, Executive Resources Office, as well as program officials responsible for fruit and vegetable, dairy, seed, and compliance activities; (2) APHIS' Deputy Administrator for Management and Budget; (3) FSIS' Associate Administrator for Field Operations and Director of the Budget and Finance Division; and (4) GIPSA's Administrator and Deputy Administrators for grain inspection and packers and stockyards. These officials generally agreed with the report's findings and conclusions and provided us with clarifying technical comments that we incorporated into the report as appropriate. FDA had no comments other than technical suggestions and clarifications that we also incorporated into the report as appropriate.

To identify and evaluate opportunities to increase the share of funding paid for by beneficiaries of food-related services, we reviewed various studies and literature on user fees and interviewed (1) budget and program officials at OMB and the six federal agencies that provide food-related services and (2) representatives of industry groups that would be affected by additional user fees. We also analyzed agencies' user fee proposals and budget requests, congressional reports on agency appropriations, and industry position papers on user fees. We asked the agencies to provide user fee and appropriations funding data for their food-related activities. We did not verify the accuracy of these data. Our work was conducted from April 1996 through January 1997 in accordance with generally accepted government auditing standards. (See app. VI for a more detailed explanation of our methodology.)

We are sending copies of this report to the Secretaries of Agriculture, Commerce, and Health and Human Services. We will also make copies available to others on request. Major contributors to this report are listed in appendix VII.



Robert A. Robinson
Director, Food and Agriculture Issues

List of Recipients

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Chairman
The Honorable Tom Harkin
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Pete V. Domenici
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The Honorable Marcy Kaptur
Ranking Minority Member
Subcommittee on Agriculture, Rural Development, FDA, and Related Agencies
Committee on Appropriations
House of Representatives

Contents

Tables

Abbreviations

APHIS	Animal and Plant Health Inspection Service
AMS	Agricultural Marketing Service
FDA	Food and Drug Administration
FSIS	Food Safety Inspection Service
GAO	General Accounting Office
GIPSA	Grain Inspection, Packers and Stockyards Administration
IOAA	Independent Offices Appropriation Act
NMFS	National Marine Fisheries Service
OMB	Office of Management and Budget
USDA	United States Department of Agriculture

Funding for Food-Related Services in Six Federal Agencies

Table I.1: Agricultural Marketing Service Funding, Fiscal Year 1995

Dollars in millions

Food-related services	Funding[a]
User fees	
Processed fruit and vegetable grading	$33.27
Poultry and egg grading	22.68
Meat grading	19.29
Fresh fruit and vegetable grading	14.35
Licensing/reparations (PACA[b])	7.37
Dairy products grading	5.89
Laboratory testing	5.13
Standardization	3.88
Research and promotion	1.91
Market news printed reports	1.24
Plant variety inspection	0.85
Seed testing	0.09
Cattle futures grading	0.04
Total	**$115.99**
General fund appropriations	
Market news	$19.35
Pesticide data program	12.00
Marketing agreements and orders	9.98
Commodity purchase services	5.91
Transportation services	2.56
Wholesale market development	2.31
Shell egg surveillance	2.00
Pesticide record keeping program	1.50
Federal seed regulatory program	1.17
Organic certification[c]	0.50
Total	**$57.28**

[a]A small portion of the funding for some of these services supports non-food-related agricultural products such as cotton and tobacco.

[b]Perishable Agricultural Commodities Act.

[c]This is a new program. Once the program is fully operational, the agency will begin assessing user fees as authorized by legislation.

Source: Data from the Agricultural Marketing Service.

Table I.2: Animal and Plant Health Inspection Service Funding, Fiscal Year 1995

Dollars in millions

Food-related services	Funding
User fees	
Agricultural quarantine inspection	$105.85
Import/export	13.59
Animal damage control reimbursements	20.40
Veterinary diagnostics	1.49
Reimbursable overtime	12.07
Miscellaneous contributed funds	7.18
Total	**$160.58**
General fund appropriations	
Agricultural quarantine inspection	$24.97
Import/export	7.72
Other pest and disease exclusion programs	52.68
Plant and animal health monitoring	73.03
Animal damage control operations	20.80
Other pest and disease management	84.77
Veterinary diagnostics	15.76
Veterinary biologics	10.50
Biotechnology/environmental protection	7.65
Other scientific and technical services	15.33
Total	**$313.21**

Source: Data from the Animal and Plant Health Inspection Service.

Table I.3: Food and Drug Administration Funding, Fiscal Year 1995

Dollars in millions

Food-related services	Funding
User fees	
Color additive certifications	$3.26
Color additive reviews	[a]
Export certificates	[b]
Total	**$3.26**
General fund appropriations[c]	
New animal drug reviews	$20.17
Animal drug compliance inspections	21.52
Domestic food compliance inspections	42.35
Import food compliance inspections	38.78
Food additive reviews	7.34
Color additive reviews	0 .64
Food-related export certificates	0 .09
Other food-related services	127.11
Total	**$258.00**

[a]Fees received from petitions for the review of new color additives totaled $12,000.

[b]Fees received from export certificates totaled $3,650 and are not kept by the agency but go to the U.S. Treasury.

[c]The agency does not receive individual appropriations for the services listed below. The amounts listed below represent the agency's estimates of the unreimbursed costs of performing these services.

Source: Data from the Food and Drug Administration.

Table I.4: Food Safety Inspection Service Funding, Fiscal Year 1995

Dollars in millions

Food-related services	Funding
User fees	
Reimbursable overtime—meat and poultry slaughter and processing inspection	$77.18
Reimbursable overtime—laboratory services	0.70
Reimbursable overtime—import/export inspection	0.81
Reimbursable overtime—egg products	0.52
Reimbursable—other federal agencies	1.67
Voluntary meat and poultry slaughter and processing fees	1.09
Voluntary laboratory service fees	0.05
Voluntary import/export and laboratory services fees	1.68
Voluntary egg products fees	0.19
Total	**$83.89**
General fund appropriations	
Meat and poultry slaughter and processing inspection	$446.27
Laboratory services	18.02
Import/export inspection	12.44
Egg products inspection[a]	3.44
Pathogen reduction	10.21
Grants to states	40.59
Total	**$530.97**

[a]Responsibility for egg products inspections was transferred to the agency during 1995. Total federal annual egg products inspection funding for fiscal year 1995 was $10.86 million.

Source: Data from the Food Safety Inspection Service.

Table I.5: Grain Inspection, Packers and Stockyards Administration Funding, Fiscal Year 1995

Dollars in millions

Food-related services	Funding
User fees	
Grain inspection and grading	$23.40
Miscellaneous commodities inspection	4.00
Rice inspection	4.00
Supervision of states and agencies	1.50
Inspection of U.S. grain exported from Canada	0.60
Total	**$33.50**
General fund appropriations	
Packers and stockyards regulation	$11.70
Grain Standards Act standardization	4.80
Grain Standards Act compliance	4.70
Methods development	1.50
Total	**$22.70**

Source: Grain Inspection, Packers and Stockyards Administration.

Table I.6: National Marine Fisheries Service Funding, Fiscal Year 1995

Dollars in millions

Food-related services	Funding
User fees	
Seafood inspection and grading services	$12.35
National training branch	0 .87
Document approval and supply services	0 .33
Other programs	0 .05
Total	**$13.60**
General fund appropriations[a]	
Standards and specifications/sensory evaluation	0.32
Foreign requirements	0.30
Total	**$0.62**

[a]The agency also received $1.58 million in general fund appropriations for the National Seafood Inspection Laboratory; however, because the laboratory does not primarily provide services to the seafood inspection program its funding is not included in the total.

Source: National Marine Fisheries Service.

Food-Related Services for Which Current User Fees Do Not Recover All Program Costs

Federal agencies charge user fees for a number of food-related services, but the fee calculations for some of these services exclude the support costs that are essential to providing them. In addition to the grain standard-setting activities discussed in the body of this report, several other food-related services charge user fees that do not take all program costs into account.

Specifically, user fees do not take into account the following costs: (1) the Grain Inspection, Packers and Stockyards Administration's (GIPSA) costs for developing grain measurement methods and compliance activities; (2) the National Marine Fisheries Service's (NMFS) costs for developing standards and conducting other essential activities related to its seafood inspection program; (3) the Food and Drug Administration's (FDA) full costs for issuing food product export certificates and reviewing color additives for foods, drugs, cosmetics and medical devices; and (4) the Animal and Plant Health Inspection Service's (APHIS) costs for controlling the damage that wild animals do to agricultural interests, natural resources, and human health, safety, and property.

Table II.1 lists food-related services that we reviewed for which the user fees do not account for the full costs. This appendix provides a general description of these services, the level of federal funding they receive, and arguments for and against increasing user fees to account for the full costs.

Table II.1: Food-Related Services Whose User Fees Are Not Calculated Based on Full Costs and Fiscal Year 1995 Funds Appropriated

Dollars in millions

Food-related services	Funding
GIPSA standardization[a]	$4.80
GIPSA methods development	1.50
GIPSA compliance	4.70
NMFS standards, sensory evaluation, and foreign requirements	0.62
FDA food-related export certificates	0.09
FDA color additive reviews	0.64
APHIS animal damage control	10.10[b]
Total	**$22.45**

[a]Discussed earlier on pp. 9-11.

[b]This amount represents an estimate of the user fees that could have been charged for livestock protection activities in fiscal year 1995.

Sources: Data from GIPSA, NMFS, FDA, and APHIS.

GIPSA's Methods Development and Compliance Activities

GIPSA conducts a number of activities that are essential to its grain inspection and grading services. These activities include (1) developing and implementing new methods for measuring grain quality and (2) ensuring the quality of the program through regulatory compliance activities. Currently, none of the costs of providing these services are included in GIPSA's user fee calculation for inspection and grading services.

GIPSA's Methods Development Activities

GIPSA's grain inspection and grading program was established to facilitate the marketing of U.S. grains, oilseeds, rice, and related commodities. GIPSA, as required by the U.S. Grain Standards Act and the Agricultural Marketing Act, inspects and weighs almost all exported grain shipments. While grain for domestic use is not required to be inspected and weighed, GIPSA provides these services on a voluntary basis.

GIPSA charges customers with contracts a user fee of $31.50 per hour for its services. However, the user fee calculation was based only on direct program activities, such as inspection and weighing, and did not include the $1.5 million GIPSA received in 1995 to identify, evaluate, and implement new or improved methods for measuring grain quality.

GIPSA's methods development activities help ensure the continued integrity of inspection certificates and, as such, are essential to its grain inspection and grading program. According to the Office of Management and Budget's Circular A-25, user fees should recover the full costs of providing the service, including all direct and indirect costs.

The National Grain and Feed Association[1] opposes new user fees for activities that support GIPSA's grain grading services, arguing that (1) appropriated funds are the only fair way to fund these activities because of their broad societal benefits, (2) new user fees are likely to fall disproportionately on exporters and effectively become a tax on U.S. agricultural exports, and (3) new user fees would weaken the official inspection system because higher costs would drive some domestic grain inspection customers away from voluntary inspections.

The National Association of Wheat Growers[2] voiced similar concerns. The Association argued that new fees are likely to fall disproportionately on

[1]The National Grain and Feed Association is a trade association representing more than 1,000 grain, feed, and processing firms that process and export more than two-thirds of all U.S. grains and oilseeds.

[2]The National Association of Wheat Growers is a federation of 22 state wheat growers associations, representing wheat growers' educational, legislative, and regulatory interests.

grain exporters. To compensate for the decrease in revenues associated with reduced grain exports, GIPSA would then need to further increase fees for its remaining customers to fund future operations.

GIPSA's Compliance Activities

GIPSA spends about $4.7 million annually ensuring the quality of its grading program. GIPSA investigates violations of applicable grain laws, licenses personnel to grade grain, and maintains an international monitoring program that interacts with foreign governments and responds to complaints concerning the quality and quantity of U.S. grain shipments. GIPSA also performs management evaluations and procedural reviews of its field offices and compliance reviews of the state and private agencies designated to inspect grain.

In addition to the grain grading work of its own employees, GIPSA has designated 17 state and 48 private agencies with authority to officially inspect and weigh domestic grain. Eight of the 17 states, called delegated states, also have the authority to inspect and weigh export grain. Criteria for becoming a designated or delegated state or private agency for GIPSA include (1) having licensed personnel, (2) providing training to maintain skills, (3) using approved equipment, and (4) keeping proper records. State and private agencies operate under a 3-year agreement that can be renewed.

While GIPSA charges user fees for its direct grain grading activities, no fees are charged for compliance activities such as (1) approving the states and private companies who want to participate in the program, (2) licensing grain inspectors and weighers, or (3) investigating violations of applicable grain laws. The grain industry benefits from GIPSA's compliance activities, because they give grain purchasers confidence that the grain is inspected and weighed properly, meets U.S. grain standards, and can be sold for export. Thus, these activities are part of the full costs of grain inspection, as defined by OMB Circular A-25.

Neither GIPSA nor the grain industry supports charging user fees for GIPSA's compliance activities. GIPSA officials said that the agency has not proposed user fees for compliance activities because (1) it is difficult to identify specific beneficiaries and (2) increased user fees could decrease the number of voluntary inspections performed and thereby reduce agency revenues. Just as they opposed user fees for standard setting and methods development activities, industry groups also oppose user fees for GIPSA's compliance activities.

Impact of Including Full Costs in GIPSA User Fees

Table II.2 shows how grain inspection user fees would increase to cover the full costs of the service, according to GIPSA. If all costs were included, fees would increase from $31.50 per hour to $40.96. Charging user fees to cover GIPSA's full costs should have a minimal impact on the cost of grain. The total cost of grain grading user fees, including the cost of standard setting, methods development, and compliance activities, represented less than 0.3 percent of the value of grain exports in fiscal year 1995.

Table II.2: Cumulative Impact of Including Full Costs in GIPSA's User Fee Calculations

Activity	Percent increase	Hourly increase	Hourly rate
Direct grain grading	•	•	$31.50
Standard setting	13	$4.10	35.60
Methods development	4	1.26	36.86
Compliance	13	$4.10	$40.96

Source: GAO's analysis based on data from GIPSA.

NMFS' Activities Essential to Inspection and Grading Services

NMFS' seafood inspection program includes a number of activities essential to its voluntary seafood inspection and grading services. NMFS develops and maintains processing, inspection, and grading standards. NMFS develops and supports a sensory science program that uses touch, sight, and smell to determine the wholesomeness and quality of fish and fish products. As part of this program, the agency develops standard definitions and terms of seafood freshness and decay and trains inspectors on how to consistently identify and describe these factors. NMFS also collects, translates, analyzes, codifies, and disseminates seafood import requirements of foreign governments and buyers and develops seafood export certificates that meet these requirements. NMFS received about $620,000 in general fund appropriations in fiscal year 1995 to perform these services. Currently, none of the costs of providing these essential support services are included in NMFS' user fee calculations for inspection and grading services.

Program standards and sensory evaluation techniques are essential elements of NMFS' seafood inspection and grading services, because without them NMFS inspectors would not be able to attest to the quality and safety of the seafood they examine. Furthermore, NMFS' foreign requirements work directly benefits seafood exporters. All of these costs fall under the Circular A-25 definition of full costs.

Under its original proposal to operate a stand-alone, self-supporting, "performance-based" organization,[3] NMFS included the cost of conducting standard setting, sensory evaluation, and foreign requirements activities in its user fee calculation. In November 1996, NMFS revised its proposal to include only the costs of sensory evaluation in the user fee calculation. The revised approach responded to customer arguments that the benefits of standard-setting and foreign requirements activities did not accrue solely to inspection customers but rather were broadly shared by the seafood industry.

However, other agencies have concluded that essential support costs, such as developing and maintaining standards, should be included in the user fee calculation. The Agricultural Marketing Service includes the cost of standardization activities in its user fee calculations, and GIPSA has proposed including such costs in its user fee calculations.

Seafood inspection and grading service customers have been generally supportive of NMFS' efforts to create a performance-based organization. However, because the program is voluntary, if customers find the fees too high for the benefits received, they may choose not to participate. NMFS officials said that including sensory evaluation costs in the user fee calculation should not increase inspection and grading user fees, because under their performance-based organization proposal some administrative overhead costs would be eliminated.

FDA's Export Certifications and Color Additive Reviews

Apart from omitting essential support costs, such as standard setting, from user fee calculations, some federal agencies charge only a nominal fee that bears little relation to the actual costs of providing the service. For example, FDA does not cover the costs of providing export certifications or reviewing color additives. FDA could obtain about $730,000 annually if it charged fees that were sufficient to cover the costs of providing these services.

FDA's Export Certifications

Some foreign countries require that food-related products exported to their countries be accompanied by a certificate from FDA. FDA's certificates of export generally indicate that the product can be freely sold in the United States and that there are no known safety concerns about the product or the company that manufactures it. FDA issues certificates after

[3]A performance-based organization is designed to be more responsive to customer needs by emphasizing business-like operations, improving efficiency, and meeting specific performance goals.

determining that the product, among other things, meets the specifications of the foreign purchaser and is not in conflict with the laws of the country to which it is intended for export. The certificate consist of three parts: (1) a letter to the firm explaining FDA's responsibilities concerning the product, (2) a "to whom it may concern" letter that is intended for the importing country, and (3) the certificate with the Department's seal and ribbon attesting to the facts in the "to whom it may concern" letter.

Currently, FDA charges a $10 fee for each export certificate it issues for food products.[4] Although FDA does not know exactly what it costs to issue a food-related export certificate, it recently estimated that on average agencywide, it costs about $250 to process an export certificate. Using this figure, we estimate that in fiscal year 1995 FDA spent about $91,250 processing 365 export certificates, but it charged only $3,650 in fees.

In addition, FDA issues export health certificates for seafood being exported to the European Union. These certificates state that the shipment was produced in an establishment covered under a regulatory oversight program equivalent to those in place in the European Union. FDA issued 8,884 seafood export health certificates in fiscal year 1996. FDA does not have any estimate of the cost of processing these certificates. The agency does not charge user fees for seafood export certificates although the National Marine Fisheries Service's seafood inspection program does.

OMB's Circular A-25 states that agencies charging user fees should recover from the service beneficiary the government's full costs of providing the service, including both direct and indirect costs. Export certificate recipients benefit from FDA's export certification, for example, by being able to market their products in international commerce. The benefits related to export certification have been recognized by NMFS, the Food Safety and Inspection Service, and APHIS, which all charge user fees for providing export certificates.

FDA's Review of New Color Additives

FDA is responsible for reviewing and approving new color additives used in foods, drugs, cosmetics, and medical devices. The approval of a color additive is initiated by a petition from the manufacturer to FDA. The petition contains information on the intended use, chemical composition, methods used to produce the colors, and the results of various tests. FDA analyzes the petition and supporting data and determines if the color can

[4]According to FDA, this is a Freedom of Information fee, and the money collected does not stay with FDA but goes to the U.S. Treasury.

be approved. According to FDA, between 1986 and 1995 the agency averaged fewer than five petitions for new color additives each year, which includes amendments to already regulated color additives. Once a color additive is approved and listed by FDA, it can be manufactured by anyone.

FDA charges a fee of $3,000 for petitions requesting the approval of a color additive for use in or on foods only. The fee for this review was set at $3,000 in 1963 and has not changed since. FDA does not know the exact cost of reviewing color additive petitions but according to the agency, the current fees do not cover the full costs of the review process. FDA estimates spending about $163,000 per food and color additive petition although this average is heavily weighted by food additive petitions.[5] Using this cost estimate, FDA spent about $652,000 in fiscal year 1995 reviewing four petitions for color additives. FDA is now studying what the actual review costs are for all food and color additive petitions.

OMB's Circular A-25 states that agencies charging user fees should recover from the service beneficiary the government's full costs of providing the service, including both direct and indirect costs. By approving a petition for a new color additive, the government allows the color additive to be marketed, which may result in a financial gain for the firm or industry which submitted the petition.

APHIS' Animal Damage Control

The purpose of the animal damage control program, as established under the Animal Damage Control Act of 1931, as amended, is to control damage caused by wildlife to agricultural interests, natural resources, and human health, safety, and property. Efforts to protect livestock from predators, primarily coyotes, constitutes one of the major program activities. Livestock protection activities are carried out primarily in the 18 western states. Animal damage control operations were funded with $41.2 million ($20.4 million in nonfederal funds and $20.8 in federal general fund appropriations) in fiscal year 1995.

While program funding varies from state to state, the federal government provided about 51 percent of the fiscal year 1995 funding. The remaining program funds came from state and local governments and program beneficiaries such as grazing boards. For example, funding for fiscal year 1995 program activities in the state of Nevada was 54 percent federal,

[5]According to FDA, certain complex petitions will cost many times more to process while simple applications may cost much less than the average amount.

39 percent state, 6 percent wool growers association and grazing boards, and 1 percent local (cities and utilities).

The animal damage control program's livestock protection activities in the 18 western states primarily benefit livestock producers and others who own livestock herds. For example, in Nevada 90 percent of the program consists of livestock protection. Ten sheep operators own about 90 percent of the sheep in Nevada, and in some cases, animal control specialists work full time protecting one sheep company's herd. As such, proponents of charging user fees argue that the recipients of animal damage control services receive "special benefits" as defined in OMB's Circular A-25 and should be charged the full costs of providing the service. According to APHIS, fully funding livestock protection activities through user fees could have resulted in about $10.1 million in additional revenue in fiscal year 1995. However, in the past when federal funding for these activities decreased, nonfederal contributions decreased as well.

Those opposed to increasing the share of program funding paid for by service beneficiaries have raised several concerns. First, some believe that controlling damage caused by wildlife is inherently a government responsibility because wildlife is a publicly owned resource of the United States.[6] Second, instead of paying for APHIS animal damage control services, some ranchers may try to save money by controlling predators with illegal poisons thereby creating human health or environmental safety hazards. Finally, predators cross property boundaries so that if one rancher pays for federal animal damage control services, a neighbor who does not may still benefit.

APHIS has not studied what the impact on ranchers would be of charging user fees for the full costs of providing animal damage control services. Assessing the overall impact on ranchers would be difficult, according to an APHIS official, because each state operates and funds its program differently.

[6]The federal government has statutory supremacy for managing threatened and endangered species, such as wolves and eagles, and migratory birds such as ducks and geese.

User Fees Are Not Applied Consistently to Similar Services

The federal government does not consistently charge user fees for similar food-related services. In addition to the premarket review of new animal drugs and border inspections of agricultural products discussed in the body of this report, FDA's review of new food additives and APHIS' issuance of licenses and permits for veterinary biologics and biotechnology activities bear no user fees. In contrast, user fees are charged for similar licensing and approval activities, such as FDA's color additive reviews.

Table III.1 lists the food-related services that we reviewed for which no user fees are charged, even though fees are charged for similar services. This appendix provides a general description of these services, the level of federal funding they receive, and arguments for and against recovering their full costs through user fees.

Table III.1: Food-Related Services Provided Without Charge That Are Similar to Services for Which User Fees Were Charged and Fiscal Year 1995 Funds Appropriated

Dollars in millions

Food-related services	Funding
FDA new animal drug reviews[a]	$20.17
FDA food additive reviews	7.34
APHIS Canadian border inspections[b]	15.05[c]
APHIS veterinary biologics	3.50[c]
APHIS biotechnology	3.30[c]
Total	**$49.36**

[a]Discussed earlier on pp. 11-13.

[b]Discussed earlier on pp. 13-14.

[c]This amount represents an estimate of the user fees that could have been charged for this activity in fiscal year 1995.

Sources: Data from FDA and APHIS.

FDA's Food Additive Review Process

In addition to reviewing and approving new animal drugs, FDA is also responsible under section 409 of the Federal Food, Drug, and Cosmetic Act, for approving new food additives, such as artificial sweeteners. Sponsors of new food additives must conduct scientific studies to establish the safety of their products. FDA then evaluates the scientific data submitted in support of a petition to approve a new food additive to ensure that it is safe for its intended use.

Between 1986 and 1995, FDA received an annual average of 55 petitions for food additive approvals. FDA estimates that it spent about $7.34 million in

fiscal year 1995 reviewing and approving food additive petitions.[1] However, according to FDA, the food additive program is being redesigned, and a study is being conducted to more accurately estimate the cost of food additive reviews. FDA believes that a more timely, predictable process would likely cost more than an average of $163,000 per petition.

FDA charges no user fees for reviewing petitions for new food additives. In contrast, FDA charges fees for reviewing petitions for new food and drug colors and applications for human drugs. (Discussed previously on pp. 38-39 and p. 12.)

Those who support charging user fees for food additive reviews argue that industry receives special benefits as a result of these reviews. OMB's Circular A-25 states that a special benefit exists if a government service "enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public." By approving a petition for a new food additive, the government allows the food additive to be marketed, which may result in a substantial financial gain for the firm or industry that submitted the petition.

According to an FDA official, the primary incentive a company has for applying for a food additive approval is to "get a corner on the market." Once the petition has been approved, the company will be able to use the additive before anyone else. That timing gives the company an advantage over its competitors. In addition, FDA's approval validates the firm's efforts to produce a safe and effective product and contributes to public confidence in the firm and its products. In a 1987 report,[2] the Department of Health and Human Services' Inspector General identified FDA's review and approval of food additive petitions as an activity that had the potential for charging user fees.

The Grocery Manufacturers of America, a trade association representing the food industry, is opposed to user fees because food additive approvals are not proprietary and thus do not provide the economic rewards that drug approvals do. The grocery manufacturers favor an alternative system of nongovernmental, third-party reviews of food additive petitions that would be paid for by the applicant.

[1]This amount is based on the 45 petitions FDA received in fiscal year 1995 and its estimated average cost of $163,000 per petition. According to FDA, certain complex petitions will cost many times more to process, while simple petitions may cost much less than the average.

[2]Analysis of Costs Included in Current Food and Drug Administration User Fees and the Potential for Additional User Fees, Department of Health and Human Services, Office of Inspector General (Dec. 1987).

APHIS' Veterinary Biologics and Biotechnology Regulatory Activities

APHIS regulates the development and use of veterinary biological products and genetically modified organisms to help prevent the use of ineffective or unsafe products. As part of this regulation, APHIS issues licenses and permits to the producers of veterinary biological and biotechnology products. APHIS does not charge user fees for providing these services.

Veterinary Biologics

To prevent the importation, production, and distribution of impure, ineffective, unsafe, or impotent veterinary medicines and to regulate veterinary medicine manufacturing, APHIS licenses drug companies that produce veterinary biologics and issues permits for the manufacture and sale of each approved biologic. Veterinary biologics are medicines for the diagnosis, prevention, and treatment of diseases in animals. A small portion of these medicines are made using biotechnology. Veterinary biologics are different from animal drugs in that they generally attack the animal's immune system, causing the body to react to the medicine. Animal drugs, on the other hand, attack the disease itself and are regulated by FDA.

In both its fiscal year 1996 and 1997 budget requests, APHIS proposed charging user fees for licensing, inspecting, and testing veterinary biologics. Specifically, APHIS proposed a general license fee for approving establishments to manufacture approved biologics products, a permit fee to manufacture each specific product, and a transit permit fee for the movement of biologics for research and evaluation and for the distribution and sale of biologics. APHIS estimated that it could charge user fees of about $3.5 million for its services.

Firms that manufacture, sell, transport, research, and evaluate veterinary biologics derive some specific identifiable benefits from APHIS services. Without an APHIS license or permit, veterinary biologics cannot be field-tested or produced, imported, transported interstate, or sold on either the domestic or international markets. An APHIS license or permit also enhances public confidence that the veterinary biologic will not harm public health or the environment. In addition, APHIS licenses and permits help protect the livestock and pet industries from unfair competition by excluding firms that might manufacture unsafe or impure products. Thus, these services qualify for user fees under OMB's Circular A-25. In addition, courts have ruled that when a license is a prerequisite to operating in a given industry, obtaining a license provides a special benefit that justifies a user fee.[3]

[3]Federal User Fees: A Legal and Economic Analysis, Boston University Law Review, vol. 67, No. 5 (Nov. 1987).

Other agencies that issue licenses or permits charge user fees. For example, the Nuclear Regulatory Commission charges a user fee for licensing firms to operate nuclear power plants.

To date, the Congress has not approved APHIS' veterinary biologics user fee proposals. We did not find any public record of the Congress' reasons for not approving them. APHIS has again proposed user fees for its veterinary biologics licensing, inspection, and testing activities in its fiscal year 1998 budget.

The animal drug industry has also not supported APHIS' user fee proposals. The Animal Health Institute, which represents the animal drug industry, believes that the assessment of any fees on veterinary biologics would be detrimental to small firms, possibly forcing them to abandon needed products. In addition, the Institute believes that the biologics program benefits the U.S. population as a whole.

Biotechnology Regulatory Activities

The goal of APHIS' biotechnology program is to approve innovative biotechnology techniques and processes that benefit the agricultural industry while protecting the environment. Biotechnology involves developing products that make use of genetically engineered organisms. New biotechnology techniques or processes are primarily used for improving agricultural crops. For example, a company may develop a new kind of soybean by genetically combining two different kinds of soybeans. The new soybean may grow faster, be more resistant to weather, or contain more vitamins and minerals than any other kind of soybean on the market.

In order to market products that are manufactured or produced through new biotechnology, a company must obtain a permit from APHIS. APHIS issues three types of permits: (1) an import permit, (2) a transit permit for interstate movement, and (3) a permit to release the product to the environment, for example, disposing of product waste in a landfill.

Before issuing a permit for field testing biotechnology products, APHIS reviews plans for field testing and the results of any preliminary tests. APHIS also analyzes the products' environmental impact to ensure compliance with environmental laws and regulations.

In both its fiscal years 1996 and 1997 budget requests, APHIS proposed charging user fees of about $1 million for its biotechnology services. The

proposed fees would cover the direct cost of investigating and issuing notifications, petitions, and permits to use genetically engineered products. If indirect costs were included in the user fee, permit applicants would be charged an additional $2.3 million in fees.

Without a permit from APHIS, a biotechnologically derived product cannot be field-tested or produced, imported, transported interstate, or sold on either the domestic or international markets. In addition, federal approval of the product fosters public confidence that the technology and resulting products will not harm public health or the environment. Thus, APHIS' permit reviews qualify for user fees under Circular A-25 and legal precedent.

APHIS has been unsuccessful in obtaining congressional approval for these user fees. We did not find any public record of the Congress' reasons for not approving the proposals. APHIS has again proposed user fees for the issuance of biotechnology certificates in the agency's fiscal year 1998 budget submission.

The biotechnology industry in general opposes APHIS' proposed user fees. If user fees were too high, the industry argues that companies might be forced to do their work in Europe. In addition, some argue that since this program also benefits the public by ensuring that genetically engineered or modified plants or organisms do not put livestock or crops at risk, user fees should not be charged.

We estimate that a user fee covering all the agency's costs of issuing biotechnology permits, notifications, and petitions would run from about $400 per permit and notification, the most common types, to $3,680 per petition, which requires an APHIS environmental study. Biotechnology customers are generally large corporations such as Upjohn, Calgene, and Monsanto.

Food-Related Services That Are Provided Without Charge to Identifiable Beneficiaries

The federal government provides a number of food-related services for which no user fees are charged. In addition to meat and poultry inspection and marketing agreements and orders discussed in the body of this report, other federal services provided without charge that benefit specific individuals or industries include (1) the Food Safety Inspection Service's (FSIS) egg product inspections, laboratory services, pathogen reduction activities, and import inspections; (2) the Agricultural Marketing Service's (AMS) seed regulatory activities; (3) the Grain Inspection, Packers and Stockyards Administration's (GIPSA) regulatory oversight of packers and stockyards; and (4) Food and Drug Administration's (FDA) domestic and import compliance inspections.

Table IV.1 lists the food-related services we reviewed that are provided without charge to identifiable beneficiaries. This appendix provides a general description of these services, their fiscal year 1995 funding, and arguments for and against charging user fees.

Table IV.1: Food-Related Services Provided Without Charge to Identifiable Beneficiaries and Fiscal Year 1995 Funds Appropriated

Dollars in millions

Food-related services	Funding
FSIS meat and poultry slaughter and processing inspection[a]	$486.86[b]
FSIS egg products inspection	10.86[c]
FSIS laboratory services	18.02
FSIS pathogen reduction	10.21
AMS marketing agreements and orders[d]	9.98
AMS federal seed regulatory program	1.17
GIPSA packers and stockyards regulation	11.70
FDA domestic food and animal drug compliance inspections	63.87
FDA import food compliance inspections	38.78
Total	**$651.45**

[a]Discussed earlier on pp. 15-17.

[b]Includes grants to states.

[c]Responsibility for egg products inspections was transferred to FSIS during 1995. This amount represents the total annual federal funding for egg products inspections.

[d]Discussed earlier on pp. 17-19.

Sources: Data from FSIS, AMS, GIPSA, and FDA.

Food Safety Inspection Service's Regulatory Compliance Activities

In addition to inspecting domestic meat and poultry, FSIS (1) inspects domestic egg products and imported meat, poultry, and egg products and (2) provides laboratory analysis and pathogen reduction services to support its inspection program. No user fees are charged for these services.

Egg Products Inspections

The Egg Products Inspection Act of 1970, as amended, mandated that the federal government inspect egg processing plants to ensure that egg products are safe, wholesome, and properly labeled. An egg products plant inspection includes, among other things, a preoperations sanitary inspection, a rodent control program, and testing for the presence of pathogens such as salmonella. A federal inspector must be present at all times for an egg products plant to operate. FSIS inspects egg products without charge during regularly scheduled shifts, which may include several shifts daily, but charges user fees for overtime, or unscheduled shift inspections. In fiscal year 1995, FSIS obtained from user fees about $710,000 of the $11.57 million funding for egg product inspections.

In fiscal years 1996 and 1997, FSIS proposed charging user fees for egg product inspections conducted during nonprimary shifts. In its fiscal year 1998 budget request, FSIS proposed user fees for the salaries, benefits, and related costs associated with in-plant inspections of egg products at all establishments inspected by the agency. Such user fees, according to USDA estimates, would generate about an additional $9 million in revenues.

A variety of arguments have been made in favor of user fees for FSIS inspection activities. In a recent report,[1] USDA's Inspector General concluded that federal inspections of egg products provided special benefits to industry, the costs of which should be funded through user fees. These special benefits include (1) helping assure public confidence in the safety and wholesomeness of the product, (2) permitting a plant to sell its products interstate and overseas, and (3) allowing FSIS' stamp of inspection to be used as a marketing tool to promote the product's superior quality.

The Congress did not approve FSIS' fiscal year 1997 request to charge user fees for egg products inspections because it viewed the public as the primary beneficiary of such inspections. The Congress has generally taken the position that the costs of mandated inspections, with the exception of

[1]Food Safety and Inspection Service Meat and Poultry Inspection Program Phase II, United States Department of Agriculture, Office of Inspector General, Evaluation Report No. 24801-1-AT (Apr. 1996).

overtime and voluntary services, should be borne by the federal government.

The United Egg Association, an industry trade association, opposed user fees for egg inspections, stating "these federally mandated programs were created solely to provide for the health and safety of the American people." Furthermore, according to the Association, "the integrity of the food inspection programs and the need to ensure public confidence in the safety of food products has been part of the historical basis for public funding of mandatory food inspection programs."

Neither FSIS nor AMS, which administered the program before FSIS, have estimated the cost impact of charging a user fee for the inspections of egg products. However, based on USDA's fiscal year 1995 funding for egg products inspection services, user fees would likely increase the cost to egg products producers by less than a half-cent per pound.

FSIS Laboratory Services and Pathogen Reduction Activities

The FSIS laboratory services and pathogen reduction programs support meat, poultry, and egg product inspections through the scientific examination of these products for disease, contamination, or other forms of adulteration. FSIS operates three multidisciplinary laboratories and also accredits about 200 private laboratories to carry out food safety and composition tests. FSIS and accredited laboratories test for antibiotic residues, chemical residues, microbiological contamination, pathology, and serology. Testing is also done for processed product composition and economic adulteration, such as testing for moisture, fat, protein, or salt content in ham or poultry.

Laboratory samples come from two sources—FSIS inspectors and plants. As part of the meat, poultry, and egg inspection programs, FSIS laboratories analyze, without charge, inspector-collected samples. The FSIS laboratories also analyze plant-supplied samples, but charge the plant for the services provided. In fiscal year 1995, the laboratory services program received about $19.24 million in funding. About $1.22 million came from user fees for overtime, laboratory accreditation, and analysis of plant-supplied samples.

Similar to the laboratory services program, the pathogen reduction program provides essential support to the meat, poultry and egg inspection programs. The program's goal is to control microbial contamination of meat and poultry products from farm to table, and work

is performed at all three FSIS laboratories. In fiscal year 1995, FSIS' pathogen reduction program received about $10.2 million in general fund appropriations; no user fees were charged.

FSIS laboratory services and pathogen reduction programs are essential support elements of the meat, poultry, and egg inspection services. Laboratory services and pathogen reduction were a single budget account until 1994, when for visibility purposes, FSIS separated them into two different accounts. Nonetheless, these programs would most likely not exist or at least be much smaller if it were not for the meat, poultry, and egg products inspection programs.

If user fees were charged to cover FSIS meat, poultry, and egg inspection costs, the fee calculation, according to OMB's criteria, should include the costs associated with the laboratory analysis and pathogen reduction activities. OMB Circular A-25 states user fees should cover the government's full costs, including essential support costs, such as laboratory analysis.

USDA's Inspector General recently recommended that FSIS either seek statutory authority to assess, collect, and retain user fees for its laboratory services or require the plants to assume financial responsibility for laboratory testing costs by having them send FSIS inspector-selected samples to accredited laboratories, with the plant paying directly for testing costs. The Inspector General also recommended that FSIS seek user fees for its pathogen reduction services, because they help ensure product quality and add to public confidence.

Historically, the Congress has believed that meat inspection costs, including laboratory testing, should be borne by the federal government, because the public was the primary beneficiary. Others opposed to the fees argue that if laboratory analysis were entirely paid for by industry, the results of the laboratory analysis would lose some credibility.

If industry passed the costs of FSIS laboratory analysis, pathogen reduction, and meat and poultry inspection services along to consumers, the additional cost per pound would be negligible. For example, FSIS estimates that a user fee covering all of these inspection-related costs would increase consumer prices for meat and poultry an average of about one-half cent per pound.

FSIS Import Inspections

Federal meat, poultry, and egg products inspection laws require that countries exporting these foods to the United States impose inspection requirements at least equal to U.S. requirements. An inspection document certifying that the products meet U.S. standards and issued by the responsible official of the exporting country must accompany each shipment offered for entry into the United States. FSIS spent about $11 million inspecting 2.6 billion pounds of imported meat, poultry, and egg products in fiscal year 1995.

FSIS inspections of imported meat, poultry, and egg products consist of checking (1) the exporting country's certifications and manifests to ensure that the number of packages in the lot agree with what is on the manifest and that no damage has occurred in transit, (2) the labels for truthfulness, and (3) the product for wholesomeness using organoleptic (sight, smell, and touch) techniques. Import inspectors also routinely pull import product samples for laboratory analysis.

Those in favor of charging user fees for FSIS import activities argue that importers receive a special benefit as a result of this federal service. Without the USDA inspection mark, importers cannot market their products in the United States. Federal inspection also adds to public confidence in the safety and wholesomeness of the product.

A 1996 report by USDA's Inspector General recommended that FSIS seek user fee authority for import inspections because they benefit specific identifiable individuals or firms by allowing entry to the U.S. market and enhancing public confidence through USDA's stamp of inspection.[2] In addition, charging user fees for FSIS inspection activities would reduce the inequities and inconsistencies that currently exist in charging for import activities. While FSIS does not charge for import inspections, APHIS charges a $27.50 fee per shipment to cover the cost of inspecting and issuing import permits for animal products such as horns, skins, and animal trophies.

The arguments raised against user fees for import activities at FSIS are similar to those raised regarding inspection. Some argue that if industry paid for import inspections, the public might doubt the credibility of the inspections or believe inspectors faced a conflict of interest between facilitating an import entry and protecting public health. In addition, small brokers and import dealers may be economically hurt by new user fees

[2]Food Safety and Inspection Service Meat and Poultry Inspection Program Phase II, United States Department of Agriculture, Office of Inspector General, Evaluation Report No. 24801-1-AT (Apr. 1996).

and foreign countries may take reciprocal actions on U.S. imports or may view fees as a trade barrier.

To be in compliance with the General Agreement on Tariffs and Trade, the United States could not charge for import inspections without charging for similar domestic inspections. Currently, domestic inspections are provided without charge.

An import user fee, when prorated across all imported meat and poultry products, would not have a significant impact on consumers. For example, if a user fee had been charged for the 2.6 billion pounds of imported meat, poultry, and egg products FSIS reviewed in 1995 and the cost passed on to the consumer, prices would increase an average of about one-half cent per pound.

AMS' Seed Regulatory Program

In accordance with the Federal Seed Act of 1939, AMS conducts an enforcement program to ensure truthful labeling and fair competition in the seed industry. AMS conducts the program in cooperation with the states, each of which has a state seed law with jurisdiction over sellers within that state. To enforce the interstate provisions of the act, AMS has cooperative agreements with the states. About 500 state inspectors are authorized to inspect seeds subject to the act. Seed samples are routinely drawn by state inspectors to monitor seeds sold commercially. AMS received $1.17 million in fiscal year 1995 general fund appropriations for the federal seed program. No user fees were charged.

States refer apparent infractions of the act to AMS for verification and action. Based on the results of tests and investigations, AMS attempts to resolve each case administratively by issuing "warning notices" or assessing penalties. For cases that cannot be resolved administratively, AMS will take appropriate legal action.

In 1987, AMS proposed charging user fees to fund the cost associated with its seed program. AMS proposed charging each of the approximately 3,000 interstate seed shippers a license fee. The fee would be based on the dollar value of seed sold. Currently, 37 states charge user fees for their intrastate seed inspections.

Those in favor of user fees for the federal seed program argue that AMS seed inspection activities benefit those involved in the interstate seed business by ensuring fair competition and increasing the confidence of

buyers in the quality of the product. Seed sellers also benefit from the increased confidence that buyers have that the seeds they purchase are properly labeled.

Those opposed to user fees for the program argue that seed inspections do not provide a special benefit to industry that would justify a user fee. The seed industry opposed the 1987 AMS user fee proposal, saying that the public benefited from the program, not just the industry. The industry continues to oppose user fees for this program because it believes that user fees are not appropriate for a mandatory regulatory program.

A user fee to cover AMS' fiscal year 1995 seed program funding of $1.17 million would have equated to about $423 per seed shipper. If the user fees were based on the dollar value of seed sold, the amount charged smaller dealers would be less than the average, while the amount charged larger dealers would be somewhat greater than the average.

GIPSA's Packers and Stockyards Activities

GIPSA is responsible for administering the provisions of the Packers and Stockyards Act of 1921. The act is aimed at ensuring fair business practices and competitive markets for livestock, meat, and poultry.

In fiscal year 1995, GIPSA spent about $11.7 million without reimbursement on activities aimed at fostering fair and open competition, guarding against deceptive and fraudulent practices, and providing payment protection in the marketing of livestock, meat, and poultry. To accomplish these aims, GIPSA investigates fraudulent practices in livestock marketing, such as false weighing, manipulating weights and prices, switching of livestock, and misrepresenting the source, origin, and health of livestock. GIPSA also checks the accuracy of scales used for weighing livestock, meat, and poultry and monitors the operation of scales to ensure that weighing is done correctly. GIPSA's payment protection provides for the livestock seller's financial security by providing protection against a buyer's default on payment of a contract.

Since fiscal year 1995, GIPSA has proposed license fees to fund the cost of the Packers and Stockyards Administration. Under its proposal, all 24,125 packers, live poultry dealers, stockyard owners, market agencies and dealers registered with GIPSA would be charged a license fee. Currently, the Packers and Stockyards Act requires that (1) market agencies and dealers register with GIPSA and (2) slaughterhouses, processing packers, and

poultry operations doing over $500,000 worth of business a year file an annual report with GIPSA.

Packers, stockyard owners, and others who are subject to GIPSA's regulation derive benefits because they are protected against deceptive and fraudulent practices in the marketing of livestock, meat, and poultry. In addition, livestock and poultry producers receive payment protection. Thus, according to Circular A-25, a user fee would be justified.

AMS charges a similar fee for its activities under the Perishable Agricultural Commodities Act (PACA) of 1930.[3] PACA promotes fair trading practices in the marketing of fresh and frozen fruits and vegetables. The act prohibits unfair and fraudulent practices in the industry and provides for dispute resolution outside the civil court system. Sellers must provide the quality and quantity of products specified in contracts, while buyers must accept and promptly pay for products received in accordance with the contract terms. The PACA program is funded primarily from license fees paid annually by approximately 15,000 buyers and sellers, including dealers, retailers, processors, and truckers. The amount each licensee pays is based on the number of branches and business facilities owned. Fees range from about $300 to $4,000.

The National Cattlemen's Association, an industry association that represents approximately 230,000 cattlemen, breeders, producers, and feeders, opposes the imposition of license fees to cover the costs of administering the Packers and Stockyards Act. The Association believes that the companies that would be responsible for paying these fees accrue no benefit from the program. Therefore, the Association argues that GIPSA's licensing activities should be publicly funded.

GIPSA has estimated that the annual licensing fees for a single business operation subject to regulation under the Packers and Stockyards Act would range from about $600 to $7,500. The amount of the fee would vary based on the size of the firm. If license fees were passed on to the farmer, rancher, or the consumer, the impact on meat and poultry prices would be negligible, according to a GIPSA official.

[3]USDA License Fees: Analysis of the Solvency and Users of the Perishable Agricultural Commodities Act Program (GAO/T-RCED-95-135, Mar. 16, 1995).

FDA's Compliance Activities

FDA is responsible for, among other things, the safety of the nation's domestically produced foods and animal drugs. The agency is also responsible for ensuring that foods imported into this country meet the same standards as domestic products. To carry out these responsibilities, FDA conducts inspections at domestic food and animal drug plants and at ports of entry. No user fees are charged for these services.

FDA's Domestic Compliance Inspections

FDA is responsible for ensuring the safety of all foods sold in interstate commerce—except meat, poultry, and eggs, which are regulated by USDA. FDA conducts a variety of regulatory compliance activities, including (1) monitoring the conditions under which food is manufactured, processed, packed, and stored by inspecting food establishments and products; (2) collecting and conducting laboratory analysis of food samples; and (3) investigating violations and initiating enforcement actions when appropriate. FDA also investigates USDA referrals of illegal drug residues found on meat and poultry and ensures that animal drugs are manufactured in accordance with established procedures.

Domestic food-related compliance inspections were funded at about $42.35 million in fiscal year 1995, and domestic animal drug compliance activities received another $21.52 million; no user fees were charged. In a recent report,[4] we found that based on its 1994 operating plan, FDA inspected food processing plants about once every 8 years. FDA inspects animal drug facilities about once every 2 years.

Those favoring user fees for FDA's regulatory oversight of food and animal drugs argue that these activities benefit firms in these industries (1) by ensuring the safety and effectiveness of their products, (2) increasing consumer confidence in their products, (3) reducing their exposure to liability, and (4) protecting them from unfair competition. A 1990 report by the Department of Health and Human Services' Inspector General stated, "... user fees in the Food and Drug Administration, properly instituted, represent a legitimate method to recover regulatory costs. Such fees would be consistent with fee systems in other federal regulatory environments."[5] In a 1991 report, the Inspector General recommended that

[4]Food Safety: New Initiatives Would Fundamentally Alter the Existing System (GAO/RCED-96-81, Mar. 27, 1996).

[5]Implementing User Fees in the Food and Drug Administration: A Case Study, Department of Health and Human Services, Office of Inspector General (July 1990).

FDA collect an inspection user fee from all food firms, in part so that the frequency of inspections could be increased.[6]

On the other hand, those opposed to user fees for FDA's food-related compliance activities argue that these activities do not provide specific benefits to industry but protect the public and, therefore, are not appropriate for user fees. In March 1995, an official representing the Grocery Manufacturers of America, a trade association whose membership comprises many of the largest food companies in America, testified before the Subcommittee on Agriculture, House Committee on Appropriations, that FDA inspection programs should continue to be funded through appropriations, not user fees. Specifically, according to the official, to require the food industry to pay for any form of government regulation intended strictly to benefit the public is tantamount to a food tax.

The Animal Health Institute, which represents animal drug manufacturers, opposes user fees for FDA's compliance activities related to animal drugs. According to an Institute official, the Institute does not support user fees for animal drug reviews, and any discussion of user fees for animal drugs must begin with improving the review and approval process before considering fees for other FDA activities related to animal drugs.

Arguably, any benefits that industry may derive from FDA compliance inspections of food and animal drug firms are minimized by their infrequency. Furthermore, it is difficult to justify charging a user fee for infrequent FDA compliance inspections, so long as the meat, poultry, and egg industries receive continuous or daily FSIS inspections without charge.

About 48,000 food firms are in FDA's official inventory. To fully fund domestic food compliance inspections in fiscal year 1995, each firm in the official inventory would have had to pay, on average, a $900 annual fee. To lessen the burden on smaller firms, a fee schedule could be developed that would vary based on the size or economic value of the firm's products.

There are about 4,700 animal drug firms in FDA's official establishment inventory. To fully fund animal drug compliance inspections in fiscal year 1995, each firm in the official inventory would have had to pay, on average, a $4,600 annual fee. To lessen the burden on smaller firms, a fee schedule

[6]FDA Food Safety Inspection, Department of Health and Human Services, Office of Inspector General (1991).

could be developed that would vary based on the size or economic value of the firm's products.

FDA's Import Inspections

All food products that are imported into the United States must meet the same standards as domestic products. For example, foods must be safe to eat and produced under sanitary conditions. However, rather than inspect each shipment of imported food, FDA chooses samples to inspect. Most food products are admitted into the United States without sampling. In fiscal year 1995, FDA spent about $38.78 million inspecting imported foods. No user fees were charged.

In its fiscal year 1993 budget, FDA proposed charging about $60 million in user fees to fund inspections of imported products, including foods, drugs and medical devices. In justifying its user fee proposal, FDA argued that importers benefit from FDA's activities through increased consumer confidence in their products. In fiscal years 1996 and 1997 FDA again proposed charging user fees to increase the effectiveness and efficiency of its regulatory compliance program for imported products. Approximately $15 million in user fees were proposed to be charged and used to help pay for a computer system which would improve the processing and monitoring of import entries. FDA argued that importers and brokers would benefit from the new system through faster turnaround times, elimination of large volumes of paperwork, and reduced costs of doing business.

Neither of these proposals for import user fees were approved by the Congress. In rejecting the 1993 proposal, the Congress was concerned, among other things, about the impact on FDA's operations if the expected user fee revenues did not materialize. In addition, opponents argue that user fees on imports could (1) add to the cost of food for consumers, (2) hinder food imports, which make up an increasing proportion of the U.S. food supply, (3) pose an unfair burden on small businesses, which import small lots of foods, and (4) be unfair if only those firms whose products are sampled by FDA had to pay a user fee. The Association of Food Industries, which represents nearly 200 companies in the food import business, is opposed to user fees for FDA's import inspection activities because they are concerned that (1) fee revenues would not be spent exclusively on improving the computer system that supports import entries, (2) fees would rise each year and may continue indefinitely.

Finally, as we mentioned earlier, to be in compliance with the General Agreement on Tariffs and Trade, the United States could not charge for the

inspection of imported foods and food-related products without charging for similar domestic inspections. Currently, domestic inspections are provided without charge.

FDA has stated that charging an import fee would be relatively simple. According to FDA, all entries would be charged, regardless of whether they were sampled, and a schedule could be established to take into account the range of values and size of the import lots. Charging user fees for FDA's food import inspections should have a minimal impact on the cost of imported foods. FDA's funding for food import inspections represented less than 0.2 percent of the value of food-related imports in fiscal year 1995.

Comments From the Department of Commerce

UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

FEB 27 1997

Mr. Robert A. Robinson
Director, Food and Agriculture Issues
Resources, Community, and Economic Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Robinson:

Enclosed is a copy of the National Oceanic and Atmospheric Administration's (NOAA) detailed comments on the General Accounting Office's draft report: Food-Related Services: Opportunities Exist to Recover Costs by Charging Beneficiaries (GAO/xxxx-xx-xx).

We generally concur with the report findings. The report indicates that NOAA's National Marine Fisheries Service (NMFS) is recovering 86 percent of its Seafood Inspection Program costs--the largest level of reimbursement for any of the six Federal providers of food-related services. The percentage of cost recovery increases to 96 percent or very close to full-cost recovery, if you exclude the National Seafood Inspection Laboratory.

Currently, we are proposing to establish a Performance Based Organization (PBO) for seafood inspection that excludes the Seafood Inspection Laboratory. This high priority research laboratory will continue to operate using appropriated funds.

We recommend that you revise your calculations in the report to reflect the exclusion of the Seafood Inspection Laboratory to reflect our proposal for the PBO.

These comments were prepared in accordance with the Office of Management and Budget Circular A-50.

Sincerely,

Diana H. Josephson

Diana H. Josephson

Enclosure

U.S. DEPARTMENT OF COMMERCE

COMMENTS ON GAO DRAFT REPORT ENTITLED

"Food-Related Services: Opportunities Exist to Recover Costs b Charging Beneficiaries"

GAO/xxxx-xx-xx

February 3, 1997

Comments:

There is only one policy issue that we wish to address related to the future of the National Seafood Inspection Laboratory. The future role of the National Seafood Inspection Laboratory, located in Pascagoula, Mississippi, precludes its inclusion in any proposed Performance Based Organization (PBO).

We wish to bring to your attention what appears to be an inconsistency in your report. The description on the top of page 8 correctly characterizes the National Marine Fisheries Services (NMFS) for-fee program as follows: "The [NMFS] inspection provides assurances of safety, wholesomeness, proper labeling and quality to consumers and the seafood industry." However, at the top of page 11, the report states that: "In no cases were user fees charged for food-related regulatory compliance activities at the six agencies we reviewed." The assurances of safety, wholesomeness and proper labeling provided by the NMFS program are, in fact, assurances of regulatory compliance. Accordingly, we suggest that the sentence quoted at the top of page 11 be modified as follows: "Except for the NMFS program, there were no instances of user fees being charged for food-related regulatory compliance activities."

Conclusions:

The draft GAO report seeks to identify additional opportunities to recover costs by charging beneficiaries additional user fees for some Federal food-related activities. The National Oceanic and Atmospheric Administration (NOAA) concurs with the report's conclusions that within the Federal Government opportunities do exist for increasing these fees. However, within the NMFS, the Seafood Inspection Division is already largely reimbursed through user fees.

The financial data cited in the draft report for FY 1995 indicates that the Seafood Inspection Program contained more than $2 million of appropriated funds, with more than $1.5 million for the Laboratory. The chart on page 10 of the report indicates that NMFS is recovering 86 percent of its Seafood Inspection Program costs -- the largest level of reimbursement for any of the six Federal providers of food-related services. This percentage of recovered program costs includes operation of the Laboratory. NOAA is proposing to exclude the Laboratory in its PBO. By doing this, the rate of recovered costs for "essential activities" of the Program would then jump to 96 percent, or very close to full-cost recovery for services provided.

Efforts to reinvent the Seafood Inspection Program have been underway for nearly 3 years. When the GAO team interviewed Program personnel last year, the program elements contained in the PBO proposal consisted of all components now included in the Division, with the exception of the Laboratory. The proposal was to phase out all appropriated support for Seafood Inspection activities. By proceeding with the PBO, we approximate that objective.

The Laboratory would be retained elsewhere within NMFS and continue to be supported by appropriated funds. We did not include the Laboratory in the PBO because it is not an essential component for carrying out Seafood Inspection activities. Laboratory support for required analyses or random sample verifications can be obtained more readily and economically from a variety of sources including other Federal, state, and approved local laboratories. There have not been any reinvention plans which suggested that the Laboratory's costs should be reimbursed by the Inspection Program's paying customers.

Objectives, Scope, and Methodology

To identify and evaluate opportunities for increasing the share of program funding paid for by beneficiaries of food-related services, we identified (1) the types of food-related services provided by federal agencies, (2) the extent to which beneficiaries currently pay for such services through user fees, and (3) potential opportunities for recovering more of the service costs through user fees, as well as arguments for and against doing so.

To identify the types of food-related services provided by federal agencies, we identified the principal federal agencies—Agricultural Marketing Service; Animal and Plant Health Inspection Service; Food and Drug Administration; Food Safety and Inspection Service; Grain Inspection, Packers and Stockyards Administration; and National Marine Fisheries Service—that provide food-related services. Some other agencies may also provide limited amounts of food-related services but we excluded them from our review. From each agency, we obtained and reviewed programmatic and budget information on the food-related services they provide. In addition, we met with agency officials to discuss the type of food-related services they provide and the beneficiaries of these services. We also reviewed information on food-related services from our previous reports and those of inspectors general.

To identify the extent to which beneficiaries pay for food-related services through user fees we asked the agencies to provide user fee and appropriations funding data for their food-related activities. We did not verify the accuracy of these data. In addition, we obtained and reviewed the agencies' budget documents and met with agency officials to discuss the degree to which program activities were funded through user fees.

To identify potential opportunities for recovering more of the service costs through user fees, as well as arguments for and against doing so, we began by examining the programs that either charged partial user fees or no user fees. We then judgmentally selected those programs where there appeared, in comparison to other programs, to be inconsistencies in user charges or where there appeared to be private beneficiaries of the services. We did not review all of the food-related services at the six agencies for which user fees may be appropriate.

We met with Office of Management and Budget and agency officials to discuss the agencies' annual budget submissions and identify services that have been proposed as appropriate for user fees in the past. We also discussed with OMB officials their Circular A-25, which provided the principal criteria for identifying opportunities for charging user fees to

beneficiaries of federal services. To identify the arguments in favor of and opposed to user fees, we met with agency officials and representatives of industry groups that would be affected by additional user fees. We also reviewed agency user fees proposals, congressional reports on agency appropriations, and industry position papers on user fees.

Our work was conducted between April 1996 and January 1997 in accordance with generally accepted government auditing standards.

Major Contributors to This Report

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