



## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

[Docket No. APHIS-2022-0023]

RIN 0579-AE71

### User Fees for Agricultural Quarantine and Inspection Services

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the user fee regulations associated with the agricultural quarantine and inspection (AQI) program. Specifically, we are adjusting the fees for certain AQI 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 or precleared or preinspected at a site outside the customs territory of the United States; adjusting the caps on prepaid fees associated with commercial trucks and commercial railroad cars; and removing certain fee exemptions that are no longer justifiable based upon pathway analyses of risk. We are also revising requirements pertaining to remittances and statements. Specifically, we will require monthly rather than quarterly remittances for the commercial aircraft fee, international air passenger fee, and international cruise passenger fee, clarify our requirements, and provide for electronic payments and statements. We are also including in the regulations information on agents responsible for ensuring compliance with paying the user fees and the requirement for entities to notify the Animal and Plant Health Inspection Service in the event they have a change in personnel responsible for fee payments. These changes are necessary to recover the costs of the current level of AQI activity, to account for actual and projected increases in the cost of doing business,

to increase fee payer accountability, and to more accurately align fees with the costs associated with each fee service.

**DATES:** This rule is effective October 1, 2024, except for the removal of section § 354.3(e)(2)(iv), which is effective on April 1, 2025.

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## 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 prescribe and collect user fees for agricultural quarantine and inspection (AQI) services. Congress amended the FACT Act on April 4, 1996, and May 13, 2002.

The FACT Act, as amended, authorizes APHIS to prescribe and collect user fees for AQI services provided in connection with the arrival, at a port in the customs territory of the United States, of certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers. According to the FACT Act, as amended, these user fees should be “sufficient” “to cover the cost of”:

- Providing AQI services “in connection with the arrival at a port in the customs territory of the United States” of the conveyances and the passengers listed above;
- Providing “preclearance or preinspection at a site outside the customs territory of the United States” to the conveyances and the passengers listed above; and
- Administering 21 U.S.C. 136a, concerning the “collection of fees for inspection services.”

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

- The amount of the fees shall be “commensurate with the costs of [AQI] services with respect to the class of persons or entities paying the fees.”
- The cost of AQI services “with respect to passengers as a class” shall “include the cost of related inspections of the aircraft or other vehicle.”

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

On August 11, 2023, we published in the *Federal Register* (88 FR 54796-54827, Docket No. APHIS-2022-0023) a proposal<sup>1</sup> to amend the user fee regulations by adjusting the fees for certain AQI 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; adjusting the caps on prepaid fees associated with commercial trucks and commercial railroad cars; removing certain fee exemptions that are no longer justifiable based upon pathway analyses of risk; and restructuring the treatment monitoring fee.

We also proposed to revise requirements pertaining to remittances and statements. Specifically, we proposed to require monthly rather than quarterly remittances for the commercial aircraft fee, international air passenger fee, and international cruise passenger fee, clarify our requirements, and provide for electronic payments and statements. We also proposed to include in the regulations information on agents responsible for ensuring compliance with paying the user fees and the requirement for entities to notify APHIS in the event they have a change in personnel responsible for fee payments.

We proposed these changes to recover the costs of the current level of AQI activity, to account for actual and projected increases in the cost of doing business, to increase fee payer accountability, and to more accurately align fees with the costs associated with each fee service.

We solicited comments concerning our proposal for 60 days ending October 10, 2023. We received 70 comments by that date. They were from airlines, shipping companies, treatment providers, industry associations, and private citizens. Eighteen commenters generally supported

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<sup>1</sup> To view the proposed rule, supporting documents, and the comments we received, go to [www.regulations.gov](http://www.regulations.gov). Enter APHIS-2022-0023 in the Search field.

the proposed rule, while 15 generally opposed it. The remaining commenters, while commenting on the provisions of the proposed rule, did not articulate a position in favor or against it. The comments are discussed below by topic.

Based on the comments that we received, we have made the following modifications to the proposed rule in this final rule:

- We have lowered the fees for commercial vessels, commercial aircraft, and international air passengers based on our determination that, while aggregate cost was correct (the numerator for the fee rate), there were more instances in which AQI services were provided in these modes (the denominator for the fee rate) than we had initially calculated.
- We have established a commercial vessel fee specific to commercial vessels operating within the Great Lakes or in the region along the coastline from Alaska to Oregon, provided that certain conditions are met.
- We have decided not to revise our regulations governing the treatment monitoring fee at this time.
- We have decided not to specify the method by which airlines and cruise ships must refund passenger user fees assessed for trips not taken.

#### General Issues

Several commenters who supported the proposed rule agreed with the proposed rule that additional personnel were needed at ports of entry to reduce workload on individual employees. One of these commenters stated that port personnel at certain ports of entry currently routinely must work overtime to conduct inspections.

As we stated in the proposed rule, the increased fees will provide for additional staffing at ports of entry.

One of these commenters also said that APHIS' regulations governing reimbursable overtime also needed to be updated.

Changes to APHIS' regulations governing reimbursable overtime are outside of the scope of this rulemaking. However, we do note that our user fee model did consider staffing at ports in order to address the staffing shortages highlighted by the commenter and reduce the need for individual employees to work overtime to conduct inspections. We discuss the staffing model at greater length below.

Several commenters, while supportive of the proposed rule, took the view that the regulations imposed a protective tariff on imports. Similarly, several other commenters stated that they were domestic producers who supported the proposal and construed the regulations as a mechanism to reduce import volume.

User fees are not tariffs, nor are they intended as a mechanism to reduce import volume. Although the AQI user fees pertain to international trade, user fees are a cost-recovery mechanism employed more broadly than just in the international trade context. They are a fee that a party charges to an entity receiving a service in order to recover the costs associated with providing the service. User fees are often imposed by a government, but not always. For example, a toll collected on a privately owned toll road would fit the definition of a user fee. As we highlighted in the preamble of the proposed rule (88 FR 54799, August 11, 2023), user fees are currently used throughout the Federal Government to recover the costs of many Federal services, both international and domestic.

Several domestic producers stated that the services funded by the fees are necessary in order to keep plant pests, noxious weeds, and pests and diseases of livestock from being introduced into or further disseminated within the United States. We agree. AQI services are essential to protect American agriculture and natural resources from the introduction or further dissemination of plant pests, noxious weeds, and pests and diseases of livestock. Furthermore, as we mentioned in the proposed rule, programs to control or eradicate pests once they become established in the United States can be costly for the Agency to administer.

One commenter construed the proposed rule to include a notice-based process by which the fees would be adjusted after October 1, 2028. We did not propose to establish a notice-based process to adjust the fees in the proposed rule. We did state in the proposed rule that we intend to initiate a separate rulemaking to propose notice-based adjustments to the fees to be implemented after October 1, 2028.

One commenter stated that the exact language of paragraph (a)(1)(A) of the FACT Act provides authority to recover the cost of AQI services provided to “an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car,” while our proposed rule stated that it provided authority to recover the cost of services provided to commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers. The commenter argued that the word “international” in the FACT Act could be read to apply to all the commercial means of conveyance listed, and not just passengers.

Insofar as the services are provided to the listed means of conveyance that are entering the United States from outside the United States, the services are provided to the listed means of conveyance that are operating “internationally” in the standard dictionary definition of that term. (Merriam-Webster’s online dictionary, for example, defines “international” to mean, among other things, “of, relating to, or affecting two or more nations.”)<sup>2</sup> Accordingly, whether or not the term “international” in the FACT Act is read restrictively to refer solely to passengers or more generally to apply to both passengers and the listed means of conveyance does not change the approach in this final rule.

The same commenter stated that inspection of animals, animal products, plants, and plant products that enter the United States from Canada may violate trade agreements between the two countries. The commenter did not specify which trade agreements it considered to be violated.

APHIS is unaware of any trade agreement that precludes either the United States or Canada from conducting sanitary or phytosanitary inspection and quarantine services. To the

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<sup>2</sup> <https://www.merriam-webster.com/dictionary/international>.

contrary, the U.S.-Mexico-Canada Agreement, or USMCA, allows for inspection of imported commodities among the three nations.

Several commenters stated that our proposed implementation date of January 1, 2024, would be difficult or impossible for their businesses to absorb, and requested more time to allow for adequate budget planning and adjustment of contracts with customers. Two commenters suggested that, regardless of what fiscal year is chosen for implementation, the implementation date should be within the June to November timeframe to minimize disruption to service contracts for that year.

Because the publication of this final rule occurred after January 1, 2024, we have elected to set October 1, 2024, as our implementation date. In the proposed rule, this was the date that the second phase of the increased fees was scheduled to take effect. The October 1 date corresponds to the beginning of APHIS' fiscal year (FY), and it occurs within the June to November timeframe requested by the commenters. In general, on October 1, 2024, we will revise the fees to set them at the level specified in the proposed rule beginning on that date. That is, for most fee classes, we are starting at phase 2 of the proposed fees, but otherwise finalizing them as proposed. However, for reasons discussed below, the user fees for commercial vessels, commercial aircraft, international air passengers, and treatment monitoring will differ from those proposed.

The same commenters who asked that the implementation date be within the June to November time frame asked for at least a 1-year delay in the implementation of this rulemaking to allow for budget planning.

As noted in the proposed rule, the AQI program ran an average deficit of over \$166 million annually for FY 2017 through FY 2019. During the COVID-19 pandemic, decreased international travel further exacerbated these deficits, and the program had to rely on emergency appropriated supplemental funds to cover program costs. Even in a post-pandemic environment, current revenue projections indicate that the fees must be raised by the outset of FY 2025 to

avoid possible disruptions to program delivery due to insufficient funds. Due to these exigencies, we cannot delay the implementation of the new fees for such a prolonged period. We note, however, that we have elected to have a later effective date of April 1, 2025, for the removal of a provision exempting commercial aircraft with 64 or fewer seats meeting certain conditions from paying the user fee for their mode of conveyance. We have determined that this later effective date can be implemented without disruption to program delivery.

Two commenters stated that the fee increases should be phased in over a 5-to-10-year period.

We note that we are phasing in the fee increases; the final fee increase will occur more than 4 years after the issuance of this final rule. A more prolonged phase-in schedule would adversely impact cost recovery and is not feasible to sustain program operations.

Commenters stated that the proposed increases are not warranted in the current inflation/recession prone environment and associated impacts to industry.

The fee increases are necessary to help achieve full cost recovery for the AQI services provided to the parties subject to the fees. AQI user fee-funded activities operated at a substantial deficit before the COVID-19 pandemic, and the pandemic exacerbated this deficit to the extent that emergency supplemental appropriations were needed to cover program costs. Moreover, APHIS notes that the AQI program is subject to the same inflationary pressures as other sectors of the economy. Costs associated with AQI personnel compensation and benefits, equipment and materials, rents, leases, utilities, contracts, and other direct and indirect costs have all increased since APHIS last adjusted the AQI user fees in December 2015. Since December 2015, the consumer price index for all urban consumers has increased over 30 percent,<sup>3</sup> and the AQI program is unsustainable at the current fee rates. Finally, we note that a commenter, a small business owner, indicated that businesses routinely factor the impact of compliance with Federal,

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<sup>3</sup> The CPI Inflation Calculator is available on the Bureau of Labor Statistics website at <https://www.bls.gov/>.

State, and local laws and regulations into their business models, and take into account changes in compliance costs. The commenter's contention that this is a common business practice was supported by several commenters who represented regulated entities and indicated they would need to adjust billing and contracts depending on the implementation date of a final rule.

Several commenters stated that instead of raising user fees, APHIS should find alternate funding sources (for example, appropriated funds) for AQI activities.

As we explained in the proposed rule, the FACT Act of 1990 was passed by Congress and signed by the President for the express purpose of the AQI program becoming self-funding through the prescription and collection of user fees. While emergency appropriated supplemental funds were provided during the COVID-19 pandemic to mitigate low balances in the accounts, Congress indicated in the appropriations bills that they were to address pandemic-related exigencies, and we cannot depend on appropriations to cover the cost of AQI activities on a routine and ongoing basis.

Many commenters asked accounting questions relating to how the fees were developed. We will address specific comments below by topic. In general, these questions are answered in the APHIS AQI cost model data that was cited in the proposed rule and made available on the APHIS website at: <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>. This data was comprehensive; for example, the FY 2017 commercial aircraft rollup report contains over 190,000 lines of highly detailed cost data. To that end, we also provided a dedicated AQI cost model video instructing the public on how to properly read the data; these video instructions were also available at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>. APHIS also referenced the data in stakeholder webinars conducted during the comment period; information about the dates and subjects of these webinars is available on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-userfee-proposed-rule-webinars> as are links to recordings of the webinars.

The data availability and link also were provided via stakeholder announcement and, as previously mentioned, further explained via a dedicated AQI cost model video and corresponding stakeholder announcement. APHIS web analytics showed an increase in AQI cost model data web traffic following each of the above engagements.

Several commenters stated that APHIS should have discussed any cost-cutting measures we had identified or considered in addition to the proposed fee increases.

To address the current challenges, the AQI program has implemented ways to increase efficiency. These efficiencies reduced AQI program costs, and these cost savings were realized in the FY 2017 through FY 2019 period. As a result, the cost data that APHIS used to develop the AQI user fee rates in this rulemaking, and which serve as the “baseline,” include these program cost savings. The most significant way we have increased inspection efficiency is by using Risk Based Sampling (RBS). RBS is an advanced statistical approach that adapts to increase inspection rates of higher risk products and reduce inspection rates of proven lower risk products. Table 1 below shows the time savings for our trade and U.S. Customs and Border Protection (CBP) inspectors across all monitored pathways, without compromising agriculture safeguarding efforts. APHIS and CBP redirect this saved time to intensive activities with greater phytosanitary risk, such as physical inspections and regulated garbage monitoring.

Table 1: Estimated RBS Time Savings

Commodity	Trade	CBP
Celery	26%	23%
Avocado	93%	77%
Broccoli	58%	52%
Date	38%	34%
Papaya	85%	73%
Mushroom	85%	81%
Carrot	88%	76%
Overall	77%	67%

The AQI program has identified other ways to increase efficiency in recent years. For example, CBP, through various initiatives, has increased its targeting efficiency rates to approximately 63 percent. In doing so, CBP deployed new approaches that significantly improved their ability to identify and inspect non-compliant material compared to random selection. APHIS and CBP have also facilitated more timely clearance of agricultural cargo by improving our processes to grant authority to inspectors and pest identifiers to make regulatory decisions at ports, rather than by national specialists in other locations. We also implemented advanced digital imaging to expedite pest identifications that in the past would have required physically shipping specimens, shaving days off of the pest identification process.

APHIS also increased its electronic capacity to process cargo. Of all the government agencies that set import requirements, APHIS had the greatest number of forms and documents required to clear cargo. APHIS joined CBP's Automated Commercial Environment single window initiative, making it easier for importers to electronically provide information critical for AQI clearance prior to importation, reducing expense and clearance time. Additionally, we have structured regulatory requirements into an advanced database, and automated permit issuance to reduce the processing time for most Plants and Plant Products permits from 5 to 7 days to 1 day or less. APHIS eFile issues up to 85 percent of the Plants and Plant Products permits to applicants in less than 1 minute.

Program and process efficiencies are just one aspect of the AQI program's efforts to become more effective and efficient at a lower cost. Personnel compensation and benefits are the single largest cost in the AQI program, and so effective use of personnel time is essential to keep costs down without compromising the mission. CBP found that their Agriculture Specialists were increasingly spending time on administrative activities, taking them away from core inspection and regulatory functions. To address this, CBP piloted using technicians (full performance level GS-08) to free Agriculture Specialists (full performance level GS-12) to spend more time on inspection-related activities. CBP's staffing and workload analysis found that

adding one technician frees up 1.49 CBP Agriculture Specialists. The 731 Technicians in CBP's staffing plan free up the equivalent of 1,089 Agriculture Specialists, resulting in a cost savings of nearly \$81 million per year.

Despite these efforts to increase efficiencies, anticipated AQI operational costs would far surpass AQI anticipated revenue unless the fees are raised in the manner specified in this final rule.

A commenter stated that APHIS should provide greater transparency for capital costs. The commenter expressed concerns over what was included in the capital costs, the allocation of those costs, and capital costs associated with non-AQI programs. The commenter stated that the proposed rule should have explained how capital costs were factored into fee calculations.

We disagree with the commenter. As we explained in the proposed rule, there is no reserve component in the fee rates in this proposed rule. Rather, the fee rates in the proposed rule were set at levels intended only to result in fee collections that cover the cost of providing agricultural quarantine and inspection services and the costs of administering the program, and personnel and capital planning cost components have been added to the cost model.<sup>4</sup> Adding these cost components to the model ensures that the program can be fully staffed in future years and ensures that future-looking capital costs can be offset as they are actualized, without recourse to use of a general-purpose reserve to pay for these costs. In the AQI cost model that accompanied the proposed rule, we included capital costs in the cost model at level 26 for APHIS and level 27 for CBP, all cost objects with an identification code starting with "26" or "27" are planned capital spending costs. Likewise, we note that an overall summary of planned capital spending costs could also be found in the supporting document at <https://www.regulations.gov/document/APHIS-2022-0023-0035> that was made available during

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<sup>4</sup> The programmatic need and legal basis for the application of fees to capital costs was discussed in further detail in the proposed rule, the relevant sections of which the agency incorporates by reference here. See 88 FR 54797-98, 54800-801.

the comment period. As an additional measure, APHIS has included the planned capital expenditure costs in a series of summary tables in this document.

Capital costs include items such as facility design, development and maintenance costs; new information technology and equipment costs, and AQI program outreach expansion and improvement costs. The AQI Program's top 10 capital projects are:

1. Design and construct two new plant inspection stations;
2. Design and construct a new multi-function laboratory and containment facility;
3. Upgrades and updates to the eFile system;
4. Beltsville facility infrastructure improvements;
5. Design and construct new plant pathogen diagnostic methods lab;
6. Design and construct new national plant germplasm greenhouse;
7. Design and construct new identification laboratory;
8. New Preclearance and Offshore Programs IT System;
9. Engage in an outreach campaign, Clean Clears Quicker, to emphasize the importance of regulatory compliance; and
10. Establish Federal oversight of the existing Don't Pack A Pest outreach campaign.

APHIS has treated capital costs as an overhead cost and allocated capital costs according to frontline Full Time Equivalent (FTE) hours because any capital projects would support the AQI program proportionately to frontline AQI FTEs. With respect to shared facilities, that is, facilities which house or support both AQI and non-AQI functions – the planned capital costs in the AQI activity-based cost model only include those costs attributable to the AQI program. Moreover, a portion of those costs are allocated to non-fee areas. Non-fee areas are those AQI activities for which there is no fee. The largest non-fee areas are privately owned vehicle (POV) and POV passenger clearance, and pedestrians. The AQI program allocates costs to non-fee areas for the express purpose of ensuring that the payers of AQI user fees do not pay for the costs associated with non-fee areas. Rollup reports associated with non-fee areas are available to the

public on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports> alongside the rollup reports for the fee areas. CBP's appropriation covers CBP's costs associated with AQI activities in non-fee areas. The rest are covered by trust funds that we have entered into pursuant to regulations issued under authority of the Plant Protection Act (7 U.S.C. 7711 *et seq.*), such as those in 7 CFR 319.37-22 for plants for planting and those in 7 CFR 319.56-6 for fruits and vegetables, or are part of other APHIS programs and appropriations and are not included in costs factored into the AQI User Fees.

We note, additionally, that the commenter assumed that the AQI program is fully funded and staffed currently, which is not the case.

A commenter stated that they worked with CBP personnel who were underused at a port of entry, and questioned whether additional CBP staffing was warranted in light of their experience. While not directly challenging the validity of this claim, several other commenters asserted that, at other ports of entry, throughput is substantial and CBP employees often work overtime to ensure timely delivery of services. One commenter stated that some ports of entry only currently employ a single inspector to conduct AQI inspections.

Our data does not support the commenter's anecdotal experience that CBP personnel are underused. CBP's staffing models, which are addressed at greater length directly below, evaluated workload and throughputs at ports of entry throughout the United States. CBP's staffing models underscore that many ports of entry have workload demands that currently exceed regular FTE hours.

Several commenters noted that a significant amount of each fee would go to staffing. The commenters stated that it was not clear from the proposed rule how the additional staffing levels needed were arrived at, and how they would be used in providing AQI services.

Additional staffing costs were included in the AQI cost model at level 35 and level 451 for APHIS and level 452 for CBP; all cost objects with an identification code starting with "35"

or “45” are additional staffing costs. We summarized CBP’s additional staffing requirements by fee area in table 1 of the proposed rule, which we have reproduced as table 2 below.

Table 2. CBP Staffing

CBP FTEs			
Pathway/Conveyance	Total FTEs as of FY 2019	Additional FTEs Required	Total Projected FY 2028 FTE
Air Passengers	1,324	341	1,665
Commercial Aircraft	819	438	1,257
Commercial Vessel	356	247	603
Commercial Truck	155	258	413
Commercial Rail	33	74	107
Cruise Vessel Passenger	22	6	28
Other (Non-Fee Areas)	362	70	432
Totals	3,071	1,434	4,505

CBP uses two statistical workload models to determine AQI staffing needs by environment. The Agriculture Specialist Resource Allocation Model<sup>5</sup> (AgRAM) calculates staffing needs for CBP Agriculture Specialists, and the Mission Operations Support Resource Allocation Model (MOSRAM) calculates the staffing needs for support positions such as CBP Agriculture Technicians and other support positions.

CBP’s staffing models calculated additional personnel needs based on estimated throughput as calculated in light of actual workload, in order to ensure that bottlenecks do not occur in port operations. APHIS summarized its additional personnel needs by fee area in table 2 of the proposed rule, which we have reproduced as table 3 below. The bulk of additional APHIS personnel are field positions, including botany, entomology and plant pathology identifiers, veterinary medical officers, and plant health safeguarding specialists. Increased frontline staffing also requires additional support staff to accommodate additional workload in

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<sup>5</sup> This model is described in the document “Agriculture Resource Optimization: Fiscal Year 2020 Report to Congress” available on CBP’s website at [https://www.dhs.gov/sites/default/files/publications/cbp\\_-\\_agriculture\\_resource\\_optimization\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/cbp_-_agriculture_resource_optimization_0.pdf).

areas such as human resources, financial management, and employee training. Finally, some additional policy and operational personnel will also be needed to accommodate the additional throughput. Our data in tables 2 and 3 account for these factors.

Table 3. APHIS Staffing

APHIS FTEs			
Pathway/Conveyance	Total FTEs as of FY 2019	Additional FTEs Required	Total Projected FY 2028 FTE
Commercial Aircraft	392	200	592
Commercial Vessel	208	91	299
Air Passengers	193	93	286
Commercial Truck	153	62	215
Treatments	57	55	112
Commercial Rail	34	14	48
Cruise Vessel Passenger	6	4	10
Other (AQI Non-Fee Areas)	43	25	68
Totals	1,086	544	1,630

A commenter noted that the proposed rule was based on cost data from FY 2017 through FY 2019 and asked how budget shortfalls or surpluses in FY 2013 through FY 2016 and FY 2020 through FY 2022 may have impacted the setting of the AQI user fees.

APHIS does not set AQI user fees based upon prior year shortfalls or surpluses. Under an activity-based costing methodology, APHIS uses actual program costs per fiscal year plus anticipated costs for capital planning and additional staffing allocated to each fee and non-fee area, then takes the total costs in each fee area and divides that total cost by the number of projected units (a unit being a commercial vessel, commercial truck, commercial railroad car, commercial aircraft, an international air or cruise passenger, or a treatment). The unit costs for 3 consecutive fiscal years are adjusted for inflation to today's dollars (in this rulemaking, June 2022), and then these adjusted unit costs are averaged. Finally, APHIS adjusted the average unit cost (that is, June 2022 dollars) for projected inflation, (that is, future dollars) for FY 2025

through FY 2028.<sup>6</sup> As we explained above, non-fee areas are those AQI activities for which there is no fee. The largest non-fee areas are privately owned vehicle (POV) and POV passenger clearance, and pedestrians. The AQI program allocates costs to non-fee areas for the express purpose of ensuring that the payers of AQI user fees do not pay for the costs associated with non-fee areas. Rollup reports associated with non-fee areas are available to the public on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports> alongside the rollup reports for the fee areas. CBP's appropriation covers most of the costs associated with non-fee areas.

The same commenter stated that it appeared that cost data from FY 2014 through FY 2016 and FY 2020 through FY 2022 had a role in the proposed fees, although it was difficult to discern exactly to what degree.

APHIS did not use cost data from FY 2014 through FY 2016 for the proposed rule because we had newer cost data on which to rely. APHIS also did not use cost data for FY 2020 through FY 2022 because, as we suggested in the proposed rule, these fiscal years were not a period of normal operations.

A commenter stated that the proposed fees did not appear to follow the inflation rate since the fees were last updated. The commenter stated that, were the fees calculated in such a manner, they would be significantly lower than proposed.

The fees were not calculated solely by applying intervening inflation. APHIS used actual cost data for FY 2017 through FY 2019 by user class, future costs for planned capital expenditures, and additional staffing, and divided that by the number of users per fiscal year to arrive at a unit cost. We then adjusted those unit costs to June 2022 dollars, averaged the unit costs across the 3 fiscal years, and finally adjusted that average unit cost for projected inflation. We made comprehensive rollup reports for the cost components of each fee available as

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<sup>6</sup> See the document titled "Projected Fees for Agricultural Quarantine Inspections, FY 2024-2028" which we made available with the proposed rule at <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

supplemental documents for the proposed rule. The reports are available on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>. In addition, we have included summary tables for each fee area below as a quick visual reference regarding fee development.

A commenter stated that all AQI user fees should be capped.

Capping all AQI user fees would undermine full cost recovery, one of the aims of the FACT Act. As we indicated in the proposed rule, while we cap fees for two AQI modes, prepaid commercial railroad cars and prepaid commercial truck crossings (transponder), this is due to their unique operational exigencies. For example, we pointed out that in the absence of a commercial truck transponder, CBP personnel would have to collect the fee at border crossings 11 million times annually, which is operationally untenable.

Several commenters suggested that APHIS should tier user fees based on the sanitary and phytosanitary risk presented by different modes of conveyance (e.g., commercial aircraft versus commercial vessel) or different conveyance types within that mode (e.g., containerized ship versus non-containerized ship).

APHIS' current user fee structure does charge different fees based on the mode of conveyance. This is done to preclude cross-subsidization, and to ensure that the fees correlate to the AQI services that each mode receives.

We generally do not consider it possible to tier fees within a mode of conveyance. This is because it is not usually possible to assign a particular level of sanitary and phytosanitary risk, and corresponding AQI services, to a conveyance type that is unique to the type. To use an example within the commercial vessel mode, while agricultural cargo is often carried in containerized ships, certain types of agricultural cargo, such as citrus, bananas, and pineapples, are routinely shipped in break bulk shipments, in which the individual boxes are placed within a commercial vessel's cargo hull, rather than in containers. In both instances, CBP personnel need to offload and inspect the cargo for plant pests, noxious weeds, and overall compliance with

APHIS' regulations. Likewise, a containerized ship may carry cargo with a low sanitary and phytosanitary risk during one shipment, and a higher sanitary and phytosanitary risk in a later shipment. The climates of different ports of export can be unique, and a vessel departing from one port of export during a particular shipment may face exposure risks to hitchhiking pests that it does not experience when departing from a different port. For a similar reason, the route chosen and the time of year during which the shipment takes place may also contribute to exposure risks.

In instances in which we have determined that the level of sanitary and phytosanitary risk is such that AQI services are not warranted for a particular conveyance type, we can and do exempt certain conveyance types from our user fees. For example, while we charge commercial railroad cars a user fee, the regulations have exempted and will continue to exempt locomotives and cabooses from the railroad car fee. Likewise, we do not charge a commercial vessel fee for vessels of less than 100 net tons.

Finally, we do note that CBP's staffing model accounts for sanitary and phytosanitary risk, so ports of entry that routinely inspect means of conveyance and cargo with a high phytosanitary and sanitary risk are assigned more personnel than ports of entry that do not.

Several commenters suggested that APHIS could establish different user fee tiers for methods of conveyance that carry agricultural cargo versus those that do not; while other commenters suggested a base fee, plus additional fees for extended service based on cargo carried.

The current method by which APHIS calculates the AQI user fees, in which aggregate costs of providing AQI services are divided by number of instances in which those services are provided, generally does not currently allow for such a distinction between conveyances carrying agricultural cargo and those that do not carry agricultural cargo. To that end, we note that sanitary and phytosanitary inspections are not only conducted of the cargo carried by a method of conveyance, but also the method of conveyance itself. We also note that non-agricultural

cargo may present sanitary and phytosanitary risks; for example, gypsy moth (*Lymantria dispar*, also known commonly as spongy moth) is known to infest stone and quarry products.

As noted above, cargo is not the sole factor contributing to the sanitary and phytosanitary risk associated with a particular means of conveyance, and the AQI services required for that means of conveyance. Port of export, route, and time of year of the shipment may also all contribute to increased risk and extend the AQI services required. As a result, if we were to establish a base fee, with additional surcharges based on cargo carried, this would not take all these risk factors into consideration.

A commenter suggested that fees should be tiered based on handling volume at a particular port of entry.

The commenter provided no information regarding why handling volume, that is, the number of instances in which AQI services were provided at the port, should be considered indicative of the level of AQI services provided to individual arrivals and would provide a better basis for setting fees than the basis articulated in the proposed rule. A single, huge container shipment of cargo that has a significant sanitary or phytosanitary risk may take as long to inspect, if not longer, as several smaller shipments of low-risk cargo. We also note that variances throughout the year in handling volume at particular ports would require the fee rate to be dynamic, which would lead to unpredictability in terms of what fee would be assessed from arrival to arrival, as well as concomitant unpredictability in APHIS and CBP's revenue stream. It also could lead to staffing and resource allocation issues at ports of entry, particularly if owners and operators began to seek out ports with the lowest current fee.

A commenter asked how APHIS will monitor expenditures to ensure the increased fees are used appropriately.

APHIS employs multiple safeguards to ensure user fee funds are used appropriately. For example, from an operational perspective, APHIS maintains all AQI fees we collect in distinct accounts, carefully monitors the balances in these accounts, and only uses these funds to pay for

our actual costs for providing these distinct services. In addition, APHIS will continue to maintain, evaluate, and ensure that our internal controls, which include our expenditure-related accounts and processes, are operating properly and in compliance with Office of Management and Budget (OMB) Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control requirements. Examples of APHIS internal controls include verifications, reconciliations, authorizations and approvals, and supervisory control activities. APHIS also complies with Federal audit requirements which include audit of expenditure-related processes and accounts under the Chief Financial Officers Act of 1990 (CFO Act) (Pub. L. No. 101-576), as amended, the Government Management Reform Act of 1994 (GMRA) (Pub. L. No. 103-356), as amended, and the Federal Financial Management Improvement Act of 1996 (FFMIA) (Pub. L. No. 104-208, title VIII), as amended.

A commenter stated that APHIS should amend the regulations to assess a penalty on airlines and cruise lines that is equivalent to the amount airlines and cruise lines have failed to lawfully remit to passengers.

APHIS has no statutory authority to assess such penalties, nor is this request within the scope of this rulemaking.

One commenter asked how airline passengers can assess that their fee was appropriately set by APHIS when they are greeted and inspected not by APHIS, but by CBP.

The Homeland Security Act of 2002 created the Department of Homeland Security and transferred the function for AQI clearance of international passengers and certain other AQI functions from APHIS to CBP.<sup>7</sup> CBP Officers review passenger manifests, passenger documentation and interview arriving international passengers. CBP Officers also refer passengers of interest to the AQI program to CBP Agriculture Specialists who are funded by AQI user fees for secondary inspection. As stated previously, rollup reports from the activity-based cost model are available for public review on the APHIS website at

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<sup>7</sup> 6 U.S.C. 231.

<https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>. For example, there are over 92,000 lines of highly detailed cost data in the FY 2017 international air passenger rollup report.

Finally, several commenters requested that APHIS extend the comment period for the proposed rule.

One of these commenters posed a series of questions that, the commenter asserted, APHIS needed to respond to for the public to provide informed comments on the proposed rule. These included questions about whether there were budget shortfalls or surpluses in the years 2013-2016 and 2020-2022, if such shortfalls or surpluses were factored into the cost-benefit analysis for the rulemaking, and whether adjustments for inflation would have resulted in shortfalls or surpluses in the years 2016 to the present. The commenter also asked why the aircraft fee is increasing if the number of aircraft arrivals has not changed and if there was a breakdown of how APHIS estimated the costs of capital costs and staffing and how capital costs were allocated in airport or non-airport environments.

We disagree with the commenter that APHIS' responses to the commenter's questions were necessary to evaluate the merits of the proposed rule. APHIS provided all information necessary to evaluate the proposed rule to the public in the proposed rule itself and its supporting documentation. This included, for example, documentation regarding how the fee model was selected and why it was appropriate, the cost components that led to the proposed fees using that model, the rationale for revising particular fee caps, and the basis for our proposed removal of exemptions. We note that, between September 12, 2023, and September 18, 2023, APHIS hosted webinars for the industries affected by the rulemaking. During the webinars, we allowed for a question-and-answer period. We also recorded the webinars and made them publicly available on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-userfee-proposed-rule-webinars>. During the webinar for

the commercial aircraft fee, which the commenter attended, we responded to each of the commenter's questions.

Two commenters who requested extension of the comment period stated that APHIS provided no information regarding how the fees were calculated.

We made comprehensive rollup reports for the cost components of each fee available as supplemental documents for the proposed rule. They were and are available on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>.

One commenter who requested extension of the comment period stated that APHIS provided no indication of how the fees would be used.

We disagree. The proposed rule discussed at length the direct and indirect costs associated with providing the AQI services funded by the user fees.

#### Economic Comments

Commenters raised several issues concerning the Regulatory Impact Analysis that accompanied the proposed rule. These are addressed in the final Regulatory Impact Analysis that accompanies this final rule.

#### Revisions to Regulatory Definitions

We proposed to revise some existing definitions and to add new ones to § 354.3(a). Specifically, we proposed to amend the definitions for *commercial railroad car* and *commercial truck*; to replace the definition of *Customs* with one for a definition for *Customs and Border Protection (CBP)*; and to add definitions for the terms *passenger*, *reconditioning*, and *restacking*. We received no comments on these revisions and additions and will adopt most of them accordingly. However, as discussed below, we have decided not to finalize proposed revisions to our AQI treatment monitoring fee that would have, among other things, charged parties for restacking and reconditioning services provided in connection with AQI treatment services. Because the terms *restacking* and *reconditioning* will not appear in the regulations as a result of

this decision, there is no longer a need to define these terms and we have not done so in this final rule.

Additionally, for reasons that we discuss below under the section heading “Commercial Vessels,” we are adding two definitions to the regulations in this final rule, for the terms *Great Lakes* and *Cascadia*. The revisions to the commercial vessel fee described below removed the term *barge* from the regulations; as a result, we no longer need a regulatory definition for the term and are removing it accordingly.

#### Commercial Vessels

The AQI program inspects, with some exceptions, commercial vessels of 100 net tons or more arriving at ports of entry into the customs territory of the United States. AQI user fees for inspection of commercial vessels are listed in § 354.3(b)(1). We proposed to increase the user fee per arrival.

We also proposed to eliminate the exemption for barges from Canada; the exemption is currently found in § 354.3(b)(2)(vi). As discussed in the pathway analysis that accompanied the proposed rule, we determined that barges entering the United States from Canada pose a phytosanitary risk similar to barges entering the United States from origins other than Canada and to other types of vessels entering from Canada. Barges from origins other than Canada and other types of vessels from Canada are not exempt from AQI user fees. Other vessels from Canada are required to pay user fees even when travelling the same routes and carrying the same cargo as exempt barges.

Finally, we proposed that the commercial vessel fee would also not apply to commercial cruise (passenger) vessels that carry passengers paying the international passenger fees under § 354.3(f), because the cost of inspecting the entirety of the vessel is included in the international cruise passenger fee. That broad proposed exemption would replace the existing limited exemption in § 354.3(b)(2)(i) for certain foreign passenger vessels. In this respect, the treatment

of commercial vessels is distinct from that of international aircraft carrying passengers, which are not exempt from the commercial aircraft user fee.

We received 28 comments on these proposed changes to the commercial vessel fee. All the commenters were generally opposed to the proposed changes.

Most commenters noted that we proposed to increase the commercial vessel fee from the current fee of \$825 to \$3,557.18 in 2028, which was a higher percent increase than any other fee.

Several of the commenters stated that they would support the fee if it was correlated to service received. The commenters asserted that the fees appeared higher than the level of AQI services they received at ports of entry.

As we discussed in the proposed rule, our revised cost model for the proposed fees was based on aggregate full-time equivalent (FTE) hours spent providing services, such as inspections, for a particular user fee class.

Similarly, a commenter suggested that APHIS should begin to analyze FTE hours worked by vessel type and revise the commercial vessel fee based on these findings before issuing a final rule to revise the commercial vessel fee.

As we noted above, vessel type is not necessarily a reliable indicator of the level of effort needed to provide AQI services. Cargo, port of departure, route, time of the year in which the shipment occurs, and port of arrival all play a contributing role to determining the sanitary and phytosanitary risk associated with the vessel and the commensurate level of services warranted. Because these can vary significantly from shipment to shipment, if we were to conduct such an assessment, it would be difficult to extrapolate generalized, defensible conclusions about different vessel types from our current data set, which is limited to aggregate hours worked providing AQI services for the commercial vessel user fee class as a whole and number of instances of providing those services. Our current data is therefore insufficiently granular to observe those variances. Moreover, as we mentioned in the proposed rule, cargo from commercial vessels is routinely offloaded into a joint holding area, and inspected en masse. We

mention this in order to underscore that the assessment requested by the commenter would need to be conducted *de novo*, and cannot be extracted from the existing data used to calculate the fee rates, and that it would require a fundamental reorientation in the manner in which cargo inspections are conducted. It is impracticable to conduct such an assessment at this time, particularly in light of resource constraints (as noted above, overtime is common at some ports of entry just to meet core inspection functions) and the economic exigencies facing the AQI program. To execute the sort of assessment requested by the commenter, we would need to hire additional port-specific analytical and billing support, which requires raising the fees to support the additional personnel.

One commenter stated that, based on data that the commenter obtained, APHIS had appeared to undercount the number of arrivals of commercial vessels. The commenter requested that APHIS use a data set from CBP that they considered to be more accurate in terms of characterizing arrivals.

APHIS used the same CBP data set as the commenter to calculate the commercial vessel fee. In reviewing the commenter's concerns, however, we realized that coastwise arrivals had been inadvertently filtered out of the data set. Coastwise arrivals refer to arrivals of the same vessel at a different port of entry, for which AQI services are provided; for example, a commercial vessel offloading cargo at the port of Philadelphia, then subsequently offloading at the port of Wilmington, Delaware, would be making coastwise arrivals. CBP's vessel arrival fee is set out in their regulations at 19 CFR 24.22(b). That fee is collected from vessels of 100 net tons or more for each arrival regardless of the number of arrivals taking place in the course of a single voyage, with a cap currently set at \$5,955 per calendar year. Because AQI services are provided at each port of entry, an AQI user fee is charged for each coastwise arrival, though we do not have a cap on those fees. APHIS charges AQI user fees for each arrival because a sizable component of the fees is the inspection of the cargo, usually after it has been offloaded and is in a joint inspection area. Some vessels offload large volumes of cargo at multiple ports-of-entry

during a single voyage. If the AQI vessel fee were charged on first arrival only, we would need to increase the fee even more to recover costs. We charge at each arrival to be more equitable to single port-of-entry arrivals versus multiple port-of-entry arrival voyages.

Accordingly, the proposed user fees should have been calculated by including coastwise arrivals within total arrivals. Total program costs, however, were accurate. When these costs are divided by the updated arrivals (including coastwise arrivals), the user fee is correspondingly lower; the numerator (costs) has not changed while the denominator (number of arrivals) has. Accordingly, in this final rule, the commercial vessel fee has been lowered as shown in table 4 below.

Table 4: Commercial Vessel Fee

FY 2025	FY 2026	FY 2027	FY 2028
\$2,903.73	\$2,981.17	\$3,059.61	\$3,139.06

This discovery led APHIS to evaluate all other data sets in the proposed rule to ensure that all instances in which the fee had been assessed were accurate. We discovered that, for two other proposed fee increases, those for commercial aircraft and those for international air passengers, filtering had also occurred to remove inspections that occur during preclearance. We discuss this below, in the relevant sections of the preamble for those fees.

Several commenters opposed the fee increase because it would have a disproportionate impact on vessels that are not ultra large container vessels.<sup>8</sup>

We acknowledge that the fees may often have a greater impact on smaller vessels than larger vessels, but we disagree that smaller vessels merit a lower fee just because they are smaller. Furthermore, we disagree that the existence of smaller vessels did not factor into the fee calculation. The commenters often stated as an assumption that ultra large container vessels necessitate more intensive AQI services than commercial vessels that are not ultra large container vessels. While this is sometimes the case, size of vessel is not the sole determinant of

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<sup>8</sup> See the graph for Container Ship Fleet Categories at <https://agtransport.usda.gov/stories/s/Ocean-Container-Fleet-Dashboard/pjaw-nxa9>.

the level of AQI services warranted for a particular vessel. As we noted above, cargo, port of departure, route, time of the year in which the shipment occurs, and port of arrival all play a contributing role to determining the sanitary and phytosanitary risk associated with the vessel and the commensurate level of services warranted. APHIS also notes that the rise of ultra large container vessels was not the sole factor contributing to this fee increase. The change in cost allocation methodology from number of arrivals to FTE hours was also a significant factor. As discussed above, APHIS develops fees using the average unit cost across 3 fiscal years. In the case of the commercial vessel fee, the unit cost is the arrival of a vessel in foreign trade, including coastwise arrivals, during a single voyage. The arrivals of vessels in foreign trade that were not ultra large container vessels brought this average cost per arrival down to the rates in this final rule. If APHIS had based the new vessel fee rates exclusively on ultra large container vessel arrivals, the commercial vessel fee would have been considerably higher.

Summary tables 5 and 6 for commercial vessel fee calculation below show that APHIS used actual cost data for FY 2017 through FY 2019 for commercial vessels, future costs for planned capital expenditures, and additional staffing, divided by number of users per fiscal year to arrive at a unit cost. We then adjusted those unit costs to June 2022 dollars, averaged the unit costs across the 3 fiscal years, and finally adjusted that average unit cost for projected inflation. The discussion of fee rates relative to other costs of doing business was to illustrate relative economic impact of the fee, and not to serve as the basis for fee development.

We included the summary tables to be used as a quick reference regarding fee development. For more comprehensive cost data information please see the full rollup reports from the APHIS AQI activity-based cost model. As we explained above, these questions are answered in the APHIS AQI cost model data that was cited in the proposed rule and made available on the APHIS website at: <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>.

For October 1, 2024, October 1, 2025, October 1, 2026, fee rates, APHIS subtracted the January 1, 2024 rate from the October 1, 2027 rate, and divided by 4. This amount became the per phase increase. The per phase increase was then added to the previous phase amount until reaching the October 1, 2027 rate.

Table 5: AQI Commercial Vessel Fee Calculation – January 1, 2024 Phase Development (\$2,827.29 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs	-	-	208
Total APHIS AQI Program Cost (Level 501)	\$62,107,626.02	\$47,594,065.97	\$43,940,334.81
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$10,224,343.40	\$7,989,045.86	\$7,049,512.01
APHIS Additional Staffing Future Costs (Levels 35 and 451)	\$0.00	\$0.00	\$0.00
CBP AQI FTEs	-	-	356
Total CBP AQI Program Cost (Level 502)	\$100,832,988.90	\$100,046,141.73	\$107,973,913.16
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$1,175,843.82	\$840,341.95	\$647,978.82
CBP Additional Staffing Future Costs (Level 452)	\$0.00	\$0.00	\$0.00
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$162,940,614.92	\$147,640,207.69	\$151,914,247.96
Number of Commercial Vessels	61,417	63,521	61,745
Calculated Unit Cost (Total AQI Costs divided by Number of Commercial Vessels)	\$2,653.02	\$2,324.27	\$2,460.35
Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$2,984.65	\$2,567.35	\$2,672.55
Average of Unit Costs in June 2022 dollars (fee basis)	\$2,741.52	-	-
Inflation Projected to FY 2024 dollars	\$2,827.29	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

Table 6: AQI Commercial Vessel Fee Calculation – October 1, 2027 Phase Development (\$3,139.06 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs + Additional FTEs required by FY 2028	-	-	299
Total APHIS AQI Program Cost (Level 501)	\$60,364,906.55	\$60,565,653.83	\$64,170,544.01
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$6,914,630.65	\$7,023,455.57	\$7,207,822.32
APHIS Additional Staffing Future Costs (Levels 35 and 451) included above	\$4,924,381.32	\$5,063,832.52	\$5,217,115.69
CBP AQI FTEs	-	-	603
Total CBP AQI Program Cost (Level 502)	\$93,959,909.17	\$97,907,047.01	\$107,864,763.34
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$765,983.90	\$776,039.26	\$786,094.63
CBP Additional Staffing Future Costs (Level 452) included above	\$13,378,307.63	\$13,553,929.83	\$13,729,552.04
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$154,324,815.72	\$158,472,700.84	\$172,035,307.35
Number of Commercial Vessels	61,417	63,521	61,745
Calculated Unit Cost (Total AQI Costs divided by Number of Commercial Vessels)	\$2,512.74	\$2,494.81	\$2,786.22
Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$2,826.83	\$2,755.72	\$3,026.57
Average of Unit Costs in June 2022 dollars (fee basis)	\$2,869.70	-	-
Inflation Projected to FY 2028 dollars	\$3,139.06	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

Notwithstanding the above discussion, we have determined that certain commercial vessels that operate within the Great Lakes, or in the region along the coastline between Alaska and Oregon, are uniquely situated and have created a new commercial vessel fee that is lower than that for other commercial vessels. This will provide a degree of regulatory relief for such

vessels that is also aligned with the sanitary and phytosanitary risk that the vessels present. We discuss these changes below.

Several commenters stated that they operated barges or other shipping vessels within the Great Lakes, or in the region along the coastline between Alaska and Oregon. The commenters stated that they were uniquely situated and that assumptions that APHIS articulated in the proposed rule about the commercial vessel industry as a whole did not apply to them. While we stated in the proposed rule that total cargo capacity of the global fleet expanded by more than 63 percent from 2011 through 2020, the commenters stated that their vessels had not increased in size. In fact, vessel operators within the Great Lakes stated that the average size of vessels operating within the Great Lakes had not increased since the 1970s. Similarly, we stated in the proposed rule that far fewer vessels had arrived internationally from 2011 through 2020 than APHIS had predicted, but the commenters stated that their average number of arrivals per year had remained relatively constant. Further, we stated in the proposed rule that individual vessels now took much longer to inspect than they previously had, but the commenters stated that they had experienced no significant increase in the amount of time inspections took.

Several commenters stated that visual inspection of their vessels was often brief, and a few barge operators stated that CBP had never boarded their vessels. Several commenters also questioned whether the proposed fees significantly exceeded the level of AQI services provided to vessels within the Great Lakes and in the region along the coastline between Alaska and Oregon. Two commenters stated that, at face value, the fee levels appeared to be set significantly above the level of inspection services currently provided, which would be inconsistent with the FACT Act. Several operators stated that they seldom, if ever, carried agricultural cargo. Finally, the commenters stated that, because they operated solely within distinct geographical areas between the United States and Canada, they pose little to no phytosanitary risk. (As discussed in this document, the geographic area covered by the port of departure, the route, and the port of arrival all do contribute to the risk profile associated with a

particular commercial vessel. However, they are not the sole factors; for example, the cargo carried may itself present a sanitary or phytosanitary risk.) To that end, several commenters stated that Great Lakes vessels often are too large to fit through the St. Lawrence seaway lock system and cannot leave the Great Lakes; one commenter stated that, even if they could leave the Great Lakes, many Great Lakes vessels are not certified by the United States Coast Guard to enter the ocean.

Commenters proposed multiple options to address these stated differences. One option proposed was to entirely exempt vessels operating within the Great Lakes or in the region along the coastline between Alaska and Oregon from the commercial vessel fee. This exemption would apply to all vessels operating within the regions, including container vessels, break bulk vessels, barges, and all other commercial vessels. A second option proposed was to retain the current exemption for certain Canadian barges. A third option proposed was to apply the fee only to vessels carrying agricultural cargo, and to exempt commercial vessels that did not carry agricultural cargo. A fourth option proposed was to retain the existing commercial vessel fee for vessels operating within the Great Lakes or in the region along the coastline between Alaska and Oregon, provided that the vessels were not currently exempt from paying the fee (e.g., barges), but to add an additional per-container surcharge or otherwise scale it in accordance with ship size. Finally, a fifth option proposed was to retain the existing fee, but to adjust it for intervening inflation. The commenters who provided the fifth option stated that the cost to inspect commercial vessels operating within the Great Lakes or in the region along the coastline between Alaska and Oregon should not have increased above the rate of inflation since the previous fees were put in place.

After reviewing the comments and available information, including data from CBP and the U.S. Army Corps of Engineers, as well as information maintained by the shipping industry in the regions themselves, we agree that the vessels operating within the Great Lakes, or in the region along the coastline between Alaska and Oregon, merit additional consideration. The

commenters presented information that they operate in a distinct geographical area that they seldom depart from, and sometimes are not physically able to leave. They also presented information indicating that their departures and arrivals are often more frequent than those of other commercial vessels, and publicly available information indicates that the vessels often take the same or substantially similar routes per shipment and sometimes carry the same or substantially similar cargo per shipment. Based on the risk factors identified above, the risk from these vessels is often, although not always, more well defined. The port of departure, route, and port of arrival are often the same or substantially similar: Many vessels are running out and back trips across the Great Lakes or along the coastline between Alaska and Oregon, sometimes multiple times a week.

However, as we discuss below, we would not say that these vessels are always less risky. Cargo can be a significant risk factor. For example, several areas in Canada are quarantined for European cherry fruit fly. Cherries from such areas could present a phytosanitary risk and vessels carrying such cargo would likewise present a risk. For this reason, we disagree with the first option that proposed to exempt all such vessels entirely from the commercial vessel fee. We currently inspect the vessels for possible sanitary and phytosanitary risks, and such vessels can carry cargo with significant risks. This is true even if the cargo is not agricultural cargo; as noted above, gypsy moth or spongy moth (*Lymantria dispar*) is known to infest stone and quarry products, so quarry products from an area of Canada that is infested with the moth do present a phytosanitary risk. For this reason, the third option also is not viable, because vessels that do not carry agricultural cargo may still merit AQI inspections.

Insofar as barge operators did not provide verifiable, supporting information that they only carry cargo with no sanitary or phytosanitary risk, and do not merit inspection of the vessel itself, and in light of our aim to achieve full cost recovery, we have decided not to retain the barge exemption, the second option proposed by commenters.

We also disagree with the fourth option to assess a per container surcharge; among other things, this option would incentivize the use of break bulk vessels, which do not carry containers, to carry agricultural products between Canada and the United States, because the vessels would be subject to a lower user fee. Because of their agricultural cargo, however, these vessels would still need an equivalent rate of phytosanitary inspection. Accordingly, over time, we consider it likely that this incentivization would compromise full cost recovery.

For a similar reason, we also cannot scale the fee based solely on ship size; a smaller ship containing break bulk agricultural products may pose a higher phytosanitary risk and thus require more intensive inspection services than a larger container ship containing no agricultural products or known host material for plant pests and noxious weeds. (That being said, as we mentioned previously in this document, commercial vessels of less than 100 net tons have been, and will continue to be, exempt from the commercial vessel fee. This is true regardless of whether they originate from Canada or any other foreign country.)

We see merit in the fifth option, however. The commenters presented significant information suggesting that the commercial vessel fee, as proposed, may not be appropriate for or commensurate with the level of AQI services provided to them. This option would allow APHIS to account for the differences stated by the commenters, and allow APHIS to further assess the appropriate fee in a future rulemaking. In so doing, it would effectively keep the current fee for such vessels, with an allowance, adjustment for inflation, that the commenters suggested and that we agree is appropriate.

However, we do not think this solution can be applied unilaterally to all arrivals within the Great Lakes or in the region along the coastline between Alaska and Oregon, particularly if the vessel carries cargo that may present a significant sanitary or phytosanitary risk.

Accordingly, in this final rule, we are pursuing the fifth option, with appropriate modifications to address the foregoing considerations. Commercial vessels traveling solely between the United States and Canada and either within the Great Lakes or along the coastline

between Alaska and Oregon (which we are terming “Cascadia” out of recognition of the Cascadian bioregion in which the coastline is located) would be assessed the following fee, provided that certain conditions, set forth below, are met: \$837.51 in FY 2025, \$850.03 in FY 2026, \$862.54 in FY 2027, and \$875.06 in FY 2028.

To qualify for the lower fee rate, a vessel must meet the following requirements:

- Is not carrying cargo originating from countries other than the United States or Canada.
- Is not carrying plants or plant products.
- Is not carrying animals or animal products.
- Is not carrying soil or quarry products from areas in Canada listed in 7 CFR 319.77-3 as being infested with gypsy moth. That section of the regulations governs the importation of gypsy moth host material.
- Is not carrying wood packaging material as defined under 7 CFR 319.40-1. In this section of the regulations, “wood packaging material” is defined as “Wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity (includes dunnage).”

All the above types of cargo may present a sanitary or phytosanitary risk, and, in instances in which a vessel carries such cargo, the level of AQI services provided to address this possible risk would merit the full commercial vessel fee.

To clarify to which vessels the reduced fee could apply, in this final rule, we are adding definitions for *Great Lakes* and *Cascadia* to the regulations. We have also prepared maps depicting the Great Lakes and Cascadia regions and are making them available as supporting documents with this final rule.

We are defining *Great Lakes* as “the Great Lakes of North America and the waters of the St. Lawrence River west of a rhumb line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along 63° W. longitude from Anticosti Island to the north shore of the

St. Lawrence River.” This is consistent with the U.S. Coast Guard definition of the region in their regulations found in 46 CFR 42.05-40.

We are defining *Cascadia* as “British Columbia and those ports of entry into the United States lying south of 59° 26' 59.316" N, north of 43° 23' 34.152" N, west of 122° 20' 31.2" W, and east of 135° 20' 2.4" W.” CBP’s regulations in 19 CFR 101.3 designate United States ports of entry, and the following ports of entry fall within the area we are defining as Cascadia:

- Alaska – Juneau;
- Alaska – Ketchikan;
- Alaska – Sitka;
- Alaska – Skagway;
- Alaska – Wrangell;
- Washington – Aberdeen;
- Washington – Anacortes (Puget Sound);
- Washington – Friday Harbor (Puget Sound);
- Washington – Longview;
- Washington – Port Angeles (Puget Sound);
- Washington – Seattle (Puget Sound);
- Washington – Tacoma (Puget Sound);
- Oregon – Astoria;
- Oregon – Coos Bay;
- Oregon – Newport; and
- Oregon – Portland.

Two commenters stated that they operated container vessels between New Jersey and Bermuda, with the majority of arrivals into the United States being unloaded containers that previously contained cargo. The commenters requested a lower fee for their vessels and similarly situated operators.

The commenters did not provide sufficient information to characterize their operation as uniquely situated or similarly situated to the Great Lakes and Cascadian vessels described above. To cite a few examples, it was not clear whether the containers ever contained agricultural cargo, and, if so, whether the empty containers were cleared of all agricultural debris before return to the United States. The commenters also did not mention whether the routes were direct, and what route was used. Based on the absence of information necessary to evaluate the commenter's claims, we cannot make the determination that a lower vessel fee is appropriate for the commenters operating container vessels between New Jersey and Bermuda. APHIS is, however, open to receiving additional information on this topic and would consider proposing a revision in the future.

Finally, one commenter encouraged APHIS to explore means for electronic remittance of the commercial vessel fee.

CBP collects the commercial vessel fee on APHIS' behalf and offers electronic remittance through its eCBP portal ([e.cbp.dhs.gov](http://e.cbp.dhs.gov)) and its Mobile Receipts and Collections (MCR) solution ([cbp.gov/trade/priority-issues/revenue/revenue-modernization/automation-368-and-1002-receipts/mcr-faq](http://cbp.gov/trade/priority-issues/revenue/revenue-modernization/automation-368-and-1002-receipts/mcr-faq)).

In summary, in response to comments, we have lowered the commercial vessel fee overall to account for coastwise arrivals and have created a separate commercial vessel fee for certain vessels operating within the Great Lakes or along the coast between Alaska and Oregon.

### Commercial Trucks

AQI user fees for inspection of commercial trucks entering the customs territory of the United States are listed in § 354.3(c)(1). The current fee had been set at \$7.29 per truck arrival, with an option, under paragraph (c)(3), to prepay an amount 40 times the single-arrival fee to obtain a transponder. We proposed to adjust the fees in that paragraph and to set the corresponding prepaid (transponder) user fees at an amount 60 times the unrounded fee rates for each arrival. We further proposed to clarify that prepayments for purchases of transponders may

be made at any time during a calendar year. The proposed rule did not provide, however, for prorating of the prepayment cost or allowing credit for individual crossings made prior to prepayment if the operator of the commercial truck elects to prepay during a calendar year. This is consistent with CBP's handling of their truck transponder fee in 19 CFR 24.22(c)(2), and we stated in the proposed rule that the intent of the proposed change was to better align our prepayment requirements with those of CBP.

We also proposed to add a sentence to paragraph (c)(1) stating that the AQI user fee would apply to all commercial trucks, regardless of what they are carrying, including empty trucks and truck cabs. This addition is already codified under the current definition of *commercial truck*, but the existing regulations in paragraph (c)(1) do not state the requirement explicitly; this revision was intended to clarify application of the fee.

We received two comments from one commenter on the proposed changes to the fees for commercial trucks.

In the supporting documentation that accompanied the proposed rule, we indicated that the data that we had obtained from the Department of Transportation (DOT) regarding freight volume per truck between the years 2006 and 2021 suggested a 79 percent increase in the number of tons per truck during that time. The commenter stated that this truck crossing and freight data did not completely match its own data and calculations. Specifically, the commenter indicated that its data indicated lower carrying capacity per truck in 2021 (9.63 tons) and an average of 22,376 more truck crossings per year between 2006 and 2016. Assuming truck crossings to be the denominator by which we determined average freight volume, the commenter stated that its data indicated that average freight volume was in fact lower in 2006 through 2016 than we had presented it to be. While the commenter conceded that carrying capacity per truck had increased between 2006 and 2021, the commenter stated that carrying capacity had not increased to the magnitude presented by APHIS, and that these discrepancies resulted in an overestimation of agricultural risk. The commenter stated that this overestimation of agricultural

risk had resulted in CBP erroneously believing that additional personnel were needed to inspect commercial trucks, and that the fee would be lower were it adjusted to reflect actual freight volume.

The commenter did cite data that differs from the data APHIS cited in the supporting documentation that accompanied the proposed rule, and the data in that supporting documentation may have been in error. However, the data the commenter presented does not directly or indirectly impact how the fee was set. Neither the disputed numbers nor the supporting document itself served as the basis for the fee, nor the analysis of fee impacts in the initial economic analysis. The fee for this conveyance is not derived from the performance of the industry, nor did we use cargo capacity as a proxy for the level of effort needed to inspect trucks. As with the other fees, the commercial truck fee results from total AQI commercial truck program costs divided by the number of truck crossings for FY 2017 through FY 2019 to arrive at the base unit cost.

The commenter itself noted that both its data and APHIS' data reported the same number of truck crossings per year from 2017 to 2020. As noted above, the supporting document that the commenter disputed did not serve as a basis for the fee. It was intended only to indicate that the freight volume for commercial trucks had increased since 2006, a contention that the commenter did not dispute in principle, only in degree. The purpose of the supporting document is to contextualize the changes in the carrying capacity in the industry, as well as illustrate the relative size and impact that the fee might have on the conveyance as a whole. To that end, though, we do note that the commenter's data does suggest that commercial trucks may have lower cargo capacity than our supporting documentation suggested. We have evaluated the economic analysis that accompanies this final rule in light of that information but determined that its assumptions and conclusions still hold.

Additionally, this supporting document was not used as the basis for the additional CBP staffing needs. As indicated previously in this document, CBP's staffing models calculated

additional personnel needs based on estimated throughput as calculated in light of actual workload, in order to ensure that bottlenecks do not occur in port operations.

The commenter also expressed concerns about the transponder cost increasing from 40 to 60 times the per arrival fee. The commenter asked how we would continue to incentivize transponder use.

As we stated in the proposed rule and the supporting document, APHIS determined that the average truck transponder is used 90 times per year, cross-referencing truck border-crossing data and truck transponder purchase data. Charging 60 times the per crossing fee is still a 33.3 percent discount, compared to average transponder use. We consider a 33.3 percent discount compared to average transponder use a sufficient incentive for transponder use.

The same commenter stated that, because the percentage of increase for the transponder fee would significantly surpass the percentage increase for the individual per-crossing fee, the transponder would no longer be incentivized, and commercial truck operators could abandon the transponder in favor of the single arrival fee.

The CBP Transponder system does not track the individual number of crossings per transponder; instead, it tracks the total number of crossings. Collections for single payer and transponder crossings are separate. The number of single payer crossings is determined by dividing single payer collections by the fee rate. Single payer crossings are subtracted from total crossings to determine transponder crossings. We determined average transponder crossings by dividing total transponder crossings by total transponders purchased (transponder collections divided by transponder fee). Given that APHIS found that the average transponder is used 90 times a year, charging 60 times the per crossing fee still significantly incentivizes the transponder over the per crossing fee for the average commercial truck operator, despite the differences in percent increase between the two fees. It is possible that some truck operators who make fewer than 60 crossings will decide to pay the per crossing fee as a result of this

rulemaking; however, we do not foresee the transponder being generally abandoned in the manner suggested by the commenter.

We acknowledge that we proposed to raise both the per arrival commercial truck fee and the multiple that results in the transponder fee. Additionally, while we proposed to phase in the increases to the per arrival fee, we did not propose to phase in the increase to the multiple: We proposed that the multiple would immediately increase from 40 times to 60 times. To help facilitate transponder use in the first year of implementation of the revised fee, we will set the fee at a multiple of 50 times the individual crossing fee for the period between October 1, 2024 and September 30, 2025. We have revised the regulatory text accordingly.

The commenter stated that APHIS should work with our counterparts in Canada and Mexico to develop policies that will mitigate the risk of pest importation or other potential threats while reducing, exempting, or eliminating fees and other regulatory costs impacting North America trade.

APHIS works collaboratively with our colleagues in Canada and Mexico to develop harmonized policies to mitigate the risk of pest importation. For example, APHIS is the United States' representative to the North American Plant Protection Organization, or NAPPO, a regional plant protection organization. Created in 1976, NAPPO coordinates the efforts among the United States, Canada, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating safe intra- and inter-regional trade. Through NAPPO, APHIS works closely with its regional counterparts and industries to develop harmonized regional standards and approaches for managing pest threats.

Additionally, outside of the auspices of NAPPO, APHIS works closely with our North American National Plant Protection Organization (NPPPO) counterparts, the Canadian Food Inspection Agency (CFIA) and Mexico's Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria, to harmonize our approaches to phytosanitary risk to the extent possible. Examples of this collaboration include the United States-Canada Greenhouse-Grown Plant

Certification Program (GCP) and the Netherlands bulb preclearance program. The GCP has been active since 1996 and allows greenhouse-grown indoor houseplants and outdoor bedding plants to move between Canada and the United States using a certification label in lieu of a phytosanitary certificate (PC), provided the plants meet the phytosanitary import requirements of both Canada and the United States. The GCP certification label eliminates the cost of a PC for certified nurseries. For the Netherlands bulb preclearance program, APHIS and CFIA have harmonized our operational workplan for imports since 2008.

Finally, as discussed previously in this document, APHIS has pursued measures to improve efficiencies and reduce costs associated with the AQI program.

However, the commenter's assumption that North American trade presents little or no sanitary and phytosanitary risk that merits AQI services is incorrect; under APHIS' regulations in titles 7 and 9 of the Code of Federal Regulations, there are numerous restrictions on the importation of animals, animal products, plants, and plant products from Canada and Mexico.

We note also that North American trade is no longer exclusively North American; for example, APHIS is aware that 194 countries send United States-bound freight through Canada seaports, and then across the border via truck and rail. The increased risk posed by commodities arriving through our North American trading partners makes it necessary to increase our level of effort to safeguard United States agriculture. This increased effort requires additional personnel, equipment, and facilities and, therefore, incurs additional costs. The AQI program must adjust the fees to recover these costs. In short, the elimination or exemption of AQI user fees for North American trade would significantly adversely impact full cost recovery because we would still need to provide AQI services to address the sanitary and phytosanitary risks posed by such trade.

The commenter stated that the information and data provided by APHIS does not explain how the proposed fee increases were calculated based upon the various services performed by APHIS inspectors. The commenter expressed concern that APHIS did not calculate the proposed

fees based upon the current and future needs of the agency, but rather upon what they assume motor carriers can afford according to operating cost data.

The summary tables for the commercial truck fee calculation (tables 7 and 8 below) show that APHIS used actual cost data for fiscal years 2017 through 2019 for commercial truck, future costs for planned capital expenditures, and additional staffing, divided by number of truck arrivals per fiscal year to arrive at a unit cost. We then adjusted those unit costs to June 2022 dollars, averaged the unit costs across the 3 fiscal years, and finally adjusted that average unit cost for projected inflation. The discussion of fee rates relative to other costs of doing business was to illustrate relative economic impact of the fee, and not to serve as the basis for fee development.

The summary tables are intended to be a quick reference regarding fee development. For more comprehensive cost data information please see the full rollup reports from the APHIS AQI activity-based cost model on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>. As we explained above, these questions regarding how the fees were arrived at are answered in the APHIS AQI cost model data that was cited in the proposed rule and made available on the APHIS website at the link above.

For October 1, 2024, October 1, 2025, October 1, 2026, fee rates, APHIS subtracted the January 1, 2024 rate from the October 1, 2027 rate, and divided by 4. This amount became the per phase increase. The per phase increase was then added to the previous phase amount until reaching the October 1, 2027 rate.

Table 7: AQI Commercial Truck Fee Calculation – January 1, 2024 Phase Development (\$11.44 Fee Rate<sup>1</sup>)<sup>2</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs	-	-	153
Total APHIS AQI Program Cost (Level 501)	\$30,780,440.27	\$24,897,674.58	\$25,285,000.66
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$5,088,246.91	\$4,157,459.56	\$4,015,145.86

APHIS Additional Staffing Future Costs (Levels 35 and 451) included above	\$0.00	\$0.00	\$0.00
CBP AQI FTEs	-	-	155
Total CBP AQI Program Cost (Level 502)	\$89,537,890.40	\$90,524,826.19	\$101,412,832.50
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$442,836.74	\$311,476.41	\$282,101.10
CBP Additional Staffing Future Costs (Level 452) included above	\$0.00	\$0.00	\$0.00
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$120,318,330.67	\$115,422,500.77	\$126,697,833.16
Number of Commercial Trucks	11,847,586	12,089,169	12,164,733
Calculated Unit Cost (Total AQI Costs divided by Number of Commercial Trucks)	\$10.16	\$9.55	\$10.42
Unit Cost inflated to June 2022 dollars <sup>3</sup>	\$11.42	\$10.55	\$11.31
Average of Unit Costs in June 2022 dollars (fee basis)	\$11.09	-	-
Inflation Projected to FY 2024 dollars	\$11.44	-	-

<sup>1</sup> The final single payer fee was rounded down to the next \$0.05 (five-cent) increment to facilitate border operations.

<sup>2</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>3</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

Table 8: AQI Commercial Truck Fee Calculation – October 1, 2027 Phase Development (\$15.59 Fee Rate)<sup>1</sup><sup>2</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs + Additional FTEs required by FY 2028	-	-	215
Total APHIS AQI Program Cost (Level 501)	\$46,945,077.64	\$46,844,072.02	\$48,662,846.48
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$5,224,895.94	\$5,286,726.10	\$5,293,808.19
APHIS Additional Staffing Future Costs (Levels 35 and 451) included above	\$3,565,295.85	\$3,585,850.42	\$3,529,879.46
CBP AQI FTEs	-	-	413
Total CBP AQI Program Cost (Level 502)	\$97,794,153.68	\$108,587,662.86	\$117,124,406.85
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$575,583.31	\$583,139.22	\$590,695.12
CBP Additional Staffing Future Costs (Level 452) included above	\$11,201,393.37	\$11,348,438.38	\$11,495,483.39

Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$144,739,231.3 2	\$155,431,734.8 9	\$165,787,253.3 3
Number of Commercial Trucks	11,847,586	12,089,169	12,164,733
Calculated Unit Cost (Total AQI Costs divided by Number of Commercial Trucks)	\$12.22	\$12.86	\$13.63
Unit Cost inflated to June 2022 dollars <sup>3</sup>	\$13.74	\$14.20	\$14.80
Average of Unit Costs in June 2022 dollars (fee basis)	\$14.25	-	-
Inflation Projected to FY 2028 dollars	\$15.59	-	-

<sup>1</sup> The final single payer fee was rounded down to the next \$0.05 (five-cent) increment to facilitate border operations.

<sup>2</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>3</sup> As described in <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

In summary, in response to comments regarding the commercial truck fee, we have lowered the cost of a transponder to 50 times the per arrival fee for the period between October 1, 2024 and September 30, 2025. The fees are otherwise being finalized as proposed.

#### Commercial Railroad Cars

Fees for inspection of loaded commercial railroad cars arriving at land ports in the United States are listed in current § 354.3(d)(1). The current fee is \$2 per loaded railroad car arrival, with an option to prepay an amount 20 times the single-arrival fee for all arrivals of a commercial railroad car during a calendar year. We proposed to increase the user fee per arrival and to set the corresponding prepaid user fees at an amount 48 times the AQI user fee for each arrival.

As noted above, the existing regulations in § 354.3(d)(1) refer to AQI fees for inspection of *loaded* commercial railroad cars. In addition to the fee changes, we proposed to amend § 354.3(d)(1) to remove the references to loaded cars. We proposed this change because APHIS does not collect AQI user fees for unloaded railroad cars under the current regulations; however, CBP inspects all commercial railroad cars, loaded and unloaded. We received no comments on this proposed change and will adopt it accordingly.

We also proposed to revise paragraph (d)(4) to provide for submission of remittance not only by The Association of American Railroads (AAR), and the National Railroad Passenger Corporation (AMTRAK), as is the case in the current regulations, but by individual railroad companies as well. This revision would more closely align our requirements pertaining to railroad car user fees with those of CBP as set out in 19 CFR 24.22(d).

We received two comments from one commenter on the proposed changes to the fees for commercial railroad cars.

The commenter opposed the proposed fee increases in general and the increase to the prepaid railroad car fee in particular. The commenter noted that, in the economic analysis that accompanied the proposed rule, we indicated that the number of railroad car arrivals has remained relatively steady, averaging approximately 3.5 million from 2014 to 2022. The commenter questioned why the per arrival fee and prepaid fee would increase significantly if arrivals had not commensurately increased.

The per arrival fee was derived by dividing the actual programs costs plus planned capital expenditures and additional staffing costs (adjusted for inflation) associated with providing AQI services for railroad cars by the number of anticipated arrivals. Accordingly, an increase or decrease in the forecasted number of arrivals would not itself have caused the fee to change, if aggregate costs remained correlated with arrivals. However, as stated in the proposed rule, the main reason for the per arrival fee increase for commercial railroad cars is that what falls under the definition of a railroad car as set forth in CBP's regulations in 19 CFR 24.22(d)(1) is now much larger than what the current inspection fee is designed to cover. The fees were designed to cover inspection costs for a railroad car that is essentially a single box on wheels. The typical railroad car in use today, however, consists of a multi-unit chassis with double stacked containers on wheels. This, in turn, has increased the amount of cargo in general arriving into the United States by rail. In sum, although arrivals have remained relatively constant, costs have increased significantly due to the change in size of railroad cars.

With regard to the increased cost of the prepaid fee, as stated in the proposed rule, based upon analysis of collections and arrival data, the average railroad car arrives 48.32 times per year. A prepaid multiple of 48 brings us significantly closer to full cost recovery than the present multiple of 20 times the per arrival fee. APHIS notes, however, that the prepaid railroad car user fee is optional, and, as we noted in the proposed rule, very few railroad companies use the prepaid option. If an entity determines that paying per arrival fee is more advantageous, they may do so.

The commenter stated that it was not clear that the fee increases are directly linked to the need for more resources and staff to inspect railroad cars specifically. The commenter noted that while costs for staffing and capital resources are noted generally, it is not clear if those costs are based on deficits experienced by the agency due to railroad car inspection duties.

APHIS made available a high-level cost summary as a supporting document with the proposed rule,<sup>9</sup> and comprehensive rollup reports directly from the APHIS AQI cost model were available with the proposed rule on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>.<sup>10</sup> Moreover, the summary tables for commercial railroad car fee calculation (tables 9 and 10 below) show that APHIS used actual cost data for fiscal years 2017 through 2019 for railroad cars, future costs for planned capital expenditures and additional staffing, divided by number of users per fiscal year to arrive at a unit cost. APHIS adjusted those unit costs to June 2022 dollars, averaged the unit costs across the 3 fiscal years, and finally adjusted that average unit cost for projected inflation. The summary tables are intended to be a quick reference regarding fee development. For more comprehensive cost data information please see the full rollup reports from the APHIS AQI activity-based cost model.

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<sup>9</sup> The document, titled “AQI User Fee Input Costs and Cost Allocation Summary,” can be accessed online at <https://www.regulations.gov/document/APHIS-2022-0023-0035>.

<sup>10</sup> Due to the size of the files, the rollup reports are available on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>. The rollup reports must be downloaded before viewing.

For October 1, 2024, October 1, 2025, October 1, 2026, fee rates, APHIS subtracted the January 1, 2024 rate from the October 1, 2027 rate, and divided by 4. This amount became the per phase increase. The per phase increase was then added to the previous phase amount until reaching the October 1, 2027 rate.

Table 9: AQI Commercial Railroad Car Fee Calculation – January 1, 2024 Phase Development (\$5.81 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs	-	-	34
Total APHIS AQI Program Cost (Level 501)	\$5,566,102.63	\$5,071,335.27	\$4,677,632.67
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$919,065.79	\$844,689.11	\$739,573.71
APHIS Additional Staffing Future Costs (Levels 35 and 451)	\$0.00	\$0.00	\$0.00
CBP AQI FTEs	-	-	33
Total CBP AQI Program Cost (Level 502)	\$13,477,545.16	\$14,727,551.87	\$11,212,114.53
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$83,588.53	\$73,542.13	\$60,872.95
CBP Additional Staffing Future Costs (Level 452)	\$0.00	\$0.00	\$0.00
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$19,043,647.79	\$19,798,887.14	\$15,889,747.20
Number of Commercial Railroad Cars	3,435,666	3,603,205	3,755,351
Calculated Unit Cost (Total AQI Costs divided by Number of Railroad Cars)	\$5.54	\$5.49	\$4.23
Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$6.24	\$6.07	\$4.60
Average of Unit Costs in June 2022 dollars (fee basis)	\$5.63	-	-
Inflation Projected to FY 2024 dollars	\$5.81	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

Table 10: AQI Commercial Railroad Car Fee Calculation – October 1, 2027 Phase Development (\$8.72 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs + Additional FTEs required by FY 2028	-	-	48
Total APHIS AQI Program Cost (Level 501)	\$11,058,967.95	\$11,078,453.98	\$11,350,202.67
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$1,178,174.68	\$1,196,264.07	\$1,173,902.31
APHIS Additional Staffing Future Costs (Levels 35 and 451) included above	\$773,900.48	\$789,228.11	\$772,755.87
CBP AQI FTEs + Additional FTEs required by FY 2028	-	-	107
Total CBP AQI Program Cost (Level 502)	\$14,804,044.79	\$16,284,542.96	\$13,091,366.25
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$153,287.10	\$155,299.36	\$157,311.62
CBP Additional Staffing Future Costs (Level 452) included above	\$2,998,962.09	\$3,038,330.62	\$3,077,699.15
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$25,863,012.74	\$27,362,996.93	\$24,441,568.92
Number of Commercial Railroad Cars	3,435,666	3,603,205	3,755,351
Calculated Unit Cost (Total AQI Costs divided by Number of Railroad Cars)	\$7.53	\$7.59	\$6.51
Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$8.47	\$8.39	\$7.07
Average of Unit Costs in June 2022 dollars (fee basis)	\$7.98	-	-
Inflation Projected to FY 2028 dollars	\$8.72	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

The commenter stated that the proposed rule did not appear to consider the use of technology by APHIS to reduce inspection costs, in lieu of raising fees, though the commenter did not specify what kinds of technology APHIS might use to reduce inspection costs.

As we discussed above, the AQI program has made significant efforts to reduce program costs while maintaining a robust agricultural safeguarding program. APHIS also notes that the evaluation, procurement, maintenance, and upgrading of technology also carries a cost, as well as the cost of training personnel or the hiring of new personnel skilled in handling the technology.

In summary, we are finalizing the commercial railroad car fee as proposed.

#### Commercial Aircraft

APHIS inspects international commercial aircraft arriving at airports in the customs territory of the United States. These inspections cover commercial aircraft capable of carrying cargo and passengers, regardless of whether cargo or passengers are on a particular flight. AQI user fees for inspection of commercial aircraft per arrival are listed in § 354.3(e)(1). The current fee is \$225 per arrival. We proposed to adjust the fee in that paragraph to increase the user fee per arrival.

In addition to the proposed fee changes, we proposed to remove paragraph (e)(2)(iv) to eliminate the current fee exemption for aircraft with 64 or fewer seats.

We also proposed to require monthly, rather than quarterly, remittances for the commercial aircraft fee, clarify our remittance requirements, and provide for electronic payments and statements. We further proposed to include in the regulations information on agents responsible for ensuring compliance with paying the user fees and a requirement for entities to notify APHIS in the event they have a change in personnel responsible for fee payments.

We received five comments on these proposed changes. All the commenters were generally opposed to the proposed changes.

A commenter stated that we needed to disclose the number of aircraft inspected per inspector and number of plant pests or noxious weeds found during these inspections per day, month, or year, in order to validly assess the efficacy of the current inspections and the need for the fee increases.

The number of aircrafts inspected per inspector is materially irrelevant to evaluating the base costs for the proposed fee. In the AQI cost model used to set the proposed fee, we evaluated the aggregate time currently needed to conduct all commercial aircraft inspections, whether they were conducted by one inspector or multiple inspectors at a particular port of entry. We do note, however, that CBP's staffing model indicated that additional staff were needed to inspect aircraft and air cargo to match personnel to throughputs and workload.

As we discussed above, a host of factors can contribute to the sanitary and phytosanitary risk associated with a particular arrival. This includes the cargo, the country of departure, the route chosen, the port of entry, and the time of year when the shipment takes place. Furthermore, the sanitary and phytosanitary risk in foreign regions that ship to the United States is not static and past import history is not necessarily indicative of future trends. A disease or pest of concern not previously known to exist in the country could be introduced; climatic conditions for a particular season could be especially conducive to pest populations (this is becoming increasingly common due to the climatic volatility associated with climate change); industry downturns could reduce monitoring and suppression efforts at places of production; or regime change could downsize the foreign government's sanitary and phytosanitary efforts. Sometimes multiple factors can occur simultaneously.

It is important to note, however, that the introduction and establishment of plant pests within the United States has significant economic consequences both for APHIS and for the affected industries. As we discussed in the proposed rule, APHIS has spent more than \$1.3 billion on the eradication and quarantine of wood, tree, and forest pests such as Asian Longhorn Beetle, Emerald Ash Borer, and Spotted Lantern Fly, in addition to the direct and indirect losses experienced by the affected industries themselves. Even plant pest outbreaks in a single State can prove quite costly: APHIS recently had to request \$103.5 million in emergency funding to address the effects of fruit fly outbreaks in California.

The same commenter stated that the proposed rule appeared to state that APHIS uses the commercial aircraft fee and international passenger fee to cross-subsidize other fee areas. The commenter specifically cited the following from the preamble of the proposed rule: “Collections from the air sector (commercial aircraft and commercial air passenger) are a combined annual average of over 85 percent of total AQI collections. If this final rule is adopted as proposed, APHIS estimates that by FY 2028 the combined air sector would account for approximately 68 percent of total collections, assuming future arrivals match average arrivals for FY 2017 through FY 2019.” The commenter asserted that APHIS failed to explain the anticipated reduction in percentage of total collections paid by the air sector, and whether this indicates that the air sector industry overpaid in FY 2017 through FY 2019 and thus cross-subsidized other user fee areas.

As discussed in the proposed rule, APHIS updated its AQI cost model to allocate certain costs based upon the number of frontline FTE hours. In contrast, in the 2015 rulemaking, the cost model allocated those costs based upon the number of arrivals. Our updated model resulted in more accurate cost allocations based upon level of effort in each area, and the percentage of total collections associated with the air sector shifted accordingly. No cross-subsidization of other modes occurred between FY 2017 and FY 2019. Revenue from other fees will increase more than aircraft and air passenger fees, making the relative revenue from aircraft and air passengers a smaller percentage of total revenue. We disagree with the commenters’ interpretation of our statements in the proposed rule.

A commenter stated that APHIS did not recognize fundamental changes since 2020 to CBP’s customs clearance process, specifically for e-Commerce-driven parcel processing and de minimis (Entry Type 86) shipments.

APHIS did not propose to charge a fee for individual parcels. We note, however, that entry type has no bearing on sanitary or phytosanitary risk.

A commenter stated that international mail shipments already pay customs fees.

The customs fees mentioned by the commenter are unrelated to AQI services, but rather other customs services provided by CBP. International mail shipments pay specific Customs entry fees to CBP, but those are not for AQI inspections. APHIS does not charge an AQI user fee specifically for international mail shipments. Rather, those costs are allocated to the fee for commercial aircraft. While the AQI program is related to the customs entry process, funds collected by CBP through their various fees do not fund AQI activities. AQI cargo activities are funded through AQI user fees and not CBP fees.

A commenter stated that users were asked to accept the proposed fees at face value without any means to review how APHIS arrived at the proposed user fees outlined in the proposed rule.

We disagree. APHIS AQI has prioritized transparency in this rulemaking and gone to great lengths to make its data available. As we explained above, the APHIS AQI cost model data was cited in the proposed rule and made available on the APHIS website. We also referenced the data in the stakeholder webinars. We also provided the data and link via stakeholder announcement, and we further explained via a dedicated AQI cost model video and corresponding stakeholder announcement. APHIS web analytics showed an increase in AQI cost model data traffic following each of the above engagements. At least one stakeholder specifically referenced the data in their comment, making it clear the data was available and usable by stakeholders for the purpose of notice and comment. Moreover, the summary tables for commercial aircraft fee calculation (tables 11 and 12 below) show that APHIS used actual cost data for FY 2017 through FY 2019 for commercial aircraft, future costs for planned capital expenditures and additional staffing, divided by number of commercial aircraft arrivals per fiscal year to arrive at a unit cost. APHIS adjusted those unit costs to June 2022 dollars, averaged the unit costs across the 3 fiscal years, and finally adjusted that average unit cost for projected inflation. The summary tables are intended to be a quick reference regarding fee development. For more comprehensive cost data information please see the full rollup reports from the APHIS

AQI activity-based cost model available on the APHIS website at

<https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>.

For October 1, 2024, October 1, 2025, October 1, 2026, fee rates, APHIS subtracted the January 1, 2024 rate from the October 1, 2027 rate, and divided by 4. This amount became the per phase increase. The per phase increase was then added to the previous phase amount until reaching the October 1, 2027 rate.

Table 11: AQI Commercial Aircraft Fee Calculation – January 1, 2024 Phase Development (\$262.45 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs	-	-	392
Total APHIS AQI Program Cost (Level 501)	\$54,169,813.81	\$75,770,884.37	\$89,320,508.50
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$8,945,767.53	\$12,786,757.11	\$14,342,800.11
APHIS Additional Staffing Future Costs (Levels 35 and 451)	\$0.00	\$0.00	\$0.00
CBP AQI FTEs	-	-	819
Total CBP AQI Program Cost (Level 502)	\$127,537,441.52	\$147,448,957.58	\$170,134,733.75
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$616,838.67	\$1,264,559.19	\$1,492,905.74
CBP Additional Staffing Future Costs (Level 452)	\$0.00	\$0.00	\$0.00
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$181,707,255.33	\$223,219,841.95	\$259,455,242.25
Number of Commercial Aircraft	945,067	951,749	978,249
Calculated Unit Cost (Total AQI Costs divided by Number of Commercial Aircraft)	\$192.27	\$234.54	\$265.22

Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$216.30	\$259.06	\$288.10
Average of Unit Costs in June 2022 dollars (fee basis)	\$254.49	-	-
Inflation Projected to FY 2024 dollars	\$262.45	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

Table 12: AQI Commercial Aircraft Fee Calculation – October 1, 2027 Phase Development (\$340.90 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs + Additional FTEs required by FY 2028	-	-	592
Total APHIS AQI Program Cost (Level 501)	\$118,592,631.80	\$119,105,226.57	\$125,152,433.62
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$13,095,512.29	\$13,309,009.17	\$13,566,708.69
APHIS Additional Staffing Future Costs (Levels 35 and 451) included above	\$11,047,861.93	\$11,330,690.86	\$11,445,007.04
CBP AQI FTEs	-	-	1,257
Total CBP AQI Program Cost (Level 502)	\$133,882,924.34	\$147,270,149.81	\$167,745,740.25
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$1,538,329.92	\$1,558,524.17	\$1,578,718.42
CBP Additional Staffing Future Costs (Level 452) included above	\$28,009,694.67	\$28,377,388.72	\$28,745,082.78
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$252,475,556.14	\$266,375,376.38	\$292,898,173.87
Number of Commercial Aircraft	945,067	951,749	978,249
Calculated Unit Cost (Total AQI Costs divided by Number of Commercial Aircraft)	\$267.15	\$279.88	\$299.41
Unit Cost inflated to June 2022 dollars <sup>11</sup>	\$300.54	\$309.15	\$325.24
Average of Unit Costs in June 2022 dollars (fee basis)	\$311.64	-	-
Inflation Projected to FY 2028 dollars	\$340.90	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

<sup>11</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

A commenter stated that APHIS excluded data showing potential AQI program surpluses from 2016 to the present, if AQI fees had been adjusted for inflation in the 2015 rulemaking.

The 2015 rulemaking did not adjust the fees for inflation, and positing a counterfactual scenario in which it did is materially irrelevant to assessing the proposed fees. The fees in this proposed rule were based on actual costs for 3 fiscal years, plus capital planning and future staffing costs, all adjusted for inflation. The fees were developed using Activity Based Costing to support full cost recovery.

A commenter stated that the fee exemption for aircraft with 64 or fewer seats should remain because the commenter claimed that our study was predicated on a misunderstanding of the reason for the exemption. The commenter stated that, in the 1992 rule that had established the exemption, APHIS had cited two bases for the exemption to the fee. The first was that such aircraft required little to no phytosanitary inspection. The second was that such an exemption was predicated on the per-passenger cost differential that made it “difficult for small commuter airlines to compete with larger airlines for business.” The commenter further contended that our study had assumed that exempted aircraft had an increased exposure risk to plant pests since the 1992 exemption was established, without identifying the actual increased phytosanitary risk now associated with such aircraft, which the commenter stated could only be substantiated through pest detections on exempted aircraft. Finally, the commenter stated that if AQI services are not being provided for such exempted aircraft, removing the exemption would charge a user fee in the absence of services provided, and thus violate the FACT Act.

In 1991, when this fee exemption was first established it exempted aircraft with 30 or fewer seats which are not carrying cargo and are not equipped to offer inflight food service. We explained that we exempted those aircraft because we did not provide AQI services to the aircraft (56 FR 37483, August 7, 1991). In 1992, when we proposed to expand the fee exemption to aircraft with 64 or fewer seats, we explained that this was intended to exempt commuter aircraft that require little or no inspection from the per aircraft inspection fee (57 FR

56862, December 1, 1992). In other words, the initial exemption for aircraft with 30 or fewer seats was based on our determination that no AQI services were being provided for such aircraft, and the expansion to 64 or fewer seats was based on an assumption that such aircraft were commuter in nature and would not require such an inspection.

It is worth noting that the 1992 proposed rule did not also predicate the exemption on the per-passenger cost differential between small commuter airlines and larger airlines. The language cited by the commenter was articulated in the section of the preamble that evaluated the economic impacts of the rule pursuant to Executive Order 12291 (since rescinded) and the Regulatory Flexibility Act. We were characterizing the effects of the rulemaking on small entities, not articulating a basis for the rulemaking.

Now, 30 years after that rulemaking, CBP does in fact conduct inspections on aircraft with 64 or fewer seats. These inspections incur costs on the part of the AQI program. The FACT Act specifically authorizes us to prescribe and collect fees sufficient to cover the cost of providing AQI services in connection with the arrival of commercial aircraft at a port in the customs territory of the United States (21 U.S.C. 136a(a)(1)(A)).

To address whether such inspections are warranted, we re-evaluated the sanitary and phytosanitary risks posed by aircraft with 64 or fewer seats and the results of this pathway analysis indicated that aircraft with 64 or fewer seats do pose phytosanitary risk to the United States. Specifically, we found that the variety of aircraft origins worldwide (countries/airports) and destinations in the United States (States/airports) for aircraft with 64 or fewer seats was similar to or slightly higher than those of aircraft with 65 or more seats. For comparison and context, between FY 2016 and FY 2018, aircraft with 65 seats or more averaged 2,272 routes. With an average of 1,224 flight routes from calendar years 2016 to 2018, aircraft with 64 or fewer seats had many risks of exposure to hitchhiking pests, as well as many risks to expose pests to a large variety of environments in the United States. Exposure risk was used in order to characterize sanitary and phytosanitary risk because pest detections on commercial aircraft are

not categorized based on whether the aircraft has 65 or more or 64 or fewer seats. In sum, while inspection may not have been necessary based on phytosanitary conditions in 1993, when we originally established the exemption, that is no longer the case today.

A commenter stated that our basis for removing the exemption was to create an additional funding stream for the AQI program.

Our basis for removing the exemption, as articulated in the proposed rule and its supporting documentation, and reiterated above, is to fulfill our agricultural safeguarding mandate and achieve full cost recovery. Our articulated assumptions for the exemption in 1991 and 1992, respectively, are no longer indicative of air travel conducted by planes with 64 or fewer seats, and the current operational dynamics of such travel carry a sanitary and phytosanitary risk that merits AQI services.

In light of the fact that small commercial aircraft have not previously been subject to the fee, APHIS believes that additional time is warranted to allow operators to come into compliance. Accordingly, APHIS is delaying the effective date for removal of the exemption for aircraft with 64 or fewer seats until April 1, 2025.

Two commenters stated that APHIS should not change from quarterly to monthly fee remittances, because it would increase the paperwork burden on airlines. Another commenter stated that monthly remittance would increase the burden on express carriers and would be out of step with other user fees they remit, which are almost all done quarterly.

We do not consider, and the commenters did not provide any evidence, that the revised remittance procedures to be more burdensome than the current procedures. Under the proposed rule, payments would be remitted on a monthly basis after a 90-day grace period – for example, January fees would be remitted to APHIS at the end of April, February fees at the end of May. Nonetheless, monthly remittance itself is necessary. Without the authority to prescribe and collect fees to maintain a reasonable balance in the AQI account, APHIS needs to move to a monthly remittance schedule to ensure smoother and more stable cash flow. In terms of

paperwork burden, we expect a negligible difference between quarterly and monthly reporting, because the proposed rule does not change the information required for an individual month. For example, remittance reporting for the month of October is identical regardless of reporting only for October or whether issuing a quarterly report for October, November, and December of any given year.

In addition, we note that the revised procedures should make aspects of reconciliation and remittance easier, rather than harder. For example, the new monthly remittance schedule provides for a 90-day reconciliation period for each month, whereas the current quarterly remittance schedule provides a 90-day reconciliation period for the first month of the quarter, a 60-day reconciliation period for the second month of the quarter, and only a 30-day reconciliation period for the third month of the quarter.

Table 13: AQI User Fee Remittance/Collection Schedule Changes<sup>1</sup>

AQI User Fee Category	Current Remittance/Collection Schedule (Through September 30, 2024)	New Remittance/Collection Schedule (Beginning October 1, 2024)
Commercial Vessel	Paid on arrival	No change
Commercial Truck	Paid on arrival	No change
Commercial Truck (Transponder)	Prepaid with the purchase of a transponder	No change
Commercial Railroad Car	Due 60 days after the end of each calendar month	Due 90 days after the end of each calendar month (see table 1)
Commercial Railroad Car (Prepaid)	Prepaid for each railroad car for a calendar year	No change
Commercial Aircraft	Due 31 days after the close of the calendar quarter	Due 90 days after the end of each calendar month (see table 1)
International Air Passenger	Due 31 days after the close of the calendar quarter	Due 90 days after the end of each calendar month (see table 1)
International Cruise (Sea) Passenger	Due 31 days after the close of the calendar quarter	Due 90 days after the end of each calendar month (see table 1)
Treatment Monitoring	Due 31 days after the close of the calendar quarter	No change

<sup>1</sup> Refer to 7 CFR 354.3, “User fees for certain international services.” for specific guidance.

Table 14: New Remittance/Collection Schedule (Beginning October 1, 2024) for the Commercial Aircraft, Commercial Railroad Car, International Air Passenger, and International Cruise Passenger Fee Categories

Month of Collection/Arrival/Treatment	Reconciliation Period	Due Date
January	February - April	April 30
February	March - May	May 31
March	April - June	June 30

April	May - July	July 31
May	June - August	August 31
June	July - September	September 30
July	August - October	October 31
August	September - November	November 30
September	October - December	December 31
October	November - January	January 31
November	December - February	February 28
December	January - March	March 31

Another commenter noted that our proposed rule required the use of remittance worksheets as part of remittance procedures. The commenter expressed opposition to the use of the remittance worksheet as burdensome.

Our intent in proposing to require the use of the worksheet was primarily as a service to regulated entities in order to facilitate remittance; as noted in the proposed rule, entities currently submit remittance in a variety of formats, and some entities submit more information than is necessary. We believed that use of the worksheet would facilitate remittance processes for regulated entities by making them more standardized and streamlined.

Given the comments received that stated that the worksheet could be more burdensome than the status quo, however, we are stating in this final rule that the remittance worksheet is not mandatory. Entities may elect to use it depending on whether or not they find it less burdensome than current remittance practices. However, APHIS again notes that while the worksheet is not mandatory, there is mandatory information that must be provided in remittance statements, and also notes that many entities provide information in their remittance statements that goes beyond APHIS' requirements. For those entities that choose to use existing remittance statements rather than the worksheet, the remittance worksheet serves as a guide for the remittance statement, even if an entity chooses not to use the worksheet itself.

The same commenter stated that APHIS had not made the remittance worksheet available for review as part of the supporting documents for the proposed rule. Without viewing the worksheet, the commenter stated that they could not ascertain whether it would be less burdensome or more burdensome than the status quo. The commenter also stated that we had an

obligation to make the worksheet available during the comment period in order for commenters to provide informed comments on the accuracy of the estimate of burden articulated in the Paperwork Reduction Act section of the proposed rule.

While it is true that APHIS omitted the worksheet from the specific suite of supporting documents associated with the proposed rule, the remittance worksheet has been available on the APHIS website at <https://www.aphis.usda.gov/mrpbbs/userfees/remittance-form.pdf> since well before the proposed rule was published and has been used by some entities for more than 15 years.

Nonetheless, as previously stated, in this final rule, use of the remittance worksheet is not mandatory.

Finally, as noted above, in reviewing the data on which the proposed fee increases were based, we noticed that the total costs associated with commercial aircraft were accurate, but the denominator (number of commercial aircraft arrivals) was not accurate, and did not include precleared aircraft. APHIS has corrected this error, resulting in lower commercial aircraft fees than proposed. In this final rule, the commercial aircraft fees are as follows: \$281.39 for FY 2025, \$300.78 for FY 2026, \$320.61 for FY 2027, and \$340.90 for FY 2028. As noted above, we also are not requiring the use of a worksheet for the remittance of the fees.

#### International Passengers Arriving at Airports and Seaports

AQI user fees for inspection of commercial air passengers are listed in § 354.3(f)(1). The current fee is \$3.83 per arrival. We proposed to adjust the AQI user fee per arrival for commercial air passengers. The commercial air passenger fee will increase relative to the current fee.

Similarly, the AQI user fee for inspection of commercial cruise vessel passenger fee is also listed in § 354.3(f)(1). The current fee is \$1.68 per arrival. We proposed to adjust the AQI user fee for inspection of commercial cruise passengers. The commercial cruise vessel passenger

fee will decrease relative to the current fee. The change in the cruise passenger fee owes mainly to the change in allocation criteria from number of inspection events (passengers) to FTE hours.

We also proposed several clarifications in paragraph (f) of § 354.3 related to applicability, payment, and handling of international passenger user fees collected and remitted for trips not taken. In proposed paragraph (f)(1), we added language to clarify that infants, traveling with or without documents, whether in assigned seats or held in an adult passenger's lap, are subject to AQI user fees, as they are subject to the same inspection as other passengers. This harmonizes APHIS regulations with CBP regulations in 19 CFR 24.22(g), and CBP's definition of *passenger* in 19 CFR 24.22(g)(1)(v). As noted above, we also proposed to add a definition of *passenger* to help clarify these requirements.

In proposed changes to paragraphs (f)(5) and (6), we shortened the period for payment of international passenger fees and submission of remittance reports from quarterly to monthly, in order to recover the costs of inspecting international passengers in a timely manner, as discussed above with respect to the commercial aircraft fee. Also as discussed above in relation to paragraph (e) of § 354.3, operators would have 90 days to reconcile their books for each month. Airlines and cruise lines would remit passenger fees to APHIS on a monthly basis (12 times per year) versus the current quarterly basis (four times per year) and would have 90 days to reconcile their books for each month, as opposed to the current 31-day period after the close of the quarter. For example, under this final rule, remittance of fees collected in January of a given year would occur at the end of April of that year (90 days after the close of January); remittance of fees for February of a given year would occur at the end of May of that year; remittance of fees for October of a given year would occur at the end of January of the following year, etc.

We proposed to add new paragraphs (f)(5)(v) and (vi), which would cover the handling of international passenger AQI user fees collected and remitted for trips not taken. Proposed paragraph (f)(5)(v) stated that the entity issuing the ticket or travel document (e.g., air or sea carriers, travel agents, tour wholesalers, or other entities) has a responsibility to make refunds of

the international passenger AQI user fees in the original form of payment to the purchaser for trips not taken.

Proposed paragraph (f)(5)(vi) described the process for requesting a credit from APHIS for international passenger AQI user fees collected and remitted prior to refunding a ticket purchaser for an international passenger AQI user fee for a trip that was not taken. In such cases, the ticket issuing entity would have to submit a revised remittance worksheet or written statement. In keeping with other proposed changes to remittance timeframes, the revised remittance worksheet or written statement would be completed and filed for each month during which the ticket or travel document-issuing entity certifies that there was a decrease in the number of passengers and international passenger AQI user fees collected.

We received three comments about the proposed changes to the remittance procedures. The commenters generally opposed the proposed changes.

One commenter agreed with the intent of proposed paragraph (f)(5)(vi), which would allow airlines to request a credit from APHIS. The commenter stated that in such instances, AQI services are not actually provided, so a mechanism of recovering the remitted user fee for those services is warranted. The commenter also noted that the paragraph could be construed to mean that airlines must remit all fees collected to APHIS, and then only subsequently revise the remittance by requesting credit for flights not taken. The commenter stated that in instances when the flight is not taken and a refund occurs before an initial remittance of the fee is due to the Agency, airlines should be authorized to reconcile this in the initial remittance, rather than a subsequent revision.

The commenter strongly objected to proposed paragraph (f)(5)(v), however. In addition to citing numerous logistical obstacles with its implementation, the commenter stated that, in proposing to prescribe the method by which airlines must refund fees to passengers, APHIS had exceeded its statutory authority under the FACT Act.

After reviewing this comment, we acknowledge that the commenter raised points that merit further consideration. APHIS has therefore elected not to finalize paragraph (f)(5)(v).

We will retain the substance of paragraph (f)(5)(vi), though we have renumbered to paragraph (f)(5)(v). We have modified the proposed provisions of that paragraph in order to reflect the fact that the use of a remittance worksheet will be optional. Additionally, we clarify that the provision applies only in instances when an airline requests credit after it remitted the fee to APHIS. If an airline has reconciled a trip not taken with the customer prior to remittance to APHIS, no subsequent action is needed.

Finally, based on a review of data, the fee for commercial air passengers will be lower than originally proposed. The total costs associated with commercial air passengers was accurate; however, the denominator, that is, the number of air passengers, did not include precleared air passengers at certain ports of departure. APHIS corrected this error, resulting in a lower air passenger fee than proposed. In this final rule, the fees are as follows: \$3.71 in FY 2025, \$3.84 in FY 2026, \$3.98 in FY 2027, and \$4.12 in FY 2028.

The summary tables for AQI International Air Passenger Fee Calculation (tables 15 and 16 below) show that APHIS used actual cost data for FY 2017 through FY 2019 international air passengers, future costs for planned capital expenditures and additional staffing, divided by number of international air passengers per fiscal year to arrive at a unit cost. APHIS adjusted those unit costs to June 2022 dollars, averaged the unit costs across the 3 fiscal years, and finally adjusted that average unit cost for projected inflation. The summary tables are intended to be a quick reference regarding fee development. For more comprehensive cost data information please see the full rollup reports from the APHIS AQI activity-based cost model available on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>.

For October 1, 2024, October 1, 2025, October 1, 2026, fee rates, APHIS subtracted the January 1, 2024 rate from the October 1, 2027 rate, and divided by 4. This amount became the

per phase increase. The per phase increase was then added to the previous phase amount until reaching the October 1, 2027 rate.

Table 15: AQI International Air Passenger Fee Calculation – January 1, 2024 Phase Development (\$3.58 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs	-	-	193
Total APHIS AQI Program Cost (Level 501)	\$47,533,932.90	\$45,901,895.95	\$51,021,447.61
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$7,449,956.65	\$7,185,938.07	\$7,497,507.88
APHIS Additional Staffing Future Costs (Levels 35 and 451) included above	\$0.00	\$0.00	\$0.00
CBP AQI FTEs	-	-	1,324
Total CBP AQI Program Cost (Level 502)	\$322,657,388.91	\$326,636,141.51	\$367,144,251.62
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$2,323,907.55	\$2,195,730.11	\$2,374,865.09
CBP Additional Staffing Future Costs (Level 452) included above	\$0.00	\$0.00	\$0.00
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$370,191,321.81	\$372,538,037.46	\$418,165,699.22
Number of International Air Passengers	117,800,639	122,963,952	128,371,990
Calculated Unit Cost (Total AQI Costs divided by Number of International Air Passengers)	\$3.14	\$3.03	\$3.26
Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$3.54	\$3.35	\$3.54
Average of Unit Costs in June 2022 dollars (fee basis)	\$3.47	-	-
Inflation Projected to FY 2024 dollars	\$3.58	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

Table 16: AQI International Air Passenger Fee Calculation – October 1, 2027 Phase Development (\$4.12 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs + Additional FTEs required by FY 2028	-	-	286
Total APHIS AQI Program Cost (Level 501)	\$79,715,724.46	\$78,930,107.86	\$82,324,802.94
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$6,698,395.19	\$6,683,707.49	\$6,732,920.70
APHIS Additional Staffing Future Costs (Levels 35 and 451) included above	\$5,387,261.41	\$5,278,641.28	\$5,333,823.77
CBP AQI FTEs	-	-	1,665
Total CBP AQI Program Cost (Level 502)	\$322,905,697.99	\$326,760,945.10	\$366,931,730.67
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$1,876,139.13	\$1,900,767.94	\$1,925,396.74
CBP Additional Staffing Future Costs (Level 452) included above	\$30,823,253.52	\$31,227,882.24	\$31,632,510.98
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$402,621,422.45	\$405,691,052.97	\$449,256,533.61
Number of International Air Passengers	117,800,639	122,963,952	128,371,990
Calculated Unit Cost (Total AQI Costs divided by Number of International Air Passengers)	\$3.42	\$3.30	\$3.50
Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$3.85	\$3.64	\$3.80
Average of Unit Costs in June 2022 dollars (fee basis)	\$3.76	-	-

Inflation Projected to FY 2024 dollars	\$4.12	-	-
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<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

We received no comments on the AQI cruise vessel passenger fee and are finalizing it as proposed.

The summary tables for AQI Cruise Vessel Passenger Fee Calculation (tables 17 and 18 below) show that APHIS used actual cost data for FY 2017 through FY 2019 by user class, future costs for planned capital expenditures and additional staffing, divided by number of users per fiscal year to arrive at a unit cost. APHIS adjusted those unit costs to June 2022 dollars, averaged the unit costs across the 3 fiscal years, and finally adjusted that average unit cost for projected inflation. The summary tables are intended to be a quick reference regarding fee development. For more comprehensive cost data information please see the full rollup reports from the APHIS AQI activity-based cost model available on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees/aqi-fee-types/aqi-user-fee-reports>.

For October 1, 2024, October 1, 2025, October 1, 2026, fee rates, APHIS subtracted the January 1, 2024 rate from the October 1, 2027 rate, and divided by 4. This amount became the per phase increase. The per phase increase was then added to the previous phase amount until reaching the October 1, 2027 rate.

Table 17: AQI Cruise Vessel Passenger Fee Calculation – January 1, 2024 Phase Development (\$1.20 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs	-	-	6
Total APHIS AQI Program Cost (Level 501)	\$1,375,153.88	\$1,372,968.69	\$1,451,194.16
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$218,278.05	\$220,590.13	\$216,558.24

APHIS Additional Staffing Future Costs (Levels 35 and 451)	\$0.00	\$0.00	\$0.00
CBP AQI FTEs	-	-	22
Total CBP AQI Program Cost (Level 502)	\$14,068,736.05	\$14,579,099.17	\$16,296,548.83
CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$38,252.81	\$33,016.34	\$40,232.41
CBP Additional Staffing Future Costs (Level 452)	\$0.00	\$0.00	\$0.00
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$15,443,889.93	\$15,952,067.86	\$17,747,742.98
Number of Cruise Vessel Passengers	14,156,457	14,782,393	17,931,570
Calculated Unit Cost (Total AQI Costs divided by Number of Cruise Vessel Passengers)	\$1.09	\$1.08	\$0.99
Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$1.23	\$1.19	\$1.08
Average of Unit Costs in June 2022 dollars (fee basis)	\$1.16	-	-
Inflation Projected to FY 2024 dollars	\$1.20	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

Table 18: AQI Cruise Vessel Passenger Fee Calculation – October 1, 2027 Phase Development (\$1.39 Fee Rate)<sup>1</sup>

	FY 2017	FY 2018	FY 2019
APHIS AQI FTEs + Additional FTEs required by FY 2028	-	-	10
Total APHIS AQI Program Cost (Level 501)	\$2,693,514.56	\$2,767,017.10	\$2,723,363.52
APHIS Capital Planning/Expenditure Future Costs (Level 26) included in total program cost above	\$208,436.51	\$220,810.87	\$201,712.40
APHIS Additional Staffing Future Costs (Levels 35 and 451) included above	\$242,055.16	\$259,911.22	\$229,204.44
CBP AQI FTEs	-	-	28
Total CBP AQI Program Cost (Level 502)	\$14,293,361.68	\$14,630,815.71	\$16,317,674.53

CBP Capital Planning/Expenditure Future Costs (Level 27) included in total program cost above	\$31,668.56	\$32,084.29	\$32,500.01
CBP Additional Staffing Future Costs (Level 452) included above	\$1,122,418.65	\$1,137,153.07	\$1,151,887.50
Total AQI Costs (APHIS AQI Costs + CBP AQI Costs)	\$16,986,876.24	\$17,397,832.81	\$19,041,038.05
Number of Cruise Vessel Passengers	14,156,457	14,782,393	17,931,570
Calculated Unit Cost (Total AQI Costs divided by Number of Cruise Vessel Passengers)	\$1.20	\$1.18	\$1.06
Unit Cost inflated to June 2022 dollars <sup>2</sup>	\$1.35	\$1.30	\$1.15
Average of Unit Costs in June 2022 dollars (fee basis)	\$1.27	-	-
Inflation Projected to FY 2028 dollars	\$1.39	-	-

<sup>1</sup> Within this table, “level” refers to the level in the APHIS AQI Cost Model.

<sup>2</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

### AQI Treatment Monitoring

AQI treatments are performed on some agricultural goods as a condition of entry, and additional treatments 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. Currently, these treatments are charged on a per-treatment basis; that is, 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 current fees are set out in § 354.3(h). APHIS reevaluated assessing AQI treatment monitoring fees on a per-enclosure basis, and we proposed an hourly rate instead.

We received seven comments about the proposed changes to the treatment monitoring fee. The commenters generally opposed the proposed changes.

Commenters were generally opposed to this proposed change. They raised a number of concerns about moving to an hourly charge, including the magnitude of the fee increases for certain treatment types, uncertainty over how the hourly rate would be applied given nonuniform standards of service and if new efficiencies (e.g., remote monitoring) could be used. The commenters also stated that the proposed hourly billing process would present challenges in

terms of providing customers with timely invoices. The commenters further stated that for certain low-value commodities, the hourly rate would exceed the value of the import.

After reviewing the comments, we agree with the commenters that these issues merit further consideration before making changes to the AQI treatment monitoring fees. We have therefore decided not to proceed with amending § 354.3(h) at this time. We will address the restructuring of the AQI treatment monitoring fees in a future rulemaking. APHIS will keep the per-enclosure fee in place.

However, we received no comments, and are aware of no evidence, that treatment monitoring services are not subject to inflationary forces. Therefore, we are incorporating annual adjustments for projected inflation<sup>12</sup> as follows, using the current fee of \$237 per enclosure as the basis:

Table 19: Treatment Monitoring Fee with Projected Inflation Adjustment

	October 1, 2024	October 1, 2025	October 1, 2026	October 1, 2027
Treatments (per enclosure)	\$240.60	\$244.19	\$247.79	\$251.38

#### Records Retention

To improve monitoring, compliance, and enforcement of this regulation, we proposed to add a new paragraph (j), which would contain records retention requirements related to AQI user fees. Proposed paragraph (j)(1) provided that entities responsible for collecting and paying the fees and their agents would be responsible for maintaining all records required under § 354.3, as well as legible copies of contracts and other agreements made between responsible persons and their agents. Under proposed paragraph (j)(2), all parties responsible for collecting and paying the fees would have to maintain sufficient documentation for APHIS, CBP, and authorized representatives to verify the accuracy of the fee collections and remittance worksheets or written statements. Such information would have to be made available for inspection upon APHIS and

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<sup>11</sup> As described in: <https://www.regulations.gov/document/APHIS-2022-0023-0010>.

CBP's demand. Such documentation would be required to be maintained in the United States for a period of 5 years from the date of remittance calculation. Each entity covered by this proposed requirement would have to provide to APHIS and CBP the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section and to promptly notify APHIS and CBP of any changes in the identifying information previously submitted. Currently, CBP conducts U.S. Government Accountability Office yellow book standard audits of the commercial aircraft fee and international air passenger fee on APHIS' and CBP's behalf. APHIS seeks to expand this arrangement to include audits of the AQI program's commercial railroad car fee and international cruise passenger fee.

Commenters stated that the proposed 5-year record retention period does not align with current airline industry practice and other Federal agency policies (e.g., FAA requires certain records be retained for 3 years).

This change is being made to harmonize APHIS regulations with CBP's Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) fee regulations in 19 CFR 24.22(g)(7), which require a 5-year retention period. As we explained in the proposed rule, CBP audits the AQI aircraft and international air passenger fee collections on APHIS' behalf. CBP requires the 5-year-retention period because the statute of limitations for litigation purposes is 6 years. The 5-year-retention period gives us the time needed to state what is owed in the event of non-payment as well as time to bring legal action if necessary to collect. APHIS will implement these changes in this final rule.

#### Severability

We proposed to add a new § 354.3(k), "Severability," to address the possibility that this final rule, or portions of this final rule, may be challenged in litigation. It is APHIS' intent that the individual sections of this final rule be severable from each other, and that if any sections or portions of the regulations are stayed or invalidated, the validity of the remainder of the sections

shall not be affected and shall continue to be operative. We received no comments on this proposed addition and will implement it in this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866, 13563, 14094 and Regulatory Flexibility Act

This final rule has been determined to be significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, “Modernizing Regulatory Review,” and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rulemaking. The economic analysis 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 economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this final rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

The Food, Agriculture, Conservation and Trade (FACT) Act of 1990 (as amended) [21 U.S.C. 136a] authorizes the Secretary of Agriculture to prescribe and collect fees sufficient to cover the cost of providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or pre-inspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or commercial railroad

car, and to cover the cost of administering the AQI program. The United States Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) Plant Protection and Quarantine (PPQ) is responsible for developing and setting the Agricultural Quarantine and Inspection (AQI) user fee schedule, and related regulatory policy. Periodically, APHIS updates the schedule of rates paid by users via the rulemaking process. Due to a variety of factors, the current AQI fee schedule results in insufficient collections to achieve full cost recovery.

APHIS is making a number of revisions to the regulations that govern the user fee rates, and related regulatory requirements for maritime vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers on airlines and cruise ships. The revisions make adjustments to the cost model that is used to calculate the fees. Those revisions incorporate inflation into the user fees, including the fee for treatment monitoring.

This final rule will also eliminate an exemption from the commercial aircraft fee that currently applies to commercial aircraft with 64 or fewer seats that meet certain regulatory requirements; eliminate an exemption from the commercial vessel fee that currently applies to commercial barges operating between Canada and the United States that meet certain regulatory requirements; increase the "per arrival" multiple used to calculate the fee for a multiple-use transponder for commercial trucks; as well as increase the "per arrival" multiple used to calculate the prepaid railroad car fee and apply the fee to all arriving railroad cars.

APHIS has decided not to restructure the treatment fee in this final rule. Rather, we are retaining the per-enclosure treatment fee, while incorporating annual inflation adjustments for this fee. Additionally, based on comments received, APHIS has created a reduced user fee rate for commercial vessels operating solely between the United States and Canada and within either the Great Lakes or a region along the coastline between Alaska and Oregon, provided that the vessels meet certain requirements.

This final rule will also update remittance procedures to facilitate timely submission of fees. Finally, we have made editorial revisions in order to clarify intent in the regulations.

The Agricultural Quarantine and Inspection (AQI) Program implements a continuum of exclusion strategies and activities that mitigate the plant and animal health risks associated with the spread of pests and diseases due to global trade, international travel, or the smuggling of prohibited agricultural and related products. APHIS uses an Activity-Based Cost (ABC) Model to calculate the individual user fees. First, costs are allocated to a series of activities. Next, the costs assigned to those activities are allocated to the fee areas based on the level of effort associated with each fee area. For example, the costs associated with the cargo inspection activity (which include the costs of providing the service, as well as the administrative and overhead costs associated with providing the service) are allocated to the commercial vessel, truck, railroad car, and aircraft fees, based on the level of effort in each of those fee areas. This cost allocation approach avoids cross-subsidization (e.g., cargo inspection costs do not get assigned to passengers or treatment users).

When the cost of providing AQI services and the fees paid to fund these services do not align, adjustments are a necessary step in reaching the goal of full cost recovery. Services in the AQI program must be provided, but when the user fee is not covering the costs, the user of the service is not bearing the true cost of providing the service. This final rule will benefit the public by continuing to ensure that the fees received from users for providing necessary AQI services align with the expenditures associated with providing those services.

AQI services protect American agriculture and natural resources from sanitary and phytosanitary risks. The spread of invasive species harms domestic agricultural producers and damages the natural environment. Imported freight constitutes a major phytosanitary risk. The wide diversity of origins and commodities present multiple opportunities for pests to infest a product or wood packing material. AQI services are provided to mitigate such phytosanitary risks. To ensure that the expenditures on AQI services and the fees applied to those services align, adjustments to the fees are necessary. Those most likely to be impacted by this final rule are international air and sea passengers, businesses within the truck, rail, sea, and air

transportation sectors, and providers of treatment services. While users of AQI services do incur costs in the form of user fees, these user fees enable the government to recover the costs of providing AQI services. However, the associated revenues do not currently align with the costs of providing these AQI services and administering the AQI program.

Individual importers or passengers may experience some financial burden from the establishment of or increase in user fees (or relief when a fee is reduced), but the AQI services are already being provided and thus are already counted as government costs. The revenue from user fees for services provided are intended to cover the expenditures for those services, a concept known as transfer payments. Examples of transfer payments include fees paid to government agencies for services provided by the agency. Federal regulations with transfer payments are assumed to have a one-to-one effect, balancing benefits and costs.<sup>13</sup> The benefits and costs, as well as the annualized transfer payments are summarized in table A.

Table A. Accounting statement of costs, benefits, and transfers associated with the rule.

Benefits		
Non-Quantified Benefits	This final rule will better align AQI expenditures and revenues by class. Transfer payments balance the costs and benefits of the program.	
Costs		
Non-Quantified Costs	Realigned AQI user fees are intended to cover the costs of providing AQI services. User fees transfer the cost of those services from the government to the users.	
Transfers		
Annualized Transfers by user class <sup>1,2</sup>	7% discount rate	3% discount rate
Air Passengers	\$479,900,000	\$480,800,000
Commercial Aircraft	\$296,400,000	\$297,300,000
Commercial Rail	\$27,150,000	\$27,270,000
Commercial Truck <sup>3</sup>	\$118,300,000	\$118,700,000

<sup>13</sup> Transfer payments are noted by the Office of Management and Budget to include “Fees to government agencies for goods or services provided by the agency (monetary transfers from fee payers to the government—the goods and services are already counted as government costs and including them as private costs would entail double counting).” Federal regulations with transfer payments are assumed to have a one-to-one effect on benefits and costs. See: Regulatory Impact Analysis: A Primer, page 8.

Commercial Vessel	\$187,600,000	\$187,800,000
Cruise Vessel Passenger	\$20,520,000	\$20,560,000
Treatments (\$/Hr.)	\$8,750,000	\$8,760,000
Total <sup>4</sup>	\$1,139,000,000	\$1,141,000,000

<sup>1</sup> Annualized value of transfers from FY 2025 through FY 2028; discounted at 7 and 3 percent, 2022 dollars.

<sup>2</sup> Estimates of user fee collections (transfers) based on individual fee levels for each year of the implementation schedule (see table B) multiplied by an estimate of the activity level in each fee category. This activity level estimate is based on the average number of each category of arrivals from FY 2017-2019, the 3 years for which clean data are available.

<sup>3</sup> This estimate is based on truck arrivals from FY 2017-2019. To account for the change in both the fee level and transponder cap, the estimate uses a distribution of 1,000,000 single payer crossings and 125,000 transponders.

<sup>4</sup> Totals may not sum due to rounding.

The fee schedule will better reflect the costs of AQI services provided to commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air and sea passengers arriving at U.S. ports (table B).

Table B. Current and scheduled AQI user fee rates (dollars)

Fee Area	AQI User Fee Schedule				
	Current Fee	October 1, 2024	October 1, 2025	October 1, 2026	October 1, 2027
Air Passenger	3.83	3.71	3.84	3.98	4.12
Commercial Aircraft <sup>1</sup>	225.00	281.39	300.78	320.61	340.90
Commercial Vessel	825.00	2,903.73	2,981.17	3,059.61	3,139.06
Commercial Vessel-Great Lakes/Cascadia	N/A <sup>2</sup>	837.51	850.03	862.54	875.06
Commercial Truck	7.29	12.40	13.45	14.50	15.55
Commercial Railroad Car	2.00	6.51	7.23	7.97	8.72
Cruise Vessel Passenger	1.68	1.25	1.29	1.34	1.39
Treatment <sup>3</sup>	237	240.60	244.19	247.79	251.38

<sup>1</sup> We are delaying implementation of the commercial aircraft user fee for aircraft with 64 or fewer seats until April 1, 2025.

<sup>2</sup> This geographically limited fee rate does not exist under the current fee schedule; however, certain vessels in this category do currently pay the current commercial vessel fee.

<sup>3</sup> per enclosure

#### Air Passengers

The air passenger fee will increase from \$3.83 to \$4.12 in FY 2028. The total fee increase of \$0.29 will be approximately a 7.6 percent increase from current fees, but only a 0.05

percent increase in the average price of an international round-trip airfare.<sup>14</sup> These changes in the effective cost for international air travel are extremely small, and seem unlikely to significantly change consumer purchasing behavior. Limitations in the amount and nature of data available on such small fee changes make it difficult for the agency to draw specific conclusions as to how these small changes in airfare will affect international air travel overall. However, any change in international air travel due to a change of less than one dollar in the price of international airfare is likely to be small.

### Commercial Aircraft

The commercial aircraft fee will increase from \$225 to \$340.90 per arrival in FY 2028. This increase of \$115.90 will be about a 51.5 percent increase from the current fees. Between 2013 and 2019 the volume of imports into the United States by air increased by eight percent (82 million kg) and the value increased by 57 percent in constant dollars. Even after the 51.5 percent increase, the commercial aircraft fee is still the equivalent of 0.05 percent of the value of goods being imported by air. In terms of the cargo alone, the 2028 commercial aircraft fee rate under this rulemaking represents approximately \$0.069 in dollars-per-kilogram imported by air generally. In addition, the commercial aircraft user fee constitutes a small portion of the expenses associated with commercial aircraft. And moreover, most international arrivals have passenger airfares as a primary revenue source. Even with the commercial aircraft fee increasing by \$115.90 by 2028, the commercial aircraft user fee is equivalent to approximately five minutes of operating costs for aircraft.<sup>15</sup> Like all AQI user fees, this fee is based solely on the actual cost of AQI services provided for this mode of conveyance between FY 2017 and FY 2019, plus forecasted staffing and capital costs, adjusted for inflation. The fee for this conveyance is not

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<sup>14</sup> Damodaran, A., Consumer Airfare Index Report - May 2021. *As travel demand returns and more Americans are vaccinated, what does it mean for airfare prices?* May 18, 2021.

<sup>15</sup> Federal Aviation Administration. Economic Values for Investment and Regulatory Decisions – Chapter 4: Aircraft Operating Costs. March 2021 Update. Retrieved on June 8, 2022, from [https://www.faa.gov/sites/faa.gov/files/regulations\\_policies/policy\\_guidance/benefit\\_cost/econ-value-section-4-op-costs.pdf](https://www.faa.gov/sites/faa.gov/files/regulations_policies/policy_guidance/benefit_cost/econ-value-section-4-op-costs.pdf).

derived from the financial performance of the industry. Limitations in the internal industry performance data available to the agency make it difficult to develop specific conclusions as to how such a fee change will affect the commercial aircraft industry overall. This information, however, is used to contextualize the scale of the collections and illustrate the relative size and impact that the fee might have on the conveyance as a whole. However, the increase in the AQI commercial aircraft fee is likely to have a limited impact on aircraft operators.

#### Small Aircraft Exemption

The commercial aircraft user fee is not currently applied to the international arrivals of certain commercial aircraft with 64 or fewer seats. Commercial aircraft with 64 or fewer seats comprised approximately 10 percent of arriving international flights from 2016 to 2018. This final rule will result in the removal of this exemption.

In light of the fact that small commercial aircraft have not previously been subject to the fee, APHIS believes that additional time is warranted to allow operators to come into compliance. Accordingly, APHIS is delaying the effective date for removal of the exemption for aircraft with 64 or fewer seats until April 1, 2025.

The commercial aircraft fee is based on the average cost of clearing commercial aircraft and their cargo. The cost associated with any specific aircraft, whether small or large, also depends on a variety of other factors because the phytosanitary risk posed by a particular aircraft is based upon the country of origin, countries transited, type and volume of cargo, country of origin of the cargo, and environmental conditions at point of origin and final destination. These costs are not currently borne by all operators of commercial aircraft with fewer than 65 seats arriving internationally.

Domestic flights are not subject to the commercial aircraft fee. For most operators of small commercial aircraft, domestic flights are the greatest portion of their operations and associated revenue. The removal of the exemption only affects international arrivals of aircraft with fewer than 65 seats. The commercial aircraft fee is not derived from the financial

performance of the industry. Like all AQI user fees, this fee is based solely on the cost of providing AQI services for this mode of conveyance between FY 2017 and FY 2019, plus forecasted staffing and capital costs, adjusted for inflation. Because we do not have explicit data on the per-flight revenue, profit margins, and competitive landscape affecting international arrivals of commercial aircraft with 64 or fewer seats, we cannot make specific conclusions as to how the collection of this user fee will affect individual businesses. Approximately 7 percent of the flights of the top 5 small aircraft operators, and less than 5 percent of the flights of the top 10 operators, are international arrivals. This provides context for the scale of the collections and illustrates the impact that the fee might have on the affected entities.

### Commercial Vessels

The commercial vessel fee will increase from \$825 to \$3,139.06 by FY 2028. Some vessels operating in the Great Lakes or Cascadia areas will be eligible to pay a reduced commercial vessel fee. A variety of factors contributed to the commercial vessel fee increase. Among these were an increase in the cost of AQI services across the pathway, an expansion of the average ship cargo capacity, and an increase in the level of effort required to inspect the average vessel. Even with the commercial vessel fee increasing by up to 280 percent to \$3,139.06 by FY 2028, the commercial vessel fee remains very small relative to other vessel operating expenses. It is equivalent to approximately 2 percent of a single day's fuel consumption for a moderately sized container ship.<sup>16</sup> The fee for this conveyance is not derived from the financial performance of the industry. Like all AQI user fees, this fee is based solely on the costs for providing AQI services for this mode of conveyance between FY 2017 and FY 2019, plus forecasted staffing and capital costs, adjusted for inflation. The change to the

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<sup>16</sup> Global 20 port average VSLFO, first half of 2022. Retrieved 08/11/22 from <https://shipandbunker.com>; Stratiotis, E. Fuel Costs in Ocean Shipping. January 22, 2018. (<https://www.morethanshipping.com/fuel-costs-ocean-shipping>);  $\$3139.06 / \$900$  (per ton of fuel) = 3.5 tons of fuel. Average fuel consumption is 200 tons/day.  $3.5 \text{ tons} / 200 \text{ tons} = 1.75\%$

commercial vessel fee seems likely to have a limited impact on the operations of commercial vessels.

#### Canadian Barge Exemption

From 2016 through 2018, an annual average of 1,405 commercial barges arrived from Canada into the United States, most of which are exempt from the current commercial vessel AQI fee. Vessel companies and ports facilitating the movement of currently exempted barge shipments from Canada and the United States will be affected. APHIS has concluded that barges from Canada that are currently exempted do pose a phytosanitary risk and require inspection and payment of the associated fee. Barges operating in the Great Lakes and Cascadia areas also require inspection and a payment of a fee. However, those meeting certain additional conditions will be eligible to pay a reduced fee, provided their cargo meets the requirements. The reduced fee represents approximately \$.00025 per kilogram imported by barge. These fees are not derived from the financial performance of the industry. This information provides context for the scale of the collections and illustrates the impact that the fee might have on the affected entities. Because we do not have explicit data on international barge traffic revenue, profit margins, and the competitive landscape affecting arrivals of currently-exempt barges from Canada, we cannot make specific conclusions as to how the collection of this user fee will affect individual entities.

#### Commercial Trucks

The commercial truck fee will increase from \$7.29 to \$15.55<sup>17</sup> by 2028, an increase of \$8.26 per truck arrival. In addition, commercial truck operators have the option to prepay for an unlimited number of arrivals (per year) by purchasing a transponder, the price of which will increase from the equivalent of 40 arrivals to 50 arrivals in the period between October 1, 2024

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<sup>17</sup> \$15.59 rounded down to the nearest \$0.05 (five-cent) increment. At CBP's request, we rounded down to the next \$0.05 (five-cent) increment to facilitate operations at the border. CBP has indicated that making change at the penny level for single-payer trucks would have a negative impact on wait times at the land border.

and October 1, 2025, and thereafter to 60 arrivals.<sup>18</sup> Between 2013 and 2019 imports into the United States by truck increased by 397 million kilograms. Even after a 114 percent increase, the user fee of \$15.55 in 2028 for a commercial truck entering the U.S. will be the equivalent of 0.034 percent of the average value of goods imported by truck. The user fee in 2028 in dollars-per-kilogram for truck cargo is approximately \$0.0014. In addition, this user fee is roughly the equivalent of the operating expenditures of a truck transporting goods about nine miles. The fee for this conveyance is not derived from the financial performance of the industry. Limitations in the internal industry performance data available to the agency make it difficult to develop specific conclusions as to how such a fee change will affect the commercial truck industry overall. This information, however, is used to contextualize the scale of the collections and illustrate the relative size and impact that the fee might have on the conveyance as a whole. The impact of this fee change on the operations of commercial trucks seems likely to be limited. Because of the efficiencies gained by both the program and users of the AQI services, APHIS will also continue to provide an incentive to purchase the transponder in the form of a cap.

#### Commercial Railroad Cars

The commercial railroad car fee will increase from \$2 to \$8.72 per arriving railroad car by 2028, a total increase of \$6.72. Between 2013 and 2019, imports into the United States by rail remained relatively constant, but technology improvements have allowed for a reduction in the number of railroad cars assessed the commercial railroad car fee. Even after a total increase of approximately 337 percent, the commercial railroad car fee is approximately 0.029 percent of the value of goods being imported on by railroad car. The user fee in 2028 in dollars-per-kilogram for commercial railroad cars generally is approximately \$0.0004. Limitations in the amount and nature of data available to the agency make it difficult to develop specific

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<sup>18</sup> In addition, commercial truck operators have the option to prepay for an unlimited number of arrivals (per year) by purchasing a transponder, the price of which will increase from the equivalent of 40 arrivals to 50 arrivals in the period between October 1, 2024 and October 1, 2025, and thereafter to 60 arrivals

conclusions as to how these fee changes will affect international commercial railroad car arrivals overall. Like all AQI user fees, this fee is based solely on the cost of providing AQI services for this mode of conveyance between FY 2017 and FY 2019, plus forecasted staffing and capital costs, adjusted for inflation. Industry information is used to contextualize the scale of the collections and illustrate the relative size and impact that the fee might have on the conveyance as a whole. The change to this user fee seems likely to have a limited impact on commercial railroad car operations.

#### International Cruise Vessel Passengers

The international cruise vessel passenger fee will decline by 31 percent initially, and still be 21 percent lower than the current fee by 2028, an overall decline of \$0.29 per passenger arrival. Limitations in the amount and nature of data available to the agency make it difficult to develop specific conclusions as to how small fee changes will affect international cruise passenger arrivals overall. However, a decrease of \$0.29 in the fee represents less than a 0.02 percent decrease in the cost of a 7-day cruise.

#### Treatment Monitoring

APHIS monitors phytosanitary treatments to ensure that they are conducted as prescribed. APHIS proposed to shift the treatment monitoring fee to an hourly basis rather than a per-enclosure basis, and to make adjustments to the remittance practices for the treatment monitoring fee. Based on the comments received, we have decided not to make that structural revision to our AQI treatment monitoring fee or the remittance practices in this final rule. APHIS will keep the per-enclosure fee in place with annual adjustments for projected inflation, and the remittance practices will remain unchanged at this time.

APHIS estimates the total annualized cost of the paperwork and recordkeeping associated with this final rule to be \$70,061. Reporting and recordkeeping requirements associated with this final rule are discussed under the heading "Paperwork Reduction Act."

The Small Business Administration has set small-entity standards for the transportation sectors. Small entities make up between 92 percent and 99 percent of each of the regulated industries, though the size data do not distinguish between transportation firms that operate internationally and those firms that only operate within the United States. The impacts of this final rule are likely to be limited for all entities within the affected industries, including small entities. While most businesses that will be affected by this final rule are likely to be small, for the reasons discussed further in the Final Regulatory Flexibility Analysis, we believe that the changes set forth in this final rule satisfactorily accomplish the regulatory objectives while minimizing impact on small entities. The provisions of this final rule are consistent with ensuring a level of AQI services commensurate with that required to safeguard American agriculture and natural resources from sanitary and phytosanitary risks.

#### Executive Order 12988

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

#### Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Puyallup Tribe has requested Tribal consultation regarding this final rule. APHIS will coordinate with the Office of Tribal Relations to ensure that meaningful consultation occurs.

Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the reporting and recordkeeping requirements in the proposed rule and this final rule have been submitted for approval to the Office of Management and Budget (OMB) control number 0579-0055, APHIS Credit and User Fee Accounts. The remaining reporting and recordkeeping requirements that were solely associated with this final rule were submitted to OMB as a new information collection and assigned OMB comment-filed number 0579-0489. After approval, this information collection will be merged into 0579-0055 in the future.

New information collection requirements created by the regulations of this final rule include information collection, reporting, and recordkeeping requirements in the form of paper, electronic submissions, and information systems. In conjunction with the changes to provide for cost recovery for services, we have considered each change and their impact(s) on these burdens. These changes concern adjusting fee amounts, adjusting caps on certain prepaid fees, removing exemptions, and providing electronic payments and statement options. Estimates include additional respondents, responses, and burden estimates across all activities affected by this rule.

As described above, APHIS received several public comments on the proposed rule, and the following changes were made to the final rule:

- We have lowered the fees for commercial vessels, commercial aircraft, and international air passengers based on our determination that, while aggregate cost was correct (the

numerator for the fee rate), there were more instances in which AQI services were provided in these modes (the denominator for the fee rate) than we had initially calculated.

- We have established a commercial vessel fee specific to commercial vessels operating within the Great Lakes or in the region along the coastline from Alaska to Oregon, provided that certain conditions are met.
- We have decided not to revise our regulations governing the treatment monitoring fee at this time.
- We have decided not to specify the method by which airlines and cruise ships must refund passenger user fees assessed for trips not taken.

With these changes, there are corresponding updates in the related recordkeeping burdens (Applications for Credit Account and Request for Services, User Fees for International Air Passengers – Remittance and Statements, and Fees for Conducting and Monitoring Treatments) between the proposed and final rules. There was no impact on burden assumptions between the proposed and final rules due to the first two bulleted items above. The estimated burden on commercial vessels, commercial aircraft, and international aircraft customers has not changed. In addition, the volumes of payers of the new commercial vessel fee specific to commercial vessels operating within the Great Lakes or in the region along the coastline from Alaska to Oregon is a subset of the original burdens vessel user fee-related burdens included in the proposed rule, so there is no change in the estimated burden between the proposed and final rules. Because the revisions to the treatment user fees in the proposed rule would have created new burdens, the decision not to revise the regulations governing the treatment monitoring user fees has lowered the assumed burdens between the proposed and this the final rule in four ways:

- The proposed rule assumed there would be 2,844 new treatments (1,190 heat treatments and 1,654 irradiation treatments) with an estimated 5 minutes per treatment burden yielding 237 respondent burden hours per year. With the removal

of the treatment fee changes from the final rule, we reduced the burden estimate between the proposed and final rules accordingly.

- The proposed rule included a new billing process for treatment monitoring, and in the proposed rule, we assumed half of the approximate 50 treatment facilities would want to be billed. 25 facilities x 8.4 minutes per facility (the estimated time for a facility to complete an application for an account based on timed trials) = 3.5 respondent burden hours for treatment facilities to manage being billed. With the removal of the treatment fee changes from the final rule, we reduced the burden estimate between the proposed and final rules accordingly.
- The proposed rule included consequences for late payment of AQI treatment monitoring user fees and estimated there would be six treatment facilities incurring an increased time burden of 20 minutes per facility for an estimated increase in respondent burden of 2 hours. We removed these 2 hours from our estimated burden with the removal of the treatment fee changes from the final rule.
- The proposed rule included a reduction in the need for facilities to create new business procedures to hold fees in trust estimating it would save 50 treatment facilities 4.75 hours per year for a total of 237 reduction in respondent burden hours each year for individuals and 237 reduction in respondent burden hours each year for businesses. With the removal of the treatment fee changes from the final rule, the treatment facilities remain holding fee collections in trust. For this change between the proposed rule and final rule, we added 237 respondent burden hours into the total number of respondent burden hours between the proposed and final rules.

In addition, the decision not to specify the method by which airlines and cruise ships must refund passenger user fees assessed for trips not taken has also lowered the assumed burdens between the proposed rule and the final rule. The proposed rule assumed one third of the estimated 331 airlines would be required to submit revised remittance sheets each month. 1/3

of 331 airlines = 110 airlines. We estimated those 110 airlines would be required to submit 12 additional remittances per year taking 3 minutes each at 66 hours of additional burden per year. With the decision not to specify the passenger user fee refund methods, we have reduced the overall respondent burden estimate between the proposed and final rule by this amount.

With the changes to the final rule, the estimated number of respondents has decreased by 392, the estimated number of responses has decreased by 9,881, and the estimated burden has decreased by 781 hours.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this final rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2533.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104.4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, tribal governments, and the private sector. Under section 101 of the UMRA, APHIS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in expenditures by State, local, and tribal governments, in the aggregate,

or by the private sector, of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

APHIS has reviewed this rule in accordance with Executive Order 13132 regarding Federalism and has determined that it does not have “federalism implications.” The rule does not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

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

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

As discussed in the preamble, APHIS is amending 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. Revise § 354.3 to read as follows:

#### **§ 354.3 User fees for certain international services.**

(a) *Definitions.* Whenever in this section the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

*APHIS.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA).

*Arrival.* Arrival at a port of entry, as listed in 19 CFR 101.3 or as defined by 19 CFR 101.1, in the customs territory of the United States or at any place serviced by any such port of entry.

*Calendar year.* The period from January 1 to December 31, inclusive, of any particular year.

*Cascadia.* British Columbia and those ports of entry into the United States lying south of 59° 26' 59.316" N, north of 43° 23' 34.152" N, west of 122° 20' 31.2" W, and east of 135° 20' 2.4" W.”

*Certificate.* Any certificate issued by or on behalf of APHIS describing the condition of a shipment of plants or plant products for export, including but not limited to Phytosanitary Certificate (PPQ Form 577), Export Certificate for Processed Plant Products (PPQ Form 578), and Phytosanitary Certificate for Reexport (PPQ Form 579).

*Commercial aircraft.* Any aircraft used to transport persons or property for compensation or hire.

*Commercial purpose.* The intention of receiving compensation or making a gain or profit.

*Commercial railroad car.* Any carrying vehicle, measured from coupler to coupler and designed to operate on railroad tracks, other than a locomotive or a caboose.

*Commercial shipment.* A shipment for gain or profit.

*Commercial truck.* Any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the transportation of non-commercial merchandise on a for-hire basis.

*Commercial vessel.* Any watercraft or other contrivance used or capable of being used as a means of transportation on water to transport property for compensation or hire, with the exception of any aircraft or ferry.

*Customs and Border Protection (CBP).* U.S. Customs and Border Protection, U.S. Department of Homeland Security.

*Customs territory of the United States.* The 50 States, the District of Columbia, and Puerto Rico.

*Designated State or county inspector.* A State or county plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties as to the phytosanitary condition of plant products inspected under the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

*Great Lakes.* The Great Lakes of North America and the waters of the St. Lawrence River west of a rhumb line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along 63° W. longitude from Anticosti Island to the north shore of the St. Lawrence River.

*Passenger.* A natural person for whom transportation is provided, including infants, whether a separate ticket or travel document is issued for the infant, or the infant or toddler occupies a seat, or the infant or toddler is held or carried by another passenger.

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

*(b) Fee for inspection of commercial vessels of 100 net tons or more.* (1) Except as provided in paragraphs (b)(2) and (3) of this section, the master, licensed deck officer, or purser of any commercial vessel which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D, and which is either required to make entry at the customs house under 19 CFR 4.3 or is a U.S.-flag vessel proceeding coastwise under 19 CFR 4.85, shall, upon arrival, proceed to CBP and pay an agricultural quarantine and inspection (AQI) user fee. The base AQI user fee for each arrival is shown in table 1. The fee will be paid for each arrival regardless of the number of arrivals taking place in the course of a single voyage.

Table 1 to Paragraph (b)(1)—Fee for inspection of commercial vessels of 100 net tons or more

Effective date	Amount
October 1, 2024	\$2,903.73
October 1, 2025	\$2,981.17
October 1, 2026	\$3,059.61
October 1, 2027	\$3,139.06

(2) The following categories of commercial vessels are exempt from paying an AQI user fee:

(i) Commercial cruise vessels carrying passengers paying fees under paragraph (f) of this section;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Vessels used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the vessel is not carrying persons or merchandise for commercial purposes;

(iv) Vessels arriving in distress or to take on fuel, sea stores, or ship's stores;

(v) Tugboats towing vessels on the Great Lakes; and

(vi) Vessels returning to the United States after traveling to Canada solely to take on fuel.

(3) If not otherwise exempt from paying the fee, a vessel traveling solely between the United States and Canada and within the Great Lakes or Cascadia may pay the AQI user fee for each arrival as the fee is shown in table 2, provided that the vessel:

(i) Is not carrying cargo originating from countries other than the United States or Canada.

(ii) Is not carrying plants or plant products.

(iii) Is not carrying animals or animal products.

(iv) Is not carrying soil or quarry products from areas in Canada listed in § 319.77-3 of this chapter as being infested with gypsy moth.

(v) Is not carrying wood packaging material as defined under § 319.40-1 of this chapter.

Table 2 to Paragraph (b)(3)—Fee for inspection of commercial vessels traveling solely between the United States and Canada and within the Great Lakes or Cascadia, and not otherwise exempt.

Effective date	Amount
October 1, 2024	\$837.51
October 1, 2025	\$850.03

October 1, 2026	\$862.54
October 1, 2027	\$875.06

(c) *Fee for inspection of commercial trucks—(1) On-arrival payment.* Upon arrival at a CBP port of entry, the driver or other person in charge of a commercial truck that is subject to inspection under part 330 of this chapter or under 9 CFR chapter I, subchapter D, must tender the AQI user fees to CBP, unless they have been prepaid as provided for in paragraph (c)(2) of this section. APHIS strongly encourages electronic remittance of fees. The fee applies to all commercial trucks, regardless of what they are carrying, as well as empty trucks and truck cabs (see table 3).

Table 3 to Paragraph (c)(1)—Fee for inspection of commercial trucks

Effective date	Amount (per arrival)	Amount (prepaid annual fees)
October 1, 2024	\$12.40	\$622.00
October 1, 2025	\$13.45	\$808.20
October 1, 2026	\$14.50	\$870.60
October 1, 2027	\$15.55	\$935.40

Note: The per arrival fee has been rounded down to the next \$0.05 (five-cent) increment to facilitate border operations. Additionally, the prepaid fees are set at 50 times the unrounded fee rate of \$12.44, and 60 times the unrounded fee rates of \$13.47, \$14.51, and \$15.59, respectively.

(2) *Prepayment.* (i) The owner, their agent, or person in charge of a commercial vehicle may at any time prepay the commercial truck AQI fee as defined in paragraph (c)(1) of this section for all arrivals of that vehicle during a calendar year or any remaining portion of a calendar year. The prepayment transponder fee is set at 50 times the unrounded per arrival fee for the period between October 1, 2024 and September 30, 2025, and 60 times the unrounded per arrival fee thereafter. Prepayment of the AQI fee must be made in accordance with the procedures and payment methods set forth in 19 CFR 24.22. The following information must be provided, together with the prepayment amount for each arrival:

- (A) Vehicle make, model, and model year;
- (B) Vehicle Identification Number (VIN);
- (C) License numbers issued by State, Province, or country; and

(D) Owner's name and address.

(ii) Purchases of transponders may be made at any time during a calendar year; APHIS will not prorate for the portion of the calendar year already elapsed, nor refund single-crossing fees already paid.

(d) *Fee for inspection of commercial railroad cars—(1) General requirement.* Except as provided in paragraph (d)(2) of this section, an AQI user fee will be charged for each commercial railroad car (loaded or empty) which is subject to inspection under part 330 of this chapter or under 9 CFR chapter I, subchapter D, upon each arrival, as indicated in table 4. The railroad company receiving a railroad car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the United States, will be responsible for payment of the fee. Payment of the fee must be made in accordance with the procedures set forth in paragraph (d)(3) or (4) of this section. For purposes of this paragraph (d), the term “railroad car” means any carrying vehicle, measured from coupler to coupler and designed to operate on railroad tracks. If the AQI user fee is prepaid for all arrivals of a commercial railroad car during a calendar year or any remaining portion of a calendar year, the AQI user fee is an amount 48 times the AQI user fee for each arrival.

Table 4 to Paragraph (d)(1)—Fee for inspection of commercial railroad cars

Effective date	Amount (per arrival)	Amount (prepaid)
October 1, 2024	\$6.51	\$312.48
October 1, 2025	\$7.23	\$347.04
October 1, 2026	\$7.97	\$382.56
October 1, 2027	\$8.72	\$418.56

(2) *Exemptions.* The following categories of commercial railroad cars are exempt from paying an AQI user fee:

(i) Any commercial railroad car that is part of a train whose journey originates and terminates in Canada, if:

(A) The commercial railroad car is part of the train when the train departs Canada; and

(B) No passengers board or disembark from the commercial railroad car, and no cargo is loaded or unloaded from the commercial railroad car, while the train is within the United States.

(ii) Any commercial railroad car that is part of a train whose journey originates and terminates in the United States, if:

(A) The commercial railroad car is part of the train when the train departs the United States; and

(B) No passengers board or disembark from the commercial railroad car, and no cargo is loaded or unloaded from the commercial railroad car, while the train is within any country other than the United States; and

(iii) Locomotives and cabooses.

(3) *Prepayment.* The owner, agent, or person in charge of a railroad company may at any time prepay the commercial railroad car AQI fee as defined in paragraph (d)(1) of this section for all arrivals of that railroad car during a calendar year or any remaining portion of a calendar.

This payment must be remitted in accordance with paragraph (d)(4)(iii) of this section.

(4) *Remittance procedures.* The Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), and railroad companies acting individually shall file monthly written statement with USDA, APHIS, FMD, within 90 days after the end of each calendar month. Each written statement shall indicate:

(i) The number of commercial railroad cars entering the customs territory of the United States during the relevant period by railroad company;

(ii) The total monthly AQI user fees due from each railroad company; and

(iii) In the case of prepayments to cover all annual arrivals of certain railroad car(s) in accordance with paragraph (d)(3) of this section; include the number of railroad cars being prepaid for, railroad car number(s) covered by the prepayment and the calendar year to which the prepayment applies.

(iv) Railroad companies may include the written statement with their mailed payment as directed in this paragraph (d)(4). For all other payment types, the companies must email the written statement to [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov). Individual railroad companies must submit a written statement for periods with no fees collected. Detailed remittance instructions are located at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees>. Questions and correspondence may be directed to [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov) or (612) 336-3400 (fax) or (877) 777-2128 (phone).

(5) *Payment procedures.* (i) If the railroad company intends to pay monthly, the owner, agent or person in charge of an individual railroad company shall pay the AQI user fees calculated by the Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), or the individual railroad company itself within 90 days after the end of each calendar month in which commercial railroad cars entered the customs territory of the United States.

(ii) If the owner, agent or person in charge of an individual railroad company intends to prepay for railroad car(s) for the entire calendar year, as specified in paragraph (d)(3) of this section, prepayment may be made at any time during a calendar year; APHIS will not prorate for the portion of the calendar year already elapsed, nor refund or credit per arrival fees already paid.

(iii) Written statements as described in paragraph (d)(4) of this section, are required to accompany all payments. Detailed payment instructions are located at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees>. Questions and correspondence may be sent to [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov), fax (612) 336-3400 or phone (877) 777-2128.

(6) *Compliance.* (i) AAR, AMTRAK, and each railroad company responsible for making AQI user fee payments must allow APHIS, CBP, and authorized representatives to verify the accuracy of AQI user fees collected and remitted and otherwise determine compliance with 21 U.S.C. 136a and this paragraph (d). The AAR, AMTRAK, and each railroad company

responsible for making AQI user fee payments must advise the USDA, APHIS, FMD of the name, address, and telephone number of an agent or other responsible person who is authorized to verify AQI user fee calculations, collections, and written statements, payments, as well as any changes in the identifying information submitted.

(ii) The agent or other responsible person for a payment remains the agent or responsible person until the railroad company notifies APHIS of a transfer of responsibility. The agent or responsible person must contact APHIS to initiate any transfer by contacting [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov). The new agent or responsible person assumes all responsibilities for ensuring compliance for meeting the requirements of this part.

(e)(1) *Fee for inspection of commercial aircraft.* Except as provided in paragraph (e)(2) of this section, an AQI user fee will be charged for each commercial aircraft which is arriving, or which has arrived and is proceeding from one United States airport to another under a CBP “Permit to Proceed,” as specified in 19 CFR 122.81 through 122.85, or an “Agricultural Clearance or Safeguard Order” (PPQ Form 250), used pursuant to § 330.400 of this chapter and 9 CFR 94.5, and which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D. Each carrier or their agent is responsible for paying the AQI user fee. The AQI user fee for each arrival is shown in table 5:

Table 5 to Paragraph (e)(1)—Fee for inspection of commercial aircraft

Effective date	Amount
October 1, 2024	\$281.39
October 1, 2025	\$300.78
October 1, 2026	\$320.61
October 1, 2027	\$340.90

(2) *Exemptions.* The following categories of commercial aircraft are exempt from paying an AQI user fee:

(i) [Reserved]

(ii) Any aircraft used exclusively in the governmental services of the United States or a foreign government, including any Agency or political subdivision of the United States or a

foreign government, as long as the aircraft is not carrying persons or merchandise for commercial purposes;

(iii) Any aircraft making an emergency or forced landing when the original destination of the aircraft was a foreign port;

(iv) [Reserved]

(v) Any aircraft moving from the U.S. Virgin Islands to Puerto Rico; and

(vi) Any aircraft making an in-transit stop at a port of entry, during which the aircraft does not proceed through any portion of the Federal clearance process, such as inspection or clearance by APHIS or CBP, no cargo is removed from or placed on the aircraft, no passengers get on or off the aircraft, no crew members get on or off the aircraft, no food is placed on the aircraft, and no garbage is removed from the aircraft.

(3) *Remittance and payment procedures.* (i) The carrier or their agent must pay the appropriate fees for receipt no later than 90 days after the close of the month in which the aircraft arrivals occurred. APHIS strongly encourages electronic payment of fees. To set up electronic payment refer to our detailed instructions at <https://www.aphis.usda.gov/mrpbs/userfees/aqi-payment-types.pdf> or for further information relative to electronic remittance, or for further information relative to electronic remittance, contact [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov). In the event electronic remission is impractical, a check or money order can be mailed to the Agency lock box following detailed payment instructions at <https://www.aphis.usda.gov/mrpbs/userfees/aqi-payment-types.pdf>. Questions and correspondence may be directed to [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov) or to (612) 336-3400 (fax) or (877) 777-2128 (phone). For payment information, refer to our detailed payment instructions at <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees>. Late payments will be subject to interest, penalty, and a charge to cover the cost of processing and handling a delinquent claim as provided in the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3717).

(ii) The carrier or their agent must provide a written statement each month stating the fees that are due for the month. Carriers or their agents must include a hard copy of the written statement with any mailed payment. For all other payment types, including for months with no fees collected, the carriers must email the written statement to [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov).

(iii) The written statement must include the following information:

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

(B) Calendar month covered by the payment;

(C) Amount being paid, or a written statement stating that no fees were collected.

(iv) All fee payments required under this section must be made in U.S. dollars. For all payment types accepted, please visit <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees>.

(4) *Compliance.* Each carrier subject to this section must allow APHIS, CBP, and authorized representatives to verify the accuracy of the AQI user fees paid and to otherwise determine compliance in accordance with this paragraph (e) and 21 U.S.C. 136a. Each carrier must advise USDA, APHIS, FMD, FOB of the name, address, and telephone number of an agent or responsible person who is authorized to verify AQI user fee calculations, payments, and written statements as well as any changes in the identifying information submitted. The agent or responsible person for a payment remains the agent or responsible person until the carrier notifies APHIS of a transfer of responsibility. The carrier or their agent or responsible person must contact APHIS at <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/ppq-cbp-aqi-user-fees-contacts> to initiate any transfer. The new agent or responsible person assumes all responsibilities for ensuring compliance for meeting the requirements of this part.

(5) *Limitations on charges.* (i) Airlines will not be charged reimbursable overtime for inspection of aircraft if the aircraft is subject to the AQI user fee for arriving aircraft as prescribed by this section.

(ii) Airlines will not be charged reimbursable overtime for inspection of cargo from an aircraft if:

(A) The aircraft is subject to the AQI user fee for arriving aircraft as prescribed by this section; and

(B) The cargo is inspected between 8 a.m. and 4:30 p.m., Monday through Friday; or

(C) The cargo is inspected concurrently with the aircraft.

(f)(1) *Fee for inspection of international passengers.* 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 fee covers one individual arriving into a port of entry within the customs territory of the United States from a foreign port. Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the applicable fee specified in this section, including the fee applicable to any infants or toddlers traveling without a separate ticket or travel document, whether in assigned seats or held in an adult passenger's lap. In the event that the air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document does 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. The AQI user fee will apply to tickets purchased beginning October 1, 2024. The fees are shown in tables 6 and 7:

Table 6 to Paragraph (f)(1)—International Air Passenger

Effective date	Amount
October 1, 2024	\$3.71
October 1, 2025	\$3.84
October 1, 2026	\$3.98
October 1, 2027	\$4.12

Table 7 to Paragraph (f)(1)—International Cruise (Sea) Passenger

Effective date	Amount
October 1, 2024	\$1.25
October 1, 2025	\$1.29
October 1, 2026	\$1.34
October 1, 2027	\$1.39

(2) *Exemptions.* The following categories of passengers are exempt from paying an AQI user fee:

- (i) Crew members onboard for purposes related to the operation of the vessel;
- (ii) Crew members who are on duty on a commercial aircraft;
- (iii) Airline employees, including “deadheading” crew members, who are traveling on official airline business;
- (iv) Diplomats, except for U.S. diplomats, who can show that their names appear on the accreditation listing maintained by the U.S. Department of State. In lieu of the accreditation listing, an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government;
- (v) Passengers departing and returning to the United States without having touched a foreign port or place;
- (vi) Passengers arriving on any commercial aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense (DOD) are exempted if they have been precleared abroad under the joint DOD/APHIS Military Inspection Program;
- (vii) Passengers arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign port;
- (viii) Passengers transiting the United States and not subject to inspection; and

(ix) Passengers moving from the U.S. Virgin Islands to Puerto Rico.

(3) *Circumstances of user fee collections.* AQI user fees shall be collected under the following circumstances:

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

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

(4) *Responsibility for collection of fees.* (i) Any air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document on or after May 13, 1991, is responsible for collecting the AQI user fee from all passengers transported into the customs territory of the United States to whom the AQI user fee applies.

(A) Tickets or travel documents must be marked by the person who collects the AQI user fee to indicate that the required AQI user fee has been collected from the passenger.

(B) If the AQI user fee applies to a passenger departing from the United States and if the passenger's tickets or travel documents were issued on or after May 13, 1991, but do not reflect collection of the AQI user fee at the time of issuance, then the carrier transporting the passenger from the United States must collect the AQI user fee upon departure.

(C) AQI user fees collected from international passengers pursuant to this paragraph (f) 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 international passengers 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 user fees for international passengers, 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 for late remittance.

(ii) [Reserved]

(5) *Remittance and payment procedures.* (i) The air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document or their own non-carrier related tickets or travel documents, must remit collections of AQI user fees from the passengers to APHIS.

(ii) The air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document must remit the passengers' fees to APHIS no later than 90 days after the close of the calendar month in which the ticket issuer collected the AQI user fees from the passengers. Late payments will be subject to interest, penalties, and a charge to cover the cost of processing and handling a delinquent claim 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) All fee payments required under this section must be made in U.S. dollars. For payment types accepted please visit <https://www.aphis.usda.gov/aphis/ourfocus/business-services/aqi-user-fees>. APHIS strongly encourages electronic remittance of fees. To set up electronic remittance refer to our detailed payment instructions at <https://www.aphis.usda.gov/mrpbs/userfees/aqi-payment-types.pdf> or for further information relative to electronic remittance, contact [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov). In the event electronic remission is impractical, a check or money order can be mailed to the Agency lock box following detailed payment instructions at <https://www.aphis.usda.gov/sites/default/files/aqi-payment-types.pdf>. Questions and correspondence may be sent to [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov) or fax (612) 336-3400 or (877) 777-2128. For payment information, refer to our detailed payment instructions at <https://www.aphis.usda.gov/sites/default/files/aqi-payment-types.pdf>.

(iv) The air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document must provide a written statement each month stating the passenger fees that are due for the month or stating that no payments are due. The air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document must include the written statement with their mailed payment. For all other payment types, they must email the written statement separately to [ABSHelpline@usda.gov](mailto:ABSHelpline@usda.gov). The written statement must include the following information:

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

(B) Calendar month covered by the payment; and

(C) Amount collected and remitted.

(v) Refunds by a remitter of AQI user fees collected in conjunction with unused tickets or travel documents shall be netted against the next subsequent remittance. The ticket or travel document-issuing entity must submit a revised written statement indicating the revised number of passengers and international passenger AQI user fees amount collected. The revised written statement must be completed and filed for each month during which the ticket or travel document-issuing entity certifies that there was a decrease in the number of passengers and international passenger AQI user fees collected.

(6) *Notification.* Carriers contracting with U.S.-based tour wholesalers are responsible for notifying the USDA, APHIS, FMD, FOB at <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/ppq-cbp-aqi-user-fees-contacts> of all journeys contracted, the number of spaces contracted for, and the name, address, and taxpayer identification number of the United States-based tour wholesaler, within 90 days after the close of the calendar month in which such a journey occurred; *except that*, carriers are not required to make notification if tickets, marked to show collection of the AQI user fee, are issued for the individual contracted spaces.

(7) *Compliance.* Each carrier, travel agent, U.S.-based tour wholesaler, or other entity subject to this section must allow APHIS, CBP, and authorized representatives to verify the accuracy of the AQI user fees collected and remitted and to otherwise determine compliance with 21 U.S.C. 136a and this paragraph (f). Each carrier, travel agent, U.S.-based tour wholesaler, or other entity must advise USDA, APHIS, FMD, at <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/ppq-cbp-aqi-user-fees-contacts> of the name, address, and telephone number of a responsible officer who is authorized to verify AQI user fee calculations, payments, and remittance, as well as any changes in the identifying information submitted. The responsible person for a payment remains the responsible person until the air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document notifies APHIS of a transfer of responsibility. The responsible person must contact APHIS to initiate any transfer. The new responsible person assumes all responsibilities for ensuring compliance for meeting the requirements of this part.

(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.

(g) *Fees for export certification of plants and plant products.* (1) For each certificate issued by APHIS personnel, the recipient must pay the applicable AQI user fee at the time and place the certificate is issued.

(2) When the work necessary for the issuance of a certificate is performed by APHIS personnel on a Sunday or holiday, or at any other time outside the regular tour of duty of the APHIS personnel issuing the certificate, in addition to the applicable user fee, the recipient must pay the applicable overtime rate in accordance with § 354.1.

(3)(i) Each exporter who receives a certificate issued on behalf of APHIS by a designated State or county inspector must pay an administrative user fee, as shown in table 8. The administrative fee can be remitted by the exporter directly to APHIS through the Phytosanitary

Certificate Issuance and Tracking System (PCIT), provided that the exporter has a PCIT account and submits the application for the export certificate through the PCIT. If the PCIT is not used, the State or county issuing the certificate is responsible for collecting the fee and remitting it monthly to the U.S. Bank, United States Department of Agriculture, APHIS, AQI, P.O. Box 979043, St. Louis, MO 63197-9000.

Table 8 to Paragraph (g)(3)(i)—Administrative User Fee

Effective dates	Amount per shipment	
	PCIT used	PCIT not used
October 1, 2009, through September 30, 2010	\$3	\$6
October 1, 2010, through September 30, 2011	6	12
Beginning October 1, 2011	6	12

(ii) The AQI user fees for an export or reexport certificate for a commercial shipment are shown in table 9.

Table 9 to Paragraph (g)(3)(ii)—Export or Reexport Certificate for Commercial Shipment

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	\$77
October 1, 2010, through September 30, 2011	104
Beginning October 1, 2011	106

(iii) The AQI user fees for an export or reexport certificate for a low-value commercial shipment are shown in table 10. A commercial shipment is a low-value commercial shipment if the items being shipped are identical to those identified on the certificate; the shipment is accompanied by an invoice which states that the items being shipped are worth less than \$1,250; and the shipper requests that the user fee charged be based on the low value of the shipment.

Table 10 to Paragraph (g)(3)(iii)—Export or Reexport Certificate for Low-Value Commercial Shipment

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	\$42
October 1, 2010, through September 30, 2011	60
Beginning October 1, 2011	61

(iv) The AQI user fees for an export or reexport certificate for a noncommercial shipment are shown in table 11.

Table 11 to Paragraph (g)(3)(iv)—Export or Reexport Certificate for Noncommercial Shipment

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	\$42
October 1, 2010, through September 30, 2011	60
Beginning October 1, 2011	61

(v) The AQI user fees for replacing any certificate are shown in table 12.

Table 12 to Paragraph (g)(3)(v)—Replacement Fee

Effective dates	Amount per certificate
October 1, 2009, through September 30, 2010	\$11
October 1, 2010, through September 30, 2011	15
Beginning October 1, 2011	15

(4) If a designated State inspector issues a certificate, the State where the certificate is issued may charge for inspection services provided in that State.

(5) Any State which wishes to charge a fee for services it provides to issue certificates must establish fees in accordance with one of the following guidelines:

(i) *Calculation of a “cost-per-certificate” fee.* The State must:

(A) Estimate the annual number of certificates to be issued;

(B) Determine the total cost of issuing certificates by adding together delivery<sup>1</sup>, support<sup>2</sup>, and administrative costs<sup>3</sup>; and

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<sup>1</sup> Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and user fee costs associated with maintaining field offices. Delivery hours are similar hours taken by inspectors, including travel time, inspection time, and time taken to complete paperwork.

<sup>2</sup> Support costs are costs at supervisory levels which are similar to delivery costs, and user fee costs such as training, automated data processing, public affairs, enforcement, legal services, communications, postage, budget and accounting services, and payroll, purchasing, billing, and collecting services. Support hours are similar hours taken at supervisory levels, as well as hours taken in training, automated data processing, enforcement, legal services, communication, budgeting and accounting, payroll purchasing, billing, and collecting.

<sup>3</sup> Administrative costs are costs incurred as a direct result of collecting and monitoring Federal phytosanitary certificates. Administrative hours are hours taken as a direct result of collecting and monitoring Federal phytosanitary certificates.

(C) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a “raw” fee. The State may round the “raw” fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing; or

(ii) *Calculation of a “cost-per-hour” fee.* The State must:

(A) Estimate the annual number of hours taken to issue certificates by adding together delivery<sup>4</sup>, support<sup>5</sup>, and administrative<sup>6</sup> hours;

(B) Determine the total cost of issuing certificates by adding together delivery<sup>1</sup>, support<sup>2</sup>, and administrative costs; and

(C) Divide the cost of issuing certificates by the estimated number of hours taken to issue certificates to obtain a “cost-per-hour” fee. The State may round the “cost-per-hour” fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

(6) For payment of any of the AQI user fees required in this paragraph (g), we will accept personal checks for amounts less than \$100, and checks drawn on commercial accounts, cashier's checks, certified checks, traveler's checks, and money orders for any amount. All payments must be for the exact amount due.

(h)(1) *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

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<sup>4</sup> Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and user fee costs associated with maintaining field offices. Delivery hours are similar hours taken by inspectors, including travel time, inspection time, and time taken to complete paperwork.

<sup>5</sup> Support costs are costs at supervisory levels which are similar to delivery costs, and user fee costs such as training, automated data processing, public affairs, enforcement, legal services, communications, postage, budget and accounting services, and payroll, purchasing, billing, and collecting services. Support hours are similar hours taken at supervisory levels, as well as hours taken in training, automated data processing, enforcement, legal services, communication, budgeting and accounting, payroll purchasing, billing, and collecting.

<sup>6</sup> Administrative costs are costs incurred as a direct result of collecting and monitoring Federal phytosanitary certificates. Administrative hours are hours taken as a direct result of collecting and monitoring Federal phytosanitary certificates.

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 table 13:

Table 13 to Paragraph (h)(1)--Fee for conducting and monitoring treatments

Effective date	Amount
October 1, 2024	\$240.60
October 1, 2025	\$244.19
October 1, 2026	\$247.79
October 1, 2027	\$251.38

(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 this paragraph (h) 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.

(ii) [Reserved]

(4) *Remittance and statement procedures.* (i) The treatment provider that collects the AQI treatment user fee must remit the fee to USDA, APHIS, AQI, PO Box 979044, St. Louis, MO 63197-9000.

(ii) AQI treatment user fees must be remitted 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 USDA, APHIS, AQI, PO Box 979044, St. Louis, MO 63197-9000. 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.”

(i) *Consequences for nonpayment or late payment of user fees—(1) Unpaid debt.* In cases of delinquent debts, the government is required to charge and collect interest, penalties, and costs. See 31 U.S.C. 3717(a) (interest); 3717(e)(1) (costs); and 3717(e)(2) (penalties). If any person for whom the service is provided fails to pay when due any debt to APHIS, including any user fee due under chapter I or chapter III of this title, then:

(i) *Subsequent user fee payments.* Payment must be made for subsequent user fees before the service is provided if:

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

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

(C) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty charges, interest charges, or charges for the cost of processing and handling the delinquent bill on any delinquent APHIS user fee; or

(D) Payment has been dishonored.

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

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

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

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

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

(C) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty charges, interest charges, or charges for the cost of processing and handling the delinquent bill on any delinquent APHIS user fee; or

(D) Payment has been dishonored.

(2) *Unpaid debt during service.* If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if

the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action: If regulated articles in quarantine at a treatment facility cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the articles from persons liable for user fees under paragraph (h)(1) of this section. If regulated articles can be released from quarantine, the articles will be released, and any unpaid debt will be handled in accordance with procedures for unpaid debt in this section.

(3) *Late payments.* If for unbilled user fees, the user fees are unpaid 30 days after the date the pertinent regulatory provisions indicates payment is due, or if billed, are unpaid 30 days after the date of the bill, APHIS will impose late payment penalty charges, interest charges, and charges for the cost of processing and handling the delinquent bill in accordance with 31 U.S.C. 3717.

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

(5) *Debt collection management.* In accordance with applicable debt collection law, the following provisions apply:

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

(ii) *Offset.* APHIS takes appropriate action to collect debts through offset under applicable law, including by notifying the Department of the Treasury of debts that are over 120 days delinquent for the purposes of offset through the Treasury Offset Program. Through the Treasury Offset Program, the Department of the Treasury will offset eligible Federal and State payments to satisfy the debt to APHIS.

(iii) *Cross-servicing.* APHIS will transfer debts that are over 120 days delinquent to the Department of the Treasury's Cross-Servicing program. Through the Cross-Servicing program, the Department of the Treasury will collect debts on behalf of APHIS. Exceptions may be made for debts that meet certain requirements, for example, debts that are already at a collection agency or in payment plans.

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

(j) *Recordkeeping and record retention.* (1) Entities responsible for paying AQI user fees and their agents are required to establish, keep, and make available to APHIS the following records:

(i) Records and reports required under this section, including written statements, if applicable; and

(ii) Legible copies of contracts (including amendments to contracts) between the responsible entity or their agents and agents that conduct activities subject to this part for the responsible entity, and copies of documents relating to agreements made without a written contract.

(2) Responsible entities or their agents must maintain sufficient documentation for APHIS, CBP, and representatives to verify the accuracy of the fee collections and, if applicable, written statements. Such information must be made available for inspection upon APHIS and CBP's demand. Such documentation shall be maintained in the United States for a period of 5 years from the date of remittance calculation, unless a longer retention period is determined to be needed by the Administrator. Each such affected entity shall provide to APHIS and CBP the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section and shall promptly notify APHIS and CBP of any changes in the identifying information previously submitted.

(k) *Severability*. The sections of this part are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the APHIS' intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect. (Approved by the Office of Management and Budget under control numbers 1651-0019, 0579-0052, 0579-0094, and 0579-0489).

Done in Washington, DC, this 25th day of April 2024.

**Jennifer Moffitt,**  
*Undersecretary, Marketing and Regulatory Programs.*

[FR Doc. 2024-09348 Filed: 5/6/2024 8:45 am; Publication Date: 5/7/2024]