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: Proposed rule.

SUMMARY: We are proposing to update and amend the user fee regulations associated with the agricultural quarantine and inspection (AQI) program. Specifically, we propose to adjust 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; adjust the caps on prepaid fees associated with commercial trucks and commercial railroad cars; remove certain fee exemptions that are no longer justifiable based upon pathway analyses of risk; and restructure the treatment monitoring fee. We would also revise requirements pertaining to remittances and statements. Specifically, we would require monthly rather than quarterly remittances for the commercial aircraft fee, international air passenger fee, and international cruise passenger fee to make our revenue stream more stable, clarify our requirements, and provide for electronic payments and statements. We would also 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. These proposed 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: We will consider all comments that we receive on or before October 10, 2023.

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

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0023 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0023, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *Regulations.gov* in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737; (301) 851–2338; *aqi.user.fees@usda.gov.*

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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 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.

AQI services funded by these user fees and covered in the regulations in part 354 include inspections of arriving commercial maritime vessels, commercial trucks, commercial railroad cars, commercial aircraft, international air passengers, and international sea (cruise) passengers; as well as monitoring phytosanitary treatment and treatment-related activities. Services related to conveyances and cargo include issuance of import permits, review of manifests and other documentation, as well as inspections of the cargo, conveyances, and packaging material for prohibited imports and contaminants, pests, or invasive species. Passenger services include prescreening and inspection of passenger baggage and personal belongings for prohibited agricultural imports. We also charge a user fee for monitoring prescribed treatments that are performed on some agricultural goods as a condition of entry or when a pest of quarantine significance (*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.

APHIS and the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) work together to carry out these AQI program activities and thereby protect U.S. agriculture and natural resources by intercepting foreign animal and plant pests and diseases (such as African swine fever or ASF, foot and mouth disease, exotic fruit flies, and *Ralstonia* race 3 biovar 2) before they can enter the country. APHIS and CBP perform different functions that complement each other. For example, CBP's AQI activities include inspecting passengers, passenger baggage, personal belongings, conveyances, shipments, and monitoring regulatory compliance at United States ports of entry; CBP also preclears passengers at certain ports of departure outside the United States. APHIS performs pest identification for shipments across all modes (air cargo, maritime cargo, truck cargo, etc.), inspection of plants for planting shipments, and monitoring of phytosanitary treatments and related activities. CBP's agricultural inspection and safeguarding activities generate the majority of AQI costs covered by the fees, approximately 70 percent of program costs per year. Pursuant to § 354.3, APHIS collects AQI user fees for commercial railroad cars, commercial aircraft, international air and cruise (sea) passengers, and treatment monitoring directly. Also pursuant to § 354.3, CBP collects AQI user fees for commercial vessels, commercial trucks, and commercial truck transponders on APHIS' behalf, and then transfers the funds to APHIS. APHIS periodically transfers that portion of the funds allocated for CBP in accordance with § 421 of the Homeland Security Act of 2002 (6 U.S.C. 231 and the Memorandum of Agreement effectuating the transfer of functions.[1])

Inspection of commercial aircraft and their passengers account for the preponderance of fees remitted. In fiscal year (FY) 2017 to FY 2019, commercial aircraft collections averaged over 23 percent of total collections annually, or nearly $188M. Also, from FY 2017 to FY 2019, commercial aircraft passenger collections averaged over 61 percent of total collections annually, or nearly $486M. 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 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. (For this reason, we propose a change in air collections to be monthly rather than quarterly, as discussed below.)

Need for the Proposed Rule

In a final rule published in the **Federal Register** on October 29, 2015 (80 FR 66748–66779, Docket No. APHIS–2013–0021),[2] we updated and amended the user fee regulations in § 354.3 to improve AQI service cost recovery and to more accurately align fees with the costs associated with each fee service. Significant changes included the following:

- Adding new fee categories for international cruise passengers and monitoring of phytosanitary treatments;
- Adjusting existing fees charged for certain agricultural quarantine and inspection services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers arriving at ports in the customs territory of the United States; and
- Adjusting the user fee cap associated with commercial trucks and adjusting or removing the user fee cap associated with commercial railroad cars.

For FYs 2017 through 2019, the AQI program ran an average deficit of over $166 million annually. For a number of reasons, as discussed below, the fees established in the 2015 rulemaking, which were based on cost data from FY 2010 through FY 2012, no longer reflect actual program costs. This proposed rule uses cost data from FY 2017 through FY 2019 because these years reflect costs from the most recent period of normal (pre-pandemic) operations, and most closely approximate the costs in a return to normal operations (post-pandemic) AQI program environment.

For the 2015 rulemaking, APHIS used an Activity-Based Costing (ABC) Model to analyze the costs associated with the program. ABC is a cost accounting method used to calculate the total costs of a service or product. It differs from Financial Accounting, which is the preparation of financial reports for stakeholders or users who are interested in the financial position of an agency or program. ABC translates costs from ''what we pay for'' to ''what we do.'' This process entails assigning both direct and indirect costs to an activity (such as managing the import permitting process), associating those activities with outputs (such as a Maritime Cargo Inspection), and using the cost of outputs to calculate fee levels (such as the Commercial Vessel Fee) for specific user classes.

In developing this proposed rule, we re-examined the ABC Model cost allocations to ensure costs accurately reflect workload. We ensured that all costs flow through the model, that the relationships between objects in the model were accurate, and that the allocation of costs followed standard cost accounting methodologies. The re-examination also revealed that the 2015 model is not forward looking; that is, it does not factor in costs required to address new program and staffing needs. Emerging issues that are not accounted for in the 2015 model include the need for additional inspection resources at ports of entry to mitigate emerging risks,[3] such as ASF at airports, the expanding demand for treatment monitoring services, such as monitoring

[1] The Memorandum of Agreement can be viewed on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/moa.*

[2] To view the final rule, go to *www.regulations.gov* and enter APHIS–2013–0021 in the Search field.

[3] For example, on July 28, 2021, the Dominican Republic informed APHIS that samples obtained from swine in the country had tested positive for ASF, a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. Subsequently, on September 20 of that year, the Chief Veterinary Officer in Haiti reported a positive case of ASF to the World Organization for Animal Health (WOAH). Because of Hispaniola's proximity to Puerto Rico and the U.S. Virgin Islands, and the frequency of trade in pork and pork products between Hispaniola and these territories, APHIS enhanced monitoring and surveillance activities for ASF in Puerto Rico and the U.S. Virgin Islands as a result of these detections, and submitted a dossier to WOAH to finalize a new ASF protection zone in Puerto Rico and the U.S. Virgin Islands.

the restacking of cargo in overloaded cargo containers, and capital planning. In developing the model for this proposed rule, the 2023 full-time equivalent (FTE) model, APHIS incorporated cost objects for additional staffing to address these workload increases, and additional program costs related to capital planning: New and upgraded facilities, new equipment, and outreach. This proposed rule would adjust AQI user fees to reflect the updates and additions to the cost model including updated cost data, changes in cost allocation methodology, additional personnel to address emerging risks, and capital planning costs.

Further, due to its retrospective nature, ABC modeling fails to account adequately for inflation unless inflation factors are applied to it. For example, the 2015 rulemaking used source data from FY 2010 through FY 2012 adjusted to FY 2016 dollars [80 FR 66753]; however, no adjustment was made for inflation beyond the beginning of FY 2016 (October 2015). As a result, the 2015 fee rates using FY 2016 dollars are still in effect after 7 years (FY 2023), meaning, as of September 2022 (the end of FY 2022 for APHIS), the fees are approximately 24.79 percent [4] below the levels necessary to meet today's costs based on inflation alone. As discussed in the regulatory impact analysis (RIA) accompanying this proposed rule,[5] we determined that costs would be more accurately recovered if the ABC Model cost data were adjusted for inflation based on the Chained Consumer Price Index for all Urban Consumers (C–CPI–U).

Our ability to recover the full costs of administering the AQI program has also been limited by exemptions and fee caps. Under the existing regulations, commercial aircraft with 64 or fewer seats meeting certain conditions have been exempted from the fees listed in § 354.3(e), and barges operating between the United States and Canada meeting certain conditions have been exempted from those listed in § 354.3(b). The original basis for both of these exemptions, as discussed in earlier rulemakings, was that they posed little or no sanitary/phytosanitary risk, and therefore did not require inspection and would not incur costs to the program (see 58 FR 14305–14307, Docket No. 92–088–2 [6] and 75 FR 10634–10644, Docket No. APHIS–2006–0096 [7]). However, recent findings from two APHIS pathway analyses (''Pathway Analysis for Commercial Aircraft with 64 or Fewer Seats'' and ''Pathway Analysis for Barges from Canada''),[8] indicate that today commercial aircraft with 64 or fewer seats do serve as a pathway for the introduction of quarantine pests, and that barges from Canada that meet the current user fee exemption do not pose less of a phytosanitary risk than barges travelling from other countries or other vessel types travelling from Canada. The analyses accordingly conclude that both such aircrafts and such barges merit inspection that incurs AQI program costs. We discuss the analyses at greater length later in this document, under the headings ''Commercial Aircraft'' and ''Commercial Vessels.''

Fee caps for commercial trucks and railroad car user fees have also limited our ability to cover costs. Under current § 354.3(c)(3)(i) and (d)(3)(i), respectively, operators of commercial trucks and commercial railroad cars have the option to prepay AQI user fees for a calendar year. A prepayment equivalent to 40 times an individual crossing allows a commercial truck to make an unlimited number of crossings in a calendar year. For commercial railroad cars, the prepayment amount for unlimited crossings in a calendar year is capped at 20 times the fee for an individual crossing. We have determined that these prepayment multiples should be increased, as they are no longer sufficient to recover program costs and fail to account for increased usage of transponders and prepayment options.[9] This determination is discussed at length below, under the section heading labeled ''Commercial Trucks.''

Without adequate funding, the AQI program is likely to fail to keep pace with growing demand and become less effective, leading to more frequent and severe agricultural pest and disease outbreaks in the United States. Such outbreaks can be costly. To cite one example, 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 to protect U.S. forests and the U.S. forest products industry valued at more than $350 billion in manufacturing production annually.[10] Additionally, such outbreaks may cause declines in U.S. domestic production of agricultural products (according to the Census of Agriculture 2017, the market value of U.S. agricultural products sold was $388.5 billion [11]) and harm natural resources. Trading partners may question the sanitary/phytosanitary integrity of U.S. agricultural products, which would either reduce the demand for or value of U.S. agricultural exports, which were valued at $196.4 billion in fiscal year 2022.[12] Further, inadequate funding would prevent the AQI program from being able to adapt to meet emerging program needs as discussed above, resulting in additional challenges in effectively clearing cargo and passengers and mitigating the risk of costly pest and disease outbreaks impacting U.S. agricultural production and exports, and natural resources. The AQI program makes the safe importation of agricultural commodities possible. Such imports accounted for $194.0 billion in economic activity in FY 2021.[13]

We are therefore proposing to update and amend the user fee regulations to align the fees with the current needs of the AQI program. Specifically, we propose to adjust the fees for certain AQI services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air and sea passengers arriving at ports in the customs territory of the United States; adjust prepaid fee caps associated with commercial trucks and commercial railroad cars; remove certain fee exemptions that are no longer justifiable; and restructure the treatment monitoring fee. We would also revise the payment sections in order to recover the full cost of providing these AQI services, commensurate with the class of persons or entities paying the fees.

Updates to the ABC Model and Cost Calculations

In updating our cost modeling, APHIS contracted in 2021 with the accounting

[4] *https://www.bls.gov/data/inflation_calculator.htm* using the period October 2015 to September 2022.

[5] To view these and other supporting documents, go to *www.regulations.gov* and enter APHIS–2022–0023 in the Search field.

[6] FR–1993–03–17.pdf (govinfo.gov), published in the **Federal Register** on May 24, 1995.

[7] To view the rule, the supporting documents, and the comments we received, go to *www.regulations.gov* and enter APHIS–2006–0096 in the Search field.

[8] These analyses are available with this proposed rule. See footnote 5 for instructions on how to view these and other supporting documents on *Regulations.gov*.

[9] See supporting document ''Analysis of AQI User Fees: Truck Transponder and Prepaid Railroad Car Multiples Using Fee Collections and Arrival Data.'' See footnote 5 for instructions on how to view this and other supporting documents on *Regulations.gov*.

[10] *https://www.afandpa.org/statistics-resources/our-economic-impact.*

[11] *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf,* pg. 17.

[12] *https://www.ers.usda.gov/webdocs/outlooks/105919/aes-123.pdf?v=5132.7.*

[13] Ibid.

firm Grant Thornton [14] to review the data and the methodology in the ABC Model. Grant Thornton's assessment of the APHIS AQI model included a thorough review of every cost object, driver, assignment, and value. APHIS prepared two different versions of the ABC Model, using APHIS and CBP data sources, and Grant Thornton compared them. One version of the model used the cost allocation methodology from the 2015 rulemaking (direct trace and number of/workload), and the second used the proposed cost allocation methodology (direct trace, number of/ workload, full-time equivalent (FTE) hours) for comparison purposes. The intent was to identify and resolve any inconsistencies between versions and compare the impact of the two different methodologies on cost allocation, as discussed further below.

As a result of its review, Grant Thornton recommended options to more accurately allocate costs based on the activity and the output.[15] In the 2015 rulemaking, APHIS used two methods for allocating costs: Direct trace, which directly assigns costs to outputs; and "number of" (or workload), which allocated costs based upon the number of inspection units (a passenger, a vessel, an aircraft, etc.). Grant Thornton recommended that APHIS add a third allocation method for allocating certain costs: FTE hours spent conducting an output (*i.e.,* such as an inspection). As noted above, APHIS prepared two versions of the model for each of the three base years—one using the methodology from the 2015 rulemaking (direct trace and number of/workload) and one using the proposed methodology (direct trace, number of/ workload, FTE hours) for comparison purposes. As part of the comparison, Grant Thornton reviewed the underlying CBP FTE allocation methodology and provided recommended changes for CBP support activities (supervision, data entry, etc.) that should be allocated across the direct AQI activities. APHIS reviewed and accepted the recommendations and incorporated those changes into a new FTE data source file and the AQI cost models. Concurring with Grant Thornton's recommendation, APHIS is employing the model with the new methodology (direct trace, number of/ workload, FTE hours) for this rulemaking.

Several agencies charge user fees under a variety of authorities, and use different methodologies to meet their statutory mandates. For example, CBP's Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) fees are set as prescribed by statute with adjustments for inflation.[16] [17] The U.S. Patent and Trademark Office uses an activity-based costing methodology.[18] Federal Maritime Commission uses a costing methodology under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) in accordance with OMB Circular A–76, Performance of Commercial Activities (revised May 29, 2003).[19] USDA's Agricultural Marketing Service develops fees through a series of equations set by rulemaking,[20] [21] and a notice-based process for updating the components of the equations.[22] Accordingly, when an Agency is not fulfilling a ministerial function to prescribe user fees in a certain manner (as is the case with CBP), there are a variety of methodologies currently in use throughout the Federal government to compute the fees, and the most pertinent consideration is which methodology is most appropriate for a particular Agency's purposes. In this regard, we consider the proposed three-part methodology to have a distinct advantage over the previous two-part methodology with respect to the allocation of costs in non-equivalent outputs. As previously mentioned, direct trace allocation assigns costs directly to an output or outputs, and "number of"/workload allocation assigns costs based on the number of inspection units. "Number of"/ workload allocation is optimal for equivalent outputs. For example, a pest identification is equivalent across all pathways: The workload to perform a taxonomic pest identification in the air passenger environment is equivalent to the workload to perform a taxonomic pest identification in maritime, truck, rail, or air cargo environments. However, the "number of"/workload method is less useful for non-equivalent outputs such as the inspection of an air passenger and their luggage compared to the inspection of a maritime vessel and its associated cargo. While both are considered individual inspection events, they are decidedly not equivalent in terms of workload. The use of FTE hours, that is, the number of hours spent producing outputs, is the optimal cost allocation method for non-equivalent outputs. To continue the air passenger/commercial vessel comparison, assigning costs using the FTE hours spent inspecting in the air passenger environment compared to the number of FTE hours spent inspecting in the commercial vessel and maritime cargo environments provides a much more accurate means of measuring the workload required for these two non-equivalent outputs than does the previous methodology. Following the model validation task, Grant Thornton found that the APHIS (direct trace, number of/workload, FTE hours) cost models use the preferred allocation scheme for equivalent outputs and non-equivalent outputs as appropriate.

A second proposed update to the ABC Model and cost calculation is to change the manner in which we calculate costs to account for inflation. The proposed rule would apply the C–CPI–U to prior years' (FY 2017–FY 2019) costs into rulemaking year dollars before calculating the base fees. We would also apply a projected C–CPI–U to set the overall fee schedule. In prior rulemaking to adjust AQI user fees, APHIS has used the Office of Management and Budget (OMB) economic assumptions for inflation. These assumptions incorporate the Consumer Price Index for all Urban Consumers (CPI–U). APHIS selected the C–CPI–U as the basis for inflation adjustments for AQI user fees because it accounts for consumer substitution taking place between CPI item categories.[23] Typically, the C–CPI–U does not increase by as much as an index that was based on fixed purchase patterns, such as the CPI–U. APHIS therefore determined that the C–CPI–U would be fairer in fee setting for AQI user fees than the CPI–U. The Bureau of Labor Statistics has comprehensive

[14] Since completion of the assessment, Grant Thornton's government division has moved to Guidehouse Federal. However, to reflect the firm's name at the time the assessment was completed, we use the name "Grant Thornton" throughout this document when referring to the work.

[15] See supporting document "Grant Thornton United States Dpartment of Agriculture Animal and Plant Health Inspection Service Services to Validate Agency's Activity-Based Cost Model for AQI User Fees: Recommendations Report." See footnote 5 for instructions on how to view this and other supporting documents on *Regulations.gov.*

[16] *https://www.govinfo.gov/content/pkg/FR-2007-01-26/pdf/07-335.pdf.*

[17] *https://www.govinfo.gov/content/pkg/FR-2017-11-01/pdf/2017-23878.pdf.*

[18] *https://www.uspto.gov/sites/default/files/documents/Activity%20Based%20Information%20and%20Patent%20Fee%20Unit%20Expense%20Methodology.docx.*

[19] *https://downloads.regulations.gov/FMC-2023-0009-0001/content.pdf.*

[20] *https://downloads.regulations.gov/AMS-LPS-13-0050-0001/content.pdf.*

[21] *https://downloads.regulations.gov/AMS-LPS-13-0050-0004/content.pdf.*

[22] *https://downloads.regulations.gov/AMS_FRDOC_0001-2337/content.pdf.*

[23] See supporting document "Projected Fees for Agricultural Quarantine Inspections, FY2024–2028." See footnote 5 for instructions on how to view this and other supporting documents on *Regulations.gov*.

information about the C–CPI–U on their website.[24]

Third, the fee calculations in this proposed rule would also be forward-looking in that they would account for costs not previously considered. We now face new sanitary and phytosanitary threats that require APHIS and CBP to take on additional safeguarding measures and activities not previously accounted for in our assessment of staffing needs. We have been forced to commit resources to cover high priority risks, at the cost of necessary investments including mission critical infrastructure, IT system modernization, and methods innovation. Emerging high-priority program areas include the following:

- Additional inspection resources at airports to mitigate ASF risk.
- Additional inspection resources at international mail and express courier establishments experiencing eCommerce-driven trade growth.
- New seed sampling and testing workload at ports of entry and plant inspection stations.
- Expanding demand for treatment-monitoring-related services, such as monitoring the restacking of cargo in overloaded cargo containers.

Both houses of Congress have indicated interest in different aspects of the AQI program and AQI user fees in their respective reports that accompany Agriculture Appropriations legislation. The House of Representatives has focused on AQI program resources (personnel, facilities, etc.) and funding.[25 26 27] The Senate has focused more on policy: Re-evaluating the per-enclosure basis for the treatment monitoring fee, and reevaluating the exemption for certain small aircraft with 64 or fewer seats.[28 29 30]

As illustrated in tables 1 and 2 below, even under current workload demands, the AQI program is understaffed by 1,978 personnel.

TABLE 1—CBP STAFFING

Pathway/conveyance	Total FTEs as of FY 2019	Additional FTEs required	Total projected FY 2028 FTE
CBP FTEs:			
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

TABLE 2—APHIS STAFFING

Pathway/conveyance	Total FTEs as of FY 2019	Additional FTEs required	Total projected FY 2028 FTE
APHIS FTEs:			
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

The AQI program would need to spend an estimated additional $331 million per year to fully staff at the level required to meet current workload. Because the existing ABC Model does not factor in the additional cost to increase staffing to meet this workload demand, we do not currently have the means to recover those costs. Under this proposed rule, these costs would be factored into our cost model and fee calculations.

From an operational perspective, there is a limit to the number of frontline personnel the AQI program can feasibly recruit, hire, and train within 1 year. The current vacancy rate for APHIS agriculture specialist positions is 13.2 percent, and for CBP positions it is 3.14 percent. The proposed fee schedule covers a 5-year period during which we implement the fee changes incrementally to account for the fact that it will take us 5 years to achieve full staffing and incorporates the projected inflation adjustment mentioned above. This phased approach tightly links fees to actual costs rather than charging for unrealized full staffing up front.

The proposed rule would also account for capital planning costs not currently factored into the existing ABC Model. In developing the fees for this proposed rule, we would treat capital planning as a recurring cost category and build it

[24] *https://www.bls.gov/cpi/additional-resources/chained-cpi.htm.*

[25] *https://www.congress.gov/116/crpt/hrpt446/CRPT-116hrpt446.pdf.*

[26] *https://www.congress.gov/117/crpt/hrpt82/CRPT-117hrpt82.pdf.*

[27] *https://www.congress.gov/117/crpt/hrpt396/CRPT-117hrpt396.pdf.*

[28] *https://www.congress.gov/117/crpt/srpt34/CRPT-117srpt34.pdf.*

[29] *https://www.congress.gov/116/crpt/srpt110/CRPT-116srpt110.pdf.*

[30] *https://www.gpo.gov/fdsys/pkg/CRPT-115srpt259/pdf/CRPT-115srpt259.pdf.*

into the model. We would also create a separate, dedicated capital expenditure account. This approach to capital planning aligns with guidance for Federal agencies from OMB in the Capital Programming Guide, Circular A–11 [31] (2021), and the U.S. Government Accountability Office (GAO) Executive Guide (1998).[32] Congress recognizes the need for these types of investments. As recently as 2021, the House Agriculture, Rural Development, Food and Drug Administration Committee reported that ''The Committee recognizes that there may be a need to update APHIS physical facilities, staff capabilities, and processes due to the increased volume of agricultural imports'' (H.R. 117–82). By incorporating these planned costs, APHIS can better adapt to meet increased volumes of imports and changes in phytosanitary risk, and facilitate trade with enhanced automation, improved levels of service and compliance assistance.

For a full description of the model and how we applied it when calculating AQI costs and fees, please see the documents in the supporting documents folder on *Regulations.gov*, which we are making available along with this proposed rule.[33] APHIS has included APHIS and CBP input costs in the model as well as comprehensive rollup reports for both fee and non-fee outputs as supplemental documents to this rulemaking.

Court Ruling on Reserve Surcharge

On June 21, 2022, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Air Transport Association of America* v. *United States Department of Agriculture,* 37 F.4th 667 (D.C. Cir. 2022). In that case, plaintiffs contested aspects of the 2015 rulemaking which set AQI user fees. The D.C. Circuit primarily affirmed the 2015 rulemaking in the face of plaintiffs' challenges. The court, however, found in favor of plaintiffs on one count: That collection of a reserve surcharge violates the FACT Act of 1990, as amended. On September 15, 2022, upon remand, the district court issued an amended final judgment vacating the 2015 final rule only insofar as it authorized the collection of a surcharge in order to maintain a reserve account.

The D.C. Circuit opinion in the *Air Transport Association of America* case has informed this rulemaking. First, APHIS recalculated its AQI user fees so that the fees would not include a reserve surcharge component. On November 1, 2022, APHIS issued a Stakeholder Registry notice [34] that administratively lowered the fees effective on December 1, 2022, to comport with the Court's ruling, and on March 17, 2023, APHIS published a final administrative rule in the **Federal Register** (88 FR 16371–16372, Docket No. APHIS–2013–0021) adjusting the four fees that were affected by these recalculations: Those covering inspection services for trucks making individual crossings and using transponders, for international air passengers, and for international cruise vessel passengers. Those adjusted fees are listed under the heading ''Current Fees'' in table 3 below, along with the other fees that did not require adjustment. Moreover, it is these fee rates, rather than the rates as set forth in the 2015 final rule, that served as the baseline for APHIS' calculations in the supporting documents for this proposed rule.

Second, there is no reserve component in the fee rates in this proposed rule. The fee rates in this proposed rule are 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. 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.

Third, historically, the reserve surcharge helped to cover service costs between the period of service delivery and quarterly AQI user fee collections. Under the current regulations, payments are made on a quarterly basis into AQI user fee accounts for commercial aircraft and international airline and cruise passengers, with monies not remitted to APHIS until 1 month after the end of the quarter in which they are collected. Since the fiscal year fourth quarter fees are not due, and therefore not received, until after the fiscal year is over, we are not able to use those funds to pay for providing AQI services for those activities in the fiscal year in which they are earned. Without the reserve surcharge, APHIS must shorten the time frame between service delivery and fee collection to avoid periods of insufficient funding for program operations. Also under the current regulations, APHIS collects fees for railroad cars 60 days after the close of the month; APHIS proposes adjusting this remittance schedule to be consistent with the fees mentioned above. These proposed changes are reflected in the payment and billing sections for these fee types and are discussed individually below.

Proposed User Fee Amounts and Justifications

Using the data and methodology discussed above, we calculated the proposed fees shown below in table 3. We explain each fee service activity in greater detail in the following paragraphs. If these proposed fees become effective, we would continue to monitor the costs of AQI services and our collections and would undertake rulemaking to adjust the fees if we determine we are not appropriately recovering costs.

TABLE 3—PROPOSED FEES

Fee service activity	Current	Proposed (in US$)				
		January 1, 2024	October 1, 2024	October 1, 2025	October 1, 2026	October 1, 2027
Commercial Vessel (per vessel arrival)	$825.00	3,219.29	3,302.23	3,386.20	3,471.18	3,557.18

[31] *https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf.*

[32] Executive Guide: Leading Practices in Capital Decision-Making (Superseded by AIMD–99–32) U.S. GAO.

[33] See supporting documents ''AQI User Fee Input Costs and Cost Allocation Summary'' and the data files ending in ''. . . Rollup Report.'' The AQI User Fee Input Costs and Cost Allocation Summary can be viewed on *Regulations.gov*. See footnote 5 for instructions on how to view the supporting documents on *Regulations.gov*. 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.

[34] *https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/sa_by_date/sa-2022/aqi-user-fees-response.*

[35] Commercial Truck (per truck arrival) fees have been rounded down to the next $0.05 (five-cent) increment to facilitate operations at the border. This rounding does not impact calculation of the transponder fee.

[36] One annual payment for unlimited crossings within a calendar year.

TABLE 3—PROPOSED FEES—Continued

Fee service activity	Current	Proposed (in US$)				
		January 1, 2024	October 1, 2024	October 1, 2025	October 1, 2026	October 1, 2027
Commercial Truck (per truck arrival)[35]	7.29	11.40	12.40	13.45	14.50	15.55
Commercial Truck (Transponder)[36]	291.60	686.40	746.40	808.20	870.60	935.40
Commercial Rail (per railroad car arrival)	2.00	5.81	6.51	7.23	7.97	8.72
Commercial Aircraft (per aircraft arrival)	225.00	288.41	309.00	330.07	351.64	373.68
Air Passenger (per passenger arrival)	3.83	4.29	4.44	4.60	4.76	4.93
Cruise Vessel Passenger (per passenger arrival)	1.68	1.20	1.25	1.29	1.34	1.39
Treatments (per hour)	237.00 (per treatment)	232.97	253.19	273.90	295.12	316.83

In the sections that follow, we summarize the regulatory changes we propose. Where we address specific AQI activities, we generally describe the relevant activities, state the current fee, state the new fee, and explain the basis for the new fee. The intent of the proposed provisions is to bring the AQI program closer to full cost recovery, and more accurately assign costs to different user classes as required under the FACT Act of 1990, as amended.

Proposed Regulatory Changes

Revisions to Regulatory Definitions

In this proposed rule, we would revise some existing definitions and add some new ones to § 354.3(a).

The regulations currently define *commercial railroad car* as a railroad car used or capable of being used for transporting property for compensation or hire. We propose to revise the definition to read as any carrying vehicle, measured from coupler to coupler and designed to operate on railroad tracks, other than a locomotive or a caboose. This proposed revision would align APHIS' definition with that of CBP's in 19 CFR 24.22(d). This alignment is necessary because CBP is the responsible party for auditing fee remittances; therefore, we believe it is also appropriate to align our definition with CBP's definition for consistency of application of the regulations. Aligning our regulatory definitions with CBP's regulatory definitions simplifies understanding in the port environment for stakeholders and enhances operations between the two agencies, such as conducting audits.

The existing regulations in § 354.3(a) define *commercial truck* as a self-propelled vehicle, designed and used for transporting property for compensation or hire and that empty trucks and truck cabs without trailers fitting this description are included. We are proposing to define the term as 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. The proposed revision to the definition would align it with the definition in the CBP regulations in 19 CFR 24.22(c)(1). CBP collects the commercial truck fee on behalf of APHIS; therefore, we believe it is also appropriate to align our definition with theirs for consistency of application of the regulations.

The existing regulations define *Customs* as the Bureau of Customs and Border Protection, U.S. Department of Homeland Security. We propose to replace that definition with a definition for *Customs and Border Protection (CBP)*, which would be defined as U.S. Customs and Border Protection, U.S. Department of Homeland Security. This proposed change reflects current usage.

We propose to add a definition of *passenger* to read "a natural person for whom transportation is provided, including infants, whether a separate ticket or travel document is issued for the infant or toddler, or the infant or toddler occupies a seat, or the infant or toddler is held or carried by another passenger." This proposed definition would clarify that APHIS' understanding of what constitutes a passenger aligns with that of CBP in paragraph (g)(1)(v) of 19 CFR 24.22.

We are proposing to add definitions of *reconditioning* and *restacking.* We would define *reconditioning* as the removal or alteration of packaging associated with commercial cargo. We would define *restacking* as the redistribution of commercial cargo within or removal from a shipping container or other conveyance. Both of these are activities that we monitor in connection with AQI treatment services. As explained later in this document, we have not been charging for these services, but under this proposed rule, we would begin doing so.

Commercial Vessels

Pursuant to the current regulations in § 354.3(b), the AQI program inspects, with some exceptions that are discussed below, commercial vessels of 100 net tons or more arriving at ports of entry into the customs territory of the United States. Inspecting commercial maritime vessels involves the following activities: Reviewing manifests and documentation accompanying incoming cargo; determining entry status; targeting higher-risk cargo for inspection or clearance; inspecting cargo, cargo containers, wood packaging material, and packing materials for plant pests and contaminants; and determining regulatory compliance. In the maritime cargo environment, the AQI program also: Inspects the vessel's stores; inspects vessels for contaminants; identifies pests and invasive species found during inspection; monitors the storage and removal of regulated international garbage from the vessel to ensure consistency with all regulatory requirements; and safeguards shipments pending Plant Protection and Quarantine (PPQ) determination for treatment or final disposition. The current fee for these inspection services, as listed in § 354.3(b)(1), is $825 per arrival at a U.S. port.

Over 65 percent of the cargo that arrives in the United States arrives by commercial vessel. The current revenues generated by the existing fee of $825 per arrival fall well short of recovering the costs we incur in providing and administering the associated inspection services. As indicated in the RIA accompanying this proposed rule, APHIS estimates a $130 million per year loss if the fee is not adjusted in year one.

Under this proposed rule, the user fee per arrival, as listed in § 354.3(b)(1), would increase to $3,219.29 in FY 2024 (beginning in Quarter 2), $3,302.23 in FY 2025, $3,386.20 in FY 2026, $3,471.18 in FY 2027, and $3,557.18 in FY 2028. See table 3 above for the effective dates for each fee adjustment. After FY 2028, the fee would remain at FY 2028 levels for future years pending additional rulemaking. We intend to initiate a separate rulemaking to propose to allow for notice-based adjustments to the fees.

The proposed new fees adjust for the significant increase in ship cargo capacity since our prior rulemaking, which has increased the workload required to inspect each vessel. According to the U.S. Department of Agriculture (USDA) Agricultural Marketing Service,[37] while the global container vessel fleet expanded by just 6.7 percent from 2011 through 2020, total cargo capacity of the global fleet expanded by more than 63 percent. This time period marshaled in the age of the megaship (a ship with a capacity of 18,000 20-foot containers, also known as 20-foot equivalent units (TEUs)). These megaships allowed more containers to be moved per voyage than before, increasing economies of scale and reducing the number of ships serving some trade lanes.[38] The advent and adoption of megaships disrupted the industry and AQI revenue, as our current fees are tied to the number of ship arrivals, not the workload required to inspect and clear them. As the maritime industry shifted to greater carrying capacity, fewer ships arrived than APHIS predicted, but individual ships took much longer to inspect. The 2014 proposed rule had assumed average vessel arrivals of approximately 125,000 for FY 2014 through FY 2016, but the actual vessel arrivals were only around 54,000 for each of those 3 years. Much larger ships displaced smaller ships, which reduced costs to trade, but increased the AQI program's cost to inspect each vessel and the cargo it carried. The proposed adjusted fees, which would be listed in § 354.3(b)(1), reflect a change in the allocation of certain costs within the model from using the number of ship arrivals per year to the workload (FTE hours) it takes to inspect the average ship and its cargo–a more accurate reflection of our actual costs. Without the adjusted fees, we would not have adequate resources to provide the necessary level of AQI services for inspection of commercial vessels, potentially resulting in bottlenecks in the clearance of maritime cargo.

The proposed vessel fee in FY 2024 is more than four times the current fee. However, considering the greater cargo capacity per ship (increased workload), inflation since FY 2010–FY 2012 (prior rule source data), and the need for additional personnel to inspect and clear cargo in a timely manner, APHIS believes the data justify this increase. Two main factors contributed to the increase in the commercial vessel fee: First, increase in workload per vessel; second, the change from number of arrivals to FTE hours as the allocation criterion for certain costs. The 2015 rule used cost and arrival data from FY 2010 through FY 2012. At that time, the average container vessel arriving into the United States carried 1,903 twenty-foot equivalent units (TEUs). This rulemaking uses cost and arrival data from FY 2017 through FY 2019; during this period, the average arriving container vessel now carried 2,710 TEUs, a 42.4 percent increase versus the 2015 rulemaking. This increased workload per vessel increased the per vessel costs to the AQI program. In addition, in the 2015 rulemaking, certain costs were allocated using number of arrivals as the allocation criterion for certain costs; the number of vessel arrivals (approximately 108,000 per year in FY 2010—FY 2012) was relatively small (0.03 percent) compared to total arrival numbers (approximately 325 million arrivals per year between FY 2010 and FY 2012 including all conveyances and passenger). This rulemaking uses frontline AQI FTE hours—a more accurate measure for assigning costs for non-equivalent outputs (inspecting one passenger versus inspecting a commercial vessel and its cargo are not equivalent)—to allocate these costs. At full implementation, there will be approximately 575,000 frontline AQI FTE hours assigned to the commercial vessel and maritime cargo functions out of over 4 million total frontline AQI FTE hours or over 14 percent. The change to frontline AQI FTE hours changes the cost allocation for certain costs to commercial vessels from approximately 0.03 percent to over 14 percent.

The current version of § 354.3(b)(2) exempts certain vessels from AQI user fees. These include passenger vessels that depart from and return to U.S. ports without docking at any foreign ports, as well as certain barges, tugboats, and vessels used in government service. Currently, paragraph (b)(2)(vi) states that certain barges traveling solely between the United States and Canada meeting certain conditions are exempted from AQI user fees. Barges eligible for the exemption are those barges: That travel solely between the United States and Canada; that do not carry cargo originating from countries other than the United States or Canada; that do not carry plants or plant products; that do not carry animals or animal products; and that do not carry soil or quarry products from areas in Canada listed in 7 CFR 319.77–3 as being infested with gypsy moth. Based on the pathway analysis that we conducted, we are proposing to eliminate this exemption. As discussed in our pathway analysis, 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. APHIS promulgated the exemption for barges from Canada meeting certain conditions in 2010 (75 FR 10634) stating: ''we [APHIS] do recognize that barges traveling solely between the United States and Canada are operating in a lower-risk environment: A limited range of waterways between and around the U.S./Canada border such as the Puget Sound and the Great Lakes, which means that such barges present a much lower risk of carrying cargo or hitchhiking pests from a third country.'' In APHIS' recent analysis, we found that nearly 1,500 barges arrive from Canada annually requiring manifest review, review of documents, and physical inspection as necessary, which incur costs on the part of the AQI program. Moreover, part of the original premise that barges from Canada travel in limited waterways is no longer true, with certain barges from Canada arriving into 49 United States ports of entry as far south as Charleston, South Carolina on the east coast, and Oakland, California on the west coast. For additional information, please see the document titled ''Pathway Analysis for Barges from Canada,'' which we are making available along with this proposed rule.[39] Because barges from Canada do not pose less of a phytosanitary risk than those other vessel types, the proposed rule would eliminate the exemption for barges. To be clear, the AQI program does currently conduct inspections of barges arriving from Canada and the cargo they carry, and therefore incurs costs to the program. Removal of the exemption allows the AQI program to recover these barge-related costs.

Finally, the commercial vessel fee would also not apply to commercial cruise (passenger) vessels that carry

[37] *https://agtransport.usda.gov/stories/s/pjaw-nxa9.*

[38] *https://agtransport.usda.gov/stories/s/Ocean-Container-Fleet-Dashboard/pjaw-nxa9/.*

[39] See footnote 5 for instructions on how to view this and other supporting documents on *Regulations.gov*.

passengers paying the international passenger fees under paragraph (f) of § 354.3 because the cost of inspecting the entirety of the vessel is included in the international cruise passenger fee, and cruise vessels almost never carry commercial cargo. That broad exemption would replace the existing limited exemption in paragraph (b)(2)(i) of § 354.3 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. It is routine for commercial aircraft to carry passengers (and associated baggage) and cargo, but cruise vessels almost never carry commercial cargo.

Commercial Trucks

We inspect commercial trucks at land ports in the customs territory of the United States arriving from Mexico and Canada. Inspecting commercial trucks involves the following activities: Reviewing manifests and documentation accompanying incoming cargo; determining entry status; targeting higher risk cargo for inspection or clearance; inspecting cargo, cargo containers, wood packaging material, and packing materials for plant pests and contaminants; and determining regulatory compliance. In the commercial truck environment, the AQI program also: Inspects trucks for contaminants; identifies pests and invasive species found during inspection; ensures consistency with all regulatory requirements; and safeguards shipments pending PPQ determination for treatment or final disposition.

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 operational fee is $7.29 per truck arrival (see footnote 35 for further elaboration), with an option, under paragraph (c)(3), to prepay an amount (currently $290.61) 40 times the single-arrival fee to obtain a transponder that will cover all arrivals of a commercial truck during a calendar year.

For context regarding the transponder option, there are only two fee classes that allow for remittance of an annual fee, commercial trucks and commercial railroad cars. (As we discuss below, the option for commercial railroad cars is effectively unused and we are seeking public comment on whether to eliminate it.) In both instances the means of conveyance are crossing land borders using routes (whether roads or rails) that are heavily traversed. This is especially true of commercial trucks, where there are approximately 11 million crossings per year.

Currently, there is not infrastructure in place at land borders to allow for real-time fee collection (similar to automated toll collection systems used throughout the United States), although that is a long-term goal. Accordingly, annual remittance is used as an option to reduce border congestion and to keep border operations manageable.

We currently incentivize annual payments by placing a cap on the annual fee for truck crossings; crossings beyond the cap are effectively free. This incentivization makes sense because the alternative, in which CBP personnel must collect the commercial truck fee 11 million times annually, is operationally untenable. However, if we were to make this same practice broadly applicable across modes, it would undermine full cost recovery.

We are proposing 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 clarifies application of the fee. Empty trucks and truck cabs need to be inspected because they may pose a phytosanitary risk due to hitchhiking pests and contaminants from past shipments.

Strictly following the 2023 FTE model, the user fee per arrival, as listed in proposed paragraph (c)(1), would increase to $11.44 in FY 2024, $12.44 in FY 2025, $13.47 in FY 2026, $14.51 in FY 2027, and $15.59 in FY 2028; however, at CBP's request, we are rounding these fees 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. Therefore, the fees under proposed paragraph (c)(1) would increase to $11.40 in FY 2024, $12.40 in FY 2025, $13.45 in FY 2026, $14.50 in FY 2027, and $15.55 in FY 2028. The corresponding prepaid (transponder) user fees would be set at an amount 60 times the unrounded fee rates for each arrival, as discussed further below, and would rise to $686.40, $746.40, $808.20, $870.60, and $935.40, respectively. As shown in the RIA accompanying this proposed rule, APHIS estimates an aggregate $67.5 million loss per year if the per-arrival and prepaid user fees are not adjusted in year one.

In the past 10 years, agricultural cargo arriving by truck has increased by 90.6 percent, from 21.7 billion kilograms to 41.32 billion kilograms. In addition, APHIS conducted an analysis showing that the volume of freight per truck has increased from 7.6 tons per truck in 2010 (beginning of the 2015 final rule's source data) to 8.5 tons per truck in 2019 (end of this rulemaking's source data); moreover, this increase continues, with the average arriving truck carrying 10.4 tons of freight in 2021.[40] We must increase staff on the truck pathway to address this increase in volume.

Analysis of collections data cross-referenced with truck arrival data shows a consistent average of 90 crossings per transponder per year from 2013 through 2021. However, to incentivize use of annual transponders, APHIS proposes to set the AQI truck transponder fee at 60 times the per arrival fee, an increase from 40 times the per arrival fee used to calculate the current transponder fee. This has no impact on CBP truck transponder fees.

The proposed truck fee at full implementation (FY 2028) is more than double the current fee; however, the volume of cargo per truck has increased from an average of 7.6 tons per truck (FY 2010–FY 2012) to over 8.5 tons per truck (FY 2017–FY 2019). Considering the increased cargo volume per truck, increased agricultural risk per truck, additional personnel to ensure more expedient border clearance, and inflation since the FY 2010–FY 2012 source data period for the 2015 final rule, APHIS believes the data justify this increase. Under the proposed rule, by FY 2028, the associated prepaid transponder fee will more than triple; however, the average truck transponder crosses the border more than 90 times in a calendar year. To incentivize the purchase of transponders, which facilitate border-crossing procedures, while limiting the impact of the fee increase on trucking companies, APHIS is proposing to set the truck transponder fee multiple at 60 times the unrounded per arrival fee. Again, APHIS believes the underlying transponder usage data justifies this increase.

We are proposing an additional amendment to clarify that prepayments for purchases of transponders may be made at any time during a calendar year. The proposed rule would not provide, however, for prorating of the prepayment cost or allowing credit for individual crossings made prior to

[40] See supporting documents: Changes in the Carrying Capacity of Containerized Maritime and Land Border Transport Over Time: A Brief Analysis.

prepayment, if the operator of the commercial truck elects to prepay during a calendar year. This proposed change would better align our prepayment requirements with those of CBP.[41] As noted earlier, provisions for prepayment for truck transponders are currently contained in paragraph (c)(3) of the regulations. In those existing regulations, paragraph (c)(2) is reserved. In this proposed rule, the prepayment requirements described above would be moved to proposed (c)(2), and paragraph (c)(3) would be eliminated.

Commercial Railroad Cars

The AQI program inspects commercial railroad cars (cargo) arriving at land ports in the customs territory of the United States from Mexico and Canada. Inspecting railroad cars involves the following activities: Reviewing manifests and documentation accompanying incoming cargo; determining entry status; targeting higher risk cargo for inspection or clearance; inspecting cargo, cargo containers, wood packaging material, and packing materials for plant pests and contaminants; and determining regulatory compliance. In the rail cargo environment, the AQI program also: Inspects railroad cars for contaminants; identifies pests and invasive species found during inspection; monitors the storage and removal of regulated international garbage from the railroad car to ensure consistency with all regulatory requirements; and safeguards shipments pending PPQ determination for treatment or final disposition.

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.

Under this proposed rule, the user fee per arrival, as listed in proposed paragraph (d)(1)(l), would increase to $5.81 in FY 2024, $6.51 in FY 2025, $7.23 in FY 2026, $7.97 in FY 2027, and $8.72 in FY 2028. The corresponding prepaid user fees, which would be set at an amount 48 times the AQI user fee for each arrival, would rise to $278.88, $312.48, $347.04, $382.56, and $418.56, respectively.

Based upon analysis of collections and arrival data,[42] 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. As shown in the RIA accompanying this proposed rule, APHIS estimates a $13.5 million loss annually if the commercial railroad car user fees are not adjusted in year one.

The commercial railroad car fee will more than quadruple by full implementation in FY 2028 from its current level. The main reason for this is what falls under the regulatory definition of a railroad car [19 CFR 24.22(d)(1)] is now much larger than what the current inspection fee is designed to cover. The current fees are 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. Cargo in general arriving into the United States by rail has increased nearly 15 percent since the FY 2010–FY 2012 period (source data 2015 final rule). Moreover, agricultural cargo arriving by rail has increased over 20 percent since 2010, from over 15 billion kilograms to over 18 billion kilograms in 2021. We must increase staff on the rail pathway to address these changes in trade on our land borders (see Tables 1 and 2 above). Considering the aforementioned increase in rail cargo volume and the steeper increase in agricultural rail cargo volume, the necessary addition of personnel to ensure more expedient border clearance, and inflation since the FY 2010–FY 2012 source data period for the 2015 final rule, APHIS believes the data justify this increase.

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 are proposing to amend § 354.3(d)(1) to remove the references therein to loaded cars. CBP inspects all commercial railroad cars, loaded and unloaded; however, APHIS does not collect AQI user fees for unloaded rail cars under the current regulations. However, both loaded and unloaded cars and rail-bound containers can harbor hitchhiking pests, and can transit through multiple countries with disparate pest risk profiles in terms of possible hitchhiking pests. For this reason, both the exterior and interior of unloaded railroad cars and unloaded rail-bound containers need to be inspected because they, too, may pose a phytosanitary risk due to hitchhiking pests and contaminants from past shipments. In order to recover the costs of conducting these inspections, we propose to make unloaded railroad cars subject to AQI user fees.

Current paragraph (d)(3) contains prepayment requirements for a calendar year for railroad companies choosing that option. We are proposing to amend that paragraph, as we did paragraph (c)(2), to provide for purchases made during a calendar year. The amendment would better align the rule with language in CBP regulations in 19 CFR 24.22. As is the case for commercial trucks, no credit would be given towards the annual prepayment for single payer crossings made earlier in the calendar year, nor would the annual prepayment amount be prorated.

While the current regulations include a prepaid option for commercial railroad cars, very few railroad companies use the prepay option. Based on this, APHIS is considering eliminating the prepaid option to simplify the regulations. APHIS originally developed the prepaid railroad car option to reflect a similar option available for railroad companies paying CBP COBRA fees. Recent consultation with CBP and discussions with APHIS' own Financial Management Division reveal that in any given year very few, if any, railroad operators do actually exercise this option. APHIS invites comments on the possibility of eliminating the prepaid railroad car option.

Statement, remittance, and compliance requirements for AQI user fees for commercial railroad cars are located in current paragraphs (d)(4) through (6) of § 354.3. Under current paragraph (d)(4), the Association of American Railroads (AAR) and the National Railroad Passenger Corporation (AMTRAK) must submit monthly written statements by mail to APHIS listing the number of loaded commercial railroad cars entering the United States during the relevant period, the number of those cars pulled by each railroad company and the total monthly AQI user fee due from each railroad company.

We would revise paragraph (d)(4) to provide for submission of remittance not only by AAR and AMTRAK, as is the case in the current regulations, but by individual railroad companies as well. This proposed revision would more closely align our requirements pertaining to railroad car user fees with those of CBP [19 CFR 24.22(d) *et seq.*].

[41] *https://dtops.cbp.dhs.gov/main/help/HelpfulInfo2FAQs.jsp* section ''About Decals, Transponders, and Single Crossing Fees''.

[42] See supporting document ''Analysis of AQI User Fees: Truck Transponder and Prepaid Railroad Car Multiples Using Fee Collections and Arrival Data''. See footnote 5 for instructions on how to view the supporting documents on *Regulations.gov*. Please note that because our analysis reviews FY 2017–2019 data, which precedes the court opinion referred to above, it assesses usage when the truck crossing fee was $7.55, rather than the current $7.29.

CBP cites: ''The Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), and any railroad company preferring to act individually, must file monthly statements. . . .'' Current APHIS regulations omit ''any railroad company preferring to act individually''. This revision corrects this oversight.

We are also proposing some updates to statement, remittance, and compliance procedures in paragraphs (d)(4) through (6). We are proposing to replace the words ''statement'' and ''remittance'' in the rule with the words ''remittance worksheet'' and ''payments'' to clarify what is required in plain language. The document that would be submitted along with a payment would be the ''remittance worksheet'' rather than a monthly statement, which is the current practice. The remittance worksheet would capture the same data previously submitted on the monthly statements but is a standardized worksheet produced by APHIS' Financial Management Division. Changing to the remittance worksheet would standardize the documentation we receive from entities within a user class as well as standardize documentation across all user classes, which would simplify APHIS recordkeeping and payer compliance. For example, entities currently submit this data in a variety of formats. Some even submit more information than is necessary. Having the ability to complete a worksheet would focus their efforts on only the required information. This would also make the process easier for APHIS, because we would look at incoming data on the same type of incoming document each time rather than being required to hunt through various entity formats to find and record the information we need. We are making the worksheet available as a supporting document for this proposed rule. We would also remove outdated mailing addresses, and provide a link (*https://www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/ppq-cbp-aqi-user-fees-contacts*) to information on submitting remittance worksheets, and payments, both electronically and by mail, and for entities submitting online, provide an email address for submission.

To make collections for railroad cars consistent with the proposed changes to international air passenger, commercial aircraft, and international cruise passenger fees, APHIS proposes changing the remittance deadline for railroad cars to 90 days after the close of a calendar month. Under this proposed rule, railroads would remit their payments to APHIS on a monthly basis (12 times per year) which is the same as the current requirement; however, railroads would have 90 days to reconcile their books for each month versus the current 60-day period after the close of the month. For example, 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. Regular and predictable remittance of user fee collections helps with the financial management of the AQI account and with trend prediction for future operation planning. The proposed changes to these paragraphs would both clarify and streamline the procedures and update them to improve APHIS business practices.

Further, to increase accountability and establish individual responsibility for complying with our payment and remittance worksheet requirements, we would require that the AAR, AMTRAK, and any railroad company acting individually for making AQI user fee payments designate an agent or responsible person, who would have that responsibility. We would also specify the duties of that responsible person in paragraph (d)(6), which we would divide into two subparagraphs. Proposed paragraph (d)(6)(i) would contain the existing provisions of paragraph (d)(6), without the outdated addresses. Proposed paragraph (d)(6)(ii) would state that 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. Before such a transfer could take place, the agent or responsible person would first have to contact APHIS to initiate the transfer. Once APHIS acknowledges the transfer, the new agent or responsible person would assume all responsibilities for ensuring compliance with the requirements of 7 CFR part 354. This proposed requirement would ensure seamless continuity of individual responsibility for compliance in the event of personnel changes on the part of a regulated party, and facilitates APHIS' ability to resolve issues quickly, thereby improving efficiency and customer service.

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. Inspecting commercial aircraft involves the following activities: Reviewing manifests and documentation accompanying incoming cargo; determining entry status; targeting higher risk cargo for inspection or clearance; inspecting cargo, international mail, expedited courier packages, cargo containers, wood packaging material, and packing materials for plant pests and contaminants; and determining regulatory compliance. In the commercial aircraft environment, the AQI program also: Inspects the aircraft hold and exterior for contaminants and pests; identifies pests and invasive species found during inspection; ensures consistency with all regulatory requirements; and safeguards shipments pending PPQ determination for treatment or final disposition. As discussed below, there is a separate international air passenger fee, which covers, among other things, inspection of the aircraft passenger cabin.

Fees for inspection of commercial aircraft are listed in § 354.3(e)(1). The current fee is $225 per arrival. Under this proposed rule, the user fee per arrival, as listed in proposed paragraph (e)(1), would increase to $288.41 in FY 2024, $309.00 in FY 2025, $330.07 in FY 2026, $351.64 in FY 2027, and $373.68 in FY 2028.

Commercial aircraft carry less than 1 percent by volume of commercial cargo arriving in the United States. However, commercial air cargo is high-risk, highly perishable, and includes time-sensitive express courier shipments, and it accounts for an estimated 43 percent of total AQI cargo inspection costs. These costs are driven in part by the intensive effort required to inspect numerous small packages and highly perishable commodities, which are more likely to be transported via aircraft than by another type of conveyance. As with other conveyances and shipping containers, the aircraft themselves pose a significant risk from potential hitchhiking pests. From 2014 to 2020, the increase in agricultural cargo imports coincided with a tripling in the growth of worldwide mail and express courier shipment volumes, growing from 43 billion to 131 billion parcels—a 27 percent year-on-year increase. Industry analysts predict another doubling in worldwide parcel volume by 2026.[43]

[43] *https://www.statista.com/chart/10922/parcel-shipping-volume-and-parcel-spend-in-selected-countries/.*

The proposed adjusted fees would fund full staffing to inspect these aircraft and their cargo at airport facilities throughout the country, at all arrival times. The proposed aircraft fee for FY 2028 is approximately 1.6 times the current fee. This cost increase under the terms of the proposed rule reflects the additional staffing to meet our current and anticipated needs in the air cargo environment. The wide geographic range (over 320 airport facilities throughout the United States receive foreign cargo), stakeholders' need for rapid processing times, and around-the-clock service requests make servicing the air cargo environment one of the most demanding AQI functions. When coupled with inflation since the FY 2010–FY 2012 source data period for the 2015 final rule, APHIS believes the data justify this increase.

In addition to the proposed fee changes, we are proposing to remove paragraph (e)(2)(iv), which exempts from AQI user fees certain passenger aircraft with 64 or fewer seats. As noted above, the pathway analysis we conducted demonstrates that this exemption is no longer justified. Results of the pathway analysis indicated that aircraft with 64 or fewer seats had many opportunities for exposure to hitchhiker pests, as well as many opportunities to expose pests to a large variety of environments in the United States. Because of the high number of flights and flight routes by aircraft with 64 or fewer seats, relative to those with 65 seats and above, and given the similar numbers in origins and destinations between the two types of aircraft, we concluded that commercial passenger aircraft with 64 or fewer seats serve as a pathway for the introduction of quarantine pests to the United States and propose eliminating the exemption.[44]

APHIS decided not to propose a new tiered structure for the commercial aircraft fee based upon aircraft size or seat number. This is because, as noted in the pathway analysis, the phytosanitary risk posed by a particular aircraft is based upon a variety of factors, including 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.

The number of seats in the aircraft thus has little bearing on phytosanitary risk as it pertains to the aircraft fee. (Indeed, inspection of seats on an aircraft is a cost component factored into the international air passenger fee, not the commercial aircraft fee.) There is, moreover, not a single consideration that differentiates aircraft into ''high risk'' and ''low risk'' categories. Moreover, a fee tiered to account for all these factors would require excessive administration to run properly and become cost-prohibitive and impracticable. Instead, APHIS is proposing a single aircraft fee that is based on the average cost to inspect and clear commercial aircraft and their cargo, regardless of the number of seats on the plane. APHIS invites specific comment on whether the aircraft fee could be structured differently from our proposed structure, as well as evidence in support these alternate structures.

We are proposing to revise paragraphs (e)(3) and (4), which pertain to remittances and compliance for AQI user fees for commercial aircraft, in a manner corresponding with the revisions to paragraphs (d)(4) through (6), *i.e.,* by changing the terminology to refer to ''remittance worksheets'' and ''payments'' rather than ''statements'' and ''remittances,'' removing outdated addresses, providing updated information links and options for making electronic payments and submissions of remittance worksheets, and adding requirements pertaining to the air carrier's agent or responsible person for overseeing compliance. These changes would parallel those in paragraph (d) described above. We would also remove the requirement currently in paragraph (e)(3)(ii)(B), which requires the person submitting payment to provide his or her taxpayer identification number (TIN). APHIS collects the TIN for enforcement and debt collection when the stakeholder establishes a payment account with APHIS; therefore, this personally identifiable information is not necessary for submission of individual remittances. APHIS also proposes removing current paragraphs (e)(3)(ii)(D) and (e)(3)(ii)(E). APHIS no longer uses ports of entry at which inspections occurred or number of arrivals at each port for fee collection purposes.

Proposed changes to paragraph (e)(3) also include decreasing the period for payment of the fees and submission of remittance reports from quarterly to monthly. Under this proposed rule, airlines would remit their payments to APHIS on a monthly basis (12 times per year) versus the current quarterly basis (four times per year). They would have 90 days to reconcile their books for each month versus the current 31-day period after the close of the quarter. For example, 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.

The AQI account balance changes daily as customers remit their user fees, as the APHIS program obligates funds, as refund requests are processed, as account recoveries are received, as funds are transferred to CBP, and as other account adjustments are made. A regular and predictable remittance of user fee collections helps with the financial management of the account and trend prediction for future operation planning. To illustrate, from FY 2017 to FY 2019, commercial aircraft collections averaged over 23 percent of total collections, or nearly $188 million. Also, from FY 2017 to FY 2019, commercial aircraft passenger collections averaged over 61 percent of total collections, or nearly $486 million. Collections from the air sector (commercial aircraft and commercial air passenger) are a combined annual average of over 85 percent of total AQI collections. Under this rule 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 FY2017 through FY2019. Because of the large proportion of collections from the air sector, the current quarterly remittance schedule for airlines results in significant fluctuations in the account balance, making such financial management and planning challenging throughout the fiscal year. For example, airlines remit large sums 1 month after the close of each quarter, and APHIS transfers funds to CBP every other month. At certain times of the year, the quarterly remittance schedule and bi-monthly transfers lead to a low balance in the account, which may lead to a needed delay in transferring funds to CBP or APHIS operations until collections are received. During the pandemic, this trend was mitigated by appropriated supplemental funds. A monthly remittance schedule would smooth the revenue stream, which would lead to a more regular and predictable account balance. This, in turn, would allow for better financial management and trend predictions to promote the program's ability to achieve its mission efficiently and effectively. Finally, we note that, under 21 U.S.C. 136a(a)(3), APHIS has broad authority to set remittance schedules as it deems fit.

[44] See footnote 5 for instructions on how to view this and other supporting documents on *Regulations.gov*.

International Passengers Arriving at Airports and Seaports

Millions of travelers arrive at U.S. airports and seaports from international destinations daily. Inspecting international air passengers includes pre-arrival analysis of incoming passengers and screening arriving air passengers for agricultural products by the AQI Program; inspection of passenger baggage using CBP agriculture canines and specialized non-intrusive inspection equipment; inspecting the interior of the passenger cabin and baggage compartments of the aircraft; monitoring the storage and removal of regulated international garbage from the aircraft to ensure consistency with all regulatory requirements; safeguarding and appropriately disposing of any seized or abandoned prohibited agricultural products; and identifying and mitigating pests found on prohibited agricultural products or in passenger cabins brought into the country via international travel.

Inspecting a cruise vessel and its passengers includes pre-arrival analysis of incoming passengers; screening arriving sea passengers for agricultural products by CBP Agriculture Specialists and CBP Officers; inspection of passenger baggage using CBP agriculture canines and specialized non-intrusive inspection equipment; inspection of the vessel itself to ensure that contaminants, prohibited articles, or invasive pests are not present; inspecting the ship's stores to ensure that prohibited items are not present or are properly safeguarded; and monitoring the storage and removal of regulated international garbage from the vessel to ensure consistency with all existing regulatory requirements. The costs of inspecting the cruise ships themselves are covered by the sea passenger fee because the entirety of a cruise vessel is passenger-related. APHIS added the sea passenger AQI user fee in the 2015 final rule.

The current AQI user fee for inspection of commercial air passengers is $3.83 per arrival. Under this proposed rule, the user fee per arrival, as listed in proposed § 354.3(f)(1), would increase to $4.29 in FY 2024, $4.44 in FY 2025, $4.60 in FY 2026, $4.76 in FY 2027, and $4.93 in FY 2028.

Over the past decade, air and sea passenger volumes have each grown on average by over 50 percent (air by 54.6 percent and cruise by 51.65 percent), but the number of frontline employees (inspectors) actually decreased over this period. Looking specifically at frontline employee workload, there were 62,000 passengers per frontline employee in 2010. By 2019 there were 98,000 passengers per frontline employee, a 58 percent increase in workload per employee. While we experienced a decrease due to the COVID–19 pandemic, international passenger volumes are projected to recover in 2024 and grow 3.5 percent annually, further increasing frontline employee workload. In a static cost and wage environment, collections of passenger fees increase with increasing passenger arrivals, and increased collections would result in additional funds for hiring additional personnel and purchasing additional equipment to cover workload; however, underlying Federal employee wages and equipment costs have increased while the fee has remained static. For example, from 2015 to 2023, a GS–12 Step 5 (typical CBP Agriculture Specialist inspector) salary at two of the largest airports, John F. Kennedy International Airport in New York and Los Angeles International Airport in California, increased more than 22 percent, and equipment and other costs as measured by inflation (CPI–U) have increased over 28 percent from December 2015 to April 2023 while the fee itself remained static.

In addition to enabling us to recover the costs of our current program activities, the proposed fee change would increase the presence of CBP AQI canine teams from the current 189 AQI canine units to a total of 281 AQI canine units to improve the detection of prohibited products that could harbor ASF, which has become a disease of particular concern due to recent outbreaks in the western hemisphere, as well as other sanitary and phytosanitary risks in passenger baggage. Congress authorized up to $220 million per year for additional positions, but it did not fund the authorization.[45] APHIS estimates a shortfall of $28.9 million per year if the air passenger fee is not adjusted.

The commercial cruise vessel passenger fee is the only fee that will decrease relative to the current fee. The cruise ship passenger fee is currently $1.68 per arrival. As listed in proposed § 354.3(f)(1), the fee would decrease to $1.20 in FY 2024, $1.25 in FY 2025, $1.29 in FY 2026, $1.34 in FY 2027, and $1.39 in FY 2028. The change in the cruise passenger fee owes mainly to the change in allocation criteria from number of inspection events (passengers) to FTE hours. Between FY 2017 and FY 2019, there was an average of 15.6 million cruise passenger arrivals out of a total of 287.6 million total arrivals (all commercial passengers, pedestrians, commercial conveyances, and privately owned vehicles) or 5.42 percent; however, 22 FTEs out of 3,071 total FTEs or 0.72 percent of CBP AQI personnel inspected cruise passengers. Using FTE hours as the allocation criterion for certain costs resulted in 0.72 percent of those costs allocating to cruise passenger clearance rather than 5.42 percent using number of passengers (workload).

We have added several proposed clarifications in paragraph (f) related to applicability, payment, and handling of international passenger user fees collected and remitted for trips not taken. In proposed paragraph (f)(1), we have 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 their definition of passenger. As noted above, we are also proposing to add a definition of *passenger* to help clarify these requirements. In proposed changes to paragraphs (f)(5) and (6), we have 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. As discussed above in relation to paragraph (e), 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 versus the current 31-day period after the close of the quarter. For example, 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 are proposing 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) would clarify that APHIS' policy is 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

[45] *https://www.govinfo.gov/content/pkg/CRPT-116srpt94/html/CRPT-116srpt94.htm.*

AQI user fees in the original form of payment to the purchaser for trips not taken. Proposed paragraph (f)(5)(vi) describes 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.[46] In keeping with other proposed changes to remittance timeframes, the revised remittance worksheet 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, using the same procedure described in § 354.3(f)(5)(iv) of this proposed rule.

AQI Treatment Monitoring

AQI treatments are performed on some agricultural goods as a condition of entry, and others are performed when an actionable pest (*i.e.,* a plant pest that should not be allowed to be introduced into or disseminated within the United States) is detected during a port-of-entry inspection. The objective of these AQI treatments is to ensure that agricultural goods and commodities entering the United States are free from viable plant pests and noxious weeds that would pose a risk to the health of U.S. domestic agriculture and natural resources. AQI treatment methods include fumigation, cold treatment, irradiation, and heat treatment. APHIS activities related to the application of AQI treatments include personnel determining the appropriate treatment schedule, monitoring the treatment to ensure it takes place in the prescribed manner, and determining whether the treatment was successful. These AQI services focus on ensuring the effectiveness of a given treatment, regardless of its methodology. While AQI treatments are usually provided by private entities who charge the importer for their services, from time-to-time APHIS will provide the treatment, especially for propagative materials. We also develop new methods of treatments. These methods increase the effectiveness of treating agricultural goods and reduce the risk of dangerous pests entering the United States.

The 2015 final rule established user fees to cover the costs of these activities as listed currently in § 354.3(h). Prior to that rulemaking, these costs were allocated to the conveyance fees; however, a U.S. Government Accountability Office report[47] recommended that treatment monitoring be made a stand-alone fee to improve the efficiency of AQI user fees. In recent years, the Senate has included language in reports accompanying Agriculture Appropriations legislation to reevaluate assessing AQI treatment monitoring fees on a per-enclosure basis.[48] [49] [50]

APHIS has reevaluated the per-enclosure basis and is proposing an hourly rate instead. We are proposing this change for two reasons. First, the work of treatment monitoring is clocked in and clocked out by an employee devoted solely to monitoring that particular treatment, which results in distinct ‘‘blocks’’ of treatment oversight. This lends itself to an hourly rate because there is an actual computation of the amount of time worked on a distinct unit without diversion; we can say a specific employee oversaw a specific treatment for 2 hours.

Conveyance and cargo inspection do not lend themselves as readily to an hourly rate. For example, in the commercial vessel environment, cargo is routinely offloaded into a joint holding area, and inspected en masse, while a separate team inspects the actual vessel. Likewise, for commercial aircraft, one employee may make rounds to inspect the exterior of recently arrived aircraft for hitchhiking insects while another employee inspects offloaded cargo from multiple aircraft in a holding area and another employee inspects the cargo hold. In those instances, CBP will provide the number of vessels or aircraft inspected, and the collective workforce hours it took to inspect, but there is not a distinct record of time worked on any one vessel or aircraft, and disaggregating the total time worked in order to arrive at that figure is unfeasible. Instead, we total the costs associated with providing inspections annually, and divide by the number of arrivals. This results in an average amount worked, and the fee is pegged against that average.

The second reason, which we discuss below, is that there can be a significant variance in the amount of time needed to oversee a particular treatment. An in-transit cold treatment may be verified in less than 15 minutes, whereas some fumigation treatments must be administered over multiple days. These differing requirements for treatment oversight lead us to believe that an hourly treatment fee would help ensure that parties are treated equitably when assessing treatment monitoring fees.

Under the current regulations in paragraph (h)(1), treatment monitoring fees are assessed on a per-treatment basis, *e.g.,* per fumigation, cold treatment, etc. For example, a fumigation conducted under a single tarp is a single treatment, regardless of the volume under the tarp or the number of consignments subjected to the treatment under the tarp at one time, and it is subject to one treatment monitoring fee. If, however, a single consignment is split into multiple separate enclosures due to volume, treatment monitoring fees will be assessed for the treatments conducted in each enclosure, even if those treatments occurred simultaneously and a single Plant Health Safeguarding Specialist (PHSS) monitored them. In some cases, therefore, a per treatment approach may not accurately account for the time and effort required to perform these treatment monitoring services.

Additionally, the per-treatment approach lacks flexibility. Trade needs drive treatment activities, and these needs are not the same at all ports of entry. For example, in the northeast, trade primarily consists of large volumes of single commodity cargo, which has led to large scale treatment enclosures and fewer monitoring events (and thus fewer occurrences of the fee). In contrast, South Florida ports-of-entry have more cargo diversity, resulting in small-scale treatment enclosures and more monitoring events (and thus more occurrences of the fee).

Since 2018, the Senate has requested that APHIS evaluate alternatives to assessing treatment monitoring fees on a per-treatment basis: The Senate Committee on Appropriations[51] noted that assessing AQI treatment monitoring fees on a per-enclosure or per-treatment basis imposes disproportionate impacts on industry and user groups at certain key ports of entry, including ports along the southeast United States. The Senate Committee on Appropriations encouraged USDA to continue conducting a study that specifically outlines the actual costs of treatments, examines the disproportionate impact the fee has on airports and seaports in different regions of the United States,

[46] *https://www.aphis.usda.gov/mrpbs/userfees/aqi-account-credit-req.xlsx.*

[47] *https://www.gao.gov/products/gao-13-268.*

[48] *https://www.congress.gov/117/crpt/srpt34/CRPT-117srpt34.pdf.*

[49] *https://www.congress.gov/116/crpt/srpt110/CRPT-116srpt110.pdf.*

[50] APHIS is exploring several options for AQI user fees after FY2028 including a new rulemaking to adjust the fee schedule and a rule implementing a notice-based process for inflation adjustments for those periods between fee adjustment rulemakings.

[51] 2018: *https://www.govinfo.gov/content/pkg/CRPT-115srpt259/pdf/CRPT-115srpt259.pdf.* 2019: *https://www.congress.gov/116/crpt/srpt110/CRPT-116srpt110.pdf.* 2021: *https://www.congress.gov/117/crpt/srpt34/CRPT-117srpt34.pdf.*

and evaluates alternative and equitable funding mechanisms.

APHIS has holistically evaluated issues associated with treatment monitoring. First, we have determined that there are often significant differences in the amount of time and workload necessary to monitor certain treatments. For example, in-transit container cold treatments require considerably less time to monitor than a tarpaulin-less container fumigation.

Second, we have determined that the only difference in current actualized program costs between treatments monitored during regular business hours and those performed on overtime is the rate of pay to the PHSS(s) conducting the treatment monitoring. For example, APHIS assumes the average treatment monitoring event is conducted by a GS–11 step 5 (mid-career journeyman level). If one takes the average GS–11 step 5 rate of pay across all locality pay rates,[52] weighted by the number of Federal employees in a given locality,[53] in 2022 dollars, that weighted average is $37.52 per hour. Similarly, the average weighted overtime rate for Monday through Saturday and holidays is $45.21 per hour and for Sundays $75.05 per hour. The additional cost to the AQI program for treatment monitoring during overtime on Mondays through Saturdays and holidays is $7.68 per hour, and on Sundays that difference is $37.52 per hour (numbers may appear off due to rounding).[54] These cost differences have then been added to the proposed base treatment monitoring hourly rate, and then adjusted for projected inflation. Tables 4 and 5 of this document reflect these calculations.

Finally, APHIS has assessed the role of the party responsible for paying the user fee associated with treatment monitoring. In cases in which a third-party treatment provider provides the treatment, APHIS has determined that the responsible party should be the treatment provider. In cases in which APHIS is the treatment provider, APHIS has determined that the responsible party should be the importer.

Based on the foregoing, the proposed rule would restructure the treatment monitoring fee to better address the concerns of stakeholders, increase program flexibility, and more accurately assign costs. Specifically, we would revise § 354.3(h), which lists the treatment monitoring fees and related requirements, including those pertaining to remittances, statements, and collections, to change the structure of the fees from a per-treatment basis to an hourly basis and to update those other requirements.

Change From a per-Treatment Basis to an Hourly Basis

With treatments fees assessed on an hourly rate (in quarter-hour increments, rounded up to the next quarter-hour) instead of per-treatment, the responsible party requesting and receiving treatment monitoring services would only be charged for the total time the employee spends monitoring the treatments. The hourly rate (as opposed to the per-treatment rate) would more accurately reflect the time spent and costs incurred for any APHIS treatment monitoring service and, therefore, would be fairer and more transparent. The impact of changing from a per-treatment basis to an hourly basis on an individual treatment provider will depend upon several factors, including number of simultaneous treatment monitoring events and duration of treatments.

To illustrate the impact of the change from per-treatment to hourly, consider two common treatment types: In-transit container cold treatments and tarp-less container fumigations. The average in-transit container cold treatment requires less than 15 minutes of monitoring, but the average tarp-less container fumigation requires over 2½ hours (2 hours and 30 minutes) of monitoring. Under the current fee schedule, the treatment monitoring fee for both of those treatments during regular business hours is $237, regardless of the amount of time or effort spent monitoring a treatment. Under the proposed hourly scheme at full implementation (FY 2028, Table 4), the in-transit container cold treatment would cost $79.21 (assumes 15 minutes; 0.25 hours × $316.83/hour), and the tarp-less container fumigation would cost $792.08 (assumes 2½ hours; 2.5 hours × $316.83/hour).

Additional benefits of our proposed hourly rate structure include the following:

- Multiple treatments could be monitored by a single PPQ employee in a given hour (per local labor agreements), incentivizing efficient operations;
- The fee could be implemented in 15-minute increments, incentivizing treatment provider investments in automation of treatment application; and
- Premium service rates would simplify treatment monitoring services provided on reimbursable overtime: One premium rate for Monday through Saturday and holidays, and a second premium service rate for Sunday.

Applying the Teatment Monitoring Fee to All Treatment Types and Treatment-Related Activities

The range of treatment related activities subject to the proposed fee would include phytosanitary treatments under 7 CFR part 305 and in the USDA APHIS Treatment Manual,[55] as well as to the treatment-preparatory activities of restacking and reconditioning, which are discussed earlier in this document under the heading ''Definitions'' and below. The current regulations allow the fee to be applied to all phytosanitary treatments. However, as a matter of current Agency practice, since the 2015 rulemaking, APHIS has only applied the treatment monitoring fee to fumigations and cold treatments, and we have not been recovering the costs of monitoring other treatment types. Moreover, we have not been collecting fees for monitoring activities such as restacking and reconditioning. For a treatment to be effective, the commodity must meet certain conditions such as sufficient space above, below, and between commodity stacks for the movement of air, as well as packaging which does not interfere with the treatment. If these conditions do not exist at the time of arrival, APHIS must monitor and safeguard restacking and reconditioning procedures that will satisfy these conditions and make it possible to treat the commodity. The time necessary to restack and recondition ranges from an hour to multiple days depending upon the condition of the commodity at the time of arrival, the type of commodity, the treatment to be performed, etc. The practice of not collecting fees for reconditioning and restacking has prevented us from recovering any of the costs to APHIS in monitoring these activities. As noted earlier, we would also add definitions of *reconditioning* and *restacking* to § 354.3(a). We are proposing to add new paragraphs (h)(1)(ii)(A) through (D), which would describe the activities for which the treatment monitoring fees are assessed.

The proposed treatment monitoring user fee rates, as listed in proposed paragraph (h)(1)(i), are listed in table 4.

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[52] *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2022/2022-general-schedule-pay-rates.xls.*

[53] *https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/major-work-locations-of-the-executive-branch.pdf.*

[54] See supporting document ''AQI Treatment Monitoring User Fee: Change to an Hourly Rate, and Incorporate Reimbursable Overtime.'' See footnote 5 for instructions on how to view this and other supporting documents on *Regulations.gov/.*

[55] Treatment schedules will migrate to the Agriculture Commodity Import Requirements (ACIR) Database in the future: *https://www.aphis.usda.gov/aphis/resources/acir.*

The fees are assessed per employee, per hour conducting the service.

TABLE 4—TREATMENT MONITORING FEES (HOURLY RATE)—REGULAR TIME

Beginning on	FY1/1/2024 FY2024	FY10/1/2024 FY2025	FY10/1/2025 FY2026	FY10/1/2026 FY2027	FY10/1/2027 FY2028
Treatment monitoring and related services performed during regular business hours					
Regular Time Hourly Rate	$232.97	$253.19	$273.90	$295.12	$316.83
Quarter Hour Rate	58.24	63.30	68.48	73.78	79.21

Applying Overtime to Treatment Monitoring Performed Outside of Regular Business Hours

Proposed paragraph (h)(2) would clarify that overtime rates, rather than the regular hourly rates, would apply for treatment monitoring activities conducted outside of normal business hours. The paragraph would further state that the treatment services overtime hourly rate would be applied identically to reimbursable overtime and that overtime services would incur a minimum charge of 2 hours, unless performed on the employee's regular tour of duty and performed in direct continuation of the regular tour of duty or begun within an hour of the regular tour of duty. Overtime hourly rates for activities conducted on Mondays through Saturdays and holidays and Premium hourly rates for activities conducted on Sundays would be listed separately in a table in paragraph (h)(2).

TABLE 5—TREATMENT MONITORING FEES (HOURLY RATE) —OVERTIME

Beginning on	FY1/1/2024 FY2024	FY10/1/2024 FY2025	FY10/1/2025 FY2026	FY10/1/2026 FY2027	FY10/1/2027 FY2028
Treatment monitoring and related services performed outside of regular business hours Monday through Saturday and Holidays					
Mon–Sat, Holiday Overtime Hourly Rate	$240.89	$261.36	$282.32	$303.93	$326.04
Quarter Hour Rate	60.22	65.34	70.58	75.98	81.51
Treatment monitoring and related services performed on Sundays					
Sunday Premium Hourly Rate	272.27	294.34	317.62	342.26	368.40
Quarter Hour Rate	68.07	73.58	79.41	85.57	92.10

Changes to Treatment Monitoring Fee Designation of Responsible Parties and Remittance Procedures

Current paragraphs (h)(2), (3), (4), and (i), contain provisions for collection of treatment user fees, remittance and statement procedures, payment methods, and liability. The existing regulations in (h)(2) and (3) specify that 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 and for holding those fees separately in a trust for the United States by the entity collecting such fees. Paragraphs (h)(4) and (i) contain provisions pertaining to remittance and statement procedures and payment methods that are outdated, as discussed earlier in relation to commercial railroad cars and commercial aircraft fees. Paragraph (j) lists hourly and overtime rates for certain treatment monitoring services pertaining to solid wood packing material.

Since implementation of the treatment fees, APHIS has received feedback from stakeholders regarding challenges with the structure of the fee collection and payment process. Some stakeholders expressed the view that because the Agency did not provide an invoice for services delivered, tracking APHIS-delivered services fell entirely on the AQI treatment provider, which added burden and cost. Another concern was that the requirement to set up a separate trust account for user fees added cost and burden to business operations compared to typical invoice and billing practices. In addition, the Agency had to develop procedures to pursue compliance and enforcement actions when funds were collected and held in trust, compared to more typical, and efficient, billing and debt collection procedures.

We are therefore proposing a new approach to collection, billing, and payment, which we discuss in detail in the paragraphs that follow. This approach would reduce cost and burden on treatment providers by reducing the need to create new business procedures to monitor, collect, and pay treatment monitoring fees to APHIS, while simplifying the Agency's procedures to address payment non-compliance.

The existing regulations in paragraph (h)(3)(i) state that in cases in which APHIS is not providing the AQI treatment and collecting the associated fee, AQI user fees collected from importers pursuant to 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. We are proposing to clarify responsibility for payment by revising paragraphs (h)(3) and (4). For treatments carried out by third party treatment providers and monitored by APHIS, APHIS would collect the fees from the treatment providers either at the time of service or as described below in the discussion of the billing process. For treatments conducted by APHIS, APHIS would collect the AQI treatment fee at the time the treatment is applied directly from the person receiving the services, which, in that case, would be the importer or their agent. Because APHIS would issue a bill to all service providers who have credit accounts in good standing, or would collect payment at the time of service, service providers would no longer be required to establish a trust fund account.

Proposed paragraph (h)(5) would describe the billing process. User fees for treatment monitoring would be due at the time-of-service delivery, unless the treatment provider has established an acceptable credit history and opened a customer account with APHIS, in which case they can be billed by APHIS for services provided. Proposed paragraph (h)(6) would provide the same updated link for payment information provided in proposed paragraphs (d) and (e).

The existing regulations in § 354.3 do not specify consequences for late payment or nonpayment of AQI treatment monitoring user fees. We propose to add new paragraphs (i)(1) to (5) to explain the consequences of and procedures for nonpayment or late payment of treatment monitoring user fees, including debt collection.[56] [57] Consequences for nonpayment or late payment under proposed paragraph (i) include denial of AQI services, seizure and disposal of cargo, assessment of late fees and fees for dishonored debt, and reporting by APHIS of delinquent debt to credit reporting agencies. Procedures for debt collection, which would be carried out by the USDA and the Department of the Treasury on behalf of the USDA, are contained in proposed paragraph (i)(5).

Collectively, proposed paragraphs (h) and (i) would reduce cost and burden on treatment providers by reducing the need to create new business procedures to hold fees in trust, while codifying and streamlining the Agency's procedures to address payment non-compliance. The changes would also update addresses and provisions pertaining to payment methods in a manner consistent with the updates to the corresponding requirements for commercial railroad cars and aircraft.

Technical Amendments

We are proposing to remove current paragraph (j), which lists hourly and overtime charges for certain treatment monitoring services pertaining to solid wood packing material. Prior to the adoption of International Standards for Phytosanitary Measures (ISPM) 15 [58] in 2002, APHIS had specific regulations in 7 CFR 319.40–5(g) and (h) regarding solid wood packing material and merchandise from the Peoples Republic of China, including Hong Kong, with § 319.40–5(h) referring to the fees in § 354.3(j). Adoption of ISPM 15 made § 319.40–5(g) and (h) obsolete, and APHIS removed them in 2005. Though APHIS did not also remove § 354.3(j) from the regulations at that time, it, too, has become obsolete because there are no other sections of APHIS' regulations pointing to or relying upon § 354.3(j).

Records Retention

To improve monitoring, compliance, and enforcement of this regulation, we are proposing to add a new paragraph (j), which would contain retention requirements for records related to AQI user fees. Proposed paragraph (j)(1) would provide 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. Such information would have to be made available for inspection upon APHIS and 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 fee 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 GAO 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.

Severability

Finally, we are proposing to add a new § 354.3(k), ''Severability,'' to address the possibility that this rule, or portions of this rule, may be challenged in litigation. It is APHIS' intent that the individual sections of this 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.

Executive Orders 12866 and 13563, and Regulatory Flexibility Act

This proposed rule has been determined to be significant under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 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 proposed rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, ''Improving Regulation and Regulatory Review,'' 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 an initial regulatory flexibility analysis that examines the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

We do not have sufficient information to certify that this proposed rule will not have significant economic impact on a substantial number of small entities. We have therefore included an Initial Regulatory Flexibility Analysis exploring the impacts on small entities. We invite comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

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

[56] Current paragraph (g) in § 354.3 of the regulations covers export certification user fees. Current paragraph (i) in § 354.3 contains requirements related to payment methods for those export certification user fees only. This proposed rule does not address any of those requirements. We are proposing, however, to consolidate the export certification user fee requirements presently found in paragraph (i) and move them to in § 354.3(g)(6). This proposed editorial change would make the regulations clearer and easier to use.

[57] This change will not affect export certification user fees.

[58] *https://www.fao.org/3/mb160e/mb160e.pdf.*

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 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 proposing a number of revisions to the regulations that govern the oversight of phytosanitary treatments, 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 proposed revisions would incorporate adjustments to the cost model that is used to calculate the fees.

This proposed rule would 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.

This proposed rule also restructures the treatment monitoring fee from a ''per treatment'' basis to a three-tier, per employee, hourly rate system; applies the treatment monitoring fee to all approved phytosanitary treatments; incorporates associated actions, such as monitoring restacking and reconditioning, into the fee; and incorporates monitoring destructions and other phytosanitary mitigation measures, such as seed grinding and steam cleaning, into the fee. The proposed rule would also implement a billing process for the treatment monitoring fee and move responsibility for paying the fee from the importer of record to the party applying the treatment.

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

The 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. The personnel and support to carry out an effective import and pest exclusion program begins before and continues after the port-of-entry where inspections often take place. APHIS uses an 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 proposed rule would 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. 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 should this proposed rule be finalized 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 help 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 if 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.[59] The benefits and costs, as well as the annualized transfer payments are summarized in table A.

[59] 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. *https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf.*

TABLE A—ACCOUNTING STATEMENT OF COSTS, BENEFITS, AND TRANSFERS ASSOCIATED WITH THE RULE

Benefits		
Non-Quantified Benefits	The proposed rule would 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 [1 2]	7% discount rate	3% discount rate
Air Passengers	$471,200,000	$472,500,000
Commercial Aircraft	290,200,000	291,700,000
Commercial Rail	25,730,000	25,920,000
Commercial Truck [3]	113,500,000	114,100,000
Commercial Vessel	186,100,000	186,400,000
Cruise Vessel Passenger	20,120,000	20,170,000
Treatments ($/Hr.)	14,430,000	14,520,000
Total [4]	1,121,280,000	1,125,310,000

[1] Annualized value of transfers from 2024 through 2028; discounted at 7 and 3 percent, 2022 dollars.
[2] Estimates of user fee collections (transfers) based on individual fee levels for each year of the 5-year 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.
[3] 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 one million single payer crossings and 125,000 transponders.
[4] Totals may not sum due to rounding.

The proposed fee schedule would better reflect the costs of AQI services provided to commercial cargo vessels, commercial trucks, commercial cargo railroad cars, commercial aircraft, and international air and sea passengers arriving at U.S. ports; and it would more accurately assign costs to treatment monitoring activities (table B).

TABLE B—CURRENT AND PROPOSED AQI USER FEE RATES

[Dollars]

Fee area	Current fee	Proposed fees				
		2024	2025	2026	2027	2028
Air Passenger	3.83	4.29	4.44	4.60	4.76	4.93
Commercial Aircraft	225.00	288.41	309.00	330.07	351.64	373.68
Commercial Cargo Vessel	825.00	3,219.29	3,302.23	3,386.20	3,471.18	3,557.18
Commercial Truck	7.29	11.40	12.40	13.45	14.50	15.55
Commercial Cargo Railroad Car	2.00	5.81	6.51	7.23	7.97	8.72
Cruise Vessel Passenger	1.68	1.20	1.25	1.29	1.34	1.39
Treatment:						
(per treatment)	237.00					
(per hour)		232.97	253.19	273.90	295.12	316.83

Air Passengers

The air passenger fee would increase from $3.83 to $4.93 by 2028. The total fee increase of $1.10 would be approximately a 28.7 percent increase from current fees, but only a 0.1 percent increase in the average price of an international round-trip airfare. 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 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 would increase from $225 to $373.68 per arrival by 2028. This increase of $148.68 would be approximately a 66 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 66 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 proposal would represent 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 $148.68 by 2028, the commercial aircraft user fee would be the equivalent to approximately 5 minutes of operating costs for aircraft.[60] Limitations in the amount and nature of data available to the agency make it difficult to develop specific conclusions as to how such a fee change will affect international arrivals of commercial aircraft overall. 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 proposed rule would result in the removal of this exemption.

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 would only apply to international arrivals of aircraft with fewer than 65 seats. 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. 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. We are inviting the public to provide data relevant to these and other questions concerning the operation of commercial aircraft with fewer than 65 seats arriving internationally. We also invite public comment on other matters related to the removal of this exemption.

Commercial Cargo Vessel

The commercial cargo vessel fee would increase from $825 to $3,557.18 by 2028. The proposed fee better accounts for the level of effort it takes to inspect the average ship and its cargo and reflects the expanded capacity of modern container ships. Even with the commercial vessel fee increasing by 331 percent to $3,557.18 by 2028, the user fee would still represent a fraction of the value of goods being imported by vessel generally (0.02 percent). The proposed commercial vessel fee rate in 2028 dollars-per-kilogram for vessel cargo generally would be less than $0.0006. The proposed 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. Limitations in the amount and nature of data available to the agency make it difficult to develop specific conclusions as to how the proposed fee changes will affect international arrivals of commercial cargo vessels overall. However, the proposed change to the 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 would be affected if the exemption were removed. APHIS has concluded that barges from Canada that meet the user fee exemption do not pose less of a phytosanitary risk than barges travelling from other countries or other vessel types travelling from Canada. At the 2028 rate, the commercial cargo vessel fee would be approximately $0.001 per kilogram (kg) imported by barge. 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 businesses. We are inviting the public to provide data relevant to these and other questions concerning the operation of currently-exempt barges from Canada. We also invite public comment on other matters related to the removal of this exemption, or on the proposed rule generally.

Commercial Truck

The commercial truck fee would increase from $7.29 to $15.55[61] by 2028, an increase of $8.26 per truck arrival. Between 2013 and 2019 imports into the United States by truck increased by 397 million kg. Even after a 114 percent increase, the user fee of $15.55 proposed in 2028 for a commercial truck entering the U.S. would be the equivalent of 0.034 percent of the average value of goods imported by truck. The proposed fee in 2028 in dollars-per-kilogram for truck cargo generally would be approximately $0.0014. In addition, this user fee would be the equivalent of the operating expenditures of a truck transporting goods about nine miles. Limitations in the amount and nature of data available to the agency make it difficult to develop specific conclusions as to how these proposed fee changes will affect international arrivals of commercial trucks overall. However, the impact of this proposed fee on the operations of commercial trucks seems likely to be limited.

Commercial Cargo Railroad Car

The commercial cargo railroad car fee would 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 cargo railroad car fee would still be the equivalent of approximately 0.029 percent of the value of goods being imported on by railroad car. The

[60] 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.*

[61] $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.

proposed fee in 2028 in dollars-per-kilogram for commercial railroad cars generally would have been approximately $0.0004. Limitations in the amount and nature of data available to the agency make it difficult to develop specific conclusions as to how these proposed fee changes will affect international commercial cargo railroad arrivals overall. However, the proposed change to this fee seems likely to have a limited impact on commercial cargo rail operations.

Cruise Vessel Passenger

The cruise vessel passenger fee would 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. Shifting the treatment monitoring fee to an hourly basis would reduce the cost of treatment monitoring for many treatment providers. Multiple treatments can often be monitored by a single PPQ employee in a given hour, and the proposed hourly fee can be implemented in 15-minute increments. The impact of shifting to an hourly fee would vary from user to user, as the cost would depend on the amount of time spent monitoring treatments rather than on the number of treatment enclosures. It is, however, likely that impacts from the proposed changes would be lower under an hourly fee than they would be under the current per-treatment fee. Providers of some treatment services are not currently subject to the treatment monitoring fee and would be impacted by the proposed rule. Because we do not have explicit data on those providers affected by the proposed changes, we cannot make specific conclusions as to how the collection of this user fee will affect individual businesses. We are inviting the public to provide data relevant to these and other questions concerning treatment operations.

APHIS estimates the total annualized cost of the paperwork and recordkeeping associated with this proposed rule to be $104,039. Reporting and recordkeeping requirements associated with the proposed rule are discussed in the rule under the heading ''Paperwork Reduction Act.''

While the Small Business Administration has set small-entity standards for the transportation sectors, the size data do not distinguish between transportation firms that operate internationally and those firms that only operate within the United States. Most businesses that would be affected by the rule are likely to be small. This RIA and initial regulatory flexibility analysis addresses possible effects of the proposed rule on small-entity stakeholders and their operations.

We recognize we may not have all relevant information concerning economic impacts at this time. Therefore, we invite the public to comment on the proposed rule and provide any additional relevant information. We also invite public comments on alternatives that may achieve the objective of this proposed rule.

Executive Order 12988

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

Executive Order 13175

This proposed 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.

APHIS has determined that this proposed rule, if finalized, does not have substantial direct effects on one or more Tribes; however, APHIS continues to seek opportunities to engage Tribal nations and their communities on new rulemaking. Accordingly, on July 18, 2022, APHIS held an initial listening session for Tribal nations regarding the provisions of the rule. No comments or concerns were received regarding that listening session. However, should a Tribe request consultation, APHIS will collaborate with the Office of Tribal Relations to ensure meaningful consultation occurs. APHIS is committed to full compliance with the provisions of Executive Order 13175.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this document to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please send a copy of your comments to: (1) Docket No. APHIS–2022–0023, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The processes involving the agricultural quarantine and inspection user fees and changes proposed in this document involve information collection, reporting, and recordkeeping requirements in the form of paper, electronic submissions, and information systems. In conjunction with the proposed changes to provide for cost recovery for services, we have considered each proposed change and their impact(s) on these burdens. These changes concern adjusting fee amounts, adjusting caps on certain prepaid fees, removing exemptions, changing certain fees from flat to hourly rates, updating requirements for fee remittances and statement, and providing electronic payments and statement options.

User fee information collection activities are reported in information collection 0579–0055. This proposed rule will add additional respondents to activities related to preparation and submission of monthly statement submissions for commercial railroad cars and commercial aircraft, and user fees for international air and cruise passengers. There is also one new information collection activity that formalizes new recordkeeping and record retention requirements. The new recordkeeping burden is associated with applications for credit accounts and requests for services; collection of user fees in connection with the arrival and inspection of commercial vessels, railroad cars, commercial aircraft, trucks, and international air and cruise passengers; collection of user fees for conducting and monitoring treatments; and issuing and use of electronic transponders.

Changes prescribed in this proposed rule may increase or decrease burden on respondents and affect one or multiple fee categories.

a. Commence Charging for Empty Railroad Cars.

(1) We will start charging for empty railroad cars. The changes in burdens here would be two-fold: (a) We will need to identify the burden involved with existing companies paying for loaded railroad cars to also identify how many empty railroad cars they will now be paying for and (b) possible burdens involved with any railroad company who is in the business of only moving empty railroad cars.

(2) Our current burden assumption includes 5 minutes per railroad company to submit user fees for their railroad cars. We assume if we commence charging for empty railroad cars, there would be an overall increase in burden of 5 percent in that time will be spent determining how many empty railroad cars each of the current railroad companies remitting the fees must spend to identify how many empty cars they would then be remitting for. A 5 percent increase in the 5-minute time value is 0.25 minutes or 15 seconds.

(3) In addition, we assume there is one railroad company whose business is only moving empty railroad cars, and that company would be required to start paying user fees for their empty cars. With railroad companies remitting fees monthly, we assume this railroad company would have the new burden of remitting fees 12 times per year. These assumptions on the impact on the burdens of the Federal Government commencing charging for empty railroad cars increases the overall estimated burden on the public by 2 hours.

b. Removal of the Exemption for Barges. Currently barges are eligible for exemption if they travel solely between the United States and Canada; that do not carry cargo originating from countries other than the United States or Canada; that do not carry plants or plant products; that do not carry animals or animal products; and that do not carry soil or quarry products from areas in Canada listed in 7 CFR 319.77–3 as being infested with gypsy moth. As discussed above, we are proposing to eliminate this exemption. Department of Transportation Statistics identify 76 barge companies operating between the United States and Canada. We make the assumption barge companies move once a month, so the increase in burden is 912 occurrences. Our current burden assumption includes less than 1 minute per barge company to submit user fees in addition to their U.S. Customs and Border Protection fee. The overall impact of this change would be an increase of less than 1 hour.

c. Commercial Vessel Fee Exemption for Commercial Cruise (Passenger) Vessels That Carry Passengers Paying the International Passenger Fees. The commercial vessel fee would not apply to commercial cruise (passenger) vessels that carry passengers paying the international passenger fees under paragraph (f) of § 354.3, because the cost of inspecting the entirety of the vessel is included in the international cruise passenger fee, and cruise vessels do not generally carry commercial cargo. In October 2022, we estimated there will be 29,009 cruise vessels trips that would be subject to paying the vessel fee over a 6-year period. This yields about 4,834 cruise vessels trips per year. [29,009/6 = 4,834]. Applying an estimate that cruise ships run 12 times a year, we obtain the number of impacted commercial cruise (passenger) vessels to be 403 per year. [4,834/12 = 403] and the number of paying cruise vessel companies to be 14. Our current burden assumption includes less than 1 minute per commercial cruise (passenger) vessel company to submit user fees in addition to their U.S. Customs and Border Protection fee. The overall impact of this change would be a decrease of less than 1 hour.

d. Commence Charging for Empty Trucks and Truck Cabs. We are proposing to add a sentence to paragraph (c)(1) of § 354.3 stating that the AQI user fee would apply to all commercial trucks, regardless of what they are carrying, including empty trucks and truck cabs. Because many truck haul freight in one direction across the U.S. border, and because there may be additional movements of empty trucks and truck cabs, we estimate there are 1,521,600 empty truck and truck cab entries per year which could have an increased burden of less than 1 minute each. These entries are a mix of both single payer entries and annual pass owner entries. The overall impact of this change would be an increase of 1,268 respondent hours per year.

e. Commercial Railroad Companies' Use of Remittance Worksheets. As discussed above, we are planning to use remittance worksheets for the respondents to submit along with payments. This is designed to simplify the data elements respondents report. We assume this change will cut the time it takes for 27 railroad companies to remit their payments by a third. 27 commercial railroad companies remitting 12 times a year is 324 submissions per year. We assume it ordinarily takes about 5 minutes per submission, so with a reduction of this amount by one third, we estimate the overall impact of this change would be decrease of 9 respondent hours per year.

f. Commercial Railroad Companies' Requirement to Complete Transfers of Responsibility. Proposed paragraph (d)(6)(ii) of § 354.3 would state that the agent or other responsible person for a payment remains the agent or responsible person unless a transfer of responsibility is approved by APHIS. Before such a transfer could take place, the agent or responsible person would first have to contact APHIS to initiate the transfer. Once APHIS approves the transfer, the new agent or responsible person would assume all responsibilities for ensuring compliance with the requirements of part 354. We estimate 12 commercial railroad companies may need to exert time and effort to do so, which would create a new burden for them. We estimate each action will take 10 minutes leading to an overall impact of this new requirement to be an increase in two respondent hours per year. We estimate each action will take 10 minutes leading to an overall impact of this new requirement to be an increase in 2 respondent hours per year.

g. Removal of Aircraft Exemption with 64 or Fewer Seats. The proposed removal of paragraph (e)(2)(iv) of § 354.3, which exempts from AQI user fees certain passenger aircraft with 64 or fewer seats will create a new burden for those aircraft. Of an estimated 331 airlines with arriving international flights into the U.S. we estimate 19 percent of these airlines fall into this exemption category or 63 airlines. [331 * 19% = 63] With airlines being required to remit fees four times per year, this leads to an estimated 252 possible new burden actions. Our current burden assumption includes 5 minutes per submission, so the overall impact of the removal of this exemption on respondents would be an increase of 21 respondent hours per year.

h. Commercial Airlines' Use of Remittance Worksheets. As discussed above, we are planning to use remittance worksheets for the respondents to submit along with payments. This is designed to simplify the data elements respondents report. We assume this change will cut the time it takes for 331 airlines to remit their payments by a third. 331 airlines remitting 4 times a year is 1324 submissions per year. We assume it ordinarily takes about 10 minutes per airline submission, so with a reduction of this amount by one third, we estimate the overall impact of this change would be decrease of 74 respondent hours per year.

i. Change in Commercial Airlines' Fee Remittances to Monthly rather than Quarterly. Proposed changes to paragraph (e)(3) of § 354.3 include decreasing the period for payment of the fees and submission of remittance reports from quarterly to monthly. This would triple the current burden on these respondents; however, it is important to note burden (h) above will also have an impact on commercial airlines' burden. Using an estimated 331 airlines × 3 (a tripling of their current submission frequency) = 993 new occurrences. These occurrences will take 6.67 minutes [⅔ of the normal 10 minutes submission time assumption used as a starting point for burden (h)]/60 minutes—an overall impact of this change to be an increase of 110 respondent hours per year.

j. Commercial Airlines to Make Refunds of AQI International Airline Passenger Fees to Ticket Purchasers when Passengers Do Not Ultimately Take Their Journey. The ticket issuing entity would have to submit a revised remittance worksheet showing the number of passengers who traveled and those passengers that did not ultimately travel who received user fee reimbursements. In keeping with other proposed changes to remittance timeframes, the revised remittance worksheet would be completed and filed for each month during which the ticket issuing entity certifies that there was an increase or decrease in the number of passengers and AQI fees collected, using the procedure described in § 354.3(f)(5)(iv) of this proposed rule. This represents an increase in respondent burden hours. We estimate this would affect one third of the 331 airlines. 331 airlines × 12 remittances per year per airline = 3972 occurrences. 3972 occurrences/3 impacted = 1324 occurrences with increased burdens. 1324 occurrences with increased burdens × 3 minutes/60 minutes per hour = an estimated increase of 66 respondent burden hours per year.

k. Proposed Commencing of Charging the Phytosanitary Treatment User Fees Under 7 CFR part 305 and in the USDA, APHIS Treatment Manual and Treatment Preparatory Activities of Restacking and Reconditioning. We are proposing to add new paragraphs (h)(1)(ii)(A) through (D) to § 354.3, which would describe the activities for which the treatment monitoring fees are assessed. Charging for these activities will cause an increased burden for these respondents. We estimate there will be about 1,654 additional irradiation treatments and 1,190 heat treatments. 1,654 + 1,190 = 2,844 new chargeable treatments. 2,844 × an estimated 5 minutes per treatment = an estimated increase of 237 respondent burden hours per year.

l. New Billing Process for Treatment Monitoring. Above we have proposed a new billing process in paragraph (h)(5) of § 354.3 which would describe the billing process. User fees for treatment monitoring would be due at the time-of-service delivery, unless the treatment provider has established an acceptable credit history and opened a customer account with APHIS, in which case they can be billed by APHIS for services provided. There are about 50 treatment facilities of which we estimate about half would want to be billed. One half of 50 treatment facilities = 25 facilities who would want to be billed. Timed trials show the application for an account takes approximately 8.4 minutes to complete. 25 × 8.4 minutes = 3.5 hours new burden during the initial year half of the treatment facilities would decide to open accounts. The assumptions made and this approach are considered reasonable.

m. Consequences for Late Payment or Nonpayment of AQI Treatment Monitoring User Fees. The existing regulations in § 354.3 do not specify consequences for late payment or nonpayment of AQI treatment monitoring user fees. To remedy that omission, we propose to add new paragraphs (i)(1) to (5) to § 354.3 to explain the consequences of and procedures for nonpayment or late payment of treatment monitoring user fees, including debt collection. We estimate six treatment facilities will incur an increased time burden of 20 minutes each for a total estimated increase in respondent burden of 2 hours.

n. Reduction in the Need to Create New Business Procedures to Hold Fees in Trust. Above, we propose in paragraphs (h) and (i) of § 354.3 to reduce cost and burden on treatment providers by reducing the need to create new business procedures to hold fees in trust, while codifying and streamlining the Agency's procedures to address payment non-compliance. We estimate this will save 50 treatment facilities 4.75 hours per year for a total of 237 reduction in respondent burden hours each year.

o. Records Retention Requirements. To improve monitoring, compliance, and enforcement of this regulation, we are proposing to add a new paragraph (j) to § 354.3, which would contain retention requirements for records related to AQI user fees. Proposed paragraph (j)(1) would state 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. Such information would have to be made available for inspection upon APHIS and 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 fee 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. We estimate there to be approximately 500 entities affected by this requirement. At 1 minute per entity for records retention, we estimate the increase in respondent burden to be about 8 hours.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the new activities and the additional burden associated with this proposed rule have been submitted to OMB as a new information collection for approval. If a final rule is published, this information collection request will be scheduled for merger into 0579–0055.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed reporting and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed

information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: The public burden for this collection of information is estimated to average 0.001 hours per response.

Respondents: Individuals and private and commercial importers or exporters of agricultural plants and animals or their products.

Estimated annual number of respondents: 35,374.

Estimated annual number of responses per respondent: 43.

Estimated annual number of responses: 1,535,575.

Estimated total annual burden on respondents: 2,172 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* website or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483. APHIS will respond to any information collection review-related comments in the final rule. All comments will also become a matter of public record.

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. APHIS is working with U.S. Customs and Border Protection to explore options for further improving, streamlining, and automating user fee payment in the field, especially trucks and maritime ''real time'' payment procedures, and transponders. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

List of Subjects in 7 CFR Part 354

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

Accordingly, APHIS is proposing to amend 7 CFR part 354 as follows:

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

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

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

■ 2. 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, in the customs territory of the United States or at any place serviced by any such port of entry.

Barge. A non-self-propelled commercial vessel that transports cargo that is not contained in shipping containers. This does not include integrated tug barge combinations.

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

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.*).

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.

Reconditioning. The removal or alteration of packaging associated with commercial cargo.

Restacking. The redistribution of commercial cargo within or removal from a shipping container or other conveyance.

(b) *Fee for inspection of commercial vessels of 100 net tons or more.* (1) Except as provided in paragraph (b)(2) 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
Beginning January 1, 2024	$3,219.29
October 1, 2024	3,302.23
October 1, 2025	3,386.20
October 1, 2026	3,471.18
October 1, 2027	3,557.18

(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.

(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 2).

TABLE 2 TO PARAGRAPH (c)(1)—FEE FOR INSPECTION OF COMMERCIAL TRUCKS

Effective date	Amount (per arrival) [1]	Amount (prepaid annual fees) [2]
Beginning January 1, 2024	$11.40	$686.40
October 1, 2024	12.40	746.40
October 1, 2025	13.45	808.20
October 1, 2026	14.50	870.60
October 1, 2027	15.55	935.40

[1] Rounded down to the next $0.05 (five-cent) increment to facilitate border operations.
[2] Prepaid fees are set at 60 times the unrounded fee rates: $11.44, $12.44, $13.47, $14.51, $15.59.

(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 60 times the unrounded per arrival fee. 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 3. 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, 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 48.32 times the AQI user fee for each arrival.

TABLE 3 TO PARAGRAPH (d)(1)—FEE FOR INSPECTION OF COMMERCIAL RAILROAD CARS

Effective date	Amount (per arrival)	Amount (prepaid)
Beginning January 1, 2024	$5.81	$278.88
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 worksheet procedures.* The Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), and railroad companies acting individually shall file monthly Remittance Worksheets with USDA, APHIS, FMD, within 90 days after the end of each calendar month. Each remittance worksheet 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 remittance worksheet with their mailed payment as directed in this paragraph (d)(4). For all other payment types, the companies must email the remittance worksheet to *ABSHelpline@usda.gov.* Individual railroad companies must submit a remittance worksheet 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* 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 60 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) Remittance worksheets 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,* 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 remittance worksheets, 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.* 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 4:

TABLE 4 TO PARAGRAPH (e)(1)—FEE FOR INSPECTION OF COMMERCIAL AIRCRAFT

Effective date	Amount
Beginning January 1, 2024	$288.41
October 1, 2024	309.00
October 1, 2025	330.07
October 1, 2026	351.64
October 1, 2027	373.68

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

(v) 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 worksheet 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, contact *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* 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/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 remittance worksheet each month stating the fees that are due for the month. Carriers or their agents must include a hard copy of the remittance worksheet with any mailed payment. For all other payment types, including for months with no fees collected, the carriers must email the remittance worksheet to *ABSHelpline@usda.gov.*

(iii) The remittance worksheet is a written statement that 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 remittance worksheet 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 paragraph (e) of this section 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 remittance worksheets 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 January 1, 2024. The fees are shown in tables 5 and 6:

TABLE 5 TO PARAGRAPH (f)(1)—INTERNATIONAL AIR PASSENGER

Effective date	Amount
Beginning January 1, 2024	$4.29
October 1, 2024	4.44
October 1, 2025	4.60
October 1, 2026	4.76
October 1, 2027	4.93

TABLE 6 TO PARAGRAPH (f)(1)—INTERNATIONAL CRUISE (SEA) PASSENGER

Effective date	Amount
Beginning January 1, 2024	$1.20
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) Unless refunded pursuant to paragraph (f)(5)(v) of this section, 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.

(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* or for further information relative to electronic remittance, contact *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/mrpbe/userfees/aqi-payment-types.* Questions and correspondence may be sent to *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/aphis/ourfocus/business-services/aqi-user-fees/aqi_user_fees.*

(iv) The air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document must provide a remittance worksheet 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 remittance worksheet with their mailed payment. For all other payment types, they must email the remittance worksheet separately to *ABSHelpline@usda.gov.* The remittance worksheet is a written statement that 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) It is the ticket or travel document-issuing entity's (*e.g.,* air or sea carrier, travel agent, tour wholesaler, or other party) responsibility to make refunds of international passenger AQI user fees to the purchaser for trips not taken. The air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document must refund the purchaser in the exact form of payment that the purchaser originally used, and the entity may not issue vouchers, other forms of credit, or other forms of refund different from the purchaser's original form of payment.

(vi) If an air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document collected and remitted to APHIS the international passenger AQI user fees prior to refunding the purchaser in accordance with paragraph (f)(5)(v) of this section, it may request that APHIS credit its account in the net amount refunded to the purchaser. APHIS will apply the credit against remittances due in future months until the credit is expended. To request such a credit, the ticket or travel document-issuing entity must submit a revised remittance worksheet indicating the revised number of passengers and international passenger AQI user fees amount collected. The revised remittance worksheet 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, using the procedure described in paragraph (f)(5)(iv) of this section.

(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 worksheets, 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 7. 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 7 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 8.

TABLE 8 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 9. 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 9 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 10.

TABLE 10 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 11.

TABLE 11 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,[3] support,[4] and administrative costs;[5] and

(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,[6] support,[7] and administrative[8] hours;

(B) Determine the total cost of issuing certificates by adding together delivery,[3] support,[4] 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.* (i) User fees for all treatment-and treatment-related AQI services listed in paragraphs (h)(1)(ii)(A) through (D) of this section, will be calculated at the hourly rate listed in table 12 for each employee required to perform the service during regular business hours. Each treatment provider conducting a treatment application required for entry into the United States, or other monitored activity such as restacking or reconditioning required for treatment application, is responsible for collecting from the importer, their broker or agent the applicable fee specified in this section. In instances in which APHIS is the treatment provider, the importer is responsible paying the fee directly to APHIS. Multiple phytosanitary treatments and treatment-related activities may be conducted during the same time period and covered by a single hourly rate subject to local government, union agreements, environmental standards, and other applicable regulations, rules, and ordinances.

TABLE 12 TO PARAGRAPH (h)(1)(i)—FEE FOR CONDUCTING AND MONITORING TREATMENTS

User fee	January 1, 2024	October 1, 2024	October 1, 2025	October 1, 2026	October 1, 2027
Hourly rate (per employee):					

[3] 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.

[4] 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.

[5] 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.

[6] 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.

[7] 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.

[8] 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.

TABLE 12 TO PARAGRAPH (h)(1)(i)—FEE FOR CONDUCTING AND MONITORING TREATMENTS—Continued

User fee	January 1, 2024	October 1, 2024	October 1, 2025	October 1, 2026	October 1, 2027
Per hour	$232.97	$253.19	$273.90	$295.12	$316.83
Per quarter hour	58.24	63.30	68.48	73.78	79.21
Per service minimum fee	58.24	63.30	68.48	73.78	79.21

(ii) APHIS will charge user fees for all treatment-and treatment-related AQI services:

(A) Conducting or monitoring phytosanitary treatments in accordance with part 305 of this chapter and the USDA APHIS Treatment Manual (*https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf*) including but not limited to approved fumigation, irradiation, heat, cold, and mechanical treatment types.

(B) Conducting or monitoring the restacking of shipments in preparation for phytosanitary treatments in accordance with this section.

(C) Conducting or monitoring the reconditioning of shipments in preparation for phytosanitary treatments in accordance with this section.

(D) Conducting or monitoring the aeration of shipments after the completion of phytosanitary treatments in accordance with this section.

(2) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. Instead of paying the hourly rate user fee, you pay the premium rate listed in table 13 for each employee needed to get the work done. The treatment services overtime hourly rate will be applied identically to reimbursable overtime (rules pertaining to commuted travel time, minimum call-outs, etc., in § 354.1). Overtime services will incur a minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday. When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 354.1(a)(2) for specific information about commuted travel time.)

TABLE 13 TO PARAGRAPH (h)(2)—FEE FOR CONDUCTING AND MONITORING TREATMENTS OUTSIDE THE EMPLOYEE'S NORMAL TOUR OF DUTY, MONDAY THROUGH SATURDAY AND HOLIDAYS; AND PREMIUM RATES FOR CONDUCTING AND MONITORING TREATMENTS ON SUNDAY

Overtime rates (outside the employee's normal tour of duty)	Reimbursable overtime and premium rate user fee				
	January 1, 2024	October 1, 2024	October 1, 2025	October 1, 2026	October 1, 2027
Overtime hourly rate Monday through Saturday and holidays:					
Per hour:	$240.89	$261.36	$282.32	$303.93	$326.04
Per quarter hour:	60.22	65.34	70.58	75.98	81.51
Premium hourly rate for Sundays:					
Per hour:	272.27	294.34	317.62	342.26	368.40
Per quarter hour:	68.07	73.58	79.41	85.57	92.10

(3) *Who must pay APHIS treatment monitoring hourly user fees?* Any treatment provider or importer for whom a service is provided related to treatment conducting or monitoring as specified in paragraphs (h)(1)(ii)(A) through (D) of this section is liable for payment of fees as prescribed in paragraph (h)(4) of this section.

(4) *Collection of fees.* (i) The owner, agent, or person in charge of private entities that provide AQI treatment services to importers must collect the AQI treatment services hourly user fee and remit them to APHIS.

(ii) When APHIS conducts treatments, APHIS will collect the AQI treatment fee applicable at the time the treatment is applied from the person receiving the services.

(5) *When are APHIS treatment monitoring user fees due?* User fees specified in paragraph (h)(1)(i) of this section must be paid when service is provided (for example when APHIS monitors a treatment at a facility). If APHIS determines that the user has established an acceptable credit history, the owner, agent, or person in charge may request to pay when billed.

(6) *What payment methods are acceptable?* 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.*

(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)(i) of this section as outlined in paragraphs (h)(6)(i) through (iv) of this section. If regulated articles can be released from quarantine, the articles will be released and any unpaid debt will be handled as outlined in paragraph (h)(6)(i) of 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 remittance worksheets, 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, remittance worksheets. 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 fee 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 part 354 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.

Done in Washington, DC, this 2nd day of August 2023.

Jennifer Moffitt,

Undersecretary, Marketing and Regulatory Programs, USDA.

[FR Doc. 2023–17045 Filed 8–10–23; 8:45 am]

BILLING CODE 3410–34–P