BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. APHIS-2013-0021]

RIN 0579-AD77

User Fees for Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

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

DATE: Effective [Insert date 60 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Diane L. Schuble, AQI User Fee Coordinator, Office of the Executive Director-Policy Management, PPQ, APHIS, 4700 River Road, Unit 131, Riverdale, MD 20737 1231; (301) 851-2338; Email: AQI.User.Fees@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

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

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

- Providing the AQI services for the conveyances and the passengers listed above;
- Providing preclearance or preinspection at a site outside the customs territory of the United States to international passengers, commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft;
- Administering the user fee program; and
- Maintaining a reasonable balance, also referred to by APHIS as a “reserve,” to ensure that funding is available in the event that there are temporary reductions in the demand for AQI services leading to reduced fee collections, as was experienced in 2008 (P.L. 101-624, Section 2509). As there are fixed costs related to providing AQI services (i.e., costs that do not fluctuate with demand for AQI services) that the program incurs, a

reasonable balance/reserve is needed to ensure continuity of service in times of reduced fee collection. This provides certainty to importers regarding the availability of inspection services. Specifically, the Act states, "The Secretary shall adjust the amount of the fees to be assessed under this subsection to reflect the cost to the Secretary in administering such subsection, in carrying out the activities at ports in customs territory of the United States and preclearance and preinspection sites outside the customs territory of the United States in connection with the provision of agricultural quarantine inspection services, and in maintaining a reasonable balance in the Account." The level of the reserve is determined by the Secretary.

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

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

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

The AQI program is a Federal program that is designed to identify and address threats to U.S. agriculture and to facilitate safe agricultural trade, such as the accidental or intentional introduction of animal diseases and plant pests. Direct animal agriculture hazards include, but are not limited to, foot and mouth disease, avian influenza, and classical swine fever.

Plant pests include foreign noxious weeds such as hogweed and insects such as long-horned beetles related to the Asian long-horned beetle that has caused millions of dollars in losses in numerous communities in the United States. Fruit flies, such as the Mediterranean fruit fly, if introduced, would cause significant direct damage to U.S. fruit crops and have major impacts on export markets. Diseases such as powdery mildews on corn and its relatives, wheat blast on wheat and its related grains, and exotic rice diseases could cause major impacts on staple food supplies and create trade barriers. The fees that pay for the AQI program help protect our country from these threats at a very small cost in relation to the economic harm that would be caused by any new introduction of pests and diseases.

Under the FACT Act, the Secretary of Agriculture has the authority to prescribe and collect user fees sufficient to cover the cost of providing AQI services. By U.S. law, APHIS is designated as the Agency with the authority to establish and collect fees related to work undertaken in the AQI program. Other Federal agencies undertake activities that support the AQI program mission. APHIS followed Federal guidance, including the Office of Management and Budget (OMB) Circular A-25 and Federal Accounting Standards Advisory Board Statement of Accounting Standards Number 4, to appropriately account for these costs in order to determine the appropriate fees. Those costs not recovered through the AQI fees are paid for through appropriated funding. The use of activity based costing (ABC) methodology in establishing fees ensures that no cost is double counted. AQI program costs incurred by APHIS include:

- Program costs directly attributable to the delivery of AQI services;
- Program delivery-related costs (known as distributable costs) at the State level and below, at the regional and headquarters levels, the APHIS Agency level, and the U.S. Department of Agriculture (USDA) Departmental level. These costs are necessary to support the direct delivery of AQI services; and

- Depreciation of various equipment and facilities that directly support, in whole or in part, APHIS' delivery of AQI services and other imputed costs that other Federal agencies incur in providing services to APHIS and the AQI program. Imputed costs are the costs of goods or services incurred on behalf of an agency that are paid by another Federal entity, such as certain retirement benefits paid to retirees by the Office of Personnel Management.

The AQI fees have not been adjusted since FY 2010 and do not reflect the current cost of providing AQI services. As a result, U.S. Customs and Border Protection (CBP) of the Department of Homeland Security, which collaborates with APHIS in providing the AQI services referred to above, has relied more heavily on its appropriated funds to provide AQI services that are not paid for by AQI revenue or to cover the cost of services for which the current fee revenue is insufficient. The FACT Act provides that USDA may prescribe and collect fees that are sufficient to cover the cost of providing AQI services, and Federal guidance for fee setting states that, where possible, a user fee should recover the full cost to the government.

On April 25, 2014, we published in the Federal Register (79 FR 22895-22908, Docket No. APHIS-2013-0021) a proposal[1] to amend the regulations by adjusting existing fees and adding some new ones in order to enable us to recover the costs of providing AQI services and to allow us to maintain the AQI reserve account. Specifically, we proposed to:

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

[1] To view the proposed rule, supporting documents, and the comments we received, go to http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0021.

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

- Add a new fee to be charged for international commercial vessel (cruise) passengers.
- Add a new fee for conducting and monitoring treatments.
- Remove the caps (limits on the number of times a specific conveyance must pay the AQI fee in a given year) for vessels and railcars.
- Adjust the caps on fees for trucks with transponders. APHIS and CBP determined that there was a benefit to the use of transponders in speeding truck traffic through inspection at the border and thereby reducing the cost to the Federal Government for providing AQI services. The intent of a cap for truck transponders is to create an incentive for trucking firms to use a transponder. The difference between the cost of providing inspections for trucks with transponders and the revenue collected from trucks with transponders will be covered by appropriations. This ensures that there will be no cross-subsidization of AQI services.

There are other AQI program costs for which APHIS did not propose to establish user fees in the April 2014 document and never has done so. The costs of providing these AQI services are paid for through the CBP appropriation. These AQI services are:

- Private vehicle inspections at border crossings,
- Pedestrian inspections at border crossings,
- Bus inspections,
- Private vessel inspections,
- Private aircraft inspections,

- Military inspections, and
- Rail passenger inspections.

APHIS follows Federal guidance in determining the appropriateness of charging AQI user fees, specifically the guidance from OMB's Circular A-25. Factors influencing our decisions not to charge user fees for the above-listed services include lack of authority (e.g. to collect fees for bus-passenger inspections); conflict with other Federal regulations (e.g. such as those that affect private aircraft); and the potential for the costs of collecting fees for services to exceed the revenues generated by the fees (e.g. such as inspecting private vessels and pedestrians); and the costs of putting in place the infrastructure required to collect fees.

We base the fees on cost data from FYs 2010, 2011, and 2012, and use inflationary factors to project our costs through FY 2017.

We solicited comments concerning our proposal for 60 days ending June 24, 2014. We reopened and extended the deadline for comments until July 24, 2014, in a document published in the Federal Register on July 1, 2014 (79 FR 37231, Docket No. APHIS-2013-0021). We received 234 comments by that date. They were from trucking companies, maritime shipping companies, commercial cruise lines, airlines, and associations representing all of those industries; producers of flowers, fruits, and vegetables and importers and shippers of those commodities; companies providing fumigation treatments; port officials; Federal, State, and foreign government representatives; and individuals. They are discussed below by topic.

Calculation of Fees

Many commenters requested greater transparency regarding our calculation and/or allocation of the proposed user fee adjustments and new user fees. Commenters sought more documentation and detailed information on how we calculated AQI costs and fees. A more detailed explanation of our ABC methodology was requested by some commenters. Commenters also requested more specific information on, among other topics, how our costs correlated with the AQI services performed, how we determined our support costs, and our justification for including those costs in our calculation of our fees. These issues are discussed individually in the paragraphs that follow.

One commenter asked that we provide all final reports, presentations, or other decisional material from each of the fiscal years (FY) 2010 to the present regarding AQI inspection costs and revenue prepared by APHIS, by contractor Grant Thornton, or by any other contractor or other internal or external party.

AQI User Fee analysis reports used to calculate the new user fees, stakeholder outreach documents, and the proposed rule are available for public review on the APHIS Web site at: http://www.aphis.usda.gov/plant-health/aqi-userfee-review. The fee analysis reports were also made available on Regulations.gov along with the proposed rule as part of the rule's supporting documents and will remain posted there when this final rule is published.

Commenters stated that, because the cost data provided by APHIS did not provide specifics regarding the calculation of the individual user class fees, the validity of the cost calculations overall is questionable. The commenter stated further that the lack of transparency unfairly inhibits industry's ability to respond knowledgeably to the proposal.

APHIS provided the rationale, data, and calculations for the preferred alternative fee schedule in the proposed rule. However, to provide additional clarification on how the individual user fees were determined, we are providing a breakdown of the costs that went into calculating each new user fee in Tables 2, 5, 7, 8, 9, 10, and 11 below.

One commenter expressed concern that the proposed rule does not provide sufficient background information on how the burden of the new AQI user fee costs should be shared by all parties concerned or how the new fees will be applied and/or charged to shipments, or batches of agricultural products of different sizes.

As stated in the proposed rule, we used the ABC methodology to determine the cost of AQI activities and their associated outputs and services. APHIS incorporated ABC methodologies to ensure that the full cost of providing AQI services can be appropriately assigned to AQI user fees. The AQI expenses are captured in the USDA and CBP financial accounting systems. These systems conform to generally accepted accounting principles, and each system is subject to accounting audits to ensure its correctness in support of statements of financial positions. The ABC methodology incorporates industry standards to ensure correctness, transparency, and repeatability in the assignment of costs from the APHIS and CBP financial systems to activities directly related to the delivery of AQI services. The costs of our AQI activities are contingent upon the time and effort required of APHIS and CBP staff to perform those activities. Those activities must be performed regardless of the size or volume of the shipment.

CBP's agricultural inspection and safeguarding activities generate the majority of AQI costs. We used information from the CBP ABC model, which has been in existence for more than 10 years, to determine the safeguarding activities' costs. The CBP activity set includes inspection of shipments, monitoring compliance, and performing many other related activities. The costs ascribed to these activities contain the personnel and related non-personnel costs associated with the performance of them. The CBP model identifies activities by certain programs or operational areas, and we used AQI-related activities from the CBP model and certain activities that support the direct delivery of AQI services to the fee payer. The CBP model also provides some activity cost information by mode, so we were able to associate some costs with specific fee schedule services. For example, the CBP model has separate activities for air passenger inspection, air cargo inspection, truck inspection, etc., so we assigned those activity costs directly to the appropriate fee schedule items. However, some CBP and APHIS activities are performed across multiple modes and fee services. Those activity costs were assigned to the appropriate fee services based on AQI workload data. For example, APHIS performs pest identification for shipments across all modes (air cargo, maritime cargo, truck cargo, etc.), and the pest identification costs were assigned to each mode based on the number of pest identifications performed for each mode.

Once all costs, including support costs that are necessary to support the operation of the centralized AQI system as a whole, were assigned to the appropriate fee services and modes, the fees were calculated based on the projected number of conveyances subject to inspection within each mode, using standard units such as a truck or airplane, as has been done in the past. The analysis did not further break down the conveyance classes into large and small shipments. Because of the volume of conveyances and people crossing the U.S. borders, the Government cannot inspect each piece of baggage, package, or conveyance. To deploy its limited resources most effectively, APHIS uses scientific data to target shipments associated with the highest risks of introducing pests or diseases into the United States. Importers and other parties pay the fees for all conveyances subject to inspection under the AQI program, whether or not we inspect the shipment or vessel. Several factors, including number of conveyances, risk targeting, and other criteria, drive inspection costs, but all conveyances subject to inspection contribute to the cost of, and benefit from, the AQI program.

Whether a fee should be set based on the marginal cost or average cost of the service provided is also a consideration. A fee equal to the marginal cost of providing the service would maximize efficiency. Marginal cost is equal to the cost of providing an additional unit of the good or service. Under perfect competition, the marginal cost and average cost of a product are equal to each other and to its price. Given that AQI services are not provided in a perfectly competitive environment, the fee assessed on each class is based on the average cost of the AQI services for that class. Based on historical data, we projected AQI program costs for the various fee classes (e.g., air passenger, commercial aircraft, commercial cargo vessel, treatment, etc.). We then divided each class' total cost by the projected number of times that are expected to be provided to that class based on historical data.

One commenter stated that ABC is not required by Federal accounting guidance. The commenter stated further that there is no evidence that APHIS considered other methods of cost accounting. One commenter expressed concern that the economic model used to determine the new user fees was based on the findings of a single consultant and expressed doubt regarding the level of scrutiny the model received. The commenter also stated that a review of the AQI program should consider whether the ABC methodology is the most appropriate model for this type of operation as well as whether the data entered into the ABC model is consistent not only with current operations but also with international trade agreements.

While the ABC methodology is not required by Federal accounting guidance, it is a preferred cost accounting methodology within the manufacturing and service sectors, as noted by the Federal Accounting Standards Advisory Board in its Statement of Financial Accounting Standards (SFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government. SFAS No. 4 specifically directs the Federal Government to use managerial cost accounting identification methods to identify costs. The ABC methodology incorporates industry standards to ensure correctness, transparency, and repeatability in the assignment of costs from the APHIS and CBP financial systems to activities directly related to the delivery of AQI services. Due to the usefulness of ABC analysis in tracing costs through activities, it provides accurate product and service costs, which allows managers to evaluate the efficiency and cost-effectiveness of activities.

In 2009, APHIS set out to determine best practices in the Federal Government for fee setting. We published a statement of work seeking a competitive bid to provide assistance in AQI fee setting. Three major accounting firms proposed approaches to the work. Each firm included ABC as a best practice. The contract allowed a third party to analyze and make recommendations to APHIS and CBP on fee setting using applicable Federal guidance on fee setting. It was determined that managerial accounting was the appropriate approach based on Federal guidance and the use of ABC methods was the best approach to achieve a reasonable, reproducible, and transparent rule for fee setting. One commenter stated that APHIS should provide additional information about the methodology used to calculate the fees because there is reason to question whether costs have been properly calculated or appropriately allocated to specific activities for which user fees are paid. The commenter cited as an example the FY 2011 cost figures cited in the March 2013 Government Accountability Office (GAO) report (GAO-13-268 March 2013), which differs from the FY 2011 costs outlined in the proposed rule.

The commenter also stated that the ABC methodology can result in the over-absorption of overhead costs, and that there is no meaningful method of assigning “headquarters-level” overhead costs to services. The commenters further stated that such “headquarters-level” costs, among others listed in the proposed rule, are properly considered “business sustaining” and should not be considered AQI program costs at all.

A second commenter, representing the trucking industry, echoed the latter point, stating that AQI fees should apply only when related to the direct inspection of incoming conveyances. The commenter opposed charging carriers for activities not directly related to the costs and activities of inspecting commercial conveyances, such as administrative or headquarters-level costs, as well as costs incurred for pest identification, scientific research, and policy development.

The difference in FY 2011 costs between the proposed rule and the GAO report resulted from the fact that the GAO report used preliminary results from the AQI user fee model, i.e., the model developed by Grant Thornton to calculate costs used to run the AQI program.

In addition, the costs in the proposed rule separately show the cost of treatments, whereas the GAO cost numbers include the cost of treatments in each service or pathway. We followed Federal guidance related to fee setting and managerial cost accounting in determining AQI program costs. Specifically, we followed OMB Circular A-25: User Charges, which provides guidance on setting fees in the Federal government, and SFAS No. 4, which includes, among other things, a definition of full cost. OMB Circular A-25, which may be viewed at http://www.whitehouse.gov/omb/circulars_default, establishes the requirement that fees be set at full cost to the government, and provides a definition and examples for full cost. OMB Circular A-25 specifically defines full cost to include the support costs referred to by both commenters above, as well as the other costs listed by the second commenter. Certain Agency-level centralized services support APHIS’ programs, including the AQI program. Centralizing these services at the Agency level, rather than having each program area maintain these services individually, increases government efficiency while reducing costs through elimination of redundancy. In the paragraphs that follow, we provide a breakdown of the services that support the AQI program and also discuss the included imputed costs. There are fewer support costs than were included in the April 2014 proposed rule.

The Environmental and Risk Analysis Services staff performs environmental assessments for the AQI program. This staff supports APHIS' mission of protecting and promoting American agriculture and natural resources by developing methodologies and providing documentation, training, advice, and technology for environmental compliance and risk-informed decisionmaking. This is accomplished by using the best available science and analytical methods to enable the Agency to make and implement decisions that are compliant with the U.S. environmental laws, other statutory obligations and policies, and international standards. These assessments are resources that are generally applicable to the AQI process. For example, this could include environmental impacts of methods used for the containment of pests introduced through the imports of goods. The AQI portion of these costs is assigned by the ratio of AQI full-time equivalents (FTEs) as a portion of APHIS' FTEs. (An FTE is the equivalent of the number of hours worked by one employee who works on a full-time basis.)

The Human Resources staff provides central services for human resource services for all APHIS employees. Only the AQI portion of these costs is included in the fees, and is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs. Human Resources' primary services are to help employees accomplish their AQI work by:

- Recruiting and hiring
- Providing insurance and retirements benefits information
- Processing salaries, promotions, recognition, and benefits

- Providing policy guidance on performance and labor management
- Providing supervisors the training and tools they need to carry out their mission
- Promoting the health, safety, and security of employees
- Planning for workforce and succession needs
- Offering seminars on employee and leadership development
- Providing coaching, mentoring, and leadership transition services for managers
- Supporting employee development through USDA's on-line training system, AgLearn

The Information technology (IT) staff supports and maintains, or manages contracts for the various IT systems that are used by the AQI program. These systems include those that gather and analyze data related to threats from various pathways around the world, those that collect data used to support proper fee setting efforts, and those used to support permitting (especially used by importers). The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs.

Central and shared services include the costs of utilities and telecommunication. Shared services are used by many programs. The shared services include copy services and machines and printing services. Programs such as AQI use these shared services regularly as part of their mission. These are centralized services which increase efficiency and reduce operational cost. Each program pays a portion of the total cost. The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs.

APHIS depreciation costs are imputed costs and are associated with the square footage of facilities associated with AQI activities, e.g., plant inspection stations. The facilities depreciation is assigned to AQI based upon the square footage of facilities associated with the AQI program. The equipment costs, such as those attributable to equipment used in identification of pests and diseases, are associated with AQI FTEs so that the costs can be distributed to AQI activities.

CBP also captures depreciation expenses, as opposed to the actual purchase price of property, plant and equipment, which is considered a capital expenditure (not an expense). Thus, the purchase is recorded as an asset and is then depreciated. Depreciation expense is the accounting process for capturing the cost of an asset by expensing it periodically throughout its useful life. While CBP frontline personnel/FTEs perform a wide array of activities in addition to agriculture inspections, including border security between the ports, air and marine interdiction, and immigration and customs inspections, CBP distributes depreciation expenses of facilities and equipment across all mission area activities proportionally based on FTEs so that no activity is overcharged.

USDA agencies and CBP also incur a series of costs, as required by law, related to their employees, including those employees who provide services to importers as part of the AQI programs. For example, USDA agencies are responsible for recognizing an imputed cost equal to the difference between the cost of providing retirement, health, and life insurance benefits to foreign employees and the contributions agencies currently remit to the State Department for them. The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs.

Office of Personnel Management imputed costs include costs for pensions, Federal employee health benefits, and Federal employee life insurance costs. These costs are directly associated with AQI FTEs. These costs are distributed to the AQI program based upon the ratio of AQI FTEs to Agency FTEs. CBP also incurs this expense and distributes this cost across all mission areas proportionally based on FTEs within the CBP ABC model.

The Department allocates part of its imputed costs to each Agency. The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs. These costs can be found in the USDA fiscal year 2015 Budget Explanatory Notes (Departmental Administration, found at http://www.obpa.usda.gov/04da2015notes.pdf).

Unemployment compensation is a financial liability that must be accounted for (all organizations that follow generally accepted accounting principles account for this). These are costs that are associated with FTEs, and, as such, the liability is distributed to AQI based upon the ratio of AQI FTEs as a portion of APHIS FTEs. CBP also incurs this expense and distributes this cost across all mission areas proportionally based on FTEs.

The Federal Employees' Compensation Act (FECA; 5 USC Chapter 81) provides compensation benefits to Federal employees for work-related injuries or illness and to their surviving dependents if a work-related injury or illness results in the employee's death. The FECA is administered by the Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP). OWCP district offices adjudicate the claims and pay benefits, and the costs of those benefits are charged back to the employing agency. We have two unfunded liability-type costs: FECA unfunded accrual balance and FECA actuarial liability balance.

The FECA unfunded accrual balance is the current year's actual FECA expense paid by the DOL during the current year on APHIS' behalf. The FECA Special Benefits Fund pays benefits on behalf of Federal entities as costs are incurred and bills the Federal entity annually for the costs. The liabilities due to the FECA Special Benefits Fund are considered as unfunded at the time of receipt of the bill. Each Federal entity must record its portion of the FECA unfunded liability based on amounts provided by S. DOL. The entity's unfunded liability balance must equal the amount provided by DOL.

The FECA actuarial liability balance is DOL’s estimate of FECA payments that will be made by DOL on behalf of APHIS in the future. The balance is periodically adjusted to reflect the current liability estimate. The actuarial estimate for the FECA unfunded liability is determined by the DOL using a method that utilizes historical benefit payment patterns related to a specific incurred period to predict the ultimate payments related to that period. The projected annual benefit payments are discounted to present value using OMB’s economic assumptions for 10-year Treasury notes and bonds, and the amount is further adjusted for inflation. The projected number of years of benefit payments is about 35 years. Each federal entity must record its portion of the FECA actuarial liability based on amounts provided by the DOL. The agencies’ actuarial liability balance must equal the amounts provided by DOL. The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs. CBP also incurs this expense and distributes this cost across all mission areas proportionally based on FTEs.

USDA agencies are responsible for recording the unfunded liability for credit hours, annual leave, and compensatory leave. As employees expend credit hours, annual leave, and compensatory leave, these costs are expensed in the account(s) where those employees’ salaries are ordinarily charged. Annual expenses of these amounts are thus already included as costs in those accounts. To identify the additional costs we have annually for unfunded leave, APHIS is required to capture the change in the unfunded leave balance from the end of the prior fiscal year. The difference between the 2 years is the amount of leave liability that must be accounted for. APHIS pro-rates this amount based upon the number of AQI FTEs as a portion of the total Agency FTEs. CBP also incurs this expense and distributes this cost across all mission areas proportionally based on FTEs.

Two commenters stated that indirect employee costs, such as workers' compensation expenses, are being incorporated into the new rate structure, but APHIS did not provide sufficient details on those costs. The commenters asked that APHIS provide this information as well as a concise accounting of related expenses associated with any cooperative agreements which utilize other Agency resources to perform AQI functions.

A detailed breakdown of the costs to which the commenters refer has been provided above. OMB Circular A-25, referred to earlier in this document, establishes Federal policy regarding fees assessed for government services. The Circular describes “full cost” as including all direct, support, and imputed costs to any part of the Federal Government of providing a good, resource, or service. This includes all direct and imputed personnel costs, such as worker’s compensation costs. Indirect personnel costs are listed under imputed costs in Tables 1, 4, 6, 7, 8, 9, and 10 below. Cooperative agreement costs are completely separate from the AQI user fees. No cooperative agreement costs are included in the user fees and no user fee costs are included in cooperative agreement charges.

One commenter asked that APHIS provide additional data to demonstrate that the user fees charged for one user fee category would not be used to subsidize inspections of another type of user fee category. The commenter asked that we provide the dollar amount, if any, under the proposed rule that each user is projected to pay in AQI costs for a different class or classes of user for FYs 2015 through 2020.

User fees charged to one class of users will not be used to subsidize inspections of another class of users. As noted throughout this document, the use of cost accounting principles ensures that costs are aligned with activities that generate those costs and that costs can only be counted once.

One commenter asked that we provide all inputs into the cost base for the proposed AQI user fees that arise from non-AQI activities.

The AQI costs model calculations for the user fees did not include non-AQI costs. The model captured the non-AQI costs, but did not include them in the fee calculations.

Two commenters asked APHIS to provide the dollar amount of costs included in the AQI cost base for any and all types of users that are incurred at locations outside of U.S. customs territory.

Costs for offshore activities, i.e., those performed outside the customs territory of the United States, are not directly related to the AQI program and are not included in the AQI cost base.

APHIS has provided summary tables by fee class (see Tables 1, 4, 6, 7, 8, 9, and 10 below), that identify the costs to the Federal Government of providing AQI services. These costs, including support and imputed costs, are accounted for in the APHIS and CBP financial systems of record. APHIS and CBP use the ABC methodology to align these costs with the activities of each fee class.

ABC is a two-step approach. First, financial costs are associated with program activities by the level of effort employed for each activity as determined by labor surveys, time and attendance data, and other available data. Second, the activity costs are then aligned with the fee classes to determine the fee class costs. A unit cost is calculated by dividing the total cost of the AQI fee class by the number of passengers or conveyances subject to inspection or other action in a given year, based on historical data. This ‘raw fee’ is rounded up to ensure that revenue is sufficient to maintain the reserve balance. APHIS used data from 3 years of expenditures, FYs 2010 through 2012, to derive the new fee rates.

APHIS and CBP rely on the reserve account in years where program costs are greater than the revenue collected. While these funds can carry over from year to year, they are used for one-time costs associated with the AQI program, such as capital improvements and to cover the program costs when the revenue generated is less than the cost of the program. It is important not to include one-time costs in the calculation of the fees because doing so would overinflate the true cost of providing services. The ABC methodology ensures that the revenue collected will cover program costs and reserve requirements over the period the fees are in effect. While the reserve account is a single fund, the projected reserve amounts that each fee class would contribute to the AQI program reserve are included separately in the summary tables, to transparently show the total revenue generated by each fee class.

In response to concerns expressed by numerous commenters, we have made some changes to our methodology for calculating the AQI reserve amounts. As noted above, in calculating the fees for the April 2014 proposed rule, we relied upon a rounding method for generating the revenue to fund the reserve account. We rounded the fee up to the nearest $1 for fees less than $100 and to the nearest $25 for fees over $100. The use of this rounding method would have enabled us to achieve our reserve funding targets for the AQI program in 3 years. In this final rule, however, the fees by class are based on a 3-year average of the AQI costs, FYs 2010-2012, that have been inflated to FY 2016 dollars. To fund the reserve, these base fees are increased by 3.5 percent. Our use of this method has resulted in the reduction of all the fees contained in the April 2014 proposed rule except the commercial aircraft fee, the commercial cargo vessel fee, and the commercial cargo railcar fee. Under the 3.5 percent funding approach, a greater portion of these fees would have been used for funding the reserve than with the original rounding approach. The 3.5 percent reserve funding approach would have raised these three fees above their proposed levels. In order to ensure sufficient notice for affected entities, however, APHIS has decided not to raise any fees above those contained in the April 2014 proposed rule.

Commercial Air Passenger and Commercial Aircraft User Fees

One commenter asked that APHIS provide data underlying the proposed $4 AQI air passenger user fee.

Using our revised model for calculating the reserve resulted in a reduction of the air passenger fee to $3.96 in this final rule. Further breakdown of the calculations leading to the new air passenger AQI user fee is shown below in Table 1.

Table 1. Air Passenger Fee Calculation

Air Passenger Fee $3.96	
FY 2010 data	
APHIS AQI FTEs	223
APHIS Total Cost	$ 21,711,724
APHIS Imputed Cost	$ 1,593,447
i. APHIS and USDA Support Cost	1,910,180
CBP Total Cost	266,497,469
CBP Imputed Cost	21,951,183
CBP and DHS Support Cost	87,468,279
Reserve Amount	$ 14,527,679
Number of Passengers	76,448,705
Calculated Unit Cost	$ 3.77
FY 2011 data	
APHIS AQI FTEs	224
APHIS Total Cost	$ 20,829,319
APHIS Imputed Cost	$ 1,566,108
APHIS and USDA Support Cost	391,307
CBP Total Cost	270,317,238
CBP Imputed Cost	20,470,874
CBP and DHS Support Cost	84,458,217
Reserve Amount	$ 21,082,947
Number of Passengers	78,901,506
Calculated Unit Cost	$ 3.69
FY 2012 data	
APHIS AQI FTEs	225

APHIS Total Cost	$ 22,604,086
APHIS Imputed Cost	$ 2,051,921
APHIS and USDA Support Cost	1,779,664
CBP Total Cost	287,962,928
CBP Imputed Cost	20,471,708
CBP and DHS Support Cost	85,405,303
Reserve Amount	$ -4,491,747
Number of Passengers	77,255,476

One commenter expressed concern that APHIS may be charging the aircraft fee for passenger flights and suggested working together to secure refunds for those parties who were incorrectly charged.

The international air passenger user fee covers the costs for services related to the inspection of selected passenger baggage and the oversight of the handling of regulated garbage generated on airplanes carrying passengers entering the customs territory of the United States. Our mission is to prevent the entry of foreign agricultural plant pests and diseases into the United States. APHIS can include the cost of inspecting commercial aircraft that carry passengers in the international air passenger user fee if those costs directly relate to passenger baggage or regulated garbage. APHIS does not include the cost of inspecting cargo or the cargo hold area of the plane in the passenger fees.

The commercial aircraft user fee pays the costs of inspecting the aircraft itself, cargo inspection, the cargo hold, and the costs of monitoring aircraft disinfection if: (1) Such services occur during the regular hours of service (8 a.m. to 4:30 p.m. Monday through Friday) or (2) inspection of the cargo is concurrent with inspection of the aircraft.[2] Cargo owners may request inspection outside of regular business hours, but would be subject to reimbursable overtime costs

[2] Even if a plane carries no cargo, it is subject to inspection because it could carry insect pests, weed seeds, waste material from garbage, or other waste that is capable of harboring animal disease.

under 7 CFR 354.1 in addition to the applicable AQI user fee. Airlines send their payments to our lockbox quarterly, no more than 31 days after the close of each quarter along with a written statement with required information as detailed in § 354.3(e)(3). The system is based on self-reporting; however, regular audits are conducted to make sure payment is received for all aircraft covered by this fee. If an entity is incorrectly charged a commercial aircraft fee, the entity can direct its refund inquiry to the Supervisor of the Financial Management Division's Debt Management Team. The type of proof or documentation the airline sends to the team to support its refund request depends on the exemption in § 354.3(e)(2) that the airline believes itself entitled to, and the documentation thus varies.

One commenter asked that we provide CBP's costs, from each FY from 2010 to the present, for providing preclearance or pre-inspection services to commercial air passengers at locations outside the customs territory of the United States.

Table 2 below contains CBP's preclearance costs for FY 2012 through FY 2014. CBP charges costs appropriately based on activity whether it is immigration, customs, or agriculture.

Table 2. Air passenger preclearance expenses

Data in whole dollars			
	FY 2012	**FY 2013**	**FY 2014**
Preclearance Expenses	$ 86,600,433	$ 93,537,883	$ 105,495,491

Several commenters expressed concern regarding the impact of the rule on express consignment carriers. (As defined in 19 CFR part 128, an express consignment carrier is "an entity… moving cargo by special express commercial service under closely integrated administrative control. Its services are offered to the public under advertised reliable, timely delivery on a door-to-door basis. An express consignment operator assumes liability to Customs for the articles in the same manner as if it is the sole carrier.") One commenter stated that the commercial aircraft user fee is not commensurate with the cost of providing AQI services to express consignment carriers. Several commenters expressed concern that the costs for use of office space, equipment, and supplies, which express consignment carriers are required to provide to CBP under 19 U.S.C. 58c(b)(9)(B)(ii) and 19 CFR. 128.11(b)(7)(iii) in Express Consignment Clearance Facilities (ECCFs), which are essentially bonded warehouses that are able to handle express high volume parcel flows into the United States, have been included in the calculation for the AQI commercial aircraft fee, resulting in duplicate fee assessments.

The Trade Act of 2002 (P.L. 107-210) section 337, codified as 19 U.S.C. 58c (b)(9)(A)(ii) and (b)(9)(B), authorized the establishment of the ECCF fee to reimburse CBP for the customs processing costs incurred at those facilities. The original fee was set at 66 cents per individual airway bill or bill of lading and was later increased to $1 effective July 2008. Congress also mandated that 50 percent of the ECCF fee collection be paid to the Secretary of the Treasury. Because the other half of the ECCF fees are deposited in the Customs User Fee Account, for budgetary purposes, they are reported as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees. Together, the COBRA and ECCF User Fees financially support certain, statutorily-enumerated costs related to customs inspection functions. These user fees support the customs inspection functions performed by CBP and the Customs Broker Program. These user fees support CBP's mission of facilitating legitimate trade and travel while keeping the United States secure. CBP collects Express Consignment Fees to help recover the costs of providing customs cargo processing services to express consignment carriers or centralized hub facilities. The fee is not for agricultural inspection services.

AQI user fees reimburse agriculture inspections in ECCFs because these activities are separate from the customs processing costs incurred at those facilities. The ABC model uses a series of financial and workload data to derive CBP program costs. The ECCF fees under COBRA only support the customs inspections and the AQI user fees only support the agriculture inspections. CBP charges, tracks, and reports this activity using its ABC systems and analyses.

The user fee does not differ based on the class of aircraft inspected because the risks we are seeking to address and nature of the AQI services provided do not differ based on the class of aircraft inspected. The costs associated with the inspection of commercial aircraft are averaged, and all flights pay the same user fee. CBP also does not differentiate between types of commercial aircraft carrying cargo. There is no duplication of costs in the fees. The ABC model gathers costs by activity type and drives those costs to the cost pools by fee type. The costs from the financial systems of APHIS and CBP are entered into the ABC model, and the output of the model must equal those costs entered into the model, thereby ensuring that all costs are accounted for and that no cost was duplicated. Therefore, the costs for use of office space, equipment, and supplies, which express consignment carriers are required to provide to CBP under 19 U.S.C. 58c(b)(9)(B)(ii) and 19 CFR 128.11(b)(7)(iii) in ECCFs, have not been included in the calculation for the AQI commercial aircraft fee.

Several commenters asked APHIS to explain its claimed cost differentials between private and commercial aircraft inspections. The commenters stated that exempting private aircraft from paying user fees creates a competitive distortion because private aircraft compete with commercial aircraft to some extent. The commenters also stated that exempting private aircraft from the user fees is contrary to the FACT Act.

The Airport and Airway Development Act of 1970 limits charges to private aircraft to $25.00. Private aircraft are defined by the Act as not being used to transport passengers or property for compensation. Currently, no AQI fees are collected for the inspection of private aircraft and their passengers. The cost is less than $13 million, and the additional cost of creating and operating fee collections led us to recommend that private aircraft and their passengers continue not to be subject to an AQI user fee. APHIS is not required to charge fees to any specific group of service users. The FACT Act authorizes APHIS to establish fees in a reasonable manner to recover funds spent on safeguarding activities. As stated previously, those costs not recovered through a user fee are paid for through appropriated funding.

One commenter asked that APHIS provide information concerning the penalty collections and how they may offset our AQI costs.

Penalty collections do not offset the costs we incur in administering the AQI program. Penalties are assessed separately under a different authority than the authority under which APHIS conducts its AQI user fee program. Any amounts the Federal Government assesses in fines to individuals or parties whom we catch attempting to smuggle prohibited items, such as fruits, vegetables, plant pests or flower bulbs, into the United States are sent to a general fund at the U.S. Treasury Department. The fines are not deposited into any AQI account or used to pay for AQI services.

The same commenter requested more information on how the Agency projects the pool of users from which it proposes to recover costs. Specifically, the commenter asked that APHIS provide the source of data and any assumptions made regarding the annual number of both international airline passenger arrivals and international aircraft arrivals in the United States that

APHIS anticipates will be subject to AQI fees. The commenter also asked for a description of any internal or external review of this data or quality control of this data.

A second commenter also asked that APHIS identify the base numbers used for airline passenger and aircraft arrivals in the Grant Thornton study and the regulatory impact analysis (RIA) that accompanied the proposed rule and compare them to industry-standard sources such as the U.S. Department of Transportation's T-100 data. The commenter also asked that APHIS verify the reliability of data derived from the workload projections listed in Table 6 of the proposed rule and asked for the number of users of AQI services that do not pay AQI fees.

We used data provided by the International Air Transport Association (IATA) regarding the annual number of international aircraft and international airline passenger arrivals in the United States. The T-100 data includes data provided by IATA. The Grant Thornton study used preliminary results from the AQI model in order to provide information for APHIS decisionmaking for the proposed user fee rates. The study had many fee structure options for AQI cost recovery. Once the decisions on fees were made, Grant Thornton finalized the ABC model that provided the figures found in the proposed rule based on the user fee setting guidance provided by GAO. Based on the data we received, APHIS determined that the actual and estimated volumes of passengers and conveyances provided in Table 6 of the proposed rule are accurate and the amount of service users that do not pay user fees can be readily calculated.

One commenter asked for a description and the number of any and all types of aircraft not subject to AQI fees. The commenter also asked what the costs were of inspecting types of aircraft not subject to AQI fees.

Under § 354.3(e)(2)(iv), all passenger aircraft originating in any country that have 64 or fewer seats and that do not carry certain regulated articles are exempt from paying the aircraft

AQI user fee. APHIS maintains the 64-seat plane size distinction in harmony with CBP and other U.S. Government agencies with jurisdiction over civil aviation. APHIS does not maintain data on the number of exempted arrivals because the airlines do not report those flights. In FY 2012, the most recent year for which we have data, the cost of inspecting aircraft not subject to AQI fees was $12,361,173.16. Those costs not recovered through a user fee are paid for through appropriated funding.

Commenters requested information regarding the number of penalties and the dollar amount of any and all penalties assessed or paid for AQI violations for: (1) Commercial aircraft carrying only passengers and passenger baggage (no cargo), (2) commercial aircraft engaged solely in the transportation of cargo, (3) commercial aircraft carrying passengers and passenger baggage and cargo, and (4) private aircraft for each year between FY 2010 and the present. It was requested that we provide the number of pest interceptions for each of these types of AQI aircraft inspection for each year between FY 2010 and the present.

The collection of civil penalties and assessments is authorized under 31 U.S.C 3806. Under this authority, APHIS and CBP assess penalties for AQI violations and remit the funds as miscellaneous receipts in the Treasury of the United States. The dollar amount of penalties assessed for AQI violations between FY 2010 and FY 2013 are shown below in Table 3. Please note that this data is not limited to aircraft. Because APHIS does not track penalties in accordance with the categories the commenters provided (commercial airline, noncommercial airline, etc.), we are not able to provide that level of specificity.

Table 3. Penalties assessed for AQI violations

(Figures in whole dollars)				
Dept. of Agriculture	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**
Fines, Fees, and Forfeitures	$3,881,627	$3,466,238	$2,860,793	$2,857,019

All arriving international commercial flights are subject to the commercial airline clearance fee and inspection. APHIS does not collect pest interception data in a manner that allows distinction based upon the airline flight categorization model. For example, we do not distinguish carriers carrying special express items from others. We maintain pest interception data only to make risk decisions using applicable risk data such as country of origin, transit country, host material, etc. Collecting pest interception data for the categories suggested by the commenter would be administratively burdensome to maintain and would not improve our ability to make risk-based decisions.

Two commenters asked for specific information related to commercial aircraft and airline passenger AQI user fees. The commenters asked that APHIS provide, for each FY from 2010 to the present, the total cost of AQI inspections for each type of aircraft operation, the number of AQI inspections performed, broken out by type of inspection if there are different types, and the time spent on AQI inspections performed for each type of aircraft operation. The commenters asked that the aircraft operation types be quantified and broken down into the following categories: Commercial aircraft carrying only passengers and passenger baggage (no cargo), commercial aircraft engaged solely in the transportation of cargo, commercial aircraft carrying passengers and passenger baggage and cargo ("combination" services), private aircraft, and any other categories of aircraft not included elsewhere.

APHIS designed its AQI user fee structure to be simple and easily understood. This allows our stakeholders to save on effort and cost for determining fee costs and what would be payable to APHIS under a complex fee structure. APHIS and CBP save resources and costs by not having to design a process for administering a complex fee structure. This helps to keep the fee costs to the payer as low as possible. A simple fee structure benefits both the stakeholders and the Federal Government. As mentioned above, it would be administratively burdensome to charge and audit a multitude of fees for the many different types of commercial aircraft and their cargo that enter the United States. Federal guidance states that costs should be estimated from the best available records and that new systems need not be established solely for the purpose of fee setting. Further breakdown of the cost calculations for the commercial aircraft AQI user fee is shown below in Table 4. This fee did not change as a result of the modification in our method of calculating the reserve.

Table 4. Commercial aircraft fee calculation

Commercial Aircraft Fee $225.00	
FY 2010 data	
APHIS AQI FTEs	295.38
APHIS Total Cost	$ 56,315,442
APHIS Imputed Cost	$ 4,217,943
APHIS and USDA Support Cost	5,427,502
CBP Total Cost	98,929,370
CBP Imputed Cost	8,089,831
CBP and DHS Support Cost	32,682,288
Reserve Amount	$ -7,323,737
Number of Aircraft	657,427
Calculated Unit Cost	$ 236.14
FY 2011 data	
APHIS AQI FTEs	290.68
APHIS Total Cost	$ 55,601,929
APHIS Imputed Cost	$ 4,203,426
APHIS and USDA Support Cost	2,266,408
CBP Total Cost	105,721,353
CBP Imputed Cost	7,783,047
CBP and DHS Support Cost	32,007,936
Reserve Amount	$ -3,678,381
Number of Aircraft	700,644
Calculated Unit Cost	$ 230.25
FY 2012 data	
APHIS AQI FTEs	290

Commercial Aircraft Fee $225.00	
APHIS Total Cost	$ 54,520,540
APHIS Imputed Cost	$ 4,153,439
APHIS and USDA Support Cost	2,554,914
CBP Total Cost	103,225,589
CBP Imputed Cost	7,340,236
CBP and DHS Support Cost	30,530,745
Reserve Amount	$ 4,085,346
Number of Aircraft	719,251
Calculated Unit Cost	$ 219.32

Several commenters asked for a detailed description of the categories of costs that are covered by the aircraft AQI fee applicable to commercial passenger aircraft (cargo inspections, inspections of cargo hold area, passenger baggage, etc.).

The commercial passenger aircraft AQI fee covers the following categories of costs:

Table 5. APHIS and CBP AQI activities related to commercial air passengers

APHIS AQI Activities Related to Commercial Air Passengers	
-	Asian Gypsy Moth Offshore (AGM) Mitigation Program Coordination and Operations
-	AQI Outreach
-	CITES program and enforcement
-	Containment Facilities
-	Database Management Operations
-	Design, present, receive non AQI-related training (Department required training)
-	Develop Quarantine Policy for the Ports of Entry
-	Develop Regulations, Manuals and Standards
-	Emergency Action Notifications
-	Manage Agency Quality Assurance Program
-	Manage the Import Permitting Process
-	Manage the Pest Permitting Process
-	National Clean Plant Network (import)
-	Offshore Pest Information Program (OPIP) operations
-	Perform pest and disease identification
-	Perform Trend Analysis
-	Policy Development and Implementation
-	Port Environs Survey
-	Post-entry Quarantine Operations (PEQ)
-	Propagative Plants and Plant Materials Inspection Operations
-	Provide Investigative Enforcement Services
-	Safeguarding
-	Smuggling, Interdiction, & Trade Compliance (SITC) Operations
-	Support overseas programs
-	Trade
-	Verification of Compliance Agreements, Accreditation and Certification Programs
CBP AQI Activities Related to Commercial Air Passengers	
-	Cargo - Air
-	Compliance Checks - Air
-	Non-Intrusive Technology - Passenger - Air
-	Examine - Compliant Passengers - Air
-	Interception Process - Air
-	Individual Mail
-	Interception Process - Mail
-	Safeguarding
-	Antiterrorism - Trade
-	NTC (National Targeting Center)
-	Courier Mail
-	Compliance Checks - Misc.
-	Cut Flower Release - Air
-	Informed Compliance - Air
-	Antiterrorism - Passenger - Air

-	Identify - Air
-	Examine - Noncompliant Passengers - Air
-	Personnel Management & Development

Several commenters asked for an explanation and data supporting the manner in which the proposed rule allocates AQI user fees between air passenger and aircraft operators in the case of expenses listed twice (once for each type of user) in the proposed rule, namely monitoring and storage of regulated garbage and removal of regulated garbage from the aircraft and inspection of the aircraft hold, as well as any other AQI cost categories that are attributed to more than one payer.

Both the structure of the official financial accounting system of record, which follows Federal accounting standards, and the ABC analysis software do not allow the counting of costs more than once. The use of the ABC model as well as the software program used ensures that costs are not counted twice. The ABC methodology uses a causal relation between resources (general ledger costs) and activities and activities and user fees. We used workload data associated with each activity, based on a causal relationship, to "drive" the costs to the appropriate fee area. In addition, the modeling software ensures that the cost coming into the model (data from the official financial accounting system of record) is equal to the costs that are assigned to each “layer” of the model (activities and fees/services).

APHIS does not track the action of removing and disposing of regulated garbage, but rather captures those costs through various activities. There is no need or requirement within the cost model to use such information because the actions relative to regulated garbage are included within the existing activities, and therefore, do not provide information for decisionmaking in fee setting. Compliance checks and verification of compliance agreements are two key activities related to regulated garbage. ABC analysis captures the cost of compliance checks for various conveyance modes in separate activities and assigns the costs to the appropriate fees. Compliance checks performed by CBP cost approximately $15 million, and this activity cost was assigned to the calculation of the fee for passenger aircraft and cargo aircraft based on the number of compliance inspections performed for each type of aircraft. Verification of compliance agreements, performed by APHIS, costs approximately $4.5 million, and is assigned to all cargo outputs (modes) because this cost is not initially captured by mode. Another example of an activity that is not explicitly counted and tracked is pest identification performed by APHIS employees. This activity is performed for all modes, and the cost of the activity is assigned to each mode based on the number of pest identifications performed for each mode using workload data recorded by APHIS.

Several commenters asked for an explanation of the types of aircraft operations subject to the fee variously referred to in the proposed rule,RIA, and supporting documents as "Commercial Air (Cargo only)," "Commercial Aircraft," and "air cargo fee."

The regulations in 7 CFR 354.3 define a "commercial aircraft" as any aircraft used to transport persons or property for compensation or hire. This term may refer to aircraft carrying either passengers or cargo or a mixture of both passengers and cargo. The term "commercial air (cargo only)" refers to those commercial aircraft carrying only cargo. The term "air cargo fee" may be used interchangeably with "commercial aircraft user fee," and applies to aircraft carrying passengers (and cargo).

Commercial Vessel (Cruise) Passenger and Commercial Vessel User Fees

One commenter asked that APHIS provide data underlying the proposed $2 AQI commercial vessel (cruise) passenger user fee.

As a result of the change in our method for calculating the reserve amount, this fee has been reduced to $1.75 in this final rule, while the vessel fee remains unchanged from that contained in the proposed rule. Further breakdown of the calculations leading to the new sea passenger and commercial vessel AQI user fees are shown below in Tables 6 and 7.

Table 6. Commercial vessel (cruise) passenger fee calculation

Commercial Vessel (Cruise) Passenger Fee $1.75	
FY 2010 data	
APHIS AQI FTEs	7
APHIS Total Cost	$ 2,011,416
APHIS Imputed Cost	$ 149,332
APHIS and USDA Support Cost	175,193
CBP Total Cost	16,315,113
CBP Imputed Cost	1,348,650
CBP and DHS Support Cost	4,892,097
Reserve Amount	$ 1,971,842
Number of Passengers	11,599,069
Calculated Unit Cost	$ 1.58
FY 2011 data	
APHIS AQI FTEs	9
APHIS Total Cost	$ 2,352,414
APHIS Imputed Cost	$ 179,034
APHIS and USDA Support Cost	94,061
CBP Total Cost	21,322,812
CBP Imputed Cost	1,405,434
CBP and DHS Support Cost	5,269,074
Reserve Amount	$ -1,034,502
Number of Passengers	12,931,271
Calculated Unit Cost	$ 1.83
FY 2012 data	
APHIS AQI FTEs	9
APHIS Total Cost	$ 2,301,838
APHIS Imputed Cost	$ 171,207
APHIS and USDA Support Cost	95,235
CBP Total Cost	19,891,404
CBP Imputed Cost	1,405,065
CBP and DHS Support Cost	5,326,912
Reserve Amount	$ 1,488,571
Number of Passengers	13,532,465
Calculated Unit Cost	$ 1.64

Table 7. Commercial vessel fee calculation

Commercial Vessel Fee $825.00	
FY 2010 data	
APHIS AQI FTEs	188
APHIS Total Cost	$ 34,609,899
APHIS Imputed Cost	$ 2,552,290
APHIS and USDA Support Cost	3,502,650
CBP Total Cost	54,959,507
CBP Imputed Cost	4,522,814
CBP and DHS Support Cost	17,740,837
Reserve Amount	$ 7,171,744
Number of Vessels	117,262
Calculated Unit Cost	$ 763.84
FY 2011 data	
APHIS AQI FTEs	183
APHIS Total Cost	$ 31,795,471
APHIS Imputed Cost	$ 2,383,368
APHIS and USDA Support Cost	1,392,632
CBP Total Cost	62,330,388
CBP Imputed Cost	4,490,189
CBP and DHS Support Cost	17,602,759
Reserve Amount	$ -10,145,808
Number of Vessels	101,794
Calculated Unit Cost	$924.67
FY 2012 data	
APHIS AQI FTEs	182
APHIS Total Cost	$ 30,714,122
APHIS Imputed Cost	$ 2,320,790
APHIS and USDA Support Cost	1,730,986
CBP Total Cost	62,745,589
CBP Imputed Cost	4,440,037
CBP and DHS Support	17,605,694
Reserve Amount	$ 365,064
Number of Vessels	113,727
Calculated Unit Cost	$ 821.79

The current regulations provide an exemption from the payment of user fees for the crew members on duty on an arriving aircraft. In the proposed rule, we proposed to allow the same exemption for crew members on duty aboard an arriving cruise ship. One commenter asked for clarification as to the definition of a crew member on duty, since ships have operations, maintenance and inspection requirements, and schedules that are radically different than the air industry. Therefore, migrating the exemption for airlines to the shipping industry may not be the most precise and effective way to address this matter. The commenter asked that this exemption be reworded or clarified, for example, to apply to "all persons onboard for purposes related to the operation of the ship."

We agree with the commenter that clarification is necessary regarding the definition of a crew member on duty. Therefore, we are amending the regulations to exempt from the sea passenger AQI user fee "all vessel crew members onboard for purposes related to the operation of the vessel." Such crew members include those that provide support for dining and entertainment.

Commercial Truck User Fees

APHIS used CBP data associated with truck crossings at the border to determine the appropriate fee. We found that 91 percent of truck crossings at the border use transponders, and the remaining 9 percent of trucks pay the per-crossing commercial truck inspection fee. We are able to associate the total cost of commercial truck inspections with the transponder and per-crossing inspection fee based upon these percentages. Based upon the data CBP provided to Grant Thornton, it was determined that 9 percent of the total cost associated with the per-crossing fee equated to the proposed fee of $8. As a result of the change in our methodology for calculating the reserve, however, the per-crossing fee has been reduced to $7.55 in this final rule. The transponder fee has undergone a corresponding reduction from $320 in the April 2014 proposed rule to $301.67 in this final rule. Approximately 64 percent of the cost of inspecting trucks with transponders will be covered by CBP's annual appropriation. Further breakdown of the calculations leading to the new commercial truck AQI user fee is shown below in Table 8.

Table 8. Commercial truck fee calculation

Commercial Truck Fee	
FY 2010 data	
Per crossing @ $7.55	
APHIS AQI FTEs	8.9
APHIS Total Cost	$ 1,333,487
APHIS Imputed Cost	$ 98,765
APHIS and USDA Support Cost	124,512
CBP Total Cost	5,075,771
CBP Imputed Cost	417,721
CBP and DHS Support Cost	1,258,435
Reserve Amount	$ 656,425
Number of Trucks	911,701
Calculated Unit Cost	$ 7.03
Transponder @ $301.67	
APHIS AQI FTEs	80.1
APHIS Total Cost	$ 13,483,031
APHIS Imputed Cost	$ 998,620
APHIS and USDA Support Cost	1.258,950
CBP Total Cost	51,236,081
CBP Imputed Cost	4,223,618
CBP and DHS Support Cost	18,153,846
Amount Paid through Appropriation	$ 31,838,590
Number of Transponders Sold	108,995
Calculated Unit Cost	N/A
FY 2011 data	
Per crossing @ $7.55	
APHIS AQI FTEs	8.3
APHIS Total Cost	$ 1,204,362
APHIS Imputed Cost	$ 91,087
APHIS and USDA Support Cost	488,231
CBP Total Cost	5,510,967
CBP Imputed Cost	398,917
CBP and DHS Support Cost	1,742,792
Reserve Amount	$ 276,673
Number of Trucks	931,391
Calculated Unit Cost	$ 7.21
Transponder @ $301.67	
APHIS AQI FTEs	74.7
APHIS Total Cost	$ 12,177,737
APHIS Imputed Cost	$ 920,996
APHIS and USDA Support Cost	488,231
CBP Total Cost	55,709,551
CBP Imputed Cost	4,033,489

CBP and DHS Support Cost	17,621,560
Amount Paid through Appropriation	$ 35,006,766
Number of Transponders sold	108,995
Calculated Unit Cost	N/A
FY 2012 data	
Per crossing @ $7.55	
APHIS AQI FTEs	8.3
APHIS Total Cost	$ 1,291,233
APHIS Imputed Cost	$ 95,921
APHIS and USDA Support Cost	64,961
CBP Total Cost	6,029,614
CBP Imputed Cost	430,024
CBP and DHS Support Cost	1,891,285
Reserve Amount	$ 8,051,901
Number of Trucks	1,066,477
Calculated Unit Cost	$ 7.63
Transponder @ $301.67	
APHIS AQI FTEs	74.7
APHIS Total Cost	$ 13,055,804
APHIS Imputed Cost	$ 969,871
APHIS and USDA Support Cost	654,099
CBP Total Cost	60,966,102
CBP Imputed Cost	4,348,022
CBP and DHS Support Cost	19,122,988
Amount Paid through Appropriation	$ 40,684,656
Number of Transponders Sold	110,509
Calculated Unit Cost	N/A

One commenter asked for further clarification of wording in the final rule to make it clear that inspections of commodities that are imported under existing phytosanitary agreements would be considered commercial truck inspections and would be subject to the commercial truck fee rather than the proposed new treatment fee.

Any inspection undertaken after the new AQI user fees become effective would be subject to all applicable fees. Commercial trucks crossing the border are subject to inspection of both the trucks and their contents, and therefore subject to the commercial truck fees. If the contents of the shipment are required to undergo treatment to be eligible for U.S. entry, then the treatment fee would apply as well.

Commercial Rail User Fees

Although we did not receive any comments regarding the new commercial rail AQI user fee, we are providing a further breakdown of the calculations leading to that user fee below in Table 9. That commercial rail fee remains the same as we proposed in the April 2014 proposed rule.

Table 9. Commercial rail fee calculation

Commercial Rail Fee $2.00	
FY 2010 data	
APHIS AQI FTEs	5
APHIS Total Cost	$ 2,745,539
APHIS Imputed Cost	$ 204,796
APHIS and USDA Support Cost	281,810
CBP Total Cost	3,8860,112
CBP Imputed Cost	317,174
CBP and DHS Support Cost	1,380,312
Reserve Amount	$ -1,168,901
Number of Rail Cars	2,718,375
Calculated Unit Cost	$ 2.43
FY 2011 data	
APHIS AQI FTEs	5
APHIS Total Cost	$ 1,122,289
APHIS Imputed Cost	$ 85,461
APHIS and USDA Support Cost	45,039
CBP Total Cost	5,983,503
CBP Imputed Cost	317,650
CBP and DHS Support Cost	1,402,576
Reserve Amount	$ -1,281,372
Number of Rail Cars	2,912,210
Calculated Unit Cost	$ 2.44
FY 2012 data	
APHIS AQI FTEs	5
APHIS Total Cost	$ 1,147,199
APHIS Imputed Cost	$ 85,432
APHIS and USDA Support Cost	57,455
CBP Total Cost	5,765,358

CBP Imputed Cost	412,247
CBP and DHS Support Cost	1,810,754
Reserve Amount	$ -452,233
Number of Rail Cars	3,230,167
Calculated Unit Cost	$ 2.14

Treatment User Fees

Many commenters expressed concern regarding a perceived lack of transparency in how APHIS calculated the new cost category for treatments and lack of rationale for establishing the $375 treatment fee level.

As discussed in greater detail below, we have decided to lower the treatment fee from the $375 that we originally proposed to $237 and phase it in over a 5-year period. The fee will be set initially at $47 and then rise to $95 in the second year, $142 in the third, $190 in the fourth, and $237 in the fifth. APHIS recognizes that there are additional costs for providing treatment services during non-business hours. APHIS has determined that an equitable fee would provide a flat fee for services rendered during normal business hours, and the normal fee plus overtime costs for services rendered after hours. A breakdown of the calculations leading to the new treatment AQI user fee is shown below in Table 10.

Table 10. Treatment fee calculation

Treatment Fee $47.00*	
FY 2010 data	
APHIS AQI FTEs	82
APHIS Total Cost	$ 8,596,204
APHIS Imputed Cost	$ 605,763
APHIS and USDA Support Cost	918,924
CBP Total Cost	N/A
CBP Imputed Cost	N/A
CBP and DHS Support Cost	N/A
Reserve Amount	$ -6,815,750
Number of Treatments	37,882
Calculated Unit Cost	$ 226.92
Treatment Fee $95.00*	
FY 2011 data	

APHIS AQI FTEs	80
APHIS Total Cost	$ 6,657,765
APHIS Imputed Cost	$ 479,722
APHIS and USDA Support Cost	306,391
CBP Total Cost	N/A
CBP Imputed Cost	N/A
CBP and DHS Support Cost	N/A
Reserve Amount	$ -3,058,975
Number of Treatments	29,713
Calculated Unit Cost	$ 226.92
Treatment Fee $142.00*	
FY 2012 data	
APHIS AQI FTEs	79.61
APHIS Total Cost	$ 5,915,416
APHIS Imputed Cost	$ 512,688
APHIS and USDA Support Cost	344,521
CBP Total Cost	N/A
CBP Imputed Cost	N/A
CBP and DHS Support Cost	N/A
Reserve Amount	$-536,172
Number of Treatments	38,517
Calculated Unit Cost	$ 285.92

*Table 10 shows how APHIS derived the treatment user fee for the first 3 years of the 5-year implementation period.

APHIS used the actual data to analyze the potential fee rates. We then applied inflationary factors for those years that would be impacted by the fees in order to determine the correct fee amount, initially using the rounding method to ensure proper reserve funding. As noted above, in this final rule, APHIS has used a different method to calculate the reserve amounts, applying a flat 3.5 percent increase above the unit cost of providing AQI services to fund the AQI reserve.

Stakeholders can use the methodology present in these tables by referring the projected total activity cost and projected counts of activities to replicate the data found in this table.

One commenter stated that while APHIS indicates that there are certain activities related to the proposed new treatment fee, the exact components of conducting and monitoring treatments that warrant a $375 fee are unclear. The commenter asked that APHIS clarify specific elements incorporated into the calculation of the treatment fee level and the costs associated with each component.

As we have noted, in this final rule, we are lowering the treatment fee to $237. APHIS will phase this fee in over a 5-year period. APHIS prescribes different types of treatments for pests of quarantine significance when found upon inspection or for commodities that present high risk. There are various approved chemical treatments: Fumigants, dips, and sprays. The fumigants include methyl bromide, phosphine, and sulfuryl fluoride. Non-chemical treatments include cold treatment, hot water immersion, vapor heat treatment, steam sterilization, and irradiation. All the treatment types require specific methods and monitoring by APHIS personnel. APHIS determines the necessary resources (FTEs) put forth toward the treatment fee activity. This enables the ABC model to accurately assign costs to the treatments. This cost is then divided by the number of treatments that the APHIS personnel conduct or monitor.

One commenter stated that some commodities require treatment, such as cold treatment or fumigation, as a condition of entry into the United States. The commenter suggested that, rather than assessing an additional fee for those commodities already treated prior to arrival at the U.S. port of entry, such commodities should only be subject to the treatment fee if a quarantine pest is found at the port of entry necessitating additional treatment and direct supervision by APHIS.

The fee will be charged as the commenter suggests. Entities will be assessed the fee only if treatment is required and is performed in the United States and monitored by an APHIS inspector.

One commenter asked whether the treatment fees also apply to oversight provided by APHIS for fumigations on commodities exported from the United States that require a phytosanitary certificate.

Treatment services provided to facilitate export of U.S. commodities to foreign countries are not part of the calculated fee schedules. Exporters of U.S. commodities are charged a separate fee for export certification.

Stakeholder Input and Peer Review

Several commenters stated that the process to develop the proposed rule was not transparent because APHIS failed to provide and share data and information used in developing the proposed rule with affected stakeholders prior to the proposal's publication. The commenters referred to Executive Order 13563, which requires regulatory agencies to seek out public participation in rulemaking, including affected stakeholders.

Executive Order 13563 requires that regulatory agencies adopt regulations through a process involving public participation. To this end, APHIS held several stakeholder briefings to keep stakeholders informed during the evaluation of our user fee program and the development of the new user fees:

- September 9, 2011 – Stakeholder Briefing: APHIS/Grant Thornton presented the preliminary findings from the AQI user fee review;
- May 1, 2013 – Stakeholder Briefing: APHIS/Grant Thornton presented costs to deliver AQI services and factors that drive costs;
- April 22, 2014 – APHIS announced proposed adjustments to AQI user fees;
- May 29, 2014 – Stakeholder Briefing (two webinars): APHIS presented proposed adjustments to AQI user fees; and

- July 9, 2014 – Stakeholder Briefing (webinar): APHIS presented proposed adjustments to AQI user fees.

Invitations to all of the 2014 events were distributed via the APHIS stakeholder registry and via direct email. The last email invitation was sent on June 27, 2014, to 11,164 unique subscribers.

In addition, APHIS provided the opportunity for comment on the proposed rule for 60 days, which was then extended another 30 days to allow for additional public comment.

APHIS provided two documents, “Fee Setting Process Documentation and Recommendation” (dated October 25, 2011), and “AQI Fee Schedule Assessments and Alternatives, Revised” (dated May 21, 2012), along with the proposed rule to help clarify APHIS’ costing methodology. Two commenters expressed concern that the documents were not peer reviewed or reviewed by the USDA’s Chief Economist and that APHIS failed to seek public comment on either the documents or the models that form the basis of the change in implementation of the AQI user fee program.

The documents provided by Grant Thornton, which were made available along with the proposed rule for public review and comment, were to advise APHIS and CBP on decisionmaking only. These were information-gathering documents used to help inform APHIS’ decisionmaking and, as such, were not required to be peer-reviewed. The documents led to detailed policy discussions that took place at the Agency and Department levels with both APHIS and CBP. USDA and the OMB reviewed the proposed rule and the RIA. Several meetings and briefings that included Department and OMB personnel took place on several occasions, and discussions included issues such as fee alternatives, methodologies employed by

Grant Thornton, and work the contractor did to support the economic analysis. The final decisions were well-informed, including reviews that included GAO.

Overtime

Several commenters requested that detailed information be provided on how much revenue overtime services generate and how CBP determines which officers fall into the overtime category. The commenters asked why Sundays have a higher overtime rate than other days.

CBP revenue overtime services generated through the end of the month of July (for 2014) totaled $379,506.82 for the Agriculture Reimbursable Overtime and $19,525.50 for the Wood Inspection Reimbursable Overtime. CBP utilizes the National Treasury Employees Union (NTEU)/CBP collective bargaining agreement contract for employees in determining employee eligibility and overtime assignment. In general, overtime assignments are based on the lowest earner and availability of personnel. CBP officers are paid under the authority of the Customs Officer Pay Reform Act (19 U.S.C. 267, as amended). Under that authority, customs officers are entitled to 1.5 times the rate of their base pay for Sunday work if Sunday is one of their regularly scheduled work days. Customs officers whose regular work days are Sundays who work in excess of 8 hours on a Sunday are entitled to 2 times their base pay for that day’s work, but are not eligible to receive Sunday premium pay differentials. The Sunday overtime rate is higher for APHIS officers than for other days of the week because our officers are paid a higher rate for their work time on Sundays. Because our fees were developed to cover the full cost of inspections, including employee salaries, the Sunday fees are correspondingly higher. APHIS and CBP do not factor reimbursable overtime fees into the costs of the AQI user fees. Reimbursable costs are charged separately from the user fee.

As stated in the proposed rule, we used the ABC methodology to determine the cost of AQI activities and their associated outputs and services. One commenter expressed concern regarding a perceived lack of clarity regarding the alignment of the proposed fee schedule with the increase in overtime rates that was concurrently proposed. The commenter stated that, before either proposal moves forward, APHIS must document, for public review, the cumulative effect of these increases.

In calculating the flat treatment fee for the proposed rule, we did initially factor in the overtime component to arrive at the figure of $375. We did not anticipate charging overtime fees in addition to that flat fee. Because the required RIA accompanying the proposed rule was based on that original proposed fee of $375, the analysis did examine the full economic impact of the new fee, including the overtime component.

In this final rule, we are removing the overtime component from the flat fee, thus lowering the flat fee to $237. This fee will be phased in over a 5-year period. The difference between the proposed fee and the final $237 fee is $138. This difference represents the costs that are projected to be recovered through charging for reimbursable overtime. When treatment-related AQI services are applied outside of normal business hours, both the flat fee and overtime charges will apply. This manner of assessing these fees is consistent with the way we assess our other AQI user fees. APHIS can identify the amount of reimbursable overtime attributed to AQI treatments based upon the accounting attributes in the financial system. We will also continually review our business practices in relation to our treatment operations with the goal of reducing our costs and thereby reducing the fees.

APHIS/CBP Partnership

One commenter expressed concern regarding how much AQI user fees would go to APHIS compared to the amount kept by CBP.

APHIS and CBP maintain ABC models that accurately assign costs for activities related to each fee area. The basis for distribution of AQI user fees between APHIS and CBP is the cost to each agency of performing the AQI functions covered by a particular fee. Section 421(f) of the Homeland Security Act of 2002 mandates that CBP and USDA agree on a periodic transfer of funds from the latter to the former. In FY 2013, CBP received $366 million from AQI user fees. APHIS collects fees to recover the costs of providing inspection activities for international arrivals of passengers, conveyances, animals, plants, and agricultural goods at ports of entry. AQI fees reimburse the costs of CBP Agriculture Specialists, CBP officers performing agriculture inspection services, and support costs. In FY 2013, the revenues from the current fee levels covered 80 percent of CBP's costs incurred providing inspection activities associated with the passengers and conveyances that are subject to fees.

CBP will receive the collections provided by the rate adjustments for maintaining the existing operations of agricultural inspection functions. A small portion of the collections will fund treatment functions performed by APHIS. In addition, APHIS will maintain a small balance, i.e., "reserve," of user fee funds to cover costs during collection lag periods and for unanticipated changes in volumes and potential bad debt costs. As stated previously, the FACT Act authorizes APHIS to maintain a reasonable balance in the AQI account.

One commenter pointed out that the "AQI Cost Analysis" section of the proposed rule lists the National Targeting Center (NTC) as a CBP initiative, implemented since 2011, that is contributing to the necessity to raise user fees. However, the commenter stated that, since the

NTC has been in existence for over 10 years, it is not a new initiative and asked why the costs of the NTC have led to the need to raise AQI fees now. The commenter stated that Table 3 of the proposed rule lists over $7 million in 2014 NTC costs that were factored into the AQI Cost Analysis and asked whether this amount represents the entire cost of the NTC or if it is only for some portion related to AQI activities.

To expedite the processing of travelers and cargo, CBP officers deploy pre-departure screening through a variety of programs and activities. The NTC, in particular, screens relevant traveler and cargo information, including the examination of manifest data, prior to their admission into the United States. This approach is a key part of CBP's layered security strategy to protect the homeland by extending U.S. borders outward to identify and mitigate threats, interdict possible terrorists, criminals, and suspect cargo before they can board or be loaded on a conveyance destined for the United States. Through use of targeting, CBP decreases costs, including AQI user fee costs, by identifying low-risk and high-risk travelers and shipments prior to their presentation at a U.S. port of entry for admission.

Since 2009, we have seen growth in both trade and travel leading to an increase in passenger and cargo volumes. Total passenger volume in FY 2013 was 6.4 percent higher than in FY 2011, and non-immigrant arrivals during the same period increased by nearly 9 percent. Total import value in FY 2013 was nearly 5 percent higher than FY 2011. Based on available industry and government data, we expect these trends to continue and estimate that total air passenger volume for FY 2015 will increase 4 percent (approximately 3.7 million air passengers) at the top 10 U.S. airports when compared to FY 2012 data. Because the conveyance fees cover the inspection costs of the cargo during the normal tour of duty of our employees, increases in cargo volumes necessitate increases in the conveyance fees to recover these expanded cargo inspection costs. Note that the costs of inspection of cargo occurring outside the normal tour of duty of our employees are recovered separately through reimbursable overtime collections, costs not included in the AQI fees. The $7 million listed as 2014 NTC costs represent that portion of NTC that relates specifically to AQI activities on imports.

Two commenters stated that APHIS should address several issues identified during review of the AQI program, such as inconsistent data between APHIS and CBP. One commenter stated that it is not acceptable for APHIS to raise user fees without addressing its own internal issues and communication with CBP. A second commenter stated that, with additional funds generated by the user fees, APHIS should have the resources necessary to address these issues.

APHIS and CBP identified the correct data to use in the model and eliminated the identified inconsistencies. Issues such as these in a very large operation are continuous in nature as the activities change, new systems become available, priorities change, or new demands for information arise. The data is relevant and it is part of official government systems. APHIS and CBP are continually working together to enhance data collection. In addition, CBP will continue the implementation of the business transformation initiative of the International Trade Data System (ITDS). CBP will use ITDS to report data for the importation and disposition of arriving and transiting fresh fruits and vegetables cleared at ports of entry. The source-verifiable data provided by the trade prior to arrival will result in increased accuracy and simplified data entry. ITDS will allow for the elimination of duplicative data entry and will significantly reduce the overall amount of time currently spent by CBP agriculture specialists or CBP officers entering data. The agencies will not fund through AQI user fees those activities that are not associated with AQI services.

Cost Savings Measures

One commenter requested that APHIS provide an analysis of the cost savings achieved when one agent, typically a CBP officer, provides inspection services for AQI, customs clearance, and immigration processing. The commenter stated that such a review should be undertaken to ensure that cost savings achieved by sharing employee resources are passed along to the fee-paying users in the form of fee reductions or exemptions.

The ABC analysis relied on actual personnel expenses to identify the staffing cost for border stations of all sizes. CBP costs in support of the AQI mission include training and technical advice to CBP officers and other CBP personnel on regulatory requirements pertaining to compliance with agricultural regulations and the processing of passengers with regard to compliance with agriculture regulations, primarily at low volume ports of entry in the passenger environment. In the absence of a CBP Agriculture Specialist, CBP and APHIS have consistently committed to ensuring that CBP officers have been provided with the knowledge and information needed to identify possible pest risks and to make the appropriate decision to mitigate that pest risk. Therefore, the cost savings realized by lower staffing levels at some border crossings is somewhat offset by the expense of additional training needed by those officers.

One commenter stated that no analysis was made to see if cost savings could be achieved through more efficient operations.

We are constantly working to improve our efficiency and cut costs. For example, we have taken steps to reduce our personnel-related expenditures, thereby reducing the costs of inspection, by using lower-salary-grade employees to perform certain tasks when doing so would not compromise effectiveness, and implementing shift work to reduce our overtime costs. The use of X-ray technology, the Internet, online databases, and specially trained detector dogs has helped make our inspection and clearance processes more efficient. Nevertheless, the costs of providing AQI services do rise from year to year due to inflation and staffing increases. The proposed user fee increases will enable us to recover the full costs of maintaining the AQI program. We welcome the submission of information at any time that would help us contain costs or enhance our efficiency.

One commenter asked to see the computations that show how APHIS initiatives to increase efficiencies and overall effectiveness to save cost and time work to offset any increase in costs as a result of increased AQI expenditures. As an example, the commenter pointed out that the proposed rule states that the development of new treatment techniques will save time and costs, but Table 3 within the proposal appears to show a continued annual increase in costs. The commenter asked for an explanation of this apparent disparity.

APHIS PPQ has recently realigned its core functional areas into three components: Policy Management, Field Operations, and Science and Technology. By realigning this way, we were able to eliminate many redundancies within different units and keep our AQI budget static while doing more AQI work. For example, plant inspection station management is handled by Field Operations. By having Field Operations handle management of what is essentially an operational program, we are better able to collect data via a risk-based sampling method, which will help inform future inspection rates of commodity-country combinations. In Policy Management, we were able to better centralize management structures of AQI policy, enabling us to get information to CBP more quickly than before our reorganization.

As APHIS assesses its user fees, volumes, collections, and ongoing reserve balances, it will initiate rulemaking to increase or decrease the fees as necessary. We review our fees on a biennial basis to ensure that the fees charged are commensurate with the costs of inspection and inspection-related activities and, if necessary, undertake rulemaking to amend them. We will adjust a fee up or down, as appropriate, depending on the actual cost of providing services. In most cases, we propose user fee increases so that the fees will keep up with inflationary costs as well as any new expenses, and propose user fee decreases when efficiencies are implemented.

One commenter stated that APHIS should develop specific accounting processes in order to ensure that the increased fees are properly collected and that such fees remain appropriate related to modifications in agency activity. The commenter further stated that specific details should be provided regarding the anticipated improvements in clearance and efficiency at the borders related to the fee increase so that overall effectiveness can be easily monitored.

APHIS and CBP continue to invest in resources that will improve our customer services and ability to safeguard American agriculture. However, we have determined that revised user fees are necessary to recover the costs of the current level of activity, to account for increases in the cost of doing business, and to improve how fees align with the costs associated with each fee service. In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs from all other costs. We published a detailed description of these procedures in the Federal Register on December 31, 1992 (57 FR 62469–62471, Docket No. 92-148-1), as part of an interim rule amending some of our user fees. APHIS maintains all AQI fees we collect in distinct accounts, carefully monitors the balances in these accounts, and only uses these funds to pay for our actual costs for providing these distinct services. In addition to the ABC analysis to develop the proposed user fee schedule, one of the objectives of the Grant Thornton contract was to create a method that was repeatable. We are currently updating the ABC model annually with cost and activity data so that we can monitor, measure, and model for management and decisionmaking.

Additional Comments

Three commenters asked APHIS to make public its current and historic reserve levels by user class.

The AQI reserve levels by user fee category for FY 2010 through 2012 are provided in Tables 1, 4, 6, 7, 8, 9, and 10. Grant Thornton used the ABC method to develop fees and inform APHIS decisionmaking. Grant Thornton developed the ABC data through time-sensitive surveys to determine current and forecast future program costs and revenue recovery potential of fee schedules. Prior to Grant Thornton's ABC model, APHIS did not use the fee classes to track historical reserve levels.

The fees established in this final rule will align funds collected through user fees and the AQI reserve with the actual cost of safeguarding activities performed by the agencies.

Two commenters asked for a description of how APHIS ensures that reserve funds collected from commercial aircraft passengers and for commercial aircraft inspections are spent only on inspections of passengers and aircraft, respectively, in subsequent years.

As noted above, Grant Thornton developed the ABC data through time-sensitive surveys to determine current and forecast future program costs and revenue recovery potential of fee schedules. This forecasting will ensure that reserve funds are collected and spent only on inspections related to the relevant class of user. APHIS did not use the fee classes to track historical reserve levels, and the retroactive application of the ABC method analysis is not a valid use of the data.

Several commenters stated that APHIS should justify the timing of apparent salary increases that increase proposed fees. Specifically, one commenter noted that anticipated salary increases for the CBP journeyman officers would add $40 million to baseline costs.

Salary increases are set by law, Department leadership, or collective bargaining agreements. When provided, cost of living increases for government employees take effect at the beginning of each calendar year. The timing of salary increases is in no way related to the proposed rates. APHIS and CBP forecast known increases based upon Federal Government forecast guidance issued by OMB, and by known salary increases that would be in place at the time that the user fee rule was finalized.

Further, APHIS and CBP do not coordinate employee compensation levels and the agencies did not increase salaries to inflate AQI user fee costs. OPM issued a revised GS-1800 Inspections, Investigation, Enforcement and Compliance Standard for CBP officers and Border Patrol agents during April 2011. The new standard provides detailed descriptions based on the audits and interviews that the OPM position classifiers learned from on-site visits to field locations and operational and human resources staffs. CBP also conducted a rigorous review of the work responsibilities and expectations of frontline personnel that have continuously increased since CBP became the principal border control agency. OPM and CBP found that the officer’s daily work is consistent with that of individuals working at the GS-12 level. The work factors that merit the salary increase include the wide variety of laws that are enforced, a shift to proactive, intelligence-driven work using sophisticated technology and infrastructure, increased violence at the borders and focus on terrorist activities, and work with other law enforcement agencies and enforcement-related activities.

One commenter asked APHIS to list, by AQI user fee category, any costs paid by AQI user fees that are also paid through appropriations.

No costs that are paid for by user fees are also paid for using APHIS appropriations, nor will they be as a result of this rule.

On May 1, 2013, APHIS held a stakeholder meeting to discuss AQI program costs. Two commenters asked that APHIS describe the data sources underlying the 2010 AQI program study, including defining the following terms referred to in the stakeholder meeting: AQI program costs, APHIS support, cost by activity from the CBP cost model, APHIS workforce labor survey, and workload data for outputs and drivers (Operations Management Recording (OMR), Pest ID, Work Accomplishment Data System (WADS)). The commenters asked that the briefing document discussed during the meeting be included in the docket.

AQI program costs are the costs incurred by APHIS and CBP to provide inspection and other services that prevent the introduction of harmful plant pests and animal diseases.

APHIS support costs encompass both Agency administrative support and program support functions. The ABC model used by CBP has costs by activities tracked by expenditures. APHIS used a workforce labor survey to generate data comparable to the CBP ABC model. A workforce labor survey is a method of collecting information on the level of effort that an organization expends in a set of activities such that labor costs found in a financial system can be allocated to the activities of an organization. The ABC model collects costs into cost pools and uses workload data to drive the costs to the fee classes. Workload data for outputs and cost drivers are data used to establish a cause and effect relationship between an organization's activities and what it produces. The workload data enables an organization to allocate the costs of its activities to what it produces. The document referred to by the commenter was made available alongside the proposed rule and therefore is already included as part of the official docket. It can be viewed by visiting the link listed in footnote 1.

Several commenters noted in the proposed rule that APHIS "rounds up" projected costs by user by either $1 or $25 in setting AQI fee levels. The commenters stated that the legal justifications for this rounding-up are not evident and needs to be explained fully.

As previously mentioned, the FACT Act authorizes the Secretary of Agriculture to prescribe and collect fees to cover the cost of providing the AQI services covered in the proposed rule. This authority provides that the funds collected will be available until expended. GAO states in its Federal User Fee Design guide that "with permanent authority, funds are available until expended, which enables agencies to carry forward unexpended collections to subsequent years and match fee collections to average program costs over more than 1 year." This enables agencies to carry forward unexpended collections to subsequent years in a reserve fund and match fee collections to average program costs over more than 1 year. AQI policy is to maintain a 3- to 5-month reserve, but when the AQI fee study was conducted, that reserve had been significantly diminished due to the economic downturn. As a result, one of the requirements of the fee study was to allow for the replenishment of the AQI fund reserve. To do so, we rounded the projected unit cost to collect additional revenue for the reserve. While there is no specific guidance regarding rounding up for fees, it is a common practice when setting fees, especially for programs that maintain a reserve, but also for administrative simplicity.

In this final rule, however, we did not use the rounding method described above to fund the reserve. APHIS has applied a 3.5 percent increase above the unit cost of providing AQI services in order to fund the AQI reserve. The new fees, other than those for commercial aircraft, commercial cargo vessels, and commercial cargo railcars, include a 3.5 percent increase for replenishment of the reserve. For these three fee classes, a 3.5 percent increase would raise the new fees above their proposed levels. In this final rule, these three fees are kept at their proposed levels, and therefore will provide smaller shares of their revenue to the reserve replenishment.

APHIS' analysis of methods of providing sufficient revenue to include a reasonable reserve identified 3.5 percent as a level that provides for funding the reserve while minimizing the impact on the payers of the fees to the greatest extent possible. APHIS further believes that using a flat rate of 3.5 percent without raising any fees above those originally proposed meets the needs and expectations of both the Federal Government and of those who pay the AQI fee.

Several commenters asked for the number of FTEs, for both APHIS and CBP, committed to each class of user for FY 2010 to the present.

The number of APHIS FTEs for FYs 2010 through 2012 can be found in Tables 1, 4, 6, 7, 8, 9, and 10. The numbers of APHIS FTEs dedicated to each class of user for FY 2013 are listed below in Table 11. The number of CBP FTEs dedicated to each class of user for FYs 2010 through 2013 is listed below in Table 12. The number of CBP FTEs dedicated to sea passengers is not available as those user fee classes were not tracked prior to the proposed rule. CBP is not involved in treatment activities that are covered under the treatment fee. CBP does oversee disinfection activities for conveyances or equipment. However, disinfection activity costs are not included in the calculation of the treatment fee.

Table 11. APHIS full-time equivalent employees (FTE) for FY 2013

Commercial Aircraft	289.96
Commercial Rail	5.42
Commercial Truck	83.18
Commercial Vessel	181.76
Commercial Vessel Passenger	9.01
Treatments	79.61

Table 12. CBP full-time equivalent employees (FTE) for FY 2010 through 2013

User fee class	**2010**	**2011**	**2012**	**2013**
Air Passenger	1,412	1,403	1,433	1,276
Commercial Aircraft	265	276	267	254
Commercial Rail	21	25	23	19
Commercial Truck	330	314	340	301
Commercial Vessel	304	314	269	284

On September 28, 2009, we published in the Federal Register (74 FR 49311-49315, Docket No. APHIS-2009-0048), an interim rule that amended the user fee regulations by adjusting the fees charged for certain AQI services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The rule was published to help recover the costs of inspections and related support services, in response to the economic downturn, as well as to maintain a reasonable reserve balance. On November 4, 2009, we published in the Federal Register (74 FR 57057, Docket No. APHIS-2009-0048) a document withdrawing the interim rule prior to its effective date in order to explore other regulatory alternatives. One commenter asked what the results were of that exploration, specifically whether the results were published and whether viable alternatives were available.

The regulatory alternatives we considered for revising the AQI user fees were described in the proposed rule as well as the supporting analysis published along with the proposed rule entitled "AQI Fee Schedule Assessment and Alternatives (May 21, 2012)." These alternatives included several that were rejected because they either would not meet the objective of better ensuring that the fees paid by users in the various fee classes are commensurate with the costs of the AQI services provided for each class or because the transaction costs of creating and operating fee collection systems would be overly burdensome. The proposed rule represented our preferred alternative.

Three commenters stated that APHIS and CBP must provide more timely invoices for all fees. The commenters stated that, when invoices are delayed, there is no guarantee that the local contact, such as a vessel agent, will be able to collect the funds from the carrier, which means these agents can be held liable for those costs. The commenters suggested that the regulations be amended to stipulate that invoices will be provided within 30 days of performing AQI services.

APHIS does not provide invoices. Customers pay at the time of entry into the United States or when they purchase an airline ticket or transponder. CBP provides a CBP Form 368 Collection Receipt at the time of the entrance of the vessel with payment of the AQI user fee. Vessels are required to submit payment receipts covering the current calendar year at each port of call, with the cycle recommencing the next calendar year. We do not provide invoices for aircraft clearance or arriving international air passenger fee collections either. Air carriers remit theses collections on an honor basis in accordance with our current regulations.

Several commenters asked whether APHIS can demonstrate that it is currently collecting all the revenues it is entitled to receive through the AQI program. The commenters stated that, if there are shortcomings in internal processes which result in lost revenues from some sources, other program fees should not be increased to compensate.

As mentioned in the proposed rule, APHIS recently conducted a comprehensive fee review to determine the current cost of specific AQI services supported by user fees. That review determined that the AQI program was not recovering the full cost of its fee services, including costs of administering the user fee program and maintaining a reasonable reserve in the fee accounts. Some of this non-recovery is due to the fact that most of the current fees do not accurately reflect the current full cost of the services related to those fees. However, some of this non-recovery is also due to prior APHIS policy that capped fee collection for certain classes of commercial conveyances within a calendar year and that exempted certain classes of users from fee collection. The adjustments to the current AQI user fees are designed to recover the full cost of providing AQI services, commensurate with the class of persons or entities paying the fees, and are based on an analysis of our costs for providing services in FYs 2010 through 2012, as well as our best projections of what it will cost to provide these services in FYs 2015 through 2017. The adjustments will also allow us to maintain the AQI reserve account. These user fee adjustments are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

Two commenters asked for confirmation that the reserves will be kept within the AQI user fee program and not used for any other APHIS program. One commenter asked for additional information regarding how AQI user fee reserves are dispersed. The commenter noted that the AQI reserve is intended for use during periods of low import flow, but asked for clarification of what specifically constitutes a lower flow of imported products. One commenter asked if there is a way for stakeholders to have input on when and how the reserves are used and asked whether the reserves will be carried over from each fiscal year and be allowed to accumulate.

By law APHIS collects AQI fees to fund the AQI program. These funds may not be used to supplement or pay for any program in APHIS or CBP that is not directly related to the AQI program. Any excess of user fee collections over costs remains available from year to year in a dedicated reserve account to be used only to fund AQI and related program costs. OMB actively monitors AQI reserve levels keeping in mind our goal of maintaining a 90- to 150-day operating reserve. OMB provides oversight of the AQI funds and the funded reserve. Low import flow occurs when the number of imports diminishes enough that we are unable to meet the 3- to 5-month reserve. As we have noted, we have sought stakeholder input throughout this rulemaking process and would do so again in any future rulemaking involving AQI user fees.

Economic Impacts

Numerous commenters stated their opposition to the proposed AQI user fee increases on the grounds that they would create economic burdens on U.S. small businesses.

The increases in AQI user fees have been methodically derived using activity-based costing. With the rule, AQI service recipients will pay fees that more closely match the costs of providing those services. We do not expect the AQI fee increases to create significant economic burdens for a substantial number of U.S. small businesses. The additional burden will vary by user fee class (mode of transportation) because the cost of providing the AQI services varies by class and each user fee class has its own current fee deficit (or in the case of air passengers and cargo railcars, fee surplus). By user fee class, the burden will be proportional to the extent to which an entity is engaged in transporting goods to the United States, that is, the cost to businesses that make fewer entries at ports will be proportionally less than the cost to businesses that make a greater number of entries. Small businesses within each class will not be disproportionately impacted. We discuss the potential impacts of the rule on small businesses later in this document, beneath the heading "Executive Orders 12866 and 13563 and Regulatory Flexibility Act."

A few commenters stated that the imposition of new user fees could set back the maritime industry's slow recovery from the recession, particularly small and medium firms involved in the trade of perishable goods throughout southern Florida. In particular, several of these commenters stated that the fees we proposed could cause economic hardship on flower producers and the cut flower industry.

A few commenters acknowledged that user fee increases were necessary, but opposed the magnitude of the increases we proposed, citing concerns to small businesses involved in importation and transportation.

Also, several commenters stated that the fees we proposed will have a negative effect on trade relations between Peru and the United States. They stated that the proposed fees affect jobs and consumers in the United States as well as in Peru and specifically noted that the Peruvian asparagus industry is connected with American consumers through a large chain of importers, carriers, organizations, and retailers.

In addition, the Government of Chile expressed concern that the compounding effect of our proposed fee increases for overtime services (contained in a separate proposed rule published in the Federal Register on April 25, 2014 (79 FR 22887-22895, Docket No. APHIS-2009-0047)), for conveyances and for treatment will have a negative effect on trade between Chile and the United States. Particular concern was expressed about how the new treatment fee proposed in this rulemaking could disproportionately affect Chile’s agricultural exports, because shipments of fresh fruits from Chile are subject to fumigation requirements.

As noted above, we are lowering the treatment fee in this final rule from the $375 originally proposed to $237 while we attempt to develop additional cost-cutting measures in our treatment operations. APHIS will phase this fee in over a period of 5 years. This change will reduce the burden caused by the introduction of the treatment fee on affected entities, including Chilean exporters. As we have already noted, overtime fees will only apply to treatments conducted outside normal business hours. Under the FACT Act, the Secretary of Agriculture has the discretionary authority to prescribe and collect user fees sufficient to cover the cost of providing AQI services. As amended, the Act stipulates that the fees be commensurate with the costs of AQI services, with respect to the class of persons or entities paying the fees. With the exception of the treatment fee and cruise passenger fee, the fees in the proposed rule are long-established fees, and, as explained in the rules that established them, the fees are necessary for us to recover the costs of providing AQI services to the conveyances and passengers to which they apply. Similarly, for the reasons explained in the preamble to the April 2014 proposed rule and in this document, we have determined that the new cruise passenger and treatment fees are necessary to recover the costs we incur in connection with providing AQI services to such passengers and cargo.

Several commenters stated that the proposed fee for AQI treatment services and the proposed increases in fees for cargo vessel and aircraft inspections will result in significant trade barriers for importers of perishable products such as cut flowers and fresh produce.

We have statutory obligations under the Animal Health Protection Act and Plant Protection Act to prevent the introduction or dissemination of animal and plant pests and diseases into the United States. When we consider a shipment of plants or plant products to pose an unacceptable plant pest risk, whether because of a pest discovery at the port of arrival or otherwise, phytosanitary treatment can allow the shipment to enter the United States. If the shipment is not considered to pose an unacceptable plant pest risk, no treatment is required and no fee for AQI treatment services will be incurred. AQI services, including those for overseeing treatments, enable trade that would not be able to otherwise take place. The fee for AQI treatment services and the increases in user fees for truck, cargo vessel, and aircraft inspections have been calculated using the ABC methodology to ensure that the fees collected, by class, are commensurate with the costs of the AQI services provided.

One commenter stated that APHIS should quantify benefits of inspections with results and workload projections.

The collection and analysis of data on pest interceptions and workload trends are mainstays of the AQI program. CBP and APHIS use the data in numerous ways to inform operational and staffing decisions and planning. As noted elsewhere in this rule, workload projections were used in setting the AQI user fees. While that data is indispensable for those purposes, our RIA for this rule did not quantify, in an economic sense, the benefits associated with pest detections (as the avoided costs of a pest outbreak would be speculative) or workload projections.

A number of commenters pointed out that, in the preamble of the proposed rule, we cited the impact of the 2010 economic recession on AQI user fees collected. The commenters stated that levels of imports and exports have increased significantly since 2010, and asked whether there was still a basis for the rule given this increase in trade. Similarly, another commenter stated that the proposed fee raises are based on dated information, and that since the time of the study, many inspection costs have gone down.

The 2010 recession decreased our AQI fee reserve account. The account has been used to ensure the AQI program continued to fully operate when there were instances in which the fees we assessed did not provide revenue sufficient to support the AQI services rendered. The recession underscored the inefficiency of using the reserve to recover ongoing AQI-related costs in such a manner, and highlighted the need to charge user fees that ensure full cost recovery for those services, especially in times of economic downturn. It also highlighted the need to ensure that all user fee schedules are set using a methodology that will result in cost recovery for those services. The ABC method used to inform the fee schedules in the proposed rule is such a methodology. It is important to note that AQI services increase when imports increase. We have set our fees based upon the activity cost of the services delivered. Revenue generated from the fees will reflect the change in services delivered. In the economic short run, the reserve may be used to support temporary increased AQI program levels so that fees would not require an emergency adjustment.

In addition, we note that an increase in trade, in and of itself, would not increase our user fee reserve. In fact, insofar as we would have to provide AQI-related services more frequently, an increase in trade could accelerate depletion of the reserve if fees do not recover the costs per service rendered.

A commenter stated that the fee for AQI treatment services will not be neutral, that it will cause importers to alter shipping choices in order to minimize the fee cost rather than maximizing their commercial efficiency.

Phytosanitary treatments and their AQI oversight are integral activities when it is determined that a shipment is considered to pose a plant pest risk. Currently, AQI treatment monitoring is provided to importers at no direct cost. The rule will bring that cost into the importer's decisionmaking process. One outcome of that process may in fact be importers undertaking activities, where possible, to ensure shipments are more likely to be free of actionable pests before arrival at the U.S. port of entry. We would also note that the downward adjustment of the treatment fee in this final rule will make the cost to importers lower and less burdensome.

Some commenters stated that a phase-in period would allow affected entities to adjust to the new fees and prevent disruption of trade. One such commenter noted that the proposed fees for commercial aircraft, maritime vessels, and trucks with and without transponders include adjustments up to three times current fees, which will likely disrupt the movement of agricultural products because many smaller companies that ship agricultural products may have difficulty adjusting to such drastic fee increases. Many of these commenters suggested a phase-in period of 3 to 5 years.

While we recognize that for several of the classes of service users, the percentage increase in fees are sizable, we emphasize that the proposed fee levels have been methodically determined through the ABC methodology to be the amounts needed, by class, to cover the costs of the services provided. The changes in fees are based on projected levels of AQI services required and projected resource costs of providing those services. APHIS will phase in the new treatment fee in order to reduce the impact on those firms that provide the service, and allow those firms receiving the treatment fee to adjust their price structure accordingly. A phase-in of all other proposed changes would delay achieving the rule’s objectives: Increased user fee funding of AQI services; reduced reliance upon appropriated funding of AQI services; making AQI fees by class more commensurate with the services provided; and replenishment of the reserve. Moreover, this is the first major adjustment to AQI user fees in nearly 10 years. Other than minor adjustments for inflation from FY 2000–FY 2010, the fee rates have not changed even though the AQI program has hired several hundred additional inspectors and incurred other costs to meet the increasing need caused by a large increase in arriving international passenger and cargo traffic.

Several commenters specifically opposed the proposed treatment fee and cited potentially negative economic impacts, including job losses, increased prices for U.S. consumers, and loss of trade. Several of these commenters stated that because importers would have to pay this fee to individually fumigate small batches of flowers, the fee could increase the total price per-box of flowers by 200 percent, and that the fee would have a severe economic impact on perishables imported through South Florida.

The objective of fumigation and other AQI treatments is to ensure that agricultural goods and commodities entering the United States are free from viable plant pests and noxious weeds that would pose a risk to the health of the U.S. domestic agriculture and natural resources. The AQI treatment fee is designed primarily to recover the costs of APHIS services for monitoring fumigation and other types of treatment for pests to ensure it is conducted properly. As we noted in the proposed rule, no fees are currently collected by APHIS for these services. Importers have been receiving, and benefitting from, these services without paying a fee until now. Further, we have attempted in this final rule to increase the equitability of the fee by charging a flat fee for services rendered during normal business hours, and the flat fee plus an overtime charge for services rendered after normal business hours, thereby adjusting the fee downward from that which we originally proposed. APHIS will phase this new fee in over a period of 5 years.

A commenter suggested that rather than charging a flat fee per treatment, APHIS could assess user fees more equitably based on the number of pallets in a shipment. By charging the flat treatment fee, while charging considerably less for the inspection of trucks and railroad cars, APHIS, according to the commenter, would be making importers and exporters pay a disproportionate amount of APHIS' costs.

We note that user fees based on the quantity or the value of a shipment do not necessarily correspond to the actual cost of providing the AQI service. For example, the cost of monitoring a fumigation treatment for a large number of pallets is about the same as the cost for a few pallets, since an APHIS inspector would be required to be present for most of the treatment and always at the beginning and the end of the procedure regardless of the quantity of pallets being treated.

A few commenters asked whether the same cost should apply to verifying that a treatment occurred as the cost of actually conducting a treatment. The commenters cited treatment verification for Peruvian asparagus, which they stated involves reviewing a set of charts to ensure that the treatment was conducted according to the requirements. The commenters stated that the fee for verifying that a treatment was conducted satisfactorily should not be equal to the fee for conducting a treatment.

We disagree with the commenters' characterization of APHIS' involvement in verifying treatments of Peruvian asparagus. APHIS officials do not simply verify documentation to establish that a treatment, such as a fumigation, took place. APHIS pressure tests the containers, prescribes the amount of gas, and verifies the amount of gas that has been used. APHIS also conducts readings of gas concentrations at set intervals during treatment. These readings are used to determine whether the proper amount of gas is being used during treatment and to certify the treatment once it is adequately completed.

Some commenters stated that the proposed user fee for AQI treatment services will lead foreign exporters to seek markets with easier access and thereby create potential shortages and higher prices for cut flowers and off-season fresh produce. Commenters also stated that many times when there is a pest discovered in a shipment of cut flowers, for example, the number of boxes requiring treatment is minimal. In such instances, given the proposed AQI treatment fee in addition to fumigation costs, importers may decide to return the shipment to the country of origin rather than have it treated for entry.

We expect any diversion of trade away from the United States in response to the fee for AQI treatment services will be minor and not affect the U.S. economy significantly. Possible economic effects will be further diminished by the downward adjustment of the fee in this final rule. The size and breadth of U.S. demand for imported cut flowers and off-season fresh produce are large. The growth in these markets in recent years reflects U.S. consumers' willingness to pay for these commodities. The return of an infested shipment to the country of origin rather than its treatment will be a case-by-case decision of the individual importer based on costs and expected returns. In the case of imported cut flowers and fresh produce, we expect that the fee for AQI treatment services may in fact prompt increased marketing efficiencies if potential plant pest risks can be addressed prior to the U.S. port arrival. These commodities are treated at the port of entry if they are considered to pose a plant pest risk. If not, no treatment is required and the fee for AQI treatment services will not be incurred.

Several commenters stated that the proposed user fees generally run counter to the cross-border initiative between Canada and the United States to facilitate trade. Another commenter stated that increasing AQI fees that directly impact cross-border North American Free Trade Agreement (NAFTA) trade does not support a policy for reducing regulatory and trade burdens. These cooperative initiatives should review whether fees, such as the AQI user fees, should be required among the three NAFTA countries covered.

CBP and APHIS have conducted inspections and collected AQI user fees at the Canadian border since 2007 without any major collection-related issues inhibiting trade at the border. In addition, several initiatives established between the United States and Canada focus on regulatory cooperation and development of a perimeter approach to reduce risks to North America and to facilitate cross-border trade. The goal of these initiatives is to establish mechanisms for ongoing regulatory cooperation for issues of mutual concern. The Regulatory Cooperation Council (RCC) was established to facilitate closer cooperation between our two countries to develop smarter and more effective approaches to regulation. The AQI cost analysis is not counter to the commitments the United States has made to Canada under the RCC initiative, and is consistent with the goals and history of this and other initiatives.

Several commenters from the transportation sector opposed the proposed increases to AQI user fees, citing the increased cost of inspection and shipment of agricultural items across borders. Many of these commenters referred specifically to the proposed increase in the truck transponder fee. A few commenters stated that increasing transponder fees will slow down the flow of traffic at border crossings with Canada by reducing the number of transponders purchased, thereby increasing the number of cash collections at the port of entry. The commenters stated that this is not only time-consuming for border officials, but that other scarce CBP resources must also be assigned to completing reports on these activities and ensuring all financial documentation is completed.

One commenter stated that the biggest barrier to increased use of transponders has been the initial one-time payment, because owners/operators of long-haul trucks that do cross the border are often reluctant to purchase the transponder if they are not certain about their number of border crossings in a given year. The commenter stated that a 205 percent proposed fee increase will only create more difficulties in increasing transponder usage and recommended that APHIS should offer the transponder for sale on a payment program. Similarly, another commenter stated that the proposed fee increases will significantly extend the number of border crossings carriers will need to undertake to justify the use of transponders, thereby discouraging more carriers from using this technology.

Another commenter also noted that the commercial transponder fee would increase from $105 to $320 annually, for a 200 percent increase. The commenter stated that such a large increase may be unaffordable for small carriers to pay on an annual basis. The commenter also stated that it may be more feasible to provide payment options and explore a tiered approach over a time period rather than the entire amount all at once. The commenter stated that similarly, the proposed per-truck fee increase from $5.25 to $8.50 would seem to disproportionally hit small truckers, who tend to operate on a more transactional basis. The commenter stated that, incentives to apply the per-truck fee toward consolidation for securing the transponder might be appropriate.

As noted earlier, due to the change in the methodology we are using to calculate the reserve amounts, both the individual crossing and transponder fees are lower in this final rule than those we originally proposed With the rule, the cost of the transponder will be equivalent to approximately 40 times the single-crossing fee, as opposed to the current 20 times the single-crossing fee. Despite its higher cost, purchase of a transponder will still provide cost savings for most cross-border trucking firms (the average number of crossings per firm is 97 per year) and will also reduce their paperwork and wait times. Because for most cross-border trucking firms the cost of the transponder will still be more economical than paying the single crossing fee for each crossing, we disagree with commenters that the firms are unlikely to pay the increased transponder fee, and do not anticipate a significant increase in the collection of single-crossing fees at the U.S./Canada border as a result of this rule.

We also note a number of ancillary benefits associated with transponder use that should encourage continued use. Small businesses, as well as large ones, develop their annual business models based on projected levels of revenue and expenditure, for which there is always an element of uncertainty. Use of a transponder not only effectively reduces the AQI fees, but importantly, reduces the time spent crossing the border.

In short, we do not expect the increase in the AQI fees for trucking firms, with or without transponders, to significantly harm a substantial number of small businesses. We believe many if not most small businesses will continue to accrue benefits gained through the use of transponders. A system whereby payment for a transponder could be distributed over the year cannot be efficiently administered at present and would increase the annual cost of a transponder. Moreover, such a system would not reduce the level of uncertainty businesses face when planning for the future, including when deciding whether or not to purchase a transponder.

Commenters stated that the proposed increase in the commercial aircraft user fee would be extraordinarily burdensome for smaller-capacity passenger flights commonly deployed in flights from Mexico, Canada, and the Caribbean, and the new fee is not commensurate with the inspection time required for these flights.

Aircraft with 64 or fewer passenger seats are in fact exempt from the AQI commercial aircraft inspection fee if they serve only beverages and snacks that do not contain fresh fruits; fresh vegetables; or meats from ruminants, swine, or poultry; and carry cargo other than fresh fruits, fresh vegetables, plants, unprocessed plant products, cotton or covers, sugarcane, or fresh or processed meats. Arriving aircraft that do not meet these conditions pose a sanitary or phytosanitary risk. We have a statutory obligation under the Animal Health Protection Act and the Plant Protection Act and to prevent the introduction or dissemination of animal and plant pests and diseases into the United States.

One commenter stated that the proposal to introduce a commercial vessel (cruise) passenger fee of $2 could negatively impact Florida's tourist industry if cruise lines see advantages to taking their ships to less expensive foreign ports.

The FACT Act gives APHIS authority to charge a fee for all international passengers. Moreover, we note that the average cost of a cruise ticket is substantially more than the $1.75 passenger fee. Further, the cruise passenger fee will be assessed on a per-ticket basis, as is the case for international air passengers, so that cruise passengers will have to pay it only once per voyage. The commercial vessel (cruise) passenger fee will apply only to tickets purchased on or after the effective date of this final rule. For these reasons, we do not expect that the new fee will require the cruise industry to make significant adjustments to port calls or other business practices.

In addition, several commenters were concerned about the impact of the proposed commercial vessel (cruise) passenger AQI fee for international cruise ships. One commenter suggested that a 3-month time frame for implementing the proposed fees is insufficient for the maritime transport industry and suggested a minimum of 9 months for implementation. The commenter added that costs will be difficult to bear in the short-term when factored against multiple conveyances within a company.

We do not agree with these commenters. As noted above, we do not expect that the increased fee will require the cruise industry to make significant adjustments to port calls or other business practices. Phasing in the new fee, as the commenters recommend, would not allow us to recover the costs we incur for screening cruise ship passengers.

A commenter stated that the new commercial vessel (cruise) passenger fees could mean an overall increase from $7,440 to over $600,000 in fees for a single ship for 1 year. The commenter also asked for confirmation that the per-passenger fee would only be assessed one time per voyage as opposed to each U.S. port call during a voyage.

As there is currently no AQI fee for commercial vessel (cruise) passengers, we are uncertain of how the commenter arrived at the numbers cited. Regarding the question about assessment of the passenger fee, it would only be assessed one time per voyage (i.e., upon arrival in the United States) as opposed to each U.S. port call during a voyage.

A few commenters stated that the proposed treatment user fee adds costs that could derail the cold treatment pilot program in south Florida and negatively impact the economy in other regions where cold treatment programs are established.

As with cold treatment completed in transit on certified vessels, treatment performed at U.S. facilities requires oversight and will be subject to the fee for AQI treatment services. Approval of cold treatment equipment and checking of records helps to ensure that pest risks are kept at an acceptable level. APHIS has been working to automate this process, which is expected to eventually result in lower costs and a corresponding reduction in the fee for AQI cold treatment services. In the near term, the reduction in the treatment fee in this final rule will lessen the burden on entities importing commodities that require cold treatment. Cold treatment programs that operate under a trust fund agreement will be exempt from paying the fee.

Several commenters stated that the proposed fee increases are exorbitant and may not be representative of the service provided. The commenters noted that some services, such as fumigation, are performed almost exclusively during overtime hours, but APHIS gives the impression in Federal Register notices and the related documents that the costs for this work are not covered.

As has been described, APHIS employed ABC methodology to ensure that the new AQI user fees are commensurate by class with the costs of providing AQI services. For some classes, such as bus passengers, private vehicles, and pedestrians, transaction costs of creating and operating fee collection systems would be overly burdensome. As we have already noted, in this final rule, we have removed the overtime component from the flat user fee, thus lowering that fee to $237, phased in over 5 years; however, in order to recover our costs, we will need to charge overtime fees as appropriate.

A commenter stated that the treatment user fee will mean organic fruits and vegetables cannot be sold as organic.

Our proposal to recover AQI service fees for treatments against plant pests has no direct effect on whether fruits and vegetables can be sold as organic. While we propose a service fee for such treatments, the proposal makes no changes to existing treatment requirements. Shipments that are free of quarantine pests, or that do not require irradiation, methyl bromide, or other chemical treatments are able to keep their organic designation.

Fairness Issues

Many commenters expressed concerns about what they perceived as inequities in our proposed AQI user fee structure. Commenters representing, among others, pest-treatment providers, cargo and passenger conveyance industries, and importers and exporters, viewed the proposed fee increases and/or the imposition of new fees as unfairly burdensome to the entities on whose behalf they advocated. Some also suggested that the proposed fees were not commensurate with the actual costs of the AQI services provided. These issues are discussed in detail in the sections that follow.

Treatment Fee

Some commenters stated that having to pay not only the new treatment fee but also overtime fees for treatments conducted outside of regular business hours would place an undue financial burden on smaller importers and the fumigators that treat their cargo. In addition, some of these commenters viewed the requirement to pay both fees as unfair because they felt that the fees were duplicative to some extent, i.e., that the affected entities would be charged twice for the same services.

As noted above, overtime fees will only apply when treatments are conducted outside normal business hours. The $237 treatment fee contained in this final rule only covers the costs we incur in providing treatment-related AQI services during normal business hours. This approach is more equitable in that those requesting services after hours are causing the government to incur a greater cost. This cost should not be subsidized by firms that transact business within the normal hours. Since APHIS charges the firm providing the fumigation services, there should be opportunities for the smaller importing firms to work with the fumigator to consolidate several fumigations so that the single AQI charge is divided between the firms accordingly.

Commenters stated that the proposed flat fee of $375 per enclosure or treatment seemed to be disproportionately high for those treatment providers with small enclosures or treatments and disproportionately low for those with large enclosures or treatments. It was suggested that in the latter case, the fee collected by the fumigator from the importer could fall far short of the expenses incurred in providing the treatment. It was stated further that the main and the only direct treatment cost to be captured is the inspectors' time. It was suggested that a better way to charge the user for the actual costs APHIS and CBP incur would be to charge a fee as a dollar per hour of inspector time instead of an arbitrary fee per enclosure or treatment. This method, it was stated, would be more equitable, especially to small business or businesses bringing in small shipments.

Contrary to the commenters' assertion, there is not a significant difference between the time required for the monitoring of smaller enclosures and that required for the monitoring of larger ones. The level of effort required by APHIS personnel is the same regardless of the amount of product that is undergoing a fumigation treatment. Our costs, therefore, are the same, and the fees accurately reflect those costs. The reduction and phasing in of the treatment fee in this final rule will lessen the burden on both large and small entities that are subject to the fee.

A large number of commenters stated that imposing the same flat fee for different types of treatments was inequitable because some types of treatments are more labor-intensive than others and require more personnel and more time. It was recommended that APHIS reevaluate the fees. According to the commenters, such a reevaluation would likely result in our assessing different fees for different treatments, e.g., for cold treatment versus fumigation.

APHIS uses a labor survey to determine the level of effort required by AQI personnel to conduct various AQI activities, including those associated with treatments. Thus, for example, the monitoring of cold treatments requires work by APHIS unseen by the payer of the fee. This includes the analysis of the transmitted data. This is a direct service delivery and should not be confused with support costs, since the cost is incurred for each cold treatment monitored. The data we collected using our ABC methodology did not reveal a significant enough difference in the amount of labor associated with different treatments to warrant a more complex fee structure.

The April 2014 proposed rule contained a provision requiring treatment companies to be responsible for collecting the treatment fees from importers and remitting them to APHIS. Many commenters objected to this provision. It was stated that the requirement would impose substantial financial and administrative burdens on treatment providers, especially smaller entities. Among other things, treatment providers would have to hire additional administrative staff and establish dedicated bank accounts to prevent the remittances from being commingled with other company funds. It was suggested that the billing systems and infrastructure already exist for APHIS to bill treatment companies for the inspectors' time and labor. One commenter stated that a more equitable means of collecting the fee would be for APHIS to bill the shipping line or agent directly.

We do not agree with these comments. A large number of treatment providers do in fact already have mechanisms in place to collect and remit fees. The majority of fumigators are already collecting and remitting fees for overtime services that are currently being incurred. APHIS provides the treatment oversight service directly to the party that provides the fumigation service. While the imported commodity is owned by others, the treatment responsibility lies with the fumigator, who is ultimately responsible for the success or failure of the treatment; therefore, the fumigator should remit the fees. If APHIS were to bill importers for the cost of AQI treatment services, the fumigator would still be responsible for providing APHIS with necessary information on the commodities being fumigated, including the identity of the importers and each one’s percentage share of a particular treatment, for APHIS billing purposes.

Aircraft and Air Passenger Fees

Commenters expressed a number of concerns regarding the equity of the proposed air transport and air passenger fees, with many objecting to the magnitude of the increase in the former.

Some commenters recommended that APHIS create a fee schedule for aircraft that would distinguish between categories of users. It was stated that the proposed rise in the commercial aircraft inspection fee was not warranted for smaller aircraft and would besides be extraordinarily burdensome for smaller-capacity passenger flights commonly deployed in flights from Mexico, Canada, and the Caribbean. Some commenters stated that APHIS should expand its small aircraft exemption to include aircraft with 100 or fewer seats. Other commenters stated that the April 2014 proposed rule does not provide reasoned justification for the increase in the commercial aircraft inspection fee specific to small commercial jet aircraft with 20 or fewer seats. According to the commenters, inspecting smaller aircraft, such as commuter planes, imposes less of a cost burden on APHIS than does inspecting larger airliners. Some smaller aircraft may carry only passengers' luggage and not cargo and therefore impose a minimal cost burden on APHIS. Smaller aircraft, it was asserted, should therefore be charged a lower fee, commensurate with that lower cost burden, if not exempted from the fee altogether

We do not agree with these commenters. As noted earlier, aircraft with 64 or fewer passenger seats are, in fact, exempt from the AQI commercial aircraft inspection fee if they are: (1) Not carrying the following cargo: Fresh fruits, fresh vegetables, plants, unprocessed plant products, cotton or covers, sugarcane, or fresh or processed meats; and (2) do not offer meal service other than beverages and prepackaged snacks that do not contain meats derived from ruminants, swine, or poultry or fresh fruits and fresh vegetables. Additionally, because they are usually short in duration, they usually offer only drink service and light, prepackaged snacks such as peanuts. They thus would be exempt from paying the fee. Any arriving aircraft, regardless of size, that do not meet these conditions may pose a sanitary or phytosanitary risk and need to be inspected. We have a statutory obligation under the Animal Health Protection Act and the Plant Protection Act to prevent the introduction or dissemination of animal and plant pests and diseases into the United States. As noted elsewhere, the size of a particular means of conveyance does not necessarily correspond to the amount of time it takes to conduct inspections of the conveyance.

A commenter representing a Canadian airline stated that APHIS' imposition of the aircraft inspection user fee on passenger aircraft operating U.S./Canada trans-border service violates U.S. and international law. According to the commenter, the fee violates the FACT Act by being applied without regard to the class of aircraft, despite the difference in cost burdens associated with the different classes. In relation specifically to Canada, the proposed fees were said by the commenter to violate Article 9 of the 2007 U.S.-Canada Open Skies Agreement, which requires that fees be "just, reasonable, not unjustly discriminatory, and equally apportioned among categories of users." The commenter urged us to reinstate the exemption provided to carriers operating U.S./Canada services that existed prior to 2007, since there has been no evident enhancement of inspection services to justify the removal of that exemption.

We do not agree with these comments. The FACT Act requires that AQI user fees be commensurate with the costs we incur in performing our AQI activities with respect to the class of persons or entities paying the fees. The adjusted fees are necessary for us to better ensure that we recover our costs of providing AQI services, and, as noted above, the costs we incur for inspecting commercial aircraft do not differ significantly due to the size of the aircraft. Further, the fees do not in any way discriminate against Canadian air traffic. Aircraft from any country arriving in the United States are subject to the same fees. We do not agree with the recommendation by the commenter to restore the user fee exemption for air carriers operating between the United States and Canada. When the exemption was in effect, we were not recovering the costs of conducting those inspections, and shortages of funding and personnel hampered our inspection efforts.

Some commenters objected to our levying both commercial aircraft and commercial air passenger user fees. It was stated that, while the FACT Act permits the use of passenger fees to pay for inspections of the aircraft, by charging both passengers and operators inspection fees, we are, in effect, collecting double payments. Such double charging, it was stated, is not permissible under the provisions of the FACT Act and cannot be justified on the basis of cost data. It was noted that in the preamble to the April 2014 proposed rule, we stated that the costs of inspecting cruise ships would be covered by the proposed commercial vessel (cruise) passenger fee alone. One commenter asked the following question: If the international air passenger user fee must by law fully cover the AQI costs associated with inspecting the aircraft on which the passenger arrived, what costs, then, does an aircraft fee applicable to commercial passenger aircraft cover? Other commenters recommended that we exclude commercial passenger aircraft from aircraft inspection fees, since the costs of conducting such inspections is paid for by the passenger fees.

We do not agree with the suggestion by the commenters that we are double charging or violating the FACT Act by imposing both an aircraft fee and an air passenger fee, since the respective fees cover different costs. As noted in the preamble to the April 2014 proposed rule, the air passenger fee covers our costs for, among other related things, screening passengers upon arrival for agricultural products by CBP Agriculture Specialists and CBP officers; inspecting baggage using CBP agriculture canines and specialized non-intrusive inspection equipment; inspecting the interior of the passenger aircraft; monitoring the storage and removal of regulated international garbage from the aircraft; safeguarding and disposing of any seized or abandoned prohibited agricultural products; and identifying pests found on prohibited agricultural products brought into the country by air passengers. The commercial aircraft fee covers, among other related things, costs we incur in reviewing manifests and documentation accompanying incoming cargo; targeting higher-risk cargo for inspection or clearance; inspecting agricultural and agricultural-related commodities, international mail, expedited courier packages, containers, wood packaging and other packing materials and determining entry status; inspecting the aircraft hold or exterior for contaminants, pests, or invasive species; identifying pests found during those inspections; and safeguarding shipments pending PPQ determination for treatment or final disposition. Based on our ABC analysis, we determined that the air passenger fee is not adequate to recover all the costs we incur in inspecting both passengers and aircraft, while the sea passenger fee is adequate to recover the costs we incur in inspecting both passengers and cruise ships.

In the April 2014 proposed rule, we proposed to reduce the air passenger inspection fee from $5 to $4. One commenter objected to lowering that fee on the grounds that most quarantine material is seized from air passengers and that, therefore, the lower fee would not be commensurate with the labor required for inspection of such passengers.

We do not agree with this comment. As we noted in the preamble to the April 2014 proposed rule, our ABC data indicated that, if not adjusted, the air passenger fee was going to generate revenues in excess of that required to support anticipated costs. As a result, we proposed a 20 percent decrease in this fee (from $5 to $4) to better align the fee with the cost of activities related to air passengers. We have since lowered this fee further, to $3.96, due to the change in our methodology for calculating the reserve. The commenter did not present data that would support the position that the adjusted fee was too low.

Commercial Truck Fees

Some commenters stated that the proposed fee increase for commercial trucks, from $5.25 to $8 ($7.55 in this final rule), could put Canadian and Mexican products at a competitive disadvantage in comparison with products from other foreign countries that are subject to the same international trade obligations. It was claimed that the fees for commercial truck shipments are effectively higher than the fees for the other transportation modes by means of which most other countries ship their goods to the United States.

We do not agree that fees for commercial truck shipments are effectively higher than the fees for other transportation modes. As we have noted, our AQI user fees are intended to recover the costs we incur in providing AQI services and are set on that basis. These fees are based on the cost of services provided, using the ABC methodology referred to above. Fees for various conveyances are calculated based on the projected number of conveyances subject to inspection within each transportation mode, using standard units such as a truck or airplane. Inspection costs are driven by a number of factors, including number of conveyances, risk targeting, and other criteria, but costs are spread among all conveyances subject to inspection.

Other commenters expressed the view that the proposed commercial truck fee was inequitable because while the majority of trucks crossing the bridges between the United States and Canada do not carry food or agricultural items, the fee would be applied to all trucks. Commenters stated that the universal application of the truck fees contradicts the premise of the

ABC approach and results in an unfair application of the user fee to those trucks that do not use the service because they do not carry agricultural products.

We do not agree with this comment. Any cargo, whether agricultural or non-agricultural, or conveyance could potentially carry hitchhiking pests, seeds, or contaminants. For example, wood packaging material, such as wooden pallets, which are used to ship such nonagricultural products as electronic items, can carry wood-boring insects, noxious weed seeds, gypsy moths, and other hitchhiking pests that can attach themselves not only to nonagricultural items but also to the vehicles conveying them, thus posing an additional concern. In addition, prohibited soil may be attached to the articles in a shipment or to the conveyance itself. To allow us to mitigate these risks adequately, any commodities and the conveyances that carry them may be subject to inspection. Additionally, we note that, under the scenario proposed by the commenters, we would still need to inspect commercial trucks in order to determine that they were not carrying agricultural products.

Commenters stated that commercial conveyances operating under CBP's Customs-Trade Partnership Against Terrorism (C-TPAT) program pose a much smaller threat of importing items of concern to APHIS than do buses or private vehicles, which are exempt from AQI user fees. It was suggested that, at a minimum, therefore, APHIS, in coordination with CBP, should consider a reduced AQI fee for C-TPAT-certified motor carriers.

The C-TPAT program seeks to prevent the disruption of international trade via terrorism. While C-TPAT members may be considered low-risk in terms of terrorism, this program does not have an agricultural phytosanitary component and does not eliminate the need for conducting agricultural inspections.

Some commenters stated that the commercial truck fees violated Executive Order 13563, which requires Federal agencies to integrate their regulatory efforts when there are overlapping regulatory requirements. Charging a separate AQI fee for inspecting commercial vehicles when CBP is already performing and charging for those services is redundant and unnecessary, according to the commenters.

We do not agree with this comment. APHIS and CBP do not have overlapping authorities that would result in charging for the same services. CBP collects Customs user fees to defray certain costs related to the provision of services that ensure that carriers, passengers, crew members and their personal effects comply with customs laws. CBP also collects immigration user fees to defray certain costs related to the provision of services that ensure compliance with immigration laws. APHIS charges AQI user fees for work conducted by CBP under APHIS' statutory and regulatory authority.

Commercial Vessel and Commercial Vessel (Cruise) Passenger Fees

Many commenters representing the commercial vessel industry viewed our proposed fee increases and the proposed imposition of a commercial vessel (cruise) passenger fee as disproportionate, claiming that they unfairly targeted the maritime industry. Commenters stated that the fees were excessively burdensome for the industry and did not in all cases correspond with the cost of the AQI services provided.

As we explained in the preamble to the April 2014 proposed rule, we employed the ABC methodology to determine the costs of AQI services, and this information, along with other factors, was used to define an appropriate fee structure and set fee rates. Entities that are assessed AQI fees are paying to cover the costs that we incur in performing the services that we are required to perform for those entities.

Commenters noted that vessels that transit exclusively on the Great Lakes move mostly dry bulk cargos and not agricultural commodities. Such vessels, the commenters stated, do not pose a risk of spreading agricultural pests or diseases, and often, there is no boarding or AQI inspection of the vessels and their cargo by APHIS personnel. Therefore, according to the commenters, there is no basis in such cases for APHIS to levy AQI fees, since APHIS or CBP personnel are not providing AQI services. It was recommended that the fees for vessels transporting goods exclusively on the Great Lakes not be raised and, further, that such fees be collected only from vessels carrying agricultural commodities.

We do not agree with this comment. As we noted above, any cargo or conveyance may carry hitchhiking pests, seeds, or contaminants. In addition, there could be risk associated with storage of regulated international garbage, plant pest concerns associated with the origin of the vessel (e.g., Asian gypsy moth or khapra beetle), a previous history of carrier contamination, or compliance-related wood packaging material concerns. Therefore, such vessels are subject to AQI inspection conducted by CBP officers. We would also note that the vessel fees cover not only the costs of the AQI inspections themselves, but those we incur in performing, among other things, targeting activities, manifest review, and general oversight.

Prior to this rulemaking, the regulations in 7 CFR 354.3(b)(1) capped the number of payments of AQI fees for individual vessels at 15 per calendar year. In order to recover the costs of administering AQI services to commercial maritime vessels, we proposed to eliminate that cap. Some commenters recommended that we reinstate that cap in the final rule. It was suggested that the elimination of the cap would be burdensome for the commercial maritime industry and extremely so for international flag vessels operating on the Great Lakes. Such vessels, commenters stated, make several port calls per single voyage into the Great Lakes, while other commercial vessels in the same fee class tend to make single voyages with often only one port call and a complete discharge of cargo at that port. Vessels operating on the Great Lakes would therefore be subject to the fees much more often per calendar year than those making less frequent port calls.

We do not agree with the commenters. As we noted in the preamble to the April 2014 proposed rule, our ABC data indicated that by retaining the cap, we would not be able to recover fully the costs of providing AQI services to maritime vessels. Further, the tasks of collecting and administering user fees are less personnel-intensive, and therefore more cost-effective and efficient when the fees are uniform, rather than when there are different fee structures for conveyances or geographic locations that fall within the same general categories. It is true, as the commenters pointed out, that because vessels that make several port calls per voyage into the Great Lakes would be subject to the applicable AQI fees at each port of call, they would be charged more per year than vessels making less frequent port calls. Vessels in the former category, however, would also be making more frequent use of AQI services; therefore, the cost of providing those services to such vessels would be higher for APHIS and CBP.

A commenter stated that the proposed new treatment fee was unfair to the commercial maritime industry because customers of the industry would be heavily impacted while those in other sectors would not. According to the commenter, bus passengers, privately owned vehicle passengers, and pedestrians, all of whom are exempted from the fees, require more of APHIS' resources than do customers shipping or receiving cargo via private maritime vessels. The commenter stated that imposing a new fee structure on a use activity that is currently paying its share through hourly charges, while charging no fees for multiple use activities that are collectively responsible for $223 million in costs to APHIS, goes against the directives of the FACT Act in regard to cross-subsidizing AQI services.

As we noted in the preamble to the April 2014 proposed rule, we are retaining the previously established exemptions for bus passengers, privately owned vehicle passengers, and pedestrians because the collection of such fees would not be cost-effective for APHIS and CBP and could cause backups at ports of entry that could affect international trade. Regarding the cross-subsidization issue, the proposed rule was reviewed for consistency in adhering to the FACT Act. Additionally, GAO has reviewed APHIS' work in AQI fee setting. Based on the findings of those reviews, and our own internal review and assessment, we confirmed that there is no cross-subsidization of AQI programs through user fees occurring.

A commenter expressed the view that the proposed maritime vessel fee increase was unfair to carriers operating in the short-sea-shipping dry bulk markets. Such carriers do not own the cargo they carry, and compensation for its carriage is not directly dependent on the value of the commodity delivered. The carriers operate with very small profit margins to ensure competitiveness, and the proposed fee increase would have an inordinate impact on them. It was claimed that the methodology we used in setting the proposed fees led us to underestimate the impact of the fee increase on such entities. Further, it was stated that the fee increase is not justified where the vessels are not shipping agricultural products and there is no risk of spreading pests or diseases.

In accordance with the FACT Act, which states that the Secretary may prescribe and collect fees sufficient to cover the cost of providing AQI services, and policy of the Executive Branch of the Federal Government, we set our fees at levels that enable us to recover the costs of providing AQI services for each person or entity receiving those services. Regarding the assertion that the increased fees are not justified when vessels are not carrying agricultural products, as noted above, any cargo or conveyance may harbor hitchhiking pests or contaminants.

A commenter stated that the proposed $2 commercial vessel (cruise) passenger fee is a one-size-fits-all mechanism that contradicts APHIS' stated principle of reducing risk by targeting inspections. According to the commenter, by applying the fee uniformly to all passengers, APHIS recognizes neither the principle of risk analysis and reduction nor the extensive differences among cruise operations in general and between individual cruise ship operations that are careful to mitigate the risk of pest or contaminant transmission and those that are not.

We do recognize that risk levels differ among pathways, and the nature of our AQI activities for all commercial vessels, including cruise vessels reflect those differences. To that end, we do employ and will continue to employ targeting of commercial cruise vessels that we consider to pose a higher-than-average pest risk.

However, the pest risk associated with a particular vessel or class of vessels is not static and can change significantly over time. For example, a port of call visited by the vessel may be higher risk for pest introductions during certain months of the year than others. For this reason, it would be untenable for us to attempt to establish and administer a fee system for cruise passengers that was based on levels of risk when we know those levels of risk will fluctuate.

Additional Comments on Fairness Issues

Some commenters stated that the proposed fee adjustments and new fees would disproportionately punish importers with smaller volumes. Others expressed the view that importers and exporters were already paying a disproportionate share of APHIS' costs and should not be subject to additional burdens.

In collecting the fees, APHIS is recovering the costs incurred from both APHIS' and CBP's AQI-related activities. Entities paying the fees are those that use the AQI services that the two agencies provide. The ABC methodology that we employ in calculating our costs and setting our fees associates the cost we incur with the level of staff effort applied. APHIS and CBP staff have to be present at the ports and conduct AQI activities regardless of the size and volume of the cargo or conveyance requiring inspection. Importers and exporters pay only those costs that they incur by using APHIS services.

A commenter stated that the proposed rule favored break bulk shipments over container and air shipments, subjecting the latter two to disproportionate charges because of lot sizes. The commenter further stated that the disparity in charges relative to shipment size would be crippling to smaller companies and those that ship by container. It was suggested that the final rule be revised to prorate the cost of the inspections across all exporters in a way that affects each exporter uniformly and offsets the real costs to perform the necessary inspections, perhaps on a per pound basis. The commenter stated that such revisions were necessary to ensure that each exporter and importer is treated the same, regardless of the size of the shipment.

As noted above, the methodology used to determine the costs of our AQI activities is based upon the time required of APHIS and CBP staff to perform those activities. Those activities must be performed regardless of the size or volume of the shipment or whether or not it is in a container.

Some commenters representing various sectors of the transport industry expressed the view that rather than charging user fees to carriers, APHIS should charge shippers or receivers only for agricultural cargo that requires inspection or certification.

As we have noted above, the cost of inspecting and clearing the carrier itself is considered an AQI activity. Such inspection and clearance are needed even when a conveyance may not be carrying agricultural products because of the possible presence of hitchhiking pests and contaminants.

In contrast to some of the commenters referred to above, who favored exemptions for certain classes of conveyances, other commenters objected to our allowing any such exemptions. It was stated that AQI user fees should be applied equally to all modes of transportation inspected, without complete waivers for select classes.

As we noted above, this rulemaking leaves intact previously established exemptions from user fees for certain categories of conveyances and individuals, including some relatively small commercial aircraft that are not carrying certain regulated cargo, bus passengers, privately owned vehicle passengers, and pedestrians. We determined that collecting user fees for these categories of conveyances and passengers would not be cost-effective for APHIS and CBP. As stated previously, any cost not recovered through a fee is paid through appropriated funding. When the Federal Government cannot fully recover the costs of providing a service, the excess costs are ultimately borne by U.S. taxpayers rather than by the direct beneficiaries of that service. The rationale for collecting user fees is to have those who benefit from a service cover its costs rather than have the general public cover them.

One commenter representing the seed industry stated that industry would prefer to have a system whereby seed cleaning and treatment facilities in the private sector are accredited by APHIS to perform those services without the need for direct supervision or oversight from APHIS or the State designee(s). It was stated that most seed shipments are much smaller and more manageable than bulk commodities and therefore should be treated differently in regard to fees and inspections.

This is comment is outside the scope of the present rulemaking. APHIS will consider the comment, however, as it continues to explore alternate ways to safeguard American agriculture while facilitating international trade.

Commenters suggested that some of the costs of the AQI program should be borne by the general public rather than the users of the AQI services. It was claimed that because, in addition to AQI services, a significant part of the CBP mission is security, the public benefits from services provided at ports of entry. The commenter further stated that APHIS and CBP need to determine how much of their inspection activity is directed toward the public good and how much toward providing services for industry. It was recommended that once that determination was made, the agencies should re-evaluate their proposed fees and adjust them accordingly. Services that benefit the general public, according to the commenter, should be funded by Congressional appropriations or means other than charging user fees to industry.

We do not agree with the comments. While U.S. producers and consumers are indirect beneficiaries of AQI treatment services, importers and operators of the means of conveyance used to import a commodity benefit directly by being able to engage in their respective businesses. AQI user fees charged to commercial trucks, rail, aircraft, and cargo vessels cover the costs of ensuring that sanitary and phytosanitary risks posed by the means of conveyance and the commodities they carry are at an acceptable level. Industry organization and market structure largely determine how the fees or some portions thereof may be passed forwards or backwards. Lastly, we note that the general public does directly pay in part for AQI services from which they benefit indirectly to the degree that appropriated funds are used to support those services not covered by the fees.

Miscellaneous Comments

One commenter stated that the fees were based on the assumption that AQI-related services would be rendered by personnel at the general schedule (GS) grade 10, step 1 level. The commenter stated that AQI services provided by APHIS and CBP tend to be rendered by personnel at the GS grade 11 or 12 levels, and that APHIS may have therefore underestimated the direct cost of services rendered when computing the fees that we proposed.

We agree with the commenter that AQI services are often rendered by personnel at higher GS levels than grade 10, step 1. However, in order to compute the fees, we took into consideration the actual GS grade level of the personnel currently performing the services. We also took into consideration the possibility that personnel rendering the services will be promoted to a higher GS grade level before the fee schedule is revised.

Several commenters stated that any changes to user fees assessed for overtime services provided at ports of arrival would have significant negative effects on the economy, including job loss and increased prices for agricultural products. Several other commenters suggested we include revisions to the overtime user fee schedules in this final rule.

We did not propose to adjust the overtime services fees in this proposed rule. However, in a proposed rule published in the Federal Register on April 25, 2014[3] (79 FR 22887-22895, Docket No. APHIS-2009-0047), we proposed to revise those schedules.

[3] To view the proposed rule, its supporting documents, or the comments that we received, go to http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047.

One commenter suggested that we eliminate overtime fees entirely and consider those overtime costs in setting AQI user fee schedules.

If we were to eliminate overtime fees, importers who operate during normal business hours would substantially subsidize importers who use these overtime services. We do not consider that to be equitable.

Several commenters suggested that, in lieu of user fees, APHIS should request Congressional appropriations for the AQI services we provide. Other commenters pointed out that APHIS has discretionary authority under the FACT Act to charge AQI user fees, but that the Act does not mandate that we do so.

We believe the intent of the FACT Act was for APHIS to charge user fees, commensurate with the costs of services, for certain AQI-related services that were, up to that point, funded through Congressional appropriations. The amendments to the Act clarified that this was to ensure that APHIS recovers the actual costs associated with AQI-related services that we provide; annual appropriations do not guarantee such cost recovery. Making the services contingent on Congressional appropriations once more would be inconsistent with what we understand to be the intent of the FACT Act, and could result in instances in which we do not recover the costs for services rendered. This could, in turn, result in us decreasing the nature or scope of AQI-related services we provide.

One commenter asked that we develop a concrete plan and methodology for setting user fee levels and evaluating their appropriateness.

As documented in the proposed rule and its supporting documents, we have developed such a methodology: The ABC accounting methodology.

One commenter pointed out that we proposed a number of new user fees in the proposed rule. The commenter assumed that this meant that we were also proposing new AQI-related services and initiatives, and proposing a user fee for these new services and initiatives in order to recover costs. The commenter questioned the appropriateness of a proposed rule as a vehicle for expanding the scope of Agency actions in such a manner.

We did not propose to conduct any new AQI-related services. Rather, we proposed to charge an AQI user fee for services that to that point had been provided without a fee. Proposing a new fee schedule through rulemaking is authorized by § 136a(a)(1) of the FACT Act, and is consistent with our obligation under the Administrative Procedure Act to conduct rulemaking for any requirements of general applicability and future effect.

One commenter, an importer, stated that his products are always infested with plant pests, and thus subject to treatment at the port of arrival. He requested that, if he can demonstrate pest freedom for his products at least once, we waive the treatment user fee, contingent on the continual pest-freedom of the products.

The treatment referenced by the commenter is for commodities determined to be infested with a plant pest. If, in the future, the commenter's shipments are determined to be free of plant pests, they will not be treated, and he will not incur the user fee.

Several commenters recommended that we consider certifying third parties to provide AQI-related services.

In recent years, we contemplated initiating rulemaking to establish such an accreditation system for inspection and clearance services of imported commodities. However, we identified several issues that precluded us from issuing such a rule. First, there could in certain instances be a significant financial incentive for the third party to clear products for entry, even if they are infested or present a known plant pest risk. Under this scenario, those under accreditation could realize a financial benefit by clearing products that do not meet U.S. phytosanitary requirements. Second, in order for this not to occur, APHIS would need to exercise ongoing oversight of the third party's services. This would, in turn, minimize the benefits of such third party accreditation. That being said, consistent with OMB Circular A-76, we continue to explore ways to use third parties in order to provide AQI-related services.[4]

One commenter stated that, if the rule were finalized, APHIS should coordinate with CBP in order to ensure that they receive cost recovery for the AQI services they render.

APHIS agrees with the commenter. We have worked closely with CBP to ensure that costs are recovered for AQI services and will continue to do so.

One commenter stated that, because fumigators currently charge importers for their services, the proposed treatment fee was redundant and should not be finalized.

We disagree that the fee is redundant. Fumigators charge for the fumigant used and their services in applying the treatment. The treatment fee that we proposed was for our oversight of the treatment to ensure that it was applied accurately and the treated commodities do not present a plant pest risk. The fumigation fee is charged to the fumigator, since APHIS is providing oversight of the process to ensure efficacy. It is a business decision of the fumigator to pass this cost on to its customers.

Several commenters stated that, instead of revising the fee schedules to ensure full cost recovery for AQI services that we provide, APHIS and CBP should explore cost-cutting measures for those services.

[4] To view the circular, go to http://www.whitehouse.gov/omb/Circulars_a076_a76_incl_tech_correction.

APHIS and CBP are committed to the Federal Cost Cutting Campaign and the principles of Executive Order 13589, "Promoting Efficient Spending." To that end, we continually evaluate our AQI program in order to reduce costs and identify more efficient means to deliver our services. For example, APHIS is establishing a new Analysis and Information Management Program. The goal of this program will be to coordinate analyses that will inform program delivery in the areas of AQI targeting, domestic surveys, and phytosanitary and trade management. APHIS has also committed resources to expand the Agency's involvement with CBP's Commercial Targeting and Analysis Center (CTAC), a facility designed to streamline and enhance Federal efforts to address import safety issues. The CTAC combines the resources and manpower of CBP and other government agencies to protect the American public from harm caused by unsafe imported products by improving communication and information-sharing and reducing redundant inspection activities.

The fee schedule increases that we proposed do not supplant these efforts. However, under Federal policy, when we charge AQI user fees, we do so in a manner to recover the cost of the services rendered. The fee schedules that we proposed would move us closer to such full cost recovery.

If, at a future time, our ongoing efforts to promote efficiencies and reduce costs in our AQI program result in significant cost savings, we will revise the fee schedules accordingly.

One commenter stated that GAO had instructed us to reduce the fee reserve, and we should implement this recommendation.

The commenter is mistaken. Reduction of the fee reserve was not among GAO's recommendations.

Several commenters stated that the rule contradicted the policies set forth in Executive Order 13659, “Streamlining the Export/Import Process for America’s Businesses.”

That Executive Order directs Federal agencies to develop and implement the International Trade Data System (ITDS). ITDS would provide a single portal for businesses to enter data in order to comply with the regulatory and policy requirements of multiple Federal agencies regarding imports and exports. The Order also instructs agencies to “improve the broader trade development of innovative policies and operational processes that promote effective application of regulatory controls, collaborative arrangements with stakeholders, and a reduction of unnecessary procedural requirements.”

APHIS is committed to expeditious deployment of ITDS. Additionally, as noted above, we are engaged in several initiatives to identify more efficient means of delivering AQI services. However, we disagree with the commenters that the proposed rule contradicts the policies set forth in the Order. Nothing in the Order explicitly or implicitly prohibits agencies from charging user fees for import or export-related services. Additionally, Section 8 of the Order specifically states that it does not affect the authority granted by law to an agency. As noted above, discretionary authority has been granted to APHIS under the FACT Act to charge user fees for AQI-related services, and to set fees at a level that leads to full cost recovery for those services.

The same commenters stated that full deployment of ITDS would eliminate the need for user fees.

We disagree. While full deployment of ITDS will facilitate certain AQI-related services and could, over time, reduce costs, certain of the services for which we charge fees, such as inspection of regulated articles and means of conveyance and oversight of treatments, cannot be fully automated and must be performed by authorized personnel.

One commenter stated that the rule appeared to target the commercial aircraft industry. The commenter stated that the industry is subject to frequent “holds” in which inspectors detain and inspect commodities destined for inland hubs, and questioned the manner in which APHIS or CBP determines to select a commodity for inspection. As evidence, the commenter cited an audit in which an express consignment carrier was subject to 1,879 inspections during a 1-week period in 2013, with only 12 shipments being determined to be infested with plant pests. The commenter stated that this indicates inefficiencies in the manner in which APHIS and CBP conduct AQI-related inspections, and that a thorough reevaluation of our criteria for selecting a commodity for inspection could reduce Agency costs and reduce or eliminate the need to increase AQI user fees for the commercial aircraft industry.

The number of times that the express consignment carrier was subject to inspection and the relatively low number of pest detections is not necessarily indicative of inefficiencies in our inspection processes. The commenter is using CBP enforcement metrics to determine efficiencies, that is, seizures resulting in shipments being removed from the shipping continuum. However, these metrics are not appropriate for assessing the effectiveness of AQI inspections. Furthermore, AQI strategies allow for shipments to be reconditioned, e.g., by means of fumigation and cleaning to mitigate risk of infestation and contamination. Such strategies ensure that most shipments are allowed to continue to the consignee. Both APHIS and CBP employ risk-based modeling to determine which shipments to target for inspection. Factors that may lead to an inspection include: The nature of the commodity; the region from which it is imported; the compliance history of the importer; and incomplete, vague, erroneous, or illegible information on accompanying documentation. That being said, we are evaluating the manner in which we conduct inspections of shipments destined to ECCFs in order to determine whether we can make our processes simpler and more efficient, and have engaged the Express Association of America in this evaluation.

One commenter stated that we should have reduced the airline passenger fee via an interim rule, rather than a proposed rule.

We did not do so because we believe that it is important for affected parties to be afforded an opportunity to comment on significant proposed revisions to user fee schedules before they are finalized, even if these revisions would reduce burden on affected entities.

Some commenters stated that an argument could be made that the imposition of the APHIS fees may contravene Article 310 of the North American Free Trade Agreement (NAFTA), which prohibits the adoption of any customs user fees, and Article VIII:1(a) of the General Agreement on Tariffs and Trade 1994 (the GATT), which says that all fees and charges shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. Another commenter stated that APHIS fees may also contravene Article 3.12 of the United States-Chile Free Trade Agreement (FTA), which requires that, in accordance with Article VIII:1 of the GATT, all fees and charges shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

We disagree with the commenters' assertion that the AQI user fees contravene NAFTA, the GATT, or the United States-Chile FTA. Article 310 of NAFTA states that "No Party may adopt any customs user fee of the type referred to in Annex 310.1 for originating goods," and Annex 310.1 refers to a specific fee – the merchandise processing fee – that has since been eliminated for goods of Canada and Mexico. Thus, Article 310 of NAFTA does not speak to, let alone preclude, APHIS' AQI user fees.

Similarly, Article VIII:1(a) of the GATT states, in its entirety, that "All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." Article 3.12(a) of the United States-Chile FTA uses language directly from Article VIII:1(a) of the GATT. Because the AQI user fees are charged in connection with services rendered by CBP and APHIS personnel and reflect the approximate costs to the agencies of providing those services, they are entirely permissible under Article VIII:1(a) of the GATT and Article 3.12(a) of the United States-Chile FTA.

Several commenters stated that APHIS should make more use of risk assessments in conducting AQI-related services.

We agree with the commenters that risk assessments are valuable tools that can enhance targeting, effectiveness, and efficiency when conducting AQI-related activities. APHIS routinely analyzes pest risk posed by numerous potential pest pathways to the United States to update and increase the effectiveness of its inspection targeting and quarantine action policies. For example, APHIS recently worked with South American and New Zealand cut flower exporters to characterize the risk of immature, unidentifiable life stages of Tetranychus mites which are often intercepted on certain flowers. APHIS analyzed results from comprehensive surveys of export growing areas and determined that the common two-spotted spider mite was the only Tetranychus mite likely to be found on those flowers. As a result of that risk analysis, APHIS ceased requiring fumigation on import shipments of those specific flowers from the surveyed areas when unidentifiable Tetranychus life stages are intercepted.

The same commenters stated that we should consider implementing “trusted trader” practices into our AQI-related services. They stated that this could allow us to devote personnel and resources to those shipments most likely to present a plant pest risk.

Many exporters broker products from numerous growers. Even very large exporters who grow their export product may periodically augment shipments with auxiliary growers’ material to make expected volumes on deadline. These exporters cannot control conditions in various growers’ fields that may raise or lower pest risk associated with the export crop (e.g. if pesticides were applied properly, weeds are controlled, or crops are rotated to reduce pest and disease occurrence). This means that an exporter’s currently low risk commodity could pose a considerably higher pest risk next month. And, consequently, exporters cannot ensure that all pests are adequately excluded from their shipments.

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

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

APHIS was given authority by the FACT Act, as amended, to prescribe and collect cost-based fees for providing AQI services for inbound passengers, conveyances, and cargo at U.S. ports of entry. AQI activities include inspection of incoming conveyances, passengers, and cargo; pest identification; monitoring and, at times, conducting of treatments; and administering the program's finances, scientific research, and policy development. In addition to such activities, the FACT Act, as amended, allows for the maintenance of a reasonable balance (reserve) in the AQI user fee account.

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

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

AQI services protect U.S. agricultural and natural resources from the inadvertent introduction of foreign pests and diseases that may enter the country and the threat of intentional introduction of pests or pathogens. The changes in user fees will more closely align, by class, the cost of AQI services provided and user fee revenue received. The new fee schedule will better reflect the costs of AQI services provided to commercial cargo vessels, commercial trucks, commercial cargo railcars, commercial aircraft, and international air passengers arriving at U.S. ports; newly include fees for additional classes of recipients of AQI services; remove user fee caps for commercial cargo vessels and commercial cargo railcars; and increase the fee cap for commercial trucks. Fee caps refer to limits on the number of times a fee must be paid for a specific truck (with transponder), cargo vessel, or cargo railcar in a calendar year. The current and new AQI user fee rates are shown in Table 13.

Table 13. Current and new AQI user fee rates (dollars)

User Fee Class	Current	New
Air passenger	$5.00	$3.96
Commercial aircraft	70.75	225.00
Commercial cargo vessel	496.00	825.00
Commercial truck	5.25	7.55
Commercial truck with transponder (one annual payment)	105.00	301.67
Commercial cargo railcar	7.75	2.00
Commercial vessel (cruise) passenger	no fee	1.75
Treatment[1]	no fee	237.00

[1]The fee for AQI treatment services will be phased in over 5 years: first year, $47, second year, $95, third year, $142, fourth year, $190, and fifth year, $237.

APHIS used the ABC methodology to determine the rate adjustments for classes that currently pay user fees and the rates for newly charged classes. The two classes that will be newly charged user fees under the rule are commercial vessel (cruise) passengers and recipients of AQI treatment services. Currently, the cost of AQI services received by these entities is borne by other user fee classes and/or taxpayers through appropriated funding. Elimination of the user fee caps for commercial cargo railcars and commercial cargo vessels will more closely align the user fee revenue received with the cost of providing AQI services for these conveyances and rail and vessel cargo. We retain the cap for commercial trucks with transponders because of the increased efficiency gained through the use of transponders at border inspections. The cap for commercial trucks will be increased, however, and these businesses will pay in fees a larger share of the cost of the AQI services they receive.

Changes under the new user fee schedule to AQI revenue and the AQI reserve and modeled economic effects of the rule are illustrated for 3 years, FYs 2015-2017.[5] Under the new fee structure, it is estimated that AQI user fee revenue for FY 2015 would have been about $701.4 million, as compared to about $593.1 million under the current fee schedule, an increase of $108.3 million (Table 14). Given the effective date of the final rule, USDA will not collect revenues in FY 2015 under the new fee schedule, but this comparison is included to show the difference in the most recent year. If USDA collected revenues in FY 2015 under the new fee schedule, reliance on appropriated funds to finance certain AQI services in FY 2015 would have been reduced by $31.7 million, assuming that the cost of AQI services, $957.6 million, would be the same with or without adoption of the new fee schedule since the level of AQI services provided would not change. An estimated AQI program deficit of $54.2 million under the current fee schedule would not be incurred.

The reserve fund ensures that AQI program operations can continue without interruption when service volumes fluctuate due to economic conditions or other circumstances, and APHIS and CBP can adjust their activities to account for the changed economic conditions. As there are

[5] The 3-year period, FYs 2015-2017, is used to show the likely magnitude of the changes to AQI user fee and appropriated funding revenues.

fixed costs related to providing AQI services that the program incurs, a reasonable reserve is needed to ensure continuity of service.

Table 14. Illustrative example of AQI user fee revenue, appropriated AQI funding under the current and new user fee schedules, and cost of AQI services, FY 2015, million dollars

	Current Fee Schedule	New Fee Schedule	Change
AQI revenue			
User fees	$593.1	$701.4	$108.3
Appropriated funding	310.3	278.6	-31.7
AQI total revenue	903.4	980.1	76.7
AQI costs	957.6	957.6	0.0
AQI revenue minus costs	-54.2	22.5	76.7

Note: The AQI user fee revenue and costs shown exclude overtime charges incurred in conjunction with AQI treatment services that are paid for separately. The AQI user fee revenue and costs shown for the current fee schedule are reduced from what were reported in the preliminary RIA for the proposed rule by $6.2 million, the estimated reimbursable overtime costs of AQI treatment services in FY 2015. Given the effective date of the final rule, USDA will not collect revenues in FY 2015 under the new fee schedule, but this comparison is included to show the difference in the most recent year.

Respectively for FYs 2016 and 2017, in comparison to current fee schedule projections, AQI user fee revenue is expected to be larger by $113.3 million and $118.6 million, and appropriated funding of AQI services is expected to be smaller by $68.3 million and $65.3 million. Net revenue of $27.9 million in FY 2016 and $53.9 million in FY 2017 is expected to be available to maintain the AQI reserve fund.[6] Estimated AQI revenue and costs summed over the 3 years are shown in Table 15.

[6] All values in this RIA are nominal, that is, they include projected inflation.

Table 15. Estimated AQI user fee revenue, appropriated AQI funding under the current and new user fee schedules, and cost of AQI services, FY 2015-17, million dollars

	Current Fee Schedule	New Fee Schedule	Change
AQI revenue			
User fees	$1,842.3	$2,182.5	$340.2
Appropriated funding	1,039.7	874.4	-165.3
AQI total revenue	2,881.9	3,057.1	175.2
AQI costs	2,952.8	2,952.8	0.0
AQI revenue minus costs	-70.9	104.3	175.2

Note: The AQI user fee revenue and costs shown exclude overtime charges incurred in conjunction with AQI treatment services that are paid for separately. USDA will not collect revenues in FY 2015 under the new fee schedule.

.

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

We then focused on three remaining alternatives composed of different combinations of paying classes. The first or preferred alternative is the rule, with user fee classes as shown in Table 13. The second alternative differs from the first by not including user fees for recipients of AQI treatment services. Under the third alternative, recipients of commodity import permits and pest import permits would pay user fees, in addition to the classes that will pay fees under the rule.

Under all three alternatives, commercial vessel (cruise) passengers pay a user fee for services they receive that are currently funded by other AQI service recipients and/or through appropriated funding. In addition, the preferred alternative newly includes payment of fees by users of AQI treatment services. Under alternative 2, there would be no fee for AQI treatment services and the cost of providing these services would continue to be covered by user fees paid by other classes. For this reason, alternative 2 was rejected because AQI costs and revenues would be less commensurate by class than under the preferred alternative.

Alternative 3 would include user fees for recipients of commodity import permits and pest import permits, classes not charged fees under the preferred alternative. In these instances, APHIS found that there are overriding concerns. Charging a user fee for commodity import permits would be difficult to administer, at this time as our system is not designed to allow for this. Pest import permits are normally requested for research purposes. Charging a fee for pest import permits, which ABC analysis indicates would need to be set at more than $2,000, could have the unintended consequence of discouraging research that directly benefits U.S. agriculture. For these reasons, APHIS decided against the selection of alternative 3.

In Table 16, we compare the cumulative estimated revenue changes over the 3 years for the alternatives. Differences among the alternatives in user fee and appropriated funding revenue are attributable to variations in the user fee rates. In all cases, the baseline for comparison is continuation of the current AQI user fee schedule. AQI services performed and the total cost of providing those services are the same under each alternative. All three alternatives ensure that the costs of providing AQI services are covered and the reserve fund is maintained.

Table 16. Changes in estimated AQI user fee revenue, appropriated AQI funding, and net revenue under the 3 alternative user fee schedules, summed over FYs 2015-2017, million dollars

	Preferred Alternative (Rule)	Alternative 2	Alternative 3
AQI revenue	--million dollars--		
User fees	$340.2	$208.1	$175.0
Appropriated funding	-165.3	-84.9	-152.4
AQI total revenue	175.2	123.2	22.7
AQI costs	0.0	0.0	0.0
AQI revenue minus costs	175.2	123.2	22.7

Note: Columns may not sum due to rounding.

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

The changes in user fees are very small in comparison to the overall value of the commodities imported or the price of an international ticket, and therefore are expected to have negligible impact on imports or on the number of international passengers. Estimated changes in user fee revenue relative to the output of the affected sectors represent, in total, a decline of about two-hundredths of one percent, and range from a decline of about six-thousandths of one percent in the trucking industry to a decline of about one-tenth of one percent in the airline industry.[7] We cannot determine what will be the effect of the projected reductions in appropriated funding of AQI services, but observe that the reductions may counterbalance the negligible impacts of the user fee increases to some extent.

Illustrative output and employment impacts for FY 2015 under the three alternatives, shown in Table 17, were modeled for APHIS by a contracted consultancy.[8] The impacts shown can be considered estimated upper-bound effects because the AQI fees for air passengers, commercial trucks (with and without transponders), commercial vessel (cruise) passengers, and treatment services are lower than those that were set forth in the proposed rule and used to model the output and employment effects. In addition, the AQI treatment fee will be phased in over 5 years.

The model results indicate that U.S. output and employment would have declined under all three alternatives, with the smallest declines occurring under the preferred alternative. Modeled output and employment effects for FYs 2015-2017 are shown in the body of the RIA. We expect the economic effects of the user fee revisions for several of the classes, if they occur at all, to be extremely small.

---

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

[8] ABS Consulting, ABS Group Consulting, Inc., ABS Plaza, 16855 Northchase Drive, Houston, TX 77060. Appendix A of the RIA explains the methodology and data sources used by ABS Consulting in modeling expected economic effects of the rule and alternatives. Appendix B reports updated modeling results prepared by ABS Consulting in July 2013 that are used in the RIA.

Table 17. Modeled illustrative short-run effects for U.S. output and employment of the 3 AQI user fee alternatives, FY 2015

	Change in Output (million dollars)	Change in Employment (jobs)
Preferred alternative (rule)	-$113	-1,312
Alternative 2	-119	-1,337
Alternative 3	-127	-1,419

The fee increases themselves and the newly charged fees for commercial vessel passengers and treatment services are not costs to the economy as a whole, but rather transfer payments. Transfer payments are monetary payments from one group to another that do not affect total resources available to society.

The increase in user fee funding of AQI services, reduced reliance on appropriated funding, and closer alignment, by class, of user fee revenues and costs will be the principal outcomes of the rule. For the 3 years, FYs 2015-2017, user fee funding of AQI services under the rule is estimated to be $340.2 million more and appropriated funding of AQI services is estimated to be $165.3 million less than would occur with continuation of the current fee schedule.

Increased reliance on user fee funding means that APHIS will more fully prescribe and collect cost-based fees for providing AQI services, including maintaining a reasonable reserve, as provided for under the statute. It also means that a portion of appropriated funds that would be used to pay for AQI services under the existing user fee schedule will no longer be needed for that purpose, resulting in a reduced demand for directly appropriately funding or the availability of additional funds for other Federal uses. In the latter case, we are unable to determine how those appropriated funds that will no longer be needed to pay for AQI services under the rule may otherwise be used. We are, however, fully confident in our application of the ABC methodology in deriving the new AQI user fees; this methodology has enabled us to better ensure the fees are commensurate with the costs of the AQI services provided, as provided in the FACT Act.

Firms most likely to be impacted by this rule are transportation businesses within the truck, rail, sea, and air cargo sectors that import goods into the United States and providers of treatment services. 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 will be affected by the rule are likely to be small. We respond in the RIA and final regulatory flexibility analysis to comments received from small-entity stakeholders and other businesses on possible effects of the rule on their operations.

Executive Order 13175

This 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 assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. If a Tribe requests consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 354

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

Accordingly, we are amending 7 CFR part 354 as follows:

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

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

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

2. Section 354.3 is amended as follows:

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

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

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

d. By revising paragraphs (f)(1), including the table, (f)(2)(i), and (f)(8).

e. By adding paragraph (h).

The revisions and addition read as follows:

§ 354.3 User fees for certain international services.

* * * * *

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

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

* * * * *

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

Effective date	Amount
Beginning [Insert effective date of final rule]	$7.55

* * * * *

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

Effective date	Amount
Beginning [Insert effective date of final rule]	$2

* * * * *

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

Effective date	Amount
Beginning [Insert effective date of final rule]	$225

* * * * *

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

Effective dates[1]	Passenger type	Amount
Beginning [Insert effective date of final rule]	Commercial aircraft	$3.96
Beginning [Insert effective date of final rule]	Cruise ship	$1.75

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

(2) * * *

(i) Crew members onboard for purposes related to the operation of the vessel;

* * * * *

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

* * * * *

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

Effective dates	Amount
Beginning [Insert effective date of final rule]	$47
Beginning [Insert date 1 year after effective date of final rule]	$95
Beginning [Insert date 2 years after effective date of final rule]	$142
Beginning [Insert date 3 years after effective date of final rule]	$190
Beginning [Insert date 4 years after effective date of final rule]	$237

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

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

(3) Collection of fees. (i) In cases where APHIS is not providing the AQI treatment and collecting the associated fee, AQI user fees collected from importers pursuant to this paragraph shall be held in trust for the United States by the person collecting such fees, by any person holding such fees, or by the person who is ultimately responsible for remittance of such fees to APHIS. AQI user fees collected from importers shall be accounted for separately and shall be regarded as trust funds held by the person possessing such fees as agents, for the beneficial interest of the United States. All such user fees held by any person shall be property in which the person holds only a possessory interest and not an equitable interest. As compensation for

collecting, handling, and remitting the AQI treatment user fees, the person holding such user fees shall be entitled to any interest or other investment return earned on the user fees between the time of collection and the time the user fees are due to be remitted to APHIS under this section. Nothing in this section shall affect APHIS' right to collect interest from the person holding such user fees for late remittance.

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

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

(iii) The remitter must mail with the remittance a written statement to USDA, APHIS, AQI, PO Box 979044, St. Louis, MO 63197-9000. The statement must include the following information:

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

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

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

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

*   *   *   *   *

Done in Washington, DC, this 21st day of October 2015.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.