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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. APHIS-2013-0021]

RIN 0579-AD77

User Fees for Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fee regulations by adding new fee categories and adjusting current fees charged for certain agricultural quarantine and inspection services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers arriving at ports in the customs territory of the United States. We are also proposing to adjust or remove the fee caps associated with commercial trucks, commercial vessels, and commercial railcars. We have determined that revised user fee categories and revised user fees are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0021>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2013-0021, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0021> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. William E. Thomas, Senior Agriculturist, Office of the Deputy Administrator, PPQ, APHIS, 4700 River Road Unit 130, Riverdale, MD 20737 1231; (301) 851-2306. For information concerning rate development, contact Mr. Michael Peranio, Chief, User Fees, Financial Services Branch, FMD, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737; (301) 851-2852.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 2509(a) of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (21 U.S.C. 136a) authorizes the Animal and Plant Health Inspection Service (APHIS) to collect user fees for certain agricultural quarantine and inspection (AQI) services. The FACT Act was amended on April 4, 1996, and May 13, 2002.

The FACT Act, as amended, authorizes APHIS to collect user fees for AQI services provided in connection with the arrival, at a port in the customs territory of the United States, of

commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers. According to the FACT Act, as amended, these user fees should recover the costs of:

- Providing the AQI services for the conveyances and the passengers listed above;
- Providing preclearance or preinspection at a site outside the customs territory of the United States to international passengers, commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft;
- Administering the user fee program; and
- Maintaining a reasonable reserve.

In addition, the FACT Act, as amended, contains the following requirements:

- The fees should be commensurate with the costs with respect to the class of persons or entities paying the fees. This is intended to avoid cross-subsidization of AQI services.
- The cost of AQI services with respect to passengers as a class should include the cost of related inspections of the aircraft or other vehicle.

APHIS' regulations regarding overtime services and user fees relating to imports and exports are found in 7 CFR part 354. The user fees for the AQI activities described above are contained in § 354.3, "User fees for certain international services."

In an interim rule published in Federal Register on December 9, 2004 (69 FR 71660-71683, Docket No. 04-042-1), and effective on January 1, 2005, we amended the user fee regulations in § 354.3 by adjusting the fees charged for certain AQI services provided by

APHIS and the Customs and Border Protection (CBP) bureau of the Department of Homeland Security in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The AQI user fees contained in that interim rule covered fiscal years (FY) 2005 through 2010. A final rule affirming the interim rule without change was published in the Federal Register on August 24, 2006 (71 FR 49984-49986, Docket No. 04-042-2). Those fees are still in effect today. We published an interim rule to increase AQI fees 10 percent across the board on September 28, 2009 (74 FR 49311-49315, Docket No. APHIS-2009-0048), but withdrew that interim rule before it became effective in order to explore other regulatory alternatives.

### Introduction

The AQI fees have not been adjusted since FY 2010 and do not reflect the current cost of providing AQI services. In addition, the AQI fee reserve account has decreased because fees collected have not been sufficient to cover current costs, in part due to the recent economic recession. As a result, CBP has relied more heavily on its appropriated funds to supplement fee revenue.

APHIS recently conducted a comprehensive fee review to determine the current cost of specific AQI services supported by these fees. That review determined that the AQI program was not recovering the full cost of its fee services, including costs of administering the user fee program and maintaining a reasonable reserve in the fee accounts. Some of this non-recovery is because most of the current fees do not accurately reflect the current full cost of the services related to those fees. However, some of this non-recovery is also due to prior APHIS policy decisions to:

- Cap fees collected for commercial trucks (with transponders), commercial vessels, and commercial railroad cars;
- Exempt certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers as authorized in AQI regulations;
- Exempt international passengers arriving as rail passengers, bus passengers, in privately owned vehicles (POV), private aircraft, and private vessels; and
- Exempt individuals arriving as pedestrians.

The fee caps refer to current AQI user fee regulations that limit the number of times a specific truck (with transponder), vessel, or railroad car must pay the AQI fee in a given year. As part of the AQI fee review, we reviewed the financial and workload implications of those caps. We also considered the financial, workload, and policy implications of creating new fees for international passengers arriving by cruise ship, bus, private vehicle, private aircraft, and private vessel, and for pedestrians. We also considered the financial, workload, and policy implications of establishing fees for commodity (plant and plant product) import permits, pest import permits, and conducting and monitoring treatments.

Based on the findings of the AQI user fee review, we are proposing to amend the AQI user fee regulations to reflect the projected cost of providing AQI services, including expected changes in cost and workload for the period the revised fees will be in effect. Specifically, we are proposing to:

- Adjust the fees charged for the following conveyances or persons to whom AQI services are provided: Commercial vessels, commercial trucks, commercial

railroad cars, commercial aircraft, and international air passengers. However, because commercial truck inspections have separate fees for trucks with and without decals (transponders), we are actually proposing to adjust a total of six current fees.

- Add a new fee to be charged for international commercial sea (cruise vessel) passengers, who were previously funded through fees collected for commercial vessels. The FACT Act gives APHIS authority to charge a fee for all international passengers.
- Add a new fee for conducting and monitoring treatments, which is a significant cost that should be paid by those who use and benefit from these services.
- Remove the caps for vessels and railcars.
- Adjust the caps on fees for trucks with transponders.

These proposed adjustments are designed to recover the full cost of providing these AQI services, commensurate with the class of persons or entities paying the fees, and are based on an analysis of our costs for providing services in FY 2010 and FY 2011, as well as our best projections of what it will cost to provide these services in FYs 2013 through 2016. The proposed adjustments will also allow us to maintain the AQI reserve account. These user fee adjustments are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

AQI services are provided by a combination of APHIS and CBP personnel. Because of this arrangement, the AQI user fees collected will be shared with CBP based on the related respective costs for each agency.

#### AQI User Fee Accounting

We maintain all AQI user fees that we collect in a distinct account. We carefully monitor the balance in this account and use these funds to pay for our actual costs for providing these distinct AQI services. Any surpluses in the various AQI accounts carry forward from year to year. The AQI user fees are not subject to appropriation by Congress, although actual collections and estimates of future collections are expressed in each year's President's Budget. Collected funds are available until expended to fund appropriate AQI activities.

#### AQI Program Costs

For AQI user fee purposes, we are required to capture the full cost of the AQI services that we provide. This is required by:

- The FACT Act;
- Office of Management and Budget (OMB) Circular A-25, User Charges;
- Statement of Federal Financial Accounting Standards #4 (SFFAS #4), Managerial Cost Accounting Standards and Concepts;
- OMB Circular A-11, Preparation, Submission, and Execution of the Budget; and
- The Chief Financial Officers (CFO) Act.

Full cost includes programmatic costs and overhead costs as well as imputed costs, which are costs (such as certain current benefits costs and future retirement costs and other post-

employment benefits) paid by agencies other than APHIS and CBP. OMB Circular A-25 and SFFAS #4 require the inclusion of imputed costs when determining the full cost of an output, such as an AQI service, so that the full cost to the Federal Government is recovered. Full cost also includes depreciation costs related to facilities and equipment used in delivering AQI services.

### APHIS Costs

AQI program costs incurred by APHIS include:

- Direct charge costs;
- Program delivery related costs (known as distributable costs) at the State level and below, at the regional and headquarters levels, the APHIS agency level, and the U.S. Department of Agriculture (USDA) departmental level (these costs are described in greater detail below); and
- Depreciation and other imputed costs.

As part of our accounting procedures, we maintain separate accounting codes to record costs that can be directly charged to an AQI activity. APHIS functions that are directly charged to AQI accounts include salary and benefits and other costs (e.g., travel, supplies, rents, and equipment) for various personnel, including:

- Personnel in plant inspection stations inspecting propagative materials (e.g., seeds and bulbs) and conducting and monitoring treatments;
- Personnel performing pest identification services (insects, pathogens, plants);

- Personnel performing investigative, enforcement, and smuggling interdiction and trade compliance activities;
- Personnel performing risk analysis, science and technology, policy development, training, and methods development activities relating to AQI work; and
- Personnel performing training of CBP Agricultural Specialists, CBP Officers, and CBP Agriculture Specialist Canine Officers.

Other program delivery related costs that cannot be directly charged to individual AQI accounts are charged to distributable accounts established at the State, regional, headquarters, agency, and departmental levels. These costs are driven to the AQI activities using staffing level (full time equivalents or FTE) counts as the cost driver. This then provides for a “fully loaded” activity cost. The activity costs are then driven to program outputs (such as inspections) based upon work counts.

Distributable accounts typically contain the following types of costs: Salaries and benefits, utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are distributed within the APHIS accounting system to all the programs and activities that benefit from the expense. This is based on a formula under which the costs that are directly charged to each activity are divided by the total costs directly charged to each account. For example, if a work unit performs work on both domestic programs and AQI user fee programs, the distributable account costs are allocated to each of these programs based on the percentage of the costs directly charged to that activity.

Headquarters-level costs include costs for employees of APHIS’ Plant Protection and Quarantine (PPQ) and International Services (IS) programs who are based at those programs’

headquarters in Riverdale, MD, and Washington, DC. We incur agency-level support costs through activities that support APHIS, such as recruitment and development; legislative and public affairs; regulation development; regulatory enforcement; and budget, accounting, payroll, purchasing, billing, and collection services. Departmental charges are assessed for various AQI program costs including Federal telephone service, mail, processing of payroll and money management, unemployment compensation, Office of Workers Compensation Programs, and central supply for storing and issuing commonly used supplies and forms. Because the agency and department level costs are costs for all of APHIS, we assign a proportional amount to the AQI program, primarily based on the staffing level used in the AQI program.

Imputed costs include Office of Workers' Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; headquarters space operation and maintenance costs; Office of Personnel Management (OPM) and State Department costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs. Fee revenue collected that is based on imputed costs is not retained in the AQI account but is forwarded to the U.S. Treasury.

#### CBP Costs

CBP program costs are similar to those for APHIS. CBP costs that are directly charged to AQI activities include salaries and benefits for CBP Agriculture Specialists, CBP Officers, CBP Agriculture Specialist Canine Officers, supervisors (such as port directors), CBP Technicians, and mission support staff; equipment and supplies used in connection with services subject to AQI user fees; contracts used for AQI services; and large supply items such as

uniforms, laboratory and examination equipment, and non-intrusive inspection equipment used for AQI services.

CBP activities that are directly charged to AQI accounts include various personnel at ports of entry, headquarters, and field offices, including:

- Personnel deployed to international airports and seaports to perform regulatory enforcement activities that include:
  - Processing for entry of passengers, baggage, and personal effects;
  - Examination for entry of aircraft, containers, and vessels;
  - Administration of wood packaging material and regulated garbage compliance monitoring activities; and
  - Examination for entry of commercial cargo and parcels.
- Personnel deployed to land border ports of entry to perform regulatory enforcement activities including examination for entry of commercial trucks, railcars, containers, and commercial cargo and parcels.
- Personnel conducting pre-arrival analysis, targeting, and selection for examination of baggage, commodities, conveyances, packages, etc., that present a risk to American agriculture and natural resources; including agricultural and biological terrorism agents.
- Personnel providing expert guidance, training, and technical advice to CBP Officers, other CBP personnel, trade, industry, and other stakeholders on regulatory requirements pertaining to compliance with agricultural regulations and the processing of agriculture-related cargo and material.

- Personnel performing pre- and post-academy training for CBP Agriculture Specialists, CBP Officers, other CBP personnel, and the performance of recruitment and agriculture-related outreach.

Summary level costs for APHIS and CBP are shown in table 1 below.

Table 1. FY 2011 estimated costs by category and agency

Cost Category	APHIS	CBP	Total
Direct	\$140,210,651	\$418,647,765	\$558,858,416
Overhead	12,220,530	223,776,057	235,996,587
Imputed	12,572,451	53,764,878	66,337,329
Total	165,003,632	696,188,700	861,192,332

### AQI Cost Analysis

In order to determine the current cost of AQI services and understand the potential impact of alternative fee schedules, we first calculated the costs of the current AQI program by fee category, using the activity-based-costing (ABC) methodology. We were then able to project volumes and perform detailed cost analysis for potential changes to the AQI fee schedule. This cost modeling effort included developing historical cost information using FY 2010 and FY 2011 financial and workload data to provide the full cost of AQI activities and outputs. We used the ABC methodology because it supports the philosophy of full cost recovery, provides the functional elements and data for cost and business process analysis, and complies with regulatory guidance regarding full cost recovery.

ABC uses a two-step methodology to assign an organization's costs to its work activities and then to its related outputs. Costs are those things on which an organization spends its budget, such as salaries and benefits for employees, rent, equipment, etc. Work activities are the various endeavors that people in the organization undertake (e.g., air passenger inspection, pest

identification), and outputs are the goods or services that the organization produces through its activities.

In the first step of ABC, we assigned costs to activities using resource drivers, which typically represent a cause-and-effect relationship to establish how much of a resource is consumed by each activity. For example, if an organization spends 10 percent of its effort performing a particular activity, we assigned 10 percent of certain costs (e.g., salary and benefits) to that activity because the level of effort is a good indicator of resources consumed. In support of this step, we conducted an activity labor survey for APHIS State, regional, and headquarters organizations to estimate the level of effort devoted to AQI activities. We also incorporated activity cost information for CBP from their existing cost model.

In the second step, we assigned APHIS and CBP activity costs to the outputs produced by performing the activities. We performed this cost assignment using activity drivers, again based on a cause-and-effect relationship. For example, if an activity is performed for more than one type of output, we assigned the cost of the activity to the outputs proportionately based on the workload data (volume) associated with each output. We used workload data from several APHIS and CBP systems as the activity drivers.

While our AQI cost model design is based on the standard ABC methodology, it also incorporated several additional cost assignment layers to provide more transparent cost assignment and reporting. This included identifying and costing outputs at levels that were more detailed than necessary to capture costs just at current fee service levels. For example, we separately determined the cost of APHIS and CBP outputs and then combined this information to develop cost information for overall AQI services. This then provided us with flexibility for restructuring the AQI fee schedule. We also calculated expected future costs and workload and

added those to the base to estimate the total costs and workload for the future periods when the new fees are expected to be in effect.

The data for the AQI cost analysis came from financial and program workload information in standard APHIS and CBP records. The financial data included direct program costs and overhead costs previously discussed. This data was previously captured by those agencies to comply with other requirements. CBP already had a detailed cost model for its activities, and we used cost data from the CBP cost model. As noted above, we used a detailed labor survey to determine the cost of APHIS activities.

Then, in accordance with Office of Management and Budget Circular, A-25 “User Charges,” and OMB Statement of Federal Financial Accounting Standards, Number 30, “Managerial Cost Accounting Standards and Concepts,” we identified and added an appropriate amount of imputed costs. These are costs borne by other Federal agencies (such as the U.S. Treasury and the Office of Personnel Management) in support of the AQI program. We used employee costs as the basis to identify the portion of these costs to attribute to the AQI program.

We calculated APHIS depreciation by identifying equipment-related depreciation expenses. For APHIS-owned buildings where AQI work is performed, we used an appropriate portion (based on percent of work done in the building that was AQI) of the total depreciation for those buildings. CBP provided depreciation data for CBP-owned facilities and capital equipment based on similar calculations.

When the AQI cost model was completed, we were able to determine the actual costs of each of the current AQI services, as shown in the table below. By matching these costs with the workload volumes for each AQI fee service, we were also able to calculate the unit cost of each output. We were also able to determine the more detailed costs associated with all classes of

passengers and treatments. Table 2 shows the FY 2011 baseline costs by service activity that resulted from this AQI cost analysis.

Table 2. AQI FY 2011 baseline costs

Fee Service Activity	2011 Actual Cost
Air Passenger	\$291,434,620
Cruise Ship Passenger	20,205,868
Rail Passenger	1,630,302
Bus Passenger	23,091,799
POV Passenger	129,489,305
Pedestrian	34,664,442
Commercial Aircraft	156,242,180
Commercial Maritime Cargo Vessel	91,152,480
Commercial Truck	73,529,394
Commercial Cargo Railcar	5,150,585
Private Aircraft	11,371,965
Private Maritime Vessel	4,940,099
Treatments	14,324,472
Military Clearance Operations	3,964,821
Total	861,192,332

To project costs beyond FY 2011, we considered two changes to these baseline costs. The first change was any initiative which would increase APHIS or CBP costs in those years. Both APHIS and CBP have implemented various initiatives aimed at reducing redundancy in data input requirements for importers, increasing transparency, reducing wait times or expediting inspections, and eliminating or changing treatment requirements. The APHIS initiatives are:

- A Web-based permit system that allows users to submit permit applications, track applications, apply for renewals and amendments, and receive copies of their import/interstate movement/transit/release permits.
- AQI outreach, an effort to provide information and education to travelers and importers in order to reduce the risk of bringing prohibited agricultural items into the United States.

- Critical upgrades to plant inspection station equipment that will enable us to do plant inspections more effectively.
- A more robust risk assessment capacity that will enable APHIS to increase its capacity to perform risk assessments through increasing the quality and reliability of its data.
- Development of new treatment techniques by APHIS scientists that can be used on agricultural products coming into the United States. These methods can save cost and time as well as reduce the risk of invasive pests entering the country.

The CBP initiatives are:

- Border security supplemental, which is related to a FY 2010 law intended to bolster border security, specifically along the U.S./Mexican border, and represents the AQI cost associated with the law. The initiative funding supports Federal agents, judges, courts, and other various agencies.
- Increase in the journeyman grade for CBP Officers, CBP Agriculture Specialists, and Border Patrol Agents to account for increasing scope of responsibilities of officers and agents and to bring parity across Federal agencies. The AQI fee review incorporated journeyman upgrade costs specifically related to AQI.
- National Targeting Center that filters advanced information on people and products to identify threats and risks and allows CBP to target higher risk trade and travelers for detailed inspection prior to their arrival at a U.S. port of entry.
- Address increased activity at ports of entry by hiring additional personnel.

The data for these initiatives came from APHIS and CBP budget offices and is shown in

Table 3.

Table 3. APHIS and CBP initiatives

Future initiatives	2012	2013	2014	2015	2016
APHIS					
Web-based permits system	\$1,200,000	\$1,204,680	\$1,226,364	\$1,237,279	\$1,248,291
AQI outreach	5,000,000	5,019,500	5,109,851	5,155,329	5,201,211
Plant inspection station equipment	23,600	23,692	24,118	24,333	24,550
Risk assessment capacity	120,000	120,468	122,636	123,728	124,829
Treatment development	180,000	180,702	183,955	185,592	187,244
CBP					
Border security supplemental	\$5,676,640	\$5,676,640	\$5,773,143	\$5,802,009	\$5,831,019
Journeyman increase	38,550,379	38,550,379	39,205,735	39,401,764	39,598,773
National Targeting Center	6,895,000	6,919,133	7,042,985	7,102,850	7,163,225
Port of entry staff expansion	7,752,437	7,752,437	7,884,228	7,923,649	7,963,267
Totals	65,398,056	65,447,630	66,573,016	66,956,533	67,342,408

The second change that we considered in calculating future costs was projected cost growth. Table 4 shows the growth rates used to project future cost increases. These growth rates represent guidance provided by OMB for use in developing budgets and other forecasts of future costs. They are broken out by payroll and non-payroll costs, and we applied them accordingly to the baseline costs and initiatives.

Table 4. Growth rates

Fiscal year	Payroll	Non-payroll
2012	0.0%	1.3%
2013	0.0%	1.6%

2014	1.7%	2.1%
2015	0.5%	2.1%
2016	0.5%	2.1%

Based on these growth rates, we projected the costs shown in Table 5 for FYs 2014 through 2016.

Table 5. Projected costs FYs 2014 through 2016

Fee Service Activity	2014	2015	2016
Air passenger	\$322,591,452	\$324,996,118	\$327,426,378
Sea passenger	22,421,487	22,589,194	22,758,727
Rail passenger	1,805,242	1,818,103	1,831,085
Bus passenger	25,573,198	25,758,827	25,946,311
POV passenger	143,333,256	144,384,916	145,447,319
Pedestrian	38,357,661	38,635,543	38,916,167
Commercial aircraft	170,836,038	172,855,461	174,912,526
Commercial maritime	99,783,440	100,995,859	102,232,305
Commercial truck	81,018,003	81,789,820	82,573,152
Commercial cargo railcar	5,679,995	5,732,572	5,785,904
Private aircraft	12,602,768	12,690,860	12,779,754
Private maritime vessel	5,486,025	5,526,987	5,568,398
Treatments	15,086,074	15,421,466	15,765,008
Military clearance	4,331,642	4,371,639	4,412,236
Total	948,906,281	957,567,365	966,355,270

### Volume Projections

To develop potential fee scenarios, we also projected workload growth and resulting workload volumes for each fiscal year from 2013 to 2016. We were able to identify FY 2011 and 2012 actual workload from data previously captured by APHIS and CBP. To forecast expected changes in imports and tourist traffic across the nation's borders, we researched a variety of data sources and used the following:

- We used projections from the International Air Transport Association Industry Forecast Summary Report to project air passengers and air cargo.

- We used projections from a market research site, Cruise Market Watch, to project sea passengers.
- We used a U.S. Department of Transportation report that forecast the number of border crossings by mode of traffic at selected ports of entry and extrapolated to get projections for pedestrians and POV and bus passengers.
- We used a USDA report on Agricultural Sector Aggregate Indicators to project maritime cargo, truck cargo, rail cargo, mail packages, commodity import permits, and treatments.
- We did not forecast any changes for rail passengers, private aircraft, or private sea vessels because a change rate for these conveyances cannot be tied to any import data or other independent variable.

Table 6 shows the resulting volumes for the various fee service activities.

Table 6. Workload projections, FYs 2013 through 2016

Fee	2011 Actual Count	2012 Actual Count	Expected Changes (Annual)	2013	2014	2015	2016
Air passenger	78,901,506	77,255,476	3.60%	80,036,673	82,917,993	85,903,041	88,995,551
Sea passenger	12,931,271	13,532,465	3.15%	13,958,738	14,398,438	14,851,989	15,319,826
Rail passenger	276,722	276,855	-	276,855	276,855	276,855	276,855
Bus passenger	5,222,786	5,318,382	-1.69%	5,228,501	5,140,140	5,053,271	4,967,871
POV passenger	169,834,015	175,428,545	0.76%	176,761,802	178,105,192	179,458,791	180,822,678
Pedestrian	40,609,235	41,375,736	-3.49%	39,931,723	38,538,106	37,193,126	35,895,086
Commercial aircraft	700,644	719,251	3.60%	745,144	771,969	799,760	828,551
Commercial maritime cargo vessel	101,794	113,727	3.15%	117,309	121,005	124,816	128,748
Commercial truck	10,348,791	10,664,770	3.83%	11,073,231	11,497,335	11,937,683	12,394,897
Commercial cargo railcar	2,912,210	3,230,167	3.83%	3,353,882	3,482,336	3,615,710	3,754,191
Private aircraft	121,221	116,240	-	116,240	116,240	116,240	116,240
Private maritime vessel	80,529	80,949	-	80,949	80,949	80,949	80,949
Treatments	29,713	38,517	5.36%	40,582	42,757	45,048	47,463

## Fee Computation

With the total costs and the workload projections, we were able to project fee requirements for each potential fee service activity. However, in addition to the fee revenue required to cover current and projected AQI service costs, we need to generate revenue to replenish the AQI account reserve. The reserve components were established simply by rounding up the raw fee calculations (projected unit cost) for each fee. All projected unit costs less than \$10 were rounded up to the next \$1, and all unit costs greater than \$200 were rounded up to the next \$25. No proposed fees fall between \$10 and \$200. This approach provides a proportionate rounding for all fees. We then calculated the estimated number of days that the reserve could support costs on a noncumulative basis. We estimate that by the end of FY 2016 the AQI reserve will have approximately a 90 day reserve, which is consistent with our established AQI fund reserve policy.

## Proposed Fee Amounts

APHIS is proposing significant changes to the AQI user fee structure and the fee rates. As previously mentioned, we employed activity based costing (ABC) as our methodology to determine the cost of AQI services, and this information, along with other factors, was used to define an appropriate fee structure and fee rates. The ABC methodology is a derivative of the managerial cost accounting, which is recommended by OMB and Government Accountability Office guidance on government fee setting. Previously, APHIS relied on an estimation methodology to determine the fee rates, and we believe that the estimation methodology did not provide enough information to properly establish the correct fee structure and fee rates. We also believe that the use of the ABC methodology provides significantly greater accuracy and

transparency in fee setting. The use of ABC has enabled APHIS to more accurately identify the true costs of providing each of the AQI services.

The costs incurred by both APHIS and CBP have been analyzed using the ABC methodology. APHIS was able to determine activity costs for each AQI service by collecting related financial and workload data for APHIS and CBP, and using this information to properly assign AQI program costs to each activity. The AQI program costs include program delivery activities such as inspections, inspection targeting analysis, staff training, plant and pest identification, and risk assessments. The majority of activity costs are for salary and benefits, but they also include costs such as the training of CBP Agriculture Specialists, CBP Officers, training and care of CBP Agriculture Specialist Canine Officers and canines, replacement or new equipment, utilities, rent, replacement or new vehicles, and office supplies; and imputed costs that APHIS and CBP are responsible for recovering such as workman's compensation, health, retirement, and life insurance benefits.

Using the data and methodology discussed above, we calculated the proposed fees shown in table 7. Each fee service activity is explained in greater detail in the paragraphs that follow. If these proposed fees become effective, we would continue to monitor the costs of AQI services, our collections, and the level of the reserve and would undertake rulemaking to adjust the fees if we determined that costs were not being appropriately recovered or the reserve levels were on a path to be either greater or less than our established AQI fund 90-day reserve policy.

Table 7. Proposed fees

Fee Service Activity	Current	Proposed
Air passenger	\$5	\$4
Commercial aircraft	70.75	225
Commercial maritime cargo vessel	496	825
Commercial truck	5.25	8
Commercial truck transponder	105	320
Commercial cargo railcar	7.75	2
Sea passenger	no fee	2
Treatments	no fee	375

Air passenger. Millions of travelers pass through U.S. airports daily. Inspecting air passengers includes pre-arrival analysis of incoming passengers and screening arriving air passengers for agricultural products by CBP Agriculture Specialists and CBP Officers; inspection of passenger baggage using CBP agriculture canines and specialized non-intrusive inspection equipment; inspecting the interior of the passenger aircraft; monitoring the storage and removal of regulated international garbage from the aircraft to ensure consistency with all regulatory requirements; safeguarding and appropriately disposing of any seized or abandoned prohibited agricultural products; and identifying pests found on prohibited agricultural products brought into the country by air passengers. The ABC data indicated that the current fee was going to generate revenues in excess of what will be required to support anticipated costs. As a result, we are proposing a 20 percent decrease in this fee (from \$5 to \$4) to better align the fee with the cost of activities related to air passengers.

Commercial aircraft. We also inspect international commercial aircraft arriving at airports in the customs territory of the United States. Inspecting commercial aircraft includes reviewing manifests and documentation accompanying incoming cargo; targeting higher risk cargo for inspection or clearance; inspecting various types of agricultural and agricultural-related commodities, international mail, expedited courier packages, containers, compliant wood

packaging material, and packing materials to screen for the presence of plant pests and contaminants, compliance with regulations, and determining entry status; inspecting the aircraft hold or exterior for contaminants, pests, or invasive species; monitoring the storage and removal of regulated international garbage from the aircraft to ensure consistency with all regulatory requirements; identifying pests found during inspection; and safeguarding shipments pending PPQ determination for treatment or final disposition. The ABC data indicated that the current fee being charged does not reflect the actual costs incurred in the performance of those activities and would result in a significant shortfall in what will be required to cover the anticipated costs of this activity. Accordingly, we are proposing a 218 percent increase in this fee (from \$70.75 to \$225) to more accurately align the fee with the actual cost of activities related to commercial aircraft inspection described above as those costs were identified using our ABC methodology.

Commercial maritime cargo vessel. We inspect commercial vessels of 100 net tons or more arriving at ports of entry into the customs territory of the United States. Inspecting commercial maritime cargo vessels involves reviewing manifests and documentation accompanying incoming cargo; targeting higher risk cargo for inspection or clearance; inspecting various types of agricultural and agricultural-related commodities, containers, compliant wood packaging material, and packing materials to screen for the presence of plant pests and contaminants, compliance with regulations, and determining entry status; inspecting the vessel to ensure that contaminants, pests, or invasive pests are not present or are properly safeguarded; inspecting the ship's stores to ensure that prohibited items are not present; monitoring the storage and removal of regulated international garbage from the vessel to ensure consistency with all regulatory requirements; identifying pests found during inspection; and safeguarding shipments pending PPQ determination for treatment or final disposition. The current regulations cap the

number of arrivals for which a single vessel would be charged at 15 per calendar year, i.e., a vessel is not charged for its 16th or subsequent arrival in any 1 year. The ABC data indicated that the limitation on collections imposed by the cap, as well as the amount of the current fee, was going to lead to a shortfall in what will be required to support anticipated costs. As a result, we are proposing to remove the 15-arrival cap and increase the fee by 71 percent (from \$496 to \$825) to align the fee with the cost of activities related to commercial maritime cargo vessels.

Commercial truck. We inspect commercial trucks arriving at land ports in the customs territory of the United States from Mexico and Canada. Inspecting trucks involves reviewing manifests and documentation accompanying incoming cargo; targeting higher risk cargo for inspection; inspecting various types of agricultural and agricultural-related commodities, compliant wood packaging material, and packing materials to screen for the presence of plant pests and contaminants, compliance with regulations, and determining entry status; inspecting the truck and conveyance for contaminants, pests, or invasive species; identifying pests found during inspection; and safeguarding shipments pending final determination for treatment or final disposition. The ABC data indicated that the current fee was going to result in a shortfall in what will be required to support anticipated costs. As a result, we are proposing a 52 percent increase in this fee (from \$5.25 to \$8) to align the fee with the cost of activities related to commercial trucks.

Commercial truck transponder. We estimate that the use of transponders corresponds to a 10 minute reduction in the border crossing time for trucks. The proposed fee will maintain an incentive for trucks to continue the use of transponders while recovering a greater portion of the Government's cost to provide inspection services. Based on data about how many times a commercial truck with a responder came into the country, we propose to increase the truck

transponder fee from 20 to 40 times the individual truck fee. We are proposing this change based on our analysis indicating that trucks with transponders cross an average of 106 times per year. Increasing the truck transponder fee to 40 times the individual truck fee, along with the increase in the commercial truck fee, results in an increase of 205 percent (from \$105 to \$320) for the transponder fee.

Commercial cargo railcar. We inspect loaded commercial railroad cars arriving at land ports in the customs territory of the United States from Mexico and Canada. Inspecting railcars involves reviewing manifests and documentation accompanying incoming cargo; targeting higher risk cargo for inspection or clearance; inspecting various types of agricultural and agricultural-related commodities, containers, compliant wood packaging material, and packing materials to screen for the presence of plant pests and contaminants, compliance with regulations, and determining entry status; inspecting the railcars for contaminants, pests or invasive species; identifying pests found during inspection; monitoring the storage and removal of regulated international garbage from the railcar to ensure consistency with all regulatory requirements; and safeguarding shipments pending PPQ determination for treatment or final disposition. The ABC data indicated that the current fee was going to generate revenues significantly in excess of what will be required to support anticipated costs. Accordingly, we are proposing a 74 percent decrease in this fee (from \$7.75 to \$2) to align the fee with the cost of activities related to commercial cargo railcars.

We also analyzed those fee service activities for which there was not currently a fee even though significant workload and/or costs were being generated:

Sea passenger. Inspecting a cruise vessel and its passengers includes pre-arrival analysis of incoming passengers; screening arriving sea passengers for agricultural products by CBP

Agriculture Specialists and CBP Officers; inspection of passenger baggage using CBP agriculture canines and specialized non-intrusive inspection equipment; inspection of the vessel itself to ensure that contaminants, prohibited articles, or invasive pests are not present; inspecting the ship's stores to ensure that prohibited items are not present or are properly safeguarded; and monitoring the storage and removal of regulated international garbage from the vessel to ensure consistency with all existing regulatory requirements. (Consistent with our AQI fee authority, the costs of inspecting the cruise ships themselves would be covered by the proposed sea passenger fee rather than a separate fee similar to the commercial maritime cargo vessel fee, just as the international air passenger user fee covers the costs associated with inspecting the aircraft on which they arrived.) We also analyze information that allows us to perform targeted inspections in order to reduce the risk of a dangerous plant, plant pest, contaminant, or foreign animal disease from entering the United States. This information is used in our training and in the development of inspection guidance and policies. Similar information is used extensively by CBP to help distinguish levels of risk. We believe that this effort helps us to provide the highest level of protection at the lowest cost. No fees are currently collected for this category of passenger. Based on the costs associated with inspecting these passengers (projected at approximately \$22.4 million to \$22.8 million in FYs 2014 to 2016, as noted in table 5 above) and the ease of collection from the direct beneficiary (i.e., the passenger) through the sea vessel ticket, we are proposing to implement a \$2 user fee, which is sufficient to recover the projected costs of this AQI activity. This new fee would allow us to recover the costs associated with this inspection activity.

The new sea passenger user fee would be added to paragraph (f) of § 354.3, which currently contains the provisions regarding the airline passenger AQI user fee, as the collection

and remittance procedures for both the sea passenger and airline passenger user fees would be the same. The current regulations provide an exemption from the payment of user fees for the crew members on duty on an arriving aircraft; we would make the same exemption for crew members on duty aboard an arriving cruise ship. Similarly, the current regulations provide that airlines will not be charged reimbursable overtime for passenger inspection services required for any aircraft on which a passenger arrived who has paid the international passenger AQI user fee for that flight. We would provide the same limitation on overtime charges for cruise lines.

Treatments. Treatments are performed on some agricultural goods as a condition of entry, and others are performed when an actionable pest (i.e., a plant pest that should not be allowed to be introduced into or disseminated within the United States) is detected during a port-of-entry inspection. The objective of these AQI treatments is to ensure that agricultural goods and commodities entering the United States are free from viable plant pests and noxious weeds that would pose a risk to the health of the U.S. domestic agriculture and natural resources. Treatment methods include fumigation, cold treatment, irradiation, and heat treatment. APHIS activities related to the application of AQI treatments include personnel determining the appropriate treatment schedule, monitoring the treatment to ensure it is conducted as specified so that the treatment takes place in the prescribed manner, and determining whether the treatment was successful. These AQI services focus on ensuring the effectiveness of a given treatment regardless of its methodology. While AQI treatments are usually provided by private entities who charge the importer for their services, from time to time APHIS will provide the treatment, especially for propagative materials. We also develop new methods of treatments. These methods increase the effectiveness of treating agricultural goods and reduce the risk of dangerous pests entering the United States. No fees are currently collected for this activity.

Based on our analysis of the costs (projected at approximately \$15 million to \$15.8 million in FYs 2014 to 2016, as noted in table 5 above) and the relative ease of collection when the treatment is ordered, we are proposing a \$375 fee for each treatment. The AQI treatment fee is designed to recover the costs of APHIS services for monitoring the treatment to ensure it is conducted as specified so that the treatment takes place in the prescribed manner and determining whether the treatment was successful. Should a treatment prove unsuccessful and have to be reapplied, that subsequent AQI treatment would also be subject to an AQI treatment fee, as APHIS incurs costs by providing AQI treatment-related services regardless of the success or failure of the treatment. Similarly, if there was a particularly large consignment that had to be treated in two or more lots, each lot would be subject to an AQI treatment fee. Finally, along those lines, if there were two or more small consignments from different importers that required the same treatment and could be combined and treated together at the same time, there would be only one AQI treatment fee charged, with each importer being responsible for a share of that fee.

The provisions for the payment of AQI user fees for conducting and monitoring treatments would be added to § 354.3 as a new paragraph (h). Most treatment services are provided by private companies that charge importers a fee for their services. Because those companies are already invoicing the importers whose consignments are being treated, we are proposing that the treatment companies would also collect the AQI user fee and subsequently remit the fee to APHIS. This is the same model used for the collection of the AQI user fees for international airline passengers and that we are proposing to use for cruise ship passengers. In those instances where APHIS itself performs the treatment, we would collect the fee directly from the importer for whom the treatment is being provided.

## Other Fees Considered

APHIS considered, but is not proposing at this time, fees for the following AQI services:

- Rail passenger: No fees are currently collected for this category of passenger. Because the total cost is less than \$2 million, and there would be additional cost of creating and operating fee collections, we are not proposing any fees for this category of passenger.
- Bus passenger: No fees are currently collected for this category of passenger, even though annual costs are over \$25 million for this service. We considered proposing a new bus passenger fee, but recognized that this would require establishing the infrastructure and process for bus companies to collect and remit the fees since CBP does not have a comparable fee. In addition, the barriers for entry into the bus passenger industry are much lower compared to air and cruise vessel industries. As a result, there are more bus companies entering and exiting the industry, which would make fee collection and monitoring difficult. However, we intend to gather additional information to determine if there are other ways to collect this fee in the future, which would be addressed through a future rulemaking.
- POV passenger: No fees are currently collected for this category of passenger, even though annual costs are over \$160 million. The high cost of creating and operating fee collections, and considerations about potential backups of POVs at the ports of entry, led us to recommend that POV passengers continue to not be subject to an AQI user fee.

- Pedestrians: No fees are currently collected for the inspection of pedestrians arriving in the United States, even though the annual costs are over \$38 million for this service. The high cost of creating and operating fee collections and considerations about potential backups of pedestrians at the ports of entry led us to recommend that arriving pedestrians continue to not be subject to an AQI user fee at this time.
- Private aircraft: No fees are currently collected for the inspection of private aircraft and their passengers. The cost of less than \$13 million, and the additional cost of creating and operating fee collections, led us to recommend that private aircraft and their passengers continue to not be subject to an AQI user fee.
- Private maritime vessel: No fees are currently collected for the inspection of private maritime vessels and their passengers. The cost of less than \$6 million, and the additional cost of creating and operating fee collections, led us to recommend that private maritime vessel passengers continue to not be subject to an AQI user fee.
- Commodity import permit: No fee is currently charged for commodity import permits. We considered establishing a separate fee, but concerns about the impact on importers and relationships with trading partners led us to not propose this fee.
- Pest import permit: No fee is currently charged for pest import permits. We considered establishing a separate fee, but we did not want to discourage the

research associated with pest import permits because this research benefits United States agriculture and ecosystem overall.

Accordingly, the costs of these AQI services will continue to be covered through appropriated funding.

#### Periodic Updates to User Fees

The Department is seeking public comment on the frequency and methodology for updating the AQI user fees. Currently there is no established schedule for updating the fees, which has led to long gaps between updates and substantial increases in fees when updates are made. The Department is particularly interested in comments on whether fees should be updated more frequently, e.g., every 2 years, and whether the updates should be made through a rulemaking or some other means such as a notice-based process that provides an opportunity for public comment. We are also interested in comments regarding the possibility of phasing in the updated fees when there may be an economic hardship due to factors such as substantial increases due to long gaps between updates or, as in the case with this proposed rule, a comprehensive review to determine the current cost of specific AQI services indicates that the AQI program is not recovering the full cost of its fee services.

#### Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

We have prepared a regulatory impact analysis (RIA) for this rule. The RIA provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The RIA also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The RIA is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS is proposing to amend the user fee regulations by adding new fee categories and adjusting current fees charged for certain agricultural quarantine and inspection (AQI) services. We are also proposing to alter or remove certain fee caps. We have determined that revised user fee categories and revised user fees are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

AQI fees are mandated to be cost-based and paid by the users of the AQI services to ensure that recipients bear the costs of the services instead of the American taxpayer. In our RIA, benefits and costs of the proposed changes to the AQI user fee schedule are evaluated in accordance with Executive Orders 12866 and 13563. Expected effects for small entities are evaluated as required by the Regulatory Flexibility Act.

AQI services benefit U.S. agricultural and natural resources by protecting them from the inadvertent introduction of foreign pests and diseases that may enter the country and the threat of intentional introduction of pests or pathogens as a means of agroterrorism. Failure to adjust these fees to account for full cost recovery, particularly in the present fiscal climate, has the

potential to cause a decrease in AQI services provided. Efforts would be made to address the greatest risk and minimize, to the extent allowed by available resources, significant negative impact on U.S. industries.

The proposed changes in user fees would more closely align, by class, the cost of AQI services provided and user fee revenue received. The proposed fee schedule would better reflect the costs of AQI services provided commercial vessels, commercial trucks, commercial railcars, commercial aircraft, and international air passengers arriving at U.S. ports; newly include fees for additional classes of recipients of AQI services; remove user fee caps for commercial vessels and commercial railcars; and increase the fee cap for commercial trucks. Fee caps refer to limits on the number of times a fee must be paid for a specific truck (with transponder), vessel, or railcar in a calendar year. The current and proposed AQI user fee rates are shown in table 8.

Table 8. Current and proposed AQI user fee rates (dollars)

User Fee Class	Current	Proposed
Air passenger	\$5	\$4
Commercial aircraft	70.75	225
Commercial cargo vessel	496	825
Commercial truck	5.25	8
Commercial truck with transponder (one)	105	320
Commercial cargo railcar	7.75	2
Sea passenger	no fee	2
Treatment	no fee	375

APHIS used activity-based costing to determine the proposed rate adjustments for classes that currently pay user fees and the proposed rates for newly charged classes. The two classes that would be newly charged user fees under the proposed rule are international sea (cruise) passengers and recipients of AQI treatment services. Currently, the cost of AQI services received by these entities is borne by other user fee classes and/or taxpayers through appropriated funding. Elimination of the user fee caps for commercial railcars and commercial

vessels would more closely align the user fee revenue received with the cost of providing AQI services for rail and vessel cargo. We propose to retain the cap for commercial trucks because of the increased efficiency gained through the use of transponders at border inspections. The cap for commercial trucks would be increased, however, and these businesses would pay in fees a larger share of the cost of the AQI services they receive.

Under the proposed fee structure, it is expected that AQI user fee revenue for fiscal year (FY) 2014 would be about \$700.1 million, as compared to about \$573.1 million under the current fee schedule, an increase of \$127 million (table 9), of which \$94.5 million is due to the change in fees and fee structure and \$32.5 million is due to workload changes as valued at the proposed fee rates. Reliance on appropriated funds to finance certain AQI services is expected to be reduced by \$46.8 million, assuming that the total cost of AQI services, \$948.9 million, would be the same with or without adoption of the proposed fee schedule, since the level of AQI services provided would not change with the fee collections under the proposed rule available to APHIS and CBP. A projected AQI program deficit of \$54.5 million under the current fee schedule would not be incurred. Net revenue of the AQI program under the proposed fee schedule is expected to total about \$25.7 million, which would be used to maintain the AQI program's reserve fund. The reserve fund ensures that AQI program operations can continue without interruption when service volumes fluctuate due to economic conditions or other circumstances and CBP and APHIS are able to adjust their activity to account for the changed economic conditions.

Table 9. Expected AQI user fee revenue, appropriated AQI funding under the current and proposed user fee schedules, and cost of AQI services, FY 2014 (million dollars)

	Current Fee Schedule	Proposed Fee Schedule	Change
AQI revenue			
User fees	\$573.1	\$700.1	\$127.0
Appropriated funding	321.3	274.5	-46.8
AQI total revenue	894.4	974.6	80.2
AQI total cost	948.9	948.9	0
AQI revenue minus cost	-54.5	25.7	80.2

Tables showing similar expected AQI revenue effects of the proposed fee schedule for FYs 2015-2017 are presented in the body of the RIA. Respectively for these 3 years, in comparison to projections under the current fee schedule, AQI user fee revenue is expected to be larger by \$130.7 million, \$134.5 million, and \$138.4 million; appropriated funding of AQI services is expected to be smaller by \$37.6 million, \$78.2 million, and \$78.6 million; and net revenue of \$39.0 million, \$39.1 million, and \$60.3 million is expected to be available to maintain the AQI reserve fund.<sup>1</sup>

APHIS considered a number of alternatives for revising the AQI user fees. Some of the alternatives, such as increasing all current fees by the same percentage, were rejected because they clearly would not meet the objective of making the fees paid by users in the various fee classes more commensurate with the costs of the AQI services provided for each class. Other alternatives were rejected because the transaction costs of creating and operating fee collection systems for certain classes, such as bus passengers, private vehicles, and pedestrians, would be overly burdensome.

APHIS then focused on three remaining alternatives composed of different combinations of paying classes. The first or preferred alternative is the proposed rule, with user fee classes as

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<sup>1</sup> All values in the RIA are nominal, that is, they include projected inflation.

shown in table 8. The second alternative differs from the first by not including user fees for recipients of AQI treatment services. Under the third alternative, recipients of commodity import permits and pest import permits would pay user fees, in addition to the classes that would pay fees under the proposed rule.

Under all three alternatives, international sea (cruise) passengers would pay a user fee for services they receive that are currently funded by other AQI service recipients and/or through appropriated funding. In addition, the preferred alternative would newly include payment of fees by users of AQI treatment services. Under alternative 2, the cost of providing AQI treatment services would continue to be covered by user fees paid by other classes. For this reason, Alternative 2 was rejected because AQI costs and revenues would be less commensurable by class than under the preferred alternative.

Alternative 3 would include user fees for recipients of commodity import permits and pest import permits, classes not charged fees under the preferred alternative. In these instances, APHIS found that there are overriding concerns. Charging a user fee for commodity import permits could be counterproductive in terms of our relations with trading partners; negative reactions by other countries could potentially affect U.S. export markets. Pest import permits are normally requested for research purposes. Charging a fee for pest import permits, which activity-based costing indicates would need to be set at more than \$2,000, could have the unintended consequence of discouraging research that directly benefits U.S. agriculture. For these reasons, APHIS decided against the selection of alternative 3.

In table 10, we compare the cumulative expected revenue changes over 4 years for the alternatives. In all cases, the baseline for comparison is continuation of the current AQI user fee schedule. AQI services performed and the cost of providing those services would be the same

under each alternative. All three alternatives would ensure that the costs of providing AQI services are covered and the reserve fund is maintained. Relative to the other alternatives, the preferred alternative would result in the smallest increase in user fee receipts and, less noteworthy, the largest decrease in appropriated funding.

Table 10. Changes in expected AQI user fee revenue, appropriated AQI funding, and net revenue under the three alternative user fee schedules, summed over FYs 2014-2017 (million dollars)

Expected change in:	Preferred Alternative (proposed rule)	Alternative 2	Alternative 3
FYs 2014-2017			
AQI revenue			
User fees	\$530.6	\$570.2	\$584.7
Appropriated funding	-241.2	-236.5	-236.5
AQI total revenue	289.5	333.7	348.3
AQI total cost	0	0	0
AQI revenue minus cost	289.5	333.7	348.3

Note: Columns may not sum due to rounding.

Economic effects under each of the three alternatives would derive from the increase or reduction in costs borne by affected importers and international passengers because of the changes in AQI user fees and concurrent reduced reliance on appropriated funding of AQI user fees. Impacts would depend on the magnitude of the changes, and for importers, on the ability of suppliers to pass along or absorb the costs, and for inbound international passengers, on the ability of airlines and vessels to do likewise. In theory, higher user fees increase the cost of imports and the supplier may have incentive to send fewer goods to the United States or international passengers may have less incentive to travel to the United States. Lower user fees, in theory, create the opposite incentives.

The proposed changes in user fees are very small in comparison to the overall value of the commodities imported or the price of an international ticket, and therefore are expected to have negligible impact on imports or the number of international passengers. Estimated changes

in user fee revenue relative to the output of the affected sectors represent, in total, a decline of about two-hundredths of one percent, and range from a decline of about six-thousandths of one percent in the trucking industry to a decline of about one-tenth of one percent in the airline industry.<sup>2</sup> We cannot determine what would be the effect of the projected reductions in appropriated funding of AQI services, but observe that the reductions may counterbalance the negligible impacts of the user fee increases to some extent.

Output and employment impacts for FY 2014 under the three alternatives, shown in table 11, were modeled for APHIS by a contracted consultancy. The model results indicate that U.S. output and employment would decline under all three alternatives, with the smallest declines expected under the preferred alternative. Modeled output and employment effects for FYs 2015-2017, as well as output effects by class for FY 2014, are similarly shown in the body of the RIA. We expect the economic effects of the proposed user fee revisions for several of the classes, if they occur at all, to be extremely small.

Table 11. Modeled short-run direct effects for U.S. output and employment of the three AQI user fee alternatives, FY 2014

	Change in output (million dollars)	Change in employment (jobs)
Preferred alternative (proposed rule)	-\$94	-1,090
Alternative 2	-122	-1,301
Alternative 3	-126	-1,400

The fee increases themselves and the newly charged fees for cruise passengers and for monitoring and conducting treatments are not costs to the economy as a whole, but rather transfer payments. Transfer payments are monetary payments from one group to another that do

<sup>2</sup> Short-run impacts of the proposed fee changes are estimated to represent the following percentage changes from current output, by affected industry: trucking industry, -0.006 percent; rail industry, 0.035 percent; vessel cargo industry, -0.005 percent; cruise ship industry, 0.003 percent; and air cargo and passenger industry, -0.102 percent.

not affect total resources available to society. While individual importers or passengers may experience financial burden from an increase in user fees (or relief when a fee is reduced), the AQI services are already being provided and therefore they are already counted as government costs. A fee rate adjustment to support full cost recovery is consistent with the intent of the relevant statutes and regulations.

The increase in user fee funding of AQI services and closer alignment, by class, of user fee revenues and costs would be the principal outcomes of the proposed rule. For the 4 years FYs 2014-2017, user fee funding of AQI services under the proposed rule is projected to be \$530.6 million more and appropriated funding of AQI services is projected to be \$241.2 million less than would occur with continuation of the current fee schedule.

Increased reliance on user fee funding means that APHIS would more fully meet its statutory mandate to prescribe and collect cost-based fees for providing AQI services, including maintaining a reasonable reserve. It also means that appropriated funds that would be used to pay for AQI services under the existing user fee schedule may be available for other Federal uses. We are unable to determine how those appropriated funds that would no longer be used to pay for AQI services under the proposed rule may be otherwise used. We expect that the proposed increase in user fee funding and the decrease in appropriated funding would have small distributional effects that may be largely offsetting.

Firms most likely to be impacted by this rule are transportation businesses within the truck, rail, sea, and air cargo sectors that import goods into the United States. While the Small Business Administration has set guidelines for the definition of small businesses within each of those sectors, the size data do not distinguish between transportation firms that operate internationally and those firms that only operate within the United States. However, the effects

of the proposed rule on firms within the transportation sector are expected to be limited, regardless of firm size. In addition, at least some portion of increased user fees may be passed on to consumers.

We invite public comment on the proposed rule, including comments on the expected impacts for small entities and how the proposed rule may be modified to reduce the burden for small entities consistent with the rule's objectives. Any comment suggesting changes to the proposed rule should be accompanied by supporting evidence and an explanation of why the changes should be considered and supporting evidence.

#### Executive Order 12988

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

#### Paperwork Reduction Act

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

#### List of Subjects in 7 CFR Part 354

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

Accordingly, we are proposing to amend 7 CFR part 354 as follows:

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

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

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

2. Section 354.3 is amended as follows:

a. By revising the tables in paragraphs (b)(1), (c)(1), (d)(1), and (e)(1).

b. In paragraph (b)(1), by removing the words “, not to exceed 15 payments in a calendar year (i.e. , no additional fee will be charged for a 16th or subsequent arrival in a calendar year),”.

c. In paragraph (c)(3)(i), by removing the words “20 times” and adding the words “40 times” in their place.

d. By revising paragraphs (f)(1), (f)(2)(i), (f)(8), and adding paragraph (h).

The revisions and additions read as follows:

§ 354.3 User fees for certain international services.

\* \* \* \* \*

(b) Fee for inspection of commercial vessels of 100 net tons or more. (1) \* \* \*

Effective dates	Amount
Beginning [effective date of final rule]	\$825

\* \* \* \* \*

(c) Fee for inspection of commercial trucks. (1) \* \* \*

Effective dates	Amount
Beginning [effective date of final rule]	\$8

\* \* \* \* \*

(d) Fee for inspection of commercial railroad cars. (1) \* \* \*

Effective dates	Amount
Beginning [ <u>effective date of final rule</u> ]	\$2

\* \* \* \* \*

(e) Fee for inspection of commercial aircraft. (1) \* \* \*

Effective dates	Amount
Beginning [ <u>effective date of final rule</u> ]	\$225

\* \* \* \* \*

(f) Fee for inspection of international passengers. (1) Except as specified in paragraph (f)(2) of this section, each passenger aboard a commercial aircraft or cruise ship who is subject to inspection under part 330 of this chapter or 9 CFR, chapter I, subchapter D, upon arrival from a place outside of the customs territory of the United States, must pay an AQI user fee. The AQI user fee for each arrival is shown in the following table:

Effective dates <sup>1</sup>	Passenger type	Amount
Beginning [ <u>effective date of final rule</u> ]	Commercial aircraft	\$4
Beginning [ <u>effective date of final rule</u> ]	Cruise ship	2

<sup>1</sup>Persons who issue international airline and cruise line tickets or travel documents are responsible for collecting the AQI international airline passenger user fee and the international cruise ship passenger user fee from ticket purchasers. Issuers must collect the fee applicable at the time tickets are sold. In the event that ticket sellers do not collect the AQI user fee when tickets are sold, the air carrier or cruise line must collect the user fee that is applicable at the time of departure from the passenger upon departure.

(2) \* \* \*

(i) Crew members who are on duty aboard a cruise ship;

\* \* \* \* \*

(8) Limitation on charges. Airlines and cruise lines will not be charged reimbursable overtime for passenger inspection services required for any aircraft or cruise ship on which a passenger arrived who has paid the international passenger AQI user fee for that flight or cruise.

\* \* \* \* \*

(h) Fee for conducting and monitoring treatments. (1) Each importer of a consignment of articles that require treatment upon arrival from a place outside of the customs territory of the United States, either as a preassigned condition of entry or as a remedial measure ordered following the inspection of the consignment, must pay an AQI user fee. The AQI user fee is charged on a per-treatment basis, i.e., if two or more consignments are treated together, only a single fee will be charged, and if a single consignment is split or must be retreated, a fee will be charged for each separate treatment conducted. The AQI user fee for each treatment is shown in the following table:

Effective dates	Amount
Beginning [ <u>effective date of final rule</u> ]	\$375

(2) Treatment provider. (i) Private entities that provide AQI treatment services to importers are responsible for collecting the AQI treatment user fee from the importer for whom the service is provided. Treatment providers must collect the AQI treatment fee applicable at the time the treatment is applied.

(ii) When AQI treatment services are provided by APHIS, APHIS will collect the AQI treatment fee applicable at the time the treatment is applied from the person receiving the services. Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to “The Animal and Plant Health Inspection Service.”

(3) Collection of fees. (i) In cases where APHIS is not providing the AQI treatment and collecting the associated fee, AQI user fees collected from importers pursuant to paragraph (h) of this section shall be held in trust for the United States by the person collecting such fees, by any person holding such fees, or by the person who is ultimately responsible for remittance of such fees to APHIS. AQI user fees collected from importers shall be accounted for separately and shall be regarded as trust funds held by the person possessing such fees as agents, for the beneficial interest of the United States. All such user fees held by any person shall be property in which the person holds only a possessory interest and not an equitable interest. As compensation for collecting, handling, and remitting the AQI treatment user fees, the person holding such user fees shall be entitled to any interest or other investment return earned on the user fees between the time of collection and the time the user fees are due to be remitted to APHIS under this section. Nothing in this section shall affect APHIS' right to collect interest from the person holding such user fees for late remittance.

(4) Remittance and statement procedures. (i) The treatment provider that collects the AQI treatment user fee must remit the fee to [address to be added in final rule].

(ii) AQI treatment user fees must be remitted to [address to be added in final rule] for receipt no later than 31 days after the close of the calendar quarter in which the AQI user fees were collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3717).

(iii) The remitter must mail with the remittance a written statement to [address to be added in final rule]. The statement must include the following information:

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

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

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

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

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Done in Washington, DC, this 21<sup>st</sup> day of April 2014.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.

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