

October 10, 2023

Mr. George Balady
Senior Regulatory Policy Specialist
U.S. Animal and Plant Health Inspection Service
4700 River Road Unit 36
Riverdale, MD 20737

Re: User Fees for Agricultural Quarantine and Inspection Services (Docket No. APHIS-2022-0023)

The American Trucking Associations, Inc. (ATA) files these comments in response to the U.S. Department of Agriculture (USDA), Animal Plant and Health Inspection Service (APHIS) Notice of Proposed Rulemaking (NPRM) and its request for comments. ATA is a national trade association representing the interests of the trucking industry.¹ ATA and its members have strong concerns regarding APHIS's proposal to raise the AQI inspection fees, and in particular the agency's proposal to eventually raise such fees by more than 114 percent for trucks crossing U.S. international borders with Canada and Mexico.

With over 5.5 million annual truck crossings taking place from Canada into the U.S., and 7.2 million crossings coming from Mexico, the U.S. trucking industry foresees these proposed increased fees having a substantial direct financial impact on motor carriers' cross-border operations. In a highly competitive industry such as commercial trucking, where profit margins average five percent when our nation's economy performs at optimal levels, additional operational cost increases have a direct negative impact on a motor carrier's bottom line. The trucking industry is comprised of many small fleets, with 91.3 percent of all fleets operating 6 or fewer trucks. These small fleets may have a difficult time recouping such a large increase in fees from their customers, causing financial strain on many fleets hauling freight across international borders.

Consideration of the potential risk to the industry is important given that, according to the U.S. Department of Transportation's Bureau of Transportation Statistics, trucks transport between sixty and seventy percent of the value of U.S. trade with Canada and Mexico, who as of July 2023 were the Nation's two largest trading partners.

ATA understands APHIS may have a need for increased funding for the AQI program, however, after reviewing the NPRM we have several concerns with the data cited in support of these fee increases and request that APHIS both reevaluate their proposal while also sharing more information with industry stakeholders before settling on the new fee structure for the AQI program.

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 30,000 companies and every type and class of motor carrier operation.

border in 2021. Specifically, APHIS reported that there were 920,321 fewer truck crossings in 2021 (*see Table 1*) than ATA retrieved from BTS, leading to an inflated freight per crossing figure.

While ATA and APHIS reported the same number of truck crossings per year from 2017 to 2020, APHIS underreported the number of truck crossings every year between 2006 and 2016 by an average of 22,376 crossings for a total undercount of 246,136 (*see Table 1 and Table 2*). While the difference in the total truck freight arriving in the US from Canada and Mexico over the period 2009 to 2021 was only 0.4 million metric tons, APHIS significantly understated the amount of truck freight in 2006-2008 by an average of 23.3 million per year for a total understatement of 69.8 million metric tons.

ATA takes specific issue with the claims in the APHIS report that there was a 79% increase in the number of tons per truck between 2006 and 2021 (*see Table 1*). This increase is significantly overstated due to erroneous undercounting of truck crossings in 2021, inflating the tons per truck figure in the final year of the report period, and an erroneous undercount of truck freight in the 2006-2008 period, deflating the tons per truck figure at the beginning of the report period. These errors in combination resulted in a significantly overstated increase in tons per truck over the report period. The actual increase in the number of tons per truck between 2006 and 2021 was 21 percent, vastly below the 79 percent reported by APHIS.

Furthermore, ATA has additional concerns about the increase between 2006 and 2021 reported by APHIS based on their fitted model. The significantly understated tons per truck figure in the first three years of the reporting period and the slightly overstated tons per truck figure in the final year of the reporting period had a significant impact on the fitted exponential model calculated by APHIS, leading to much higher forecasts for tons per truck in the latter half of the report period and forecasted into the future. The 94 percent increase in tons per truck between 2006 and 2021 based on APHIS' fitted model is an egregious overestimate not only from the actual change erroneously reported by APHIS (79%) but from the actual increase calculated by ATA (21%) (*see Table 2*).

Finally, to further emphasize the need for greater inspections resources, APHIS claimed that "in the past 10 years, agricultural cargo arriving by truck has increased by 90.6 percent, from 21.7 billion kilograms to 41.32 billion kilograms."³ ATA would like to note that nowhere in the NPRM did APHIS provide a citation for this data. When we attempted to check it against the transborder freight data, even using the broadest commodity groups that fit into the category "agricultural cargo", our calculations only showed a total of 34 billion kilograms of agricultural cargo for 2022⁴. In order to verify APHIS' claim and to get an accurate number, we would need the agency to provide a detailed description of their source data and an explanation of how they performed their calculations.

³ User Fees for Agricultural Quarantine and Inspection Services, 88 Fed. Reg. 54804 (Aug. 11, 2023) (to be codified at 7 CFR Part 354)

⁴ www.bts.gov/transborder

Again, ATA acknowledges that there has been an increase in volume of freight per truck over the last decade, we believe it would be extremely misguided to base increases in the amount of freight per truck arriving, and therefore costs to inspect this freight, on the cited APHIS report given its significant errors and discrepancies from the source data.

Front Loading Transponder Fee Increase Will Disproportionally Harm Trucking – Today, the prepaid transponder user fee is \$291.60 per year and APHIS is proposing that, starting January 1, 2024, the fee be set at \$686.40 per year. This would be a staggering 135% increase in the annual fee, while the single crossing fee would only increase by 56 percent under this proposal. ATA has some concerns about how the disproportional increase in the two fees could impact motor carriers across the industry, especially the smaller firms (operate six or fewer trucks), which make up approximately 91.3 percent of the firms in the industry.

The trucking industry is small in nature, is highly competitive, and, when compared to other modes of transportation, has very low profit margins. Additionally, the industry has seen a significant increase in its operating costs. Between 2013 and 2022, trucking costs went up 56 percent, excluding fuel, and over that same period driver wages and benefits have gone up almost 60 percent⁵. This is all to say the trucking industry regularly operates within a tight market that leaves many carriers and operators vulnerable to volatile market changes and significant regulatory costs such as this. By increasing the transponder fee from 40 times the single crossing fee to 60 times the single crossing fee all at once rather than gradually increasing the fee over time, ATA is concerned that many industry participants will struggle to absorb or pass along the new cost.

Higher Transponder Fees will Have Negative Unintended Consequences – As CBP continues efforts to increase motor carriers' participation and purchases of the annual decal/transponder for their cross-border trucks, increasing the cost for the transponders is likely to result in fewer motor carriers purchasing the transponder. Instead, carriers are more likely to have their drivers pay the \$6.50 (COBRA) and \$11.40 (AQI) fees at every crossing. This will result in dramatically increased processing times at POEs and escalate the workload for CBP officers at the gates because they will be required to account for and provide the necessary bills and coins to make change for drivers resulting in additional back-ups at land border POEs.

As APHIS rightly points out in its Regulatory Impact Analysis (RIA), "the use of a transponder can reduce the time spent crossing the border," which would increase a motor carrier's overall efficiency (pg. 28). ATA agrees with this assessment, and efforts should be made to increase the use of transponders by motor carriers. However, ATA is certain that an initial increase of the cost of the transponder fee by 135 percent – for a total price of \$686.40 per truck – will result in fewer carriers purchasing the

⁵ American Transportation Research Institute, An Analysis of the Operational Costs of Trucking: 2023 Update, Minneapolis, MN, June 2023, pg. 16.

transponders, reducing the number of trucks availing themselves of the efficiencies gained by installing transponders.

Explanation of How New Fee Was Calculated – While the NPRM insists that increases in the AQI user fees is necessary to accommodate the increased level of effort required to inspect trucks, the information and data provided by APHIS does little to explain how the proposed fee increases were calculated based upon the various services performed by APHIS inspectors. Rather it appears, based on the information provided in the RIA, that APHIS has calculated the new fee structure based upon what APHIS believes the trucking industry can afford to pay instead of the specific needs to the program.

The NPRM states that “this user fee would be the equivalent of operating expenditures of a truck transporting goods about nine miles.” More specifically, based upon the reported operating costs of trucking in 2019, which were approximately \$1.65 per mile, APHIS’ proposed commercial truck user fee of \$15.55 in 2028 is the equivalent of the total operating expenditures of a truck transporting goods about nine miles (\$15.55 fee divided by \$1.65 operating cost per mile = 9.42 miles).

ATA is concerned that APHIS is not calculating the new proposed fees based upon the current and future needs of the agency, but rather has proposed this fee structure based upon what they assume motor carriers can afford according to operating cost data. If this was the case, the agency would essentially be asking industry stakeholders and motor carriers to pay this fee without any understanding of why.

APHIS furthered this notion that the AQI fees have not been set fairly, given that the NPRM did not provide industry stakeholders with an explanation of how the new funds would be allocated to fund the services offered under the program. As for any transaction, it would be highly unreasonable for one party to expect another party to exchange money for a service without having a clear understanding of the services for which they are paying.

Without more information regarding the budgetary breakdown of the program operations based on mode of transportation, ATA is troubled by the possibility that the trucking industry could be paying more money than is needed to fund the AQI program. For example, APHIS is claiming that it is getting money from the appropriations process to inspect private vehicles but provides no data showing how those appropriations would impact the department budget and how it compares to what is being sought from each of the industries.

Conclusion

ATA and its members oppose the significant and rapid increase of the AQI fee proposed by APHIS for commercial vehicle border crossings. The focus of our concern stems from APHIS’ overestimation of the change in freight volume per truck and how those numbers were used to support claims that agricultural risk has and will continue to increase. This assertion of increased agricultural risk is being

used to justify the drastic fee increase, and while ATA is not wholly against any increase in AQI fees, we are opposed to this specific proposal given the incongruencies in freight volume data.

Additionally, ATA is especially concerned that the more than 220 percent increase APHIS proposes for the annual decal/transponder is excessive and could seriously harm motor carriers, by rapidly increasing their operating costs once the new fees are imposed beginning on January 1, 2024. Also, this fee could result in fewer carriers buying the preferred transponder technology. By not choosing the transponder, border crossing efficiency will likely be drastically diminished as CBP officers will likely have to collect money and provide change on a single transactional basis, causing severe operational delays at POEs, increasing congestion, and resulting in numerous operational and negative factors.

ATA respectfully requests that APHIS withdraw this NPRM from further consideration and asks that they reevaluate the data they were used to support the new fee structure while also sharing more information with industry stakeholders to allow them to better assess the validity of APHIS' proposal. It is paramount that agencies fully and accurately consider the impact of all regulatory rule changes such as this one.

Additionally, ATA recommends that APHIS work with its government counterparts in Canada and in Mexico, through the high-level initiatives described above, to develop coordinated policies that mitigate the risk of pest importation or other potential threats from our North American partners while reducing, exempting, or eliminating fees and other regulatory costs impacting North America trade. Such an effort would support the goals established by the three leaders of Canada, Mexico, and the U.S. in streamlining cross-border trade and in improving regulatory coordination to facilitate and grow our commercial flows.

ATA looks forward to working with APHIS, CBP and other government agencies at the federal and state levels to make land border POEs more efficient, cost effective, and secure.

Thank you for the opportunity to comment on this AQI fees proposal. Should you have any questions or need more information regarding these comments please call me at 703-838-8895 or email me at bcostello@trucking.org.

Respectfully,



Bob Costello

Senior Vice President, International Trade & Security Policy



Table 1 APHIS Table⁶

Year	Number of Trucks	Truck freight (million metric tons)	Tons per truck
2006	11,386,624	66.1	5.8
2007	11,335,267	64.5	5.7
2008	10,735,629	58.7	5.5
2009	9,288,813	67.9	7.3
2010	10,167,035	77.5	7.6
2011	10,336,380	80.4	7.8
2012	10,706,658	82.3	7.7
2013	10,822,661	83.9	7.7
2014	11,195,499	90.4	8.1
2015	11,302,955	90.7	8.0
2016	11,660,194	95.7	8.2
2017	11,886,367	98.6	8.3
2018	12,141,829	102.9	8.5
2019	12,121,410	102.8	8.5
2020	11,580,717	110.3	9.5
2021	11,598,765	120.4	10.4

⁶ APHIS 2022. Changes in the Carrying Capacity of Containerized Maritime and Land Border Transport Over Time: A Brief Analysis. United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Riverdale, MD.



Table 2 American Trucking Associations Replication of APHIS Table^{7 8}

Year	Number of Trucks	Truck Freight (million metric tons)	Tons per truck
2006	11,409,765	90.76	7.95
2007	11,360,261	88.06	7.75
2008	10,760,803	80.26	7.46
2009	9,312,098	68.40	7.35
2010	10,187,330	77.70	7.63
2011	10,358,751	80.62	7.78
2012	10,727,430	82.56	7.70
2013	10,843,525	84.44	7.79
2014	11,216,777	90.94	8.11
2015	11,326,392	91.28	8.06
2016	11,680,719	96.27	8.24
2017	11,886,367	98.98	8.33
2018	12,141,829	103.18	8.50
2019	12,121,410	103.06	8.50
2020	11,580,717	110.66	9.56
2021	12,519,086	120.54	9.63

⁷ BTS. 2023. Border Crossing Entry Data. United States Department of Transportation, Bureau of Transportation Statistics (BTS), Washington, D.C. Last accessed September 26, 2023. <https://www.bts.gov/browse-statistical-products-and-data/border-crossing-data/border-crossingentry-data>.

⁸ BTS. 2023. TransBorder Freight Data. United States Department of Transportation, Bureau of Transportation Statistics (BTS), Washington, D.C. Last accessed September 26, 2023. <https://www.bts.gov/transborder>.