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# APHIS Adjusts Agricultural Quarantine and Inspection (AQI) User Fees in Response to Court Order

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**Media**

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**WASHINGTON, November 1, 2022** - On October 29, 2015, APHIS published a final rule in the *Federal Register* that revised its user fees charged for certain Agricultural Quarantine and Inspection services (the “final rule”). In setting the AQI user fees in the final rule, APHIS applied a 3.5% reserve surcharge to the fees for some user groups: commercial trucks and truck transponders, international air passengers, and international cruise ship passengers. In the final rule, the commercial aircraft fee, the commercial cargo vessel fee, and the commercial railroad car fees were set at a level that did not include a reserve surcharge component.

As an outcome of litigation challenging the final rule, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) rejected the majority of the challenges to the rule, but it found that APHIS’s authority to collect a surcharge to fund a reserve as a component of the fees expired in FY 2002. *See Air Transport Ass’n of Am. v. United States Dep’t of Agric.*, 37 F.4th 667 (D.C. Cir. 2022). The D.C. Circuit remanded to the District Court for proceedings consistent with the appellate court’s opinion.

On September 15, 2022, the District Court issued a final judgment vacating the final rule only insofar as it authorizes collecting fees to maintain a reserve account and remanded the final rule to the agency for further proceedings consistent with the D.C. Circuit Opinion.

In order to comply with the District Court's final judgment, APHIS is removing this surcharge from the applicable fees, effective December 1, 2022.

APHIS is making the following AQI User Fee adjustments:

**Table 1.** Adjusted AQI user fees in response to the September 15, 2022 Final Judgment:

<b>AQI User Fee Category</b>	<b>Current Fee</b>	<b>New Fee (Effective December 1, 2022)</b>
Commercial Vessel	\$825.00	\$825.00
Commercial Truck	\$7.55	\$7.29
Commercial Truck (Transponder)	\$301.67	\$291.60
Commercial Railroad Car	\$2.00	\$2.00
Commercial Railroad Car (Prepaid)	\$40.00	\$40.00
Commercial Aircraft	\$225.00	\$225.00
International Air Passenger	\$3.96	\$3.83
International Cruise ship (sea) Passenger	\$1.75	\$1.68
Treatment Monitoring	\$237.00	\$237.00

Please note that these fee changes do not affect U.S. Customs and Border Protection (CBP) fees collected concurrently with certain AQI fees listed above, such as those fees applicable to commercial trucks, although the overall amount to be tendered in such transactions will change accordingly. For the most up-to-date information on CBP fees collected concurrently with AQI fees, please consult [www.cbp.gov](http://www.cbp.gov).

APHIS recognizes that those entities charged with collecting the new fee will need time to adjust their collection systems. However, in light of the September 15, 2022 final judgment, APHIS has a legal obligation to effectuate the Court's decision without unreasonable delay. Accordingly, APHIS is requesting that stakeholders fully

implement the new fee schedule within thirty days of this announcement.

## **How The 2015 Final Rule Calculated Reserve Components**

We are implementing the Court's Judgment by removing the reserve surcharge component from the fees for all user classes for which APHIS set the fees at a level above unit cost <sup>(1)</sup> and, therefore, at a level to include a surcharge collection for maintenance of the reserve under the final rule (79 FR 22900; 80 FR 66753; 80 FR 66759). Under the 2015 final rule, four of the user fees (commercial trucks and truck transponders, international air passengers, and international cruise ship passengers) include a 3.5% reserve surcharge above unit cost as part of the fee structure, and APHIS is reducing those fees by removing this 3.5% reserve surcharge component. All other fees would remain unchanged from the levels set in the 2015 final rule because those fees were set at or slightly below unit cost and, therefore, did not include a reserve surcharge, and accordingly did not collect for maintenance of the reserve.

(1) Unit cost is the actual agency cost for performing AQI services per unit by user class (a unit is a commercial vessel, truck, railroad car, aircraft, international air passenger, international cruise ship passenger or treatment monitoring event).

For a full explanation of APHIS's methodology for determining if a particular fee included a reserve component, and the calculations to remove such a component (if any), please visit our AQI User Fee webpage at [USDA APHIS AQI User Fees](#).

## **Administrative Procedure Act Compliance**

The Court held that APHIS' authority to collect fees sufficient to maintain a reserve expired after fiscal year 2002, and therefore the final rule violates the Food, Agriculture, Conservation and Trade Act of 1990, as amended, ("FACT Act") to the extent it sets user fees at a level sufficient to maintain a reasonable balance in the AQI user fee account. *See Air Transport Ass'n of Am.*, 37 F.4<sup>th</sup> at 673. However, the Court upheld the remaining aspects of the 2015 final rule with respect to all other challenges. As a result of the September 15, 2022 final judgment, the agency has a

legal obligation to remove the reserve surcharge from any fees that include such a surcharge. For this reason, with respect to the agency's action adjusting the AQI User Fees herein, notice and public comment is "impracticable" and "unnecessary," [5 U.S.C. 553], because no public comment could alter the Court's mandate to vacate the portion of the final rule that collects fees to maintain a reserve. The remainder of the 2015 rule, which the Court upheld, remains unchanged. Accordingly, pursuant to 5 U.S.C. 553(b)(B), APHIS finds good cause to make this action effective without notice and comment. This administrative action becomes effective December 1, 2022. APHIS will publish a final rule in the *Federal Register* to codify this administrative action. In addition, APHIS is currently reviewing our AQI user fees and anticipates publishing a proposed rule to update the fees.

## **For Further Information Contact**

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