

September 2007

# FEDERAL USER FEES

## Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated





Highlights of [GAO-07-1131](#), a report to congressional committees

## Why GAO Did This Study

International air passengers arriving in the United States are subject to an inspection to ensure they possess legal entry and immigration documents and do not bring in contraband, such as illegal drugs, counterfeit goods, or harmful pests and prohibited agriculture products. With the creation of the Department of Homeland Security (DHS) in 2003, the customs, immigration, and agriculture inspections activities were integrated into one program led by DHS's office of Customs and Border Protection (CBP). However, the three fees—whose collections totaled about \$1 billion in fiscal year 2006—linked to these inspections remain statutorily distinct and are coadministered by CBP, Immigration and Customs Enforcement (ICE), both within DHS, and the Department of Agriculture's Animal Plant Health Inspection Service (APHIS). GAO was asked to examine how the fees are set, collected, and distributed, and the benefits and challenges of this process to agencies and stakeholders, including implications of consolidating these fees under the authority of DHS.

## What GAO Recommends

GAO is making 10 recommendations to the Secretaries of Agriculture and Homeland Security to improve cost estimates, collection, distribution, remittance, and compliance of the user fees. Both agencies concurred with our recommendations. Further, GAO suggests Congress consider eliminating key differences among the user fees.

To view the full product, including the scope and methodology, click on [GAO-07-1131](#). For more information, contact Susan J. Irving at (202) 512-9142 or [irvings@gao.gov](mailto:irvings@gao.gov).

## FEDERAL USER FEES

### Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated

#### What GAO Found

The process of setting, collecting, and distributing separate, dissimilar fees creates challenges for agencies and stakeholders. Although air passenger inspections were integrated within CBP, the fees supporting these inspections were created and are still governed by separate, dissimilar authorizing legislation. Two fee amounts are set in statute and one is set by regulation; all are collected by the airlines, deposited into three separate accounts and distributed among the agencies. As a result, the fees are administered and overseen by a complicated network of executive branch agencies and congressional committees, creating a series of challenges. For example, neither CBP nor ICE know whether the fees collected are recovering the full cost of the immigration inspection activities or whether the fees are properly divided between them, because ICE does not have finalized cost calculations for its inspection-related activities. In addition, certain passengers are exempt from some fees but not others, making it difficult for agencies to administer the fees. Further, although airports and airlines play an important role in facilitating inspections and the process of collecting and remitting the fees, opportunities for two-way communication are fragmented and limited, reducing stakeholder buy-in and acceptance of the fees and contributing to confusion about how the three fees work and what activities they may fund.

Other challenges are due to the statutory structure of the individual passenger inspection fees. For example, the customs inspection fees are available for limited purposes: not all reimbursable activities may be associated with inspections, and not all inspection activities are reimbursable. However, CBP officials said even if the customs fees were spent on inspection-related activities, they still would only recover about 72 percent of costs in fiscal year 2006. Therefore, customs inspection-related activities are mainly funded by appropriations from general revenues. Further, without auditing each airline, CBP cannot independently verify the amount owed by airlines, partly because airlines are required to remit the fees based on ticket sales rather than passengers transported. CBP said it is developing a legislative proposal that would address these and other challenges by requiring airlines to remit based on passengers transported, but airline industry stakeholders said this change would complicate their collection process and create substantial transition costs.

Although a number of options for addressing these fees have been raised, regardless of whether these fees are consolidated in whole, in part, or not at all, certain problems specific to the individual fees can and should be resolved first, and in a manner consistent with principles of effective user fee design, on which GAO has previously reported. Moreover, although partly or fully consolidating the fees under DHS's authority could provide opportunities to address some of the many challenges identified in this report, consolidation in-and-of-itself will not solve all of the problems we have identified.

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**Figure**

Figure 1: Process for Setting, Collecting, and Distributing Air Passenger Inspection Fees (Simplified)

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**Abbreviations**

Advisory Committee	Airport and Seaport Inspections User Fee Advisory Committee
APHIS	Department of Agriculture’s Animal and Plant Health Inspection Service
APIS	Advance Passenger Information System
AQI	agriculture quarantine inspections
ATA	Air Transport Association
CBP	U.S. Customs and Border Protection
CFO Act	Chief Financial Officers Act of 1990
DHS	Department of Homeland Security
FAA	Federal Aviation Administration
FTE	full-time equivalent
IATA	International Air Transport Association
ICE	U.S. Immigration and Customs Enforcement
INS	United States Customs Service, the Immigration and Naturalization Service
MOU/MOA	memorandum of understanding / memorandum of agreement
OMB	Office of Management and Budget
PFC	passenger facility charge
SABPOE	Securing America’s Borders at Ports of Entry

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United States Government Accountability Office  
Washington, DC 20548

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September 24, 2007

The Honorable John L. Mica  
Ranking Member  
Committee on Transportation and Infrastructure  
House of Representatives

The Honorable Daniel E. Lungren  
Ranking Member  
Subcommittee on Transportation, Security, and Infrastructure Protection  
Committee on Homeland Security  
House of Representatives

The Honorable Thomas Petri  
Ranking Member  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
House of Representatives

International air passengers arriving in the United States are subject to an inspection to ensure they possess legal entry and immigration documents and do not bring in contraband, such as illegal drugs, counterfeit goods, or harmful pests and prohibited agriculture products.<sup>1</sup> With the creation of the Department of Homeland Security (DHS) in 2003, the customs, immigration, and agriculture quarantine inspection activities were integrated into a unified inspection program—often referred to as Securing America’s Borders at Ports of Entry (SABPOE)—led by DHS’s U.S. Customs and Border Protection (CBP). However, the three fees charged for these inspections—for which collections totaled about \$1 billion in fiscal year 2006—remain statutorily distinct and are coadministered by CBP, U.S. Immigration and Customs Enforcement (ICE), both within DHS, and the Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS), referred to in this report as agencies.

Although CBP now conducts primary and secondary passenger inspections, ICE and APHIS each still conduct inspection-related

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<sup>1</sup>International arrivals at sea and land ports are also subject to inspection.

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activities. APHIS retained responsibility for 17 plant inspection stations, smuggling interdiction and trade compliance, pest and disease identification and notification, and risk analysis, in addition to agriculture inspection policy and training. ICE is responsible for the investigation, detention, and removal activities for inadmissible aliens.

You asked us to review how the three user fees charged for the inspection of arriving international airline passengers are set, collected, and distributed and the benefits and challenges of this process for agencies and stakeholders, including examining the implications of consolidating these fees under DHS's authority.

To meet these objectives, we reviewed the passenger inspection user fee legislation, regulations, guidance, agency documents, prior GAO reports, and literature on principles of effective user fee design and implementation characteristics. We observed the inspections process and interviewed CBP officials responsible for port management and airport and airline officials involved with international passenger processing for the three passenger inspection fees. We did not assess the effectiveness of these inspections. We reviewed audit and cost data related to air passenger inspection activities. We also interviewed APHIS, CBP, and ICE officials responsible for managing the user fees and auditing the user fee collections at DHS and the Department of Agriculture. We asked questions about CBP's and APHIS's internal controls for the data we used and determined that the data are sufficiently reliable for the purposes of this report. However, it was beyond the scope of this report to evaluate the reliability of the cost data for purposes beyond this report.

For more information on our scope and methodology, see appendix I. We performed our work from October 2006 through August 2007 in Washington, D.C.; San Francisco, California; Miami, Florida; Boston, Massachusetts; Newark, New Jersey; New York, New York; Dallas and Houston, Texas; and Seattle, Washington in accordance with generally accepted government auditing standards.

We reviewed the passenger inspection fees taking into consideration principles of effective user fee design. These principles, on which we have previously reported, can inform efforts to design or redesign user fees by

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helping to clarify the trade-offs associated with various fee design elements.<sup>2</sup> These principles include:<sup>3</sup>

**Equity:** An equitable user fee is one in which the consumers pay for the cost of the services received, or the burden imposed on the program.

**Efficiency:** An efficient user fee is set at a rate that is in proportion to the cost that the user imposes on the program.

**Revenue Adequacy:** The revenue adequacy of a fee is determined by its ability to cover the costs of the program over time.

**Administrative Burden:** The burden or cost of administering the user fee should not exceed the funds generated by the user fee, including any transitional costs associated with changes to the existing system.

We are currently studying these user fee design issues in more depth and expect to issue a report in the coming months.

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## Results in Brief

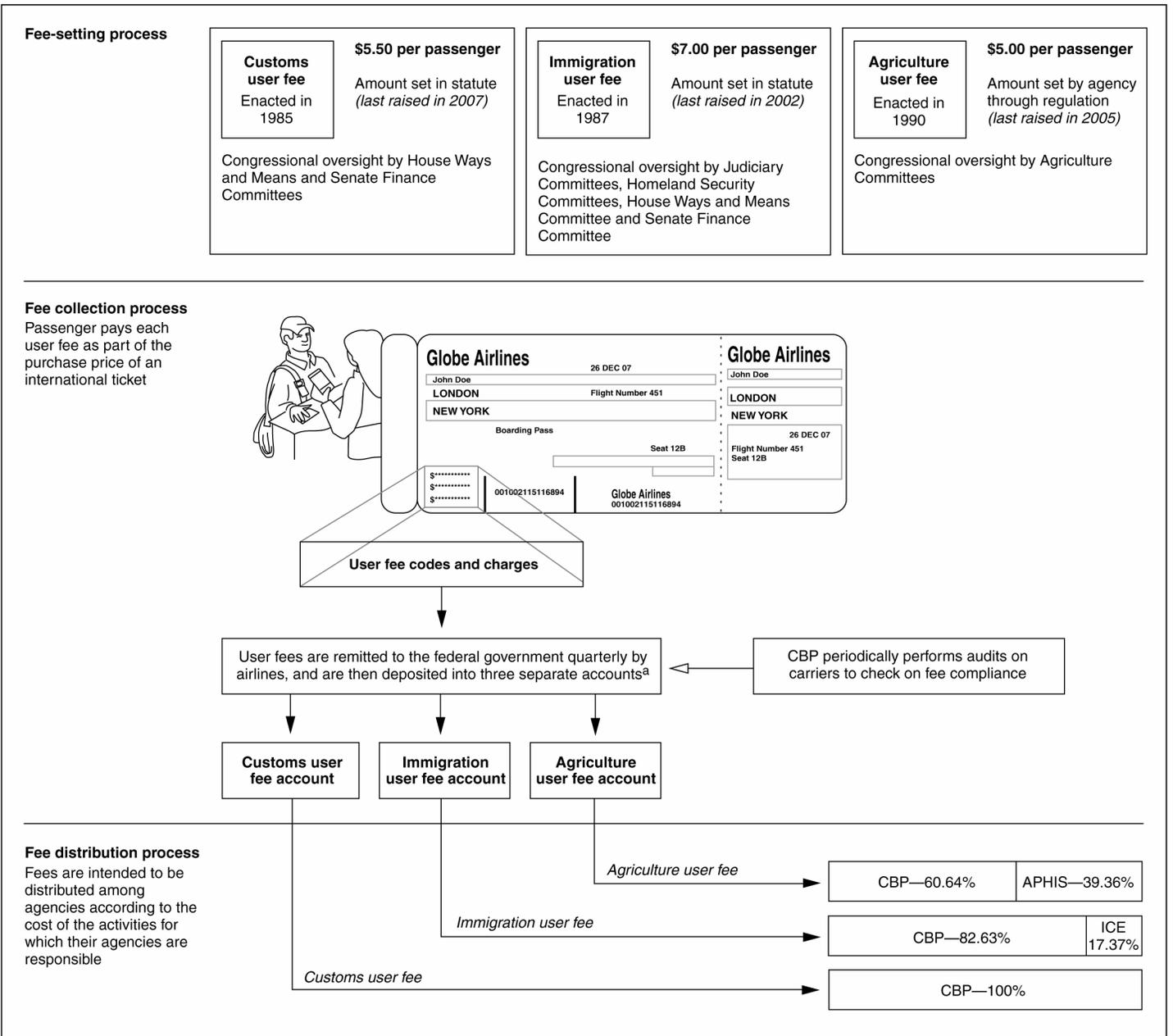
The process for setting, collecting, distributing, and using the customs, immigration, and agriculture passenger inspection fees is complex and varies for each fee. Although air passenger inspections were integrated within CBP, the fees supporting these inspections were created and are still governed by separate, dissimilar authorizing legislation. The amounts of two fees are set by legislation and the amount of one fee is set by the agency in regulation. All three are collected by the airlines and then deposited into three separate accounts and distributed among the agencies (see fig. 1).

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<sup>2</sup>For characteristics useful for reviewing user fees in general, see GAO, *Aviation Finance: Observations on Potential FAA Funding Options*, [GAO-06-973](#) (Washington, D.C.: Sept. 29, 2006).

<sup>3</sup>This is an abbreviated description of the principles relating to the passenger inspection fees. There are many specific factors to be considered within each of these principles; for example, when assessing the equity of a fee, one can consider whether it is based on the individual's ability to pay for the service, and when assessing a fee's efficiency, one can consider whether the rate is set to encourage or discourage consumption of a resource.

**Figure 1: Process for Setting, Collecting, and Distributing Air Passenger Inspection Fees (Simplified)**



Source: GAO.

<sup>a</sup>The fees are remitted to the government quarterly, except for the last quarter of the year, when the immigration fees collected to-date are remitted 10 days before the end of the fiscal year, with the remaining fees collected in the fourth quarter remitted along with the first quarter payment of the next fiscal year.

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As a result, the fees are administered and overseen by a complicated network of executive branch agencies and congressional committees, creating a series of challenges:

- The eight congressional committees that oversee the fees do not have a unified picture of whether the fees work in concert or conflict with each other because none of the agencies submit a comprehensive review of the passenger inspection fees.

Agencies disagree on how to distribute the fees. For example,

- Both conduct immigration inspection activities, but neither CBP nor ICE know whether the fees collected are recovering the full cost of the immigration inspection activities or whether the fees are properly divided between them, because ICE does not have finalized cost calculations for its inspection-related activities.
- Passengers from Canada, Mexico, and U.S. territories and adjacent islands are exempt from the customs fee but not from the immigration or agriculture fees, which complicates the oversight and audit process.
- Finally, although stakeholders—primarily airports and airlines—play an important role in both facilitating inspections and the process of collecting and remitting the fees, opportunities for two-way communication with the three agencies are fragmented and limited. This reduces stakeholder buy-in and acceptance of the fees, and contributes to misunderstandings and confusion about how the fees work and what activities they may fund. For example, the Airport and Seaport Inspections User Fee Advisory Committee, under the auspices of CBP, focuses on the passenger inspection activities under CBP's purview but omits other passenger inspection activities for which ICE and APHIS are responsible.

Other challenges are not the result of the separate passenger inspection fees but are related to the specific statutory structures of the individual fees:

- Under the authorizing statute, the customs passenger inspection fees collected are only available to reimburse appropriations for a limited set of activities related to customs inspections, namely overtime and premium pay, retirement and disability contributions, preclearance

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services,<sup>4</sup> and foreign language proficiency awards. Therefore not all activities that may be funded from the customs fee may be associated with conducting passenger inspections, and not all inspection activities are reimbursable, that is, can be covered by funds from the user fee account.

- Even if the customs fee was limited to funding the customs inspection activities, according to CBP, for fiscal year 2006 it would have only covered about 72 percent of total inspection costs. After the April 2007 fee increase, CBP estimates the fee would still need to increase an additional 39 percent to cover total costs. Therefore, customs inspection-related activities are generally funded by appropriations from general revenues, limiting funds available for other federal priorities.
- Without auditing each airline, CBP cannot independently verify the total amount owed by airlines. Because the user fee statutes or regulations require airlines and ticket issuers to collect all three fees based on total ticket sales, rather than number of passengers actually transported, CBP cannot verify the airlines are appropriately collecting and remitting the fees. CBP is developing a legislative proposal that would address several of the challenges identified in this report, including a proposal to require airlines to remit fees based on passengers transported along with documentation of passengers who traveled. Airline industry stakeholders report that this change would complicate their role in the collection process and create substantial transition costs.

A number of options for addressing these issues have been raised.<sup>5</sup> Regardless of whether these fees are consolidated in whole or in part or not at all, the problems resulting from specific elements in the individual fees—such as those identified above—need to be resolved first. Moreover, although partly or fully consolidating the fees under DHS's authority could provide opportunities to address some of the many challenges identified in this report, consolidation in-and-of-itself will not solve all of the problems we have identified.

In light of this, we are making 10 recommendations for executive action to help the Secretaries of Agriculture and of Homeland Security improve the

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<sup>4</sup>Precleared passengers are inspected in the departing country rather than in the United States.

<sup>5</sup>See for example, S. 1160, 110<sup>th</sup> Cong. (2007); H. Amend. 704, 110<sup>th</sup> Cong. (2007); H.R. 1706, 110<sup>th</sup> Cong. (2007); H.R. 2629, 110<sup>th</sup> Cong. (2007); S. 887, 110<sup>th</sup> Cong. (2007).

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cost estimates, collection, distribution, remittance, and compliance of the three user fees. Further, we suggest Congress consider eliminating key differences among the user fees such as authority to set the fee rates and the country of origin exemptions mentioned above, and aspects of individual fees such as the set of activities on which customs fee collections may be spent. We provided a draft of this report to DHS and the Department of Agriculture for comment and both agencies concurred with our recommendations.

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## Background

Millions of individuals arrive in the United States every year and undergo an inspection to ensure they are entering the country lawfully and not transporting any illegal goods or harmful pests and prohibited agricultural products.

Prior to the creation of DHS in 2003, passengers were required to undergo separate customs, immigration, and agriculture quarantine inspections (AQI), which were performed by the United States Customs Service, the United States Immigration and Naturalization Service (INS), and APHIS. Under the Homeland Security Act of 2002, however, these passenger inspection functions were transferred to DHS. As part of this realignment, CBP was charged with leading the customs, immigration, and agriculture quarantine inspection functions, and all immigration and agriculture quarantine inspectors were transferred to CBP.<sup>6</sup> The newly created CBP officers were cross-trained on customs, immigration, and agricultural quarantine inspections in what is now referred to as “SABPOE.”<sup>7</sup> As a result, all international passengers are now subject to a single primary inspection—looking for customs, immigration, and agriculture quarantine violations—conducted by a CBP officer. If, as a result of the primary inspection, a passenger requires further scrutiny, that passenger is referred to another CBP officer who conducts a more in-depth secondary inspection. Secondary inspection can involve additional interviews, document reviews, database queries, communication with other law

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<sup>6</sup>For more information on the AQI program, as well as (1) the extent to which the Department of Agriculture and DHS have changed the inspection program since the transfer, (2) how the agencies have managed and coordinated their responsibilities, and (3) how funding for agricultural inspections has been managed since the transfer, see GAO, *Homeland Security: Management and Coordination Problems Increase the Vulnerability of U.S. Agriculture to Foreign Pests and Disease*, [GAO-06-644](#) (Washington, D.C.: May 19, 2006).

<sup>7</sup>Similar transitions took place at land ports and seaports of entry.

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enforcement agencies, observational techniques, and heightened physical inspections.<sup>8</sup> Although CBP absorbed and leads the inspection program for customs, immigration, and agriculture quarantine, other immigration and agriculture responsibilities were not merged into CBP. (See text box for more information on CBP, ICE, and APHIS and their missions.)

**CBP, ICE, and APHIS**

The Homeland Security Act established DHS by merging 22 disparate agencies and organizations with multiple missions, values, and cultures. As part of this transition, both CBP and ICE were newly created from parts of legacy agencies.

CBP was assigned the border inspection functions of the former Immigration and Naturalization Service (INS) and former U.S. Customs Service and the Department of Agriculture's APHIS program. The new agency's mission is the following:

- interdicting illegal drugs and other contraband;
- apprehending individuals who are attempting to enter the United States illegally;
- inspecting inbound and outbound people, vehicles, and cargo;
- enforcing all laws of the United States at the border;
- protecting U.S. agricultural and economic interests from harmful pests and diseases;
- regulating and facilitating international trade;
- collecting import duties; and
- enforcing U.S. trade laws.

ICE was created by combining the law enforcement arms of the former INS and the former U.S. Customs Service. Its mission is the following:

- to enforce immigration and customs laws, and
- to protect the United States against terrorist attacks by targeting illegal immigrants—including the people, money, and materials that support terrorism and other criminal activities.

The APHIS Program remains part of the Department of Agriculture, though the agriculture quarantine inspection functions have now been transferred to CBP. The program's mission is to

- protect and promote U.S. agricultural health, and
- administer certain domestic and wild animal management programs.

Although the inspections were unified in 2002, the Homeland Security Act did not consolidate the corresponding air passenger inspection fees. Thus the previous separate processes for setting, collecting, and distributing the

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<sup>8</sup> Agriculture secondary inspections are performed by CBP Agriculture Specialists.

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fees remain in place. So, whereas most passengers likely notice only that they pay “fees” when they purchase a ticket, they actually pay—among other charges—three separate inspection user fees: one for the legacy customs inspection, one for the legacy immigration inspection, and one for the legacy agriculture quarantine inspection.

**What Is a User Fee?**

A user fee is a fee assessed to consumers of goods or services provided by the federal government. User fees generally apply to federal programs or activities that provide special benefits to identifiable recipients above and beyond what is normally available to the public. User fees are normally related to the cost of the goods or services provided. An example of a user fee is a fee for entering a national park. In the narrow budgetary sense, a toll for the use of a highway is considered a user fee because it is related to the specific use of a particular section of highway. Alternatively, highway excise taxes on gasoline are considered a form of user charge in the economic sense, but since the tax must be paid regardless of how the gasoline is used and since it is not directly linked with the provision of the specific service, it is considered a tax.

Source: GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005).

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**The Customs Air Passenger Inspection Fee**

The customs air passenger inspection is designed to prevent passengers from bringing illegal goods—such as narcotics—into the United States. Passengers pay a customs air passenger inspection fee, currently set in statute at \$5.50 per passenger, when they purchase their tickets. The fees are remitted to the government quarterly, after which they reimburse CBP appropriations for a specific set of reimbursable expenses. The air passenger inspection fee is only one of several types of customs inspection fees also known as COBRA fees—named for its authorizing legislation, the Consolidated Omnibus Reconciliation Act of 1985. For example, commercial vessel passengers also pay a customs inspection fee.

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**The Immigration Air Passenger Inspection Fee**

The immigration air passenger inspection is designed to prevent passengers from entering the United States without legal entry and immigration documents. Passengers pay an inspection fee (set in statute at \$7 per passenger) when they purchase their tickets. The fees are remitted to the government quarterly, except for the last quarter of the year, when the immigration fees collected to-date are remitted 10 days before the end of the fiscal year, with the remaining fees collected in the fourth quarter remitted along with the first quarter payment of the next fiscal year. The fees are then divided between CBP and ICE according to the costs of the immigration inspection activities for which each agency is responsible.

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The immigration air passenger fee is one of two immigration inspection fees, the other being the international passenger commercial vessel fee.

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## The Agriculture Air Passenger Inspection Fee

The agriculture air passenger inspection is in place to seize prohibited materials and intercept foreign agricultural pests. Passengers pay an inspection fee, set by the agency in regulation at \$5.00 per passenger, when they purchase their tickets. The fees are remitted to the government quarterly and are made available to APHIS. The fees are then divided between APHIS and CBP based on the proportion of costs associated with each agency's agriculture quarantine inspection activities. The air passenger inspection fee is only one of several types of APHIS inspection fees, known as AQI fees. For example, commercial aircraft and vessels also pay AQI fees.

By statute, the authority to collect the three passenger inspection user fees varies from a legislative grant of broad agency discretion to set and collect a full-cost recovery fee, to more restrictive authority to collect a sum-certain amount available for a limited number of purposes. For example, the agriculture inspection statute grants the Secretary of Agriculture broad discretion to prescribe and collect fees sufficient to cover the cost of providing agricultural quarantine and inspection services.<sup>9</sup> APHIS adjusts fees under this authority through the federal regulatory process by public notice and comment on proposed rates and implementing regulations in the federal register. In contrast, the customs passenger inspection fee statute is the most restrictive of these three fee statutes. It limits both the fee that may be charged and the set of activities for which collections may reimburse appropriations.<sup>10</sup> Somewhere between these two margins is the immigration fee statute. It is available to refund any appropriation for expenses incurred in providing immigration inspection and preinspection services, but it limits the fee that may be charged.<sup>11</sup> While both the immigration and customs statutes contain language that fees equal or be reasonably related to the cost of services, the two statutes actually prescribe an exact amount in law to be charged for their respective

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<sup>9</sup>21 U.S.C. § 136a(a)(1).

<sup>10</sup>19 U.S.C. §§ 58c(a)(5), (f)(3). These activities include: overtime and premium pay generally (i.e., not limited solely to international passenger inspection but for all customs inspections); retirement and disability contributions; preclearance service; and foreign language proficiency awards.

<sup>11</sup>8 U.S.C. §§ 1356(d), (h).

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inspection services. That is, the immigration and customs user fees actually limit cost recovery to a sum certain.

During our audit work, CBP informed us that they are developing a broad legislative proposal that would, among other things, partially consolidate the three passenger inspection user fees and make other changes to address certain administrative challenges.<sup>12</sup> As of August 2007, the legislative proposal had been reviewed by CBP chief counsel but officials were still working on estimates of the cost of ICE's inspection activities. We have not received, reviewed, or evaluated this proposal, although we have been briefed on elements of it. Because CBP has widely circulated elements of the proposal among key stakeholders, we refer to relevant elements of this proposal throughout this report. Any proposal to consolidate these fees, however, will be considered in an environment of considerable flux and controversy. For example, there are proposals before lawmakers to transfer the agriculture quarantine inspection function back out of DHS and under the Department of Agriculture's authority.

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## Separate, Dissimilar Fees Create Administrative, Operational, and Oversight Challenges

The complex process for setting, collecting, and distributing the passenger inspection fees is different for each fee, creating administrative, operational, and oversight challenges for agencies and stakeholders, and oversight challenges for Congress. The fees are still governed by separate, dissimilar authorizing legislation and are administered by multiple executive branch agencies and overseen by multiple congressional committees. Agencies involved face difficulties reimbursing the collections among their various appropriations because there is disagreement on how to divide the receipts among them and because the process of transferring the funds from one agency to another complicates agency budget execution. Finally, airports and airlines play an important role in both facilitating inspections and in fee collection and remittance, but they have limited substantive interaction with the three agencies. This contributes to misunderstandings, skepticism, and confusion about how the fees work and what activities they may fund.

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<sup>12</sup>CBP aims to fully consolidate the authorities that govern the three inspection user fees that support CBP inspection functions, but officials said they are proposing a partial consolidation of the customs, immigration, and CBP's portion of the agriculture fee because the Department of Agriculture does not support consolidating the portion of the agriculture fee that APHIS retained.

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**A Complicated Network of  
Decision Makers  
Administer and Oversee  
These Fees**

Although the passenger inspections themselves have largely been consolidated, administrative authority remains divided. The Treasury Department, from which the legacy U.S. Customs Service was transferred, retained administrative authority over the customs fee, although most of these duties have been delegated to DHS.<sup>13</sup> The Department of Agriculture's APHIS retained administrative authority over the agriculture inspection fee, although a majority of the fee collections is transferred to CBP to cover the cost of agriculture quarantine inspections. The administrative authority for the immigration passenger inspection fee was transferred to CBP, but CBP and ICE divide the immigration fee collections.

Table 1 shows the differences in authorizing statute, rate, congressional committees of jurisdiction, and administrative authority.

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<sup>13</sup>CBP has proposed formally moving these authorities to DHS in its draft legislative proposal.

**Table 1: Passenger Inspection Fees' Legislative Authorities, Congressional Jurisdiction, and Fee Adjustments**

<b>Passenger inspection fee</b>	<b>Authorizing legislation and amendments to rates and disposition of fees</b>	<b>Per-passenger fee rates and adjustments</b>	<b>Authority to adjust fee</b>	<b>Congressional oversight</b>	<b>Administrative authority</b>
Customs	<p>Consolidated Omnibus Reconciliation Act (COBRA) of 1985, Pub. L. No. 99-272, as amended by:</p> <ul style="list-style-type: none"> <li>• Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509;</li> <li>• Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203;</li> <li>• The Customs and Trade Act of 1990, Pub. L. No. 101-382;</li> <li>• Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66;</li> <li>• The North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182;</li> <li>• Uruguay Round Agreements Act, Pub. L. No. 103-465;</li> <li>• Miscellaneous Trade and Technical Corrections Act of 1996, Pub. L. No. 104-295; Pub. L. No. 105-150;</li> <li>• Miscellaneous Trade and Technical Corrections Act of 1999, Pub. L. No. 106-36;</li> <li>• Homeland Security Act of 2002, Pub. L. No. 107-296; and</li> <li>• The American Jobs Creation Act of 2004, Pub. L. No. 108-357.</li> </ul> <p>(COBRA customs user fees authority is currently set to expire Sept. 30, 2014.)</p>	<p>August 1986 through fiscal year 1993: \$5.00</p> <p>Fiscal years 1994–1997: \$6.50</p> <p>Fiscal years 1998–2005: \$5.00</p> <p>Fiscal years 2006–2014: Congress authorized the Secretary of Treasury to raise the fee from \$5.00 to \$5.50 and the Secretary did so.</p>	Congress	<p>House Ways and Means Committee</p> <p>Senate Finance Committee</p>	<p>Delegated by the Department of Treasury to the Department of Homeland Security (DHS)</p>

Passenger inspection fee	Authorizing legislation and amendments to rates and disposition of fees	Per-passenger fee rates and adjustments	Authority to adjust fee	Congressional oversight	Administrative authority
Immigration	<p>The Department of Justice Appropriation Act of 1987, Pub. L. No. 99-500, as amended by:</p> <ul style="list-style-type: none"> <li>Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994, Pub. L. No. 103-121; and</li> <li>The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-77.</li> </ul>	<p>From 1987 to 1993: \$5.00</p> <p>In 1993: raised from \$5.00 to \$6.00</p> <p>In 2002: raised from \$6.00 to \$7.00</p>	Congress	<p>Judiciary Committees</p> <p>Homeland Security Committees</p> <p>House Ways and Means Committee</p> <p>Senate Finance Committee</p>	DHS
Agriculture	<p>The Food, Agriculture, Conservation and Trade (FACT) Act of 1990, Pub. L. No. 101-624, as amended by:</p> <ul style="list-style-type: none"> <li>Omnibus Reconciliation Act of 1990, Pub. L. No. 101-508;</li> <li>Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Pub. L. No. 102-237;</li> <li>The Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127; and</li> <li>Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171.</li> </ul>	<p>Set at \$2.00 in 1991</p> <p>Reduced to \$1.45 in 1993</p> <p>In 1997, raised to \$1.95 for fiscal year 1997, and raised to \$2.00 for fiscal years 1998–1999.</p> <p>In 1999 raised to \$3.00 from January 1, 2000–September 30, 2001; and to \$3.10 after October 1, 2001</p> <p>In 2005: raised to \$4.95 through September 2005, then to \$5.00 (rate effective through end of fiscal year 2010)</p>	Department of Agriculture	<p>Agriculture Committees</p> <p>House Ways and Means Committee</p> <p>Senate Finance Committee</p>	Department of Agriculture

Source: GAO.

Although the agencies are required to report to Congress on their respective fees, Congress lacks a comprehensive picture of all three fees

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because the agencies report separately. Both the Office of Management and Budget (OMB) Circular A-25 and the Chief Financial Officers Act of 1990 (CFO Act) require an agency to review its user fees biennially and make recommendations on topics such as revising the fees to reflect costs incurred. We have previously reported that agencies with shared responsibilities for common outcomes or related functions should reinforce agency accountability for collaborative efforts through common agency planning and reporting.<sup>14</sup> However, when CBP issued its user fee review it only reported on the customs fee, the portion of the agriculture fee it received, and the immigration fee. Further, the information provided about the immigration fee did not include any input from ICE, which did not have cost information about its portion of the immigration fee at that time. APHIS's review included the entire agriculture fee.<sup>15</sup> As a result, the eight congressional committees that oversee the inspection fees do not have a complete picture as to whether the fees work in concert or conflict with each other.<sup>16</sup>

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## Agencies Disagree on How to Divide and Distribute the Fees

Although the immigration fee may be used for any immigration inspection activity, ICE officials said that they do not receive sufficient immigration fee collections to cover their reimbursable activities. Principles of effective user fee design suggest that user fees should be set at a rate to cover allowable costs as a way of ensuring the fee is as efficient as possible. Instead, however, ICE officials said they rely on appropriated funds to cover the gap between fee collections and costs. By law, ICE uses appropriated money for fee-reimbursable expenses and then refunds the appropriations when user fees are received. They are also permitted to use appropriations if fees are insufficient to cover inspection costs. ICE officials said that although they have not finalized their activity cost analysis, the preliminary data shows that ICE's current portion of the fee collections is not sufficient to fully refund the appropriations used and demonstrates that ICE should receive a greater proportion of the

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<sup>14</sup>GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

<sup>15</sup>However, APHIS's report did not include CBP's analysis of its agriculture inspection costs. APHIS's report is based only on APHIS's analysis of the agriculture fee collections and inspection costs.

<sup>16</sup>Starting in fiscal year 2007, APHIS and CBP are submitting a joint report to OMB on the AQI user fees, for use in evaluating the agencies' budget requests. This report will include current and projected collections and costs by activity, FTE to be funded from the user fees, and performance measures on the effectiveness of the AQI program.

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immigration user fee funds. CBP officials do not agree with the preliminary assessment.<sup>17</sup> CBP officials told us that the immigration fee collections CBP receives are sufficient to cover the cost of CBP's immigration-related reimbursable activities. In fact, CBP's data show that its portion of the immigration fee collections were 1 percent more than CBP's immigration inspection costs for fiscal year 2006. Until ICE completes its cost analysis, it will not be known whether the immigration fee is set at a rate that covers the total cost of both CBP and ICE's immigration activities.

CBP and APHIS disagree on how future collections should be estimated and how the fees are subsequently distributed. CBP and APHIS use different rates of passenger volume increases to calculate the costs of covered activities. APHIS—the agency responsible for setting the agriculture fee—estimates future international air passenger volumes by extrapolating historical growth, whereas CBP primarily uses Federal Aviation Administration's (FAA) passenger volume forecast and collection trends. In the December 2004 interim rule for the January 2005 fee adjustment, for example, APHIS forecast passenger volume to increase by 1.18 percent per year for fiscal years 2005 through 2010, which was the average volume increase for fiscal years 1999 through 2003. In contrast, CBP projected a 4.7 to 4.8 percent annual growth. The resulting higher passenger volume estimate leads to higher total collections estimates by CBP than the one APHIS uses. CBP officials said that in 2004, 2005, and 2006 actual collections were higher than APHIS's forecast by \$17 million, \$11 million, and \$12 million, respectively. CBP officials said 2007 collections to-date are also \$13 million higher than forecasted, and APHIS officials told us they would make additional transfers to CBP to distribute the extra collections. CBP officials said that if the agriculture fee estimates tracked actual collections better, CBP would receive more money earlier in the year rather than toward the end of the fiscal year, which would allow CBP to better plan for its use. However, APHIS officials said the more conservative forecasting approach was appropriate since they do not receive appropriations for these activities and must be able to provide the services even if fee collections should decline.<sup>18</sup> Table 2 shows the

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<sup>17</sup>At the end of our audit, CBP and ICE officials agreed to work together to address the immigration inspection user fee.

<sup>18</sup>The agriculture inspection fee also authorizes APHIS to maintain a user fee reserve fund equal to 3 months of agriculture quarantine inspection costs for use in the event of a decline in fee collections.

bimonthly transfers for November 2005 through August 2006, and the additional year-end transfer of additional fees.

**Table 2: Bimonthly Transfers of Agriculture Fees from APHIS to CBP, Including Additional Lump Sum in August**

Bimonthly transfer	Agriculture user fees transferred to CBP
November 2005	\$35,186,667
January 2006	35,186,667
March 2006	35,186,667
May 2006	40,931,000
July 2006	40,931,000
August 2006	40,930,999
August 2006 <sup>a</sup> (excess transfer)	12,191,000

Source: CBP and APHIS data.

<sup>a</sup>CBP officials said this transfer was scheduled for August 2006 but did not occur until September 2006.

Agencies divide and distribute the fees as specified in memoranda. CBP and APHIS, and CBP and ICE signed a memorandum of agreement (MOA) / memorandum of understanding (MOU) establishing a process for fee distribution. The Homeland Security Act of 2002 requires an agreement between the Secretaries governing the transfer of agriculture user fee funds from the Department of Agriculture to DHS for DHS's agriculture quarantine inspection activities. The most recent MOA, dated 2007, documents the fee distribution: 60.64 percent of total agriculture passenger inspection fees were allotted to CBP and 39.36 percent to APHIS.<sup>19</sup> Per the MOA, APHIS transfers CBP's portion via a bimonthly transfer. Although we reported in May 2006 that APHIS did not always make regular transfers to CBP,<sup>20</sup> we found that these issues have generally been resolved. The CBP/ICE memo allotted 82.63 percent of total immigration fee collections to CBP and 17.37 percent to ICE, and required CBP to submit monthly warrants to the Treasury to initiate the distribution of the immigration fees between ICE and CBP.

<sup>19</sup>In addition to the base collections, this MOA documents the distribution of the agriculture passenger inspection fees collected from passengers originating in Canada, as a result of the January 2007 elimination of the Canadian exemption. Per MOA, for fiscal year 2007, CBP will receive 75.5 percent and APHIS will receive 24.5 percent of these new collections.

<sup>20</sup>[GAO-06-644](#).

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However, the extent, quality, and results of agency coordination differ. The CBP/APHIS MOA requires the agencies to periodically exchange cost information. Specifically, CBP is required to submit to APHIS at the end of each quarter an accounting of the costs of its agriculture quarantine inspection activities. APHIS is also required to submit to CBP a quarterly and annual report on both agriculture user fee collections by activity and associated costs of the agriculture quarantine inspection fees. Officials told us that these requirements are important to help them address issues such as changing workloads and costs, and the MOA has been updated accordingly. CBP and APHIS's experience is consistent with our past work on agency coordination, which states that optimal coordination requires agencies to establish compatible policies and procedures and communicate frequently.<sup>21</sup> Such communication is critical, as evidenced by our recent report on APHIS and CBP management coordination issues, which found that the agencies' coordination problems sometimes result in operational weaknesses that increase the vulnerability of United States agriculture to foreign pests and disease.<sup>22</sup> In contrast, the CBP/ICE MOU is much less specific and lacks important elements present in the CBP/APHIS MOA. For example, the CBP/ICE MOU only states that, "ICE and CBP agree to provide each other reports on the total amounts of immigration user fees received to ensure that such receipts are equitably split." ICE officials said the MOU was primarily intended to set up the initial transfer of immigration fee collections from the newly formed ICE to CBP and was not designed to address how CBP and ICE would *regularly* coordinate on the immigration fee.

Even if agencies generate complete cost data and agree on how to divide collections between them, the precise activities associated with inspections—and the costs of those activities—can change over time. Legislation, regulations, or agency agreements governing a fee should ideally contain a mechanism for adjusting user fee rates that is flexible and timely enough to allow for periodic review and, as appropriate, adjustment. The CBP/APHIS MOA requires both agencies to appoint Chief Budget Liaisons who must hold "quarterly and annual face-to-face meetings where both parties would share and analyze their respective program costs ..." so that the proportions can be reviewed and adjusted as appropriate. Through this coordination, CBP received an additional 1.31 percent in agricultural passenger inspection fees, pursuant to approval by

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<sup>21</sup>GAO-06-15.

<sup>22</sup>GAO-06-644.

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both agencies, after actual fee collections exceeded projections. ICE officials told us that, at the time of the transition to DHS, ICE requested that the MOU be renegotiated every 2 years; however, the CBP/ICE MOU does not include any provision to renegotiate, and CBP and ICE officials have not regularly met to discuss potential adjustments to each agency's portion of the fee.

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### Distributing Fees among Agencies Has Implications for Agency Budget Execution

Airlines remit collections of the customs and immigration user fees to CBP and the agriculture fees to APHIS. The three fees are remitted to the government quarterly, except for the last quarter, when the immigration fees collected to-date are remitted 10 days before the end of the fiscal year, with the remaining fees collected in the fourth quarter remitted along with the first quarter payment of the next fiscal year. By law, each of the three passenger inspection fees is deposited into a separate account. Therefore CBP must transfer ICE's portion of the immigration fees to reimburse ICE's appropriations, and APHIS must transfer CBP's portion of the agriculture passenger inspection fee to reimburse CBP's appropriations. CBP officials told us that CBP has more flexibility in spending customs fees than immigration and agriculture fees, partly because of the fees' budgetary treatment and partly because of the interagency transfer process for the APHIS fee.<sup>23</sup> The customs fee is subject to an automatic warrant process, wherein within 5 business days Treasury confirms the total amount remitted and then the fees are directly reimbursed to CBP appropriations to spend from right away. In contrast, CBP's immigration and agriculture activities are funded on a reimbursable basis by CBP's portion of the respective fees. Therefore, CBP initially uses appropriations to cover the cost of the agriculture quarantine and immigration inspections and then reimburses the appropriations accounts from the immigration and agriculture user fee accounts. To ensure that they reimburse from the correct fee account, CBP officers track time spent on customs, agriculture quarantine, and immigration activities, respectively.<sup>24</sup>

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<sup>23</sup>The customs and immigration fees are both classified as offsetting receipts and the agriculture fee is a governmental receipt. Offsetting receipts are collections that are offset against gross outlays but are not authorized to be credited to expenditure accounts. Offsetting receipts are deposited in receipt accounts and cannot be used without being appropriated.

<sup>24</sup>Generally, CBP uses a standard system to estimate the amount of time an inspector spends on customs, immigration, and agriculture inspection activities per shift, and files exception reports as necessary.

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CBP officials said that the quarterly remittance schedule—which is exacerbated by the fourth quarter remittance schedule for the immigration fee—contributes to a several-month delay between use of the appropriated funds and receipt of the reimbursement from the immigration and agriculture user fee accounts, which has delayed CBP’s ability to spend funds on critical mission areas such as hiring personnel, purchasing equipment, or travel. For example, CBP officials told us of instances where they had to delay entering into a contract because of cash-flow issues resulting from the delay in fee reimbursement. They also said transferring funds between budget accounts creates administrative rework. To address these challenges, CBP told us it is requesting in its draft legislative proposal direct reimbursement authority for the immigration and agriculture quarantine activities it conducts.

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### Inconsistent Passenger Exemptions among the Fees and Record-Keeping Requirements for Airlines Complicate Remittance and Verification

Inconsistencies in passenger exemptions and definitions across the three fees make administering the fees difficult. Each statute specifies the same standard passenger exemptions for each fee, but there are additional exemptions for the customs fee. Passengers from Canada, Mexico, and U.S. territories and adjacent islands are exempt from the customs fee but not from the immigration or agriculture fees.<sup>25</sup> (See table 3). For instance, a passenger arriving from the Bahamas must pay the immigration and agriculture fee, but not the customs fee. Aspects of a fee, such as country of origin exemptions, may promote certain policy goals. However, complex fee structures—like the variations in passenger exemptions—can increase administrative costs and potential for error and complicate the audit process since CBP must reconcile the remittance for a single passenger with different exemptions rules. It is important to understand the likely administrative and operational consequences of a fee’s design in order to address and mitigate challenges.

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<sup>25</sup>There was an exemption from the agricultural fee for air passengers arriving from Canada, but it was eliminated effective January 1, 2007.

**Table 3: Air Passenger Exemptions**

	Customs	Immigration	Agriculture
<b>Geographic exemptions</b>			
Passengers originating in Canada, Mexico, a territory or possession of the United States: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands; or any adjacent island: Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea	X		
Passengers moving from the U.S. Virgin Islands to Puerto Rico	X	X	X
Passengers moving between Alaska, Hawaii, Puerto Rico, Guam, the U.S. Virgin Islands, and the continental United States <sup>a</sup>	X	X	
<b>Standard exemptions</b>			
On-duty crew members	X	X	X
Airline employees traveling on official business	X	X	X
Diplomats, except U.S. diplomats	X	X	X
Passengers arriving on commercial aircraft used exclusively in government service (U.S. or foreign)	X	X	X
Passengers arriving on an aircraft due to emergency or forced landing when original destination was a foreign port	X	X	X

Source: GAO analysis of authorized statutes and governing regulations.

<sup>a</sup>The agriculture fee exempts passengers from all of these locations except Guam.

CBP officials said its draft legislative proposal recommends eliminating the customs-specific country of origin exemptions.<sup>26</sup> The airline industry officials we spoke with generally support this change and said the administrative transition costs would be minimal, since calculations are automated and could be easily adjusted to accommodate this type of change.

In response to Treasury Inspector General recommendations, the audit function was consolidated before the inspection functions themselves were consolidated, creating efficiencies and simplifying the process for government and industry alike by having only one agency audit all three fees concurrently. However, the improvement was limited because the regulations for each of the fees still specify different airline record-keeping

<sup>26</sup>According to CBP officials, CBP's draft proposal does not recommend eliminating the exemption for passengers arriving from U.S. territories.

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requirements for audit purposes. Airlines must retain customs documentation for 5 years and immigration documentation for 2 years. There is no time period specified for airline documentation for the agriculture fees. Both CBP and airline officials said inconsistent record-keeping requirements impose an unnecessary administrative burden on both parties. Airline officials told us that the custom fee's 5-year document retention requirement is especially burdensome.

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**Air Travel Stakeholders Play an Important Role in the Process, but Mechanisms for Ensuring Substantive Stakeholder Communication and Information Exchange Are Fragmented and Reportedly Insufficient**

The administering agencies use separate, different processes for communicating with stakeholders, including soliciting stakeholder feedback on proposed adjustments to the fees, an area of great interest to stakeholders. However, stakeholders report that these disjointed mechanisms for two-way communication are insufficient. CBP uses the Airport and Seaport Inspections User Fee Advisory Committee (Advisory Committee)<sup>27</sup> to solicit stakeholder perspectives, but limits the breadth of the Advisory Committee by discussing only the customs fee and CBP's portion of the immigration and agriculture fees.<sup>28</sup> ICE is not included in planning these Advisory Committee meetings even though the legacy Department of Justice immigration fee advisory committee was combined with the customs advisory committee when immigration functions were transferred to DHS. ICE officials said they were not aware that a meeting had been scheduled and were not consulted on the agenda, even though their user fee statute specifies that they meet regularly with stakeholders. ICE officials attended the June 2007 Advisory Committee meeting but did not participate in the presentations and had not been involved in the planning or agenda-setting for the meeting.<sup>29</sup> APHIS is also not included in planning Advisory Committee meetings. APHIS officials said issues

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<sup>27</sup>The Advisory Committee is a standing committee that meets biannually to advise the Commissioner of CBP on issues related to the performance of airport and seaport agriculture, customs, or immigration inspections. The 14 committee members and chairperson are nominated as representatives from their organizations—generally airlines, airports, cruise lines, and associations with each of these industries. Both the customs and immigration passenger inspection fee statutes required the establishment and periodic meetings of advisory committees consisting of industry representatives to advise the agency on issues related to inspectional services, including fee levels. See 8 U.S.C. 1356(k); 19 U.S.C. 58c(k).

<sup>28</sup>CBP officials said they also regularly meet with officials from ATA and IATA, however, as we will discuss later, stakeholders said they do not feel these interactions are substantive.

<sup>29</sup>According to the Advisory Committee sign-in sheet, ICE officials also attended the August 2006 Advisory Committee meeting, but we do not know the extent of their participation.

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pertaining to the agricultural inspection fee are handled by CBP's liaison to APHIS, but no one from this office attended the June 2007 meeting. CBP officials said CBP met the notification requirements of the Federal Advisory Committee Act<sup>30</sup> by publishing notice of the meeting date and the agenda in the *Federal Register*.

APHIS provides information about inspection costs and receives stakeholder input on proposed changes to the agriculture fee through public notice and comment under the federal rule-making process. APHIS officials also told us that they meet informally with stakeholders when issues arise, particularly in the field, and that this informal consultation is sufficient for their purposes, but our audit work indicates otherwise. For the past two adjustments, however APHIS has adjusted the fees through interim final rules, an option within the regulatory process that allows an agency, for "good cause" to make a rule change effective before receiving public comment. That is, the increase took effect before stakeholders had an opportunity to comment.<sup>31</sup> For example, on December 9, 2004, APHIS published an interim final rule in the *Federal Register* proposing to increase the agriculture passenger inspection fee from \$3.10 in 2004 to \$4.95 in 2005 and to \$5.00 per passenger for 2006 to 2010. The change was effective January 1, 2005, although comments received by February 7, 2005, would be considered before the final rule was issued. In another instance, APHIS eliminated the fee exemption for passengers originating in Canada by means of an interim final rule published in the *Federal Register* in August 2006, which stated that it was effective November 24, 2006, and comments received by November 24, 2006, would be considered.<sup>32</sup>

APHIS's use of the "good cause" exemptions to issue interim final rules limits stakeholder input. Stakeholders said they do not feel their comments are taken into account since the Department of Agriculture adjusts the fee before even soliciting feedback and the final rule matches the interim one regardless of stakeholder feedback. Furthermore, we have previously reported that nonfederal stakeholders believe relying solely on notice and comment through the *Federal Register* is insufficient for

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<sup>30</sup>5 U.S.C. App. 2., § 10.

<sup>31</sup>See 5 U.S.C. § 553(b)(B) and (d)(3).

<sup>32</sup>The elimination of the Canadian exemption for air passengers actually went into effect January 1, 2007, allowing affected groups more time to make necessary preparations in order to comply with the inspection and collection procedures.

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obtaining stakeholder input.<sup>33</sup> When agencies do not effectively communicate their analysis and results, they miss the opportunity to obtain meaningful comments that could affect the outcome of their regulatory changes. Without showing the underlying analysis, the agencies' conclusions may lack credibility.

ICE and APHIS officials told us that air travel stakeholders have little information on their respective activities and fees and generally do not understand how these fees work or what they are intended to fund. As we will discuss in the next section, CBP stakeholders also do not have a clear understanding of how the customs fee works and what activities it may fund.<sup>34</sup> For example, officials said the agriculture quarantine inspection function has become less transparent to air passengers and stakeholders since CBP officers all wear the same uniform and conduct the primary customs, immigration, and agriculture quarantine inspections—and not all passengers are identified for an agriculture-related secondary inspection. Similarly, many of the inspection activities retained by APHIS and ICE are not visible to most passengers or stakeholders during the actual inspection process.

Stakeholders said the Advisory Committee meetings had declined in value since INS ran them because cost and full time equivalent (FTE) information is no longer provided. CBP officials said that in the post-September 11 environment, airport inspector staffing information is “law-enforcement sensitive” and therefore not shared with airports and airlines. Airport, airline, and industry officials said they have requested information about passenger inspection activities or the cost of these activities. As a result, they feel they lack data necessary to know whether the passenger inspection fees are set fairly or accurately, or are being spent on the appropriate activities.

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<sup>33</sup>GAO, *Reexamining Regulations: Opportunities Exist to Improve the Effectiveness and Transparency of Retrospective Reviews*, GAO-07-791 (Washington, D.C.: July 16, 2007).

<sup>34</sup>CBP provided information on the costs of performing air passenger inspections at the aggregated level at the Advisory Committee meetings. However, the information provided—fiscal year 2006 total costs and collections for each of the three air passenger inspections, and the forecasted collections for fiscal years 2007 and 2008—was at too high of a level to be useful to stakeholders.

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## Specific Aspects of the Individual Passenger Inspection Fees Should Be Addressed Prior to or in Concert with Any Consolidation Effort

Some difficulties with these fees arise not because the fees are separate but because of factors that are specific to the individual passenger inspection fees. First of all, by statute, the customs fees are available for limited purposes. Not all of these purposes are associated with conducting inspections, and not all inspection activities are reimbursable. Even if all the costs were reimbursable, according to CBP, the fees collected still would not cover the full inspection costs. This misalignment, coupled with the problems in stakeholder communication described in the previous section, have created confusion and misunderstandings, and in some cases the misimpression among stakeholders that CBP in particular is using the air passenger fee collections inappropriately. Furthermore, the collection process itself is complex and presents challenges for CBP and the airlines. Finally, the tools provided to the agencies to ensure the airlines' compliance are not applied consistently and, contrary to strategies associated with effective incentives and penalties, do not provide progressively stronger disincentives for noncompliance (i.e., a graduated penalty system).

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## There Is a Disconnect between What Customs User Fees Can Pay for and Activities Involved in Customs Inspections

The activities that can be funded by passenger inspection collections vary among the fees and are specified in statute. Principles of effective user fee design suggest that fees should be aligned with the costs of the activities for which the fee is collected. The agriculture and immigration statutes generally permit the Secretaries of Agriculture and Homeland Security to cover costs associated with agricultural and immigration inspection activities.<sup>35</sup> In contrast, the customs user fee collections are available for limited purposes. Under the customs authorizing statute, passenger inspection fee collections are only available to reimburse appropriations for a limited, prioritized set of activities, including general deficit reduction, overtime and premium pay, retirement and disability contributions, preclearance services, and foreign language proficiency awards. Customs inspection-related activities that occur while a CBP officer is earning overtime, premium pay, or during preclearance can be funded by the user fees, but the customs fee is not authorized to fund

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<sup>35</sup>The agriculture statute permits the Secretary of Agriculture to "prescribe and collect fees sufficient to cover the cost of providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection . . ." 21 U.S.C. § 136a(a)(1). Similarly, although the immigration user fee statute prescribes the exact amount of the fee, the statutory language is broadly available to refund any appropriation for the amount paid out of such appropriation for expenses incurred in providing immigration inspection and preinspection services. 8 U.S.C. § 1356(d) and 1356(h).

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customs-inspection activities that occur beyond these times.<sup>36</sup> Moreover, the customs air passenger fee can be used for overtime and premium pay as well as retirement and disability contributions for CBP officers for time spent conducting inspections regardless of whether the CBP officers are inspecting passengers at air, sea, or land ports of entry. Therefore, under current law not all activities that may be funded from the customs fee (see table 4) are necessarily associated with conducting air passenger inspections (see table 5), and not all inspection activities are reimbursable, that is, can be covered by funds from the user fee account.<sup>37</sup>

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**Table 4: Legal Availability of Customs Passenger User Fee<sup>a</sup>**

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**Customs user fees availability limited to (in specified order of priority):**

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(1) Transfers to the Treasury's General Fund for deficit reduction purposes, of the difference between estimated overtime compensation for customs inspections and actual overtime, premium pay, agency retirement contributions, and foreign language proficiency awards, or \$18,000,000, whichever is less.

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(2) Reimbursements to appropriations for

- overtime compensation,
- certain premium pay costs,
- retirement and disability contributions,
- all unreimbursable preclearance services, and
- foreign language proficiency awards

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(3) To the extent funds remain available after reimbursements to appropriations (listed in (2) above), user fees are further available for

- providing full- and part-time salaries for inspections personnel and equipment that enhance customs services for persons or entities required to pay fees generally for commercial vessels; trucks; railroad cars; private vessels or private aircraft; commercial passenger inspections; dutiable mail; customs broker permits; and barge or other bulk carriers.
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<sup>36</sup>According to CBP, of the customs user fee funds spent on overtime and premium pay, more than 66 percent of the overtime and nearly 12 percent of premium pay was used for CBP officers in airports in fiscal year 2006. COBRA fees can be spent on other types of inspection overtime and premium pay for inspections related to barges, broker permits, commercial vehicles, dutiable mail, private aircraft/vessels, rail cars, and sea passengers. COBRA overtime is paid at a rate of 100 percent for any time worked outside the 40-hour workweek. Premium pay is additional compensation employees receive for working nights, Sundays, and holidays.

<sup>37</sup>In fact, although the Customs Service Inspector General once questioned the agency's use of user fees to cover costs of activities unrelated to actual services provided, the Comptroller General ruled that the Customs Service was permitted by law to cover other expenses as specified by the user fee statute. B-279865, Apr. 22, 1999.

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(4) To the extent funds remain available after reimbursements to appropriations (listed in (3) above), user fees are further available for

- 50 full-time equivalent inspectional positions to provide preclearance services.

Source: GAO analysis of legislation and CBP data.

<sup>a</sup>19 U.S.C. § 58c(f).

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**Table 5: Actual Customs Air Passenger Inspection Activities**

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Air fee audits—passenger.

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Antiterrorism—passenger.

For customs-related passenger analysis unit activities and customs-related anti-terrorism-passenger/nonpassenger activities.

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Contraband enforcement team activities in passenger: seizure processing by canine officers.

All canine officer activities involving the removing, testing, weighing of narcotics during seizure processing. And CBP officer (canine) functions: all activities involving the daily or reoccurring needs of detector dogs such as veterinary exams, feeding, grooming, etc.

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Entrance—aircraft: entrance/clearance - commercial aircraft (PAX).

Processing of entry control documents, general declarations, clearance numbers, and collection of fees.

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Examine—compliant passengers.

For customs-related primary inspection.

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Examine—noncompliance passengers.

For customs-related seizure/penalty case processing, for customs-related processing of seizures and arrests, for customs-related secondary inspections, hospital detail: processing and transporting of passengers to the hospital for examination/detention; monitoring and security of detainees and arrestees at the hospital, and for customs-related court time.

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Identify—for customs-related roving.

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Informed compliance—for customs canine-related (K9) informed compliance and outreach and for customs-related informed compliance and outreach.

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Military personnel—military aircraft.

All activities associated with the processing of military personnel and military aircraft. Includes primary and secondary functions and also includes CARNETS, informal entry, Temporary Importation under Bond (TIB), other government agency processing, left over baggage clearance, duty calculations, collections, 14-point intensive exams, currency forms, currency verification, STOP, Blitzes, 7/14s inspections, COMPEX; sanctions and embargos for OFAC; munitions, dual use materials, with military applications and chemicals. Military Vessels: all activities associated with the processing of military personnel and military vessels. Includes primary and secondary functions. Also includes CARNETS, informal entry, TIB, other government agency processing, left over baggage clearance, duty calculations, collections, 14-point intensive exams, currency forms, currency verification, STOP, Blitzes, 7/14s inspections, COMPEX; sanctions and embargos for OFAC; munitions, dual-use materials, with military applications and chemicals.

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Nonintrusive technology—passenger: for customs-related non-intrusive technology—(PAX).

Other Activities—airport security and safety.

Officers assigned to work within the airport security office, processing of applications and fingerprinting of airport applicants; ramp security; internal conspiracy operations. Program administration for shared intelligence operations. Multi-agency taskforce, information, participation in technical training with foreign governments. Coordination, integration, cooperation with other federal agencies and international task forces.

Source: CBP.

Even if the customs fee was limited to funding the customs air passenger inspection activities, according to CBP, for fiscal year 2006 it would have only covered about 72 percent of total inspection costs. After the April 2007 fee increase, CBP estimates that the fee would still need to increase an additional 39 percent to cover total costs. Therefore, customs inspection-related activities are generally funded by appropriations from general revenues, limiting funds available for other federal priorities. However, CBP officials also said that customs fee collections would fully cover current inspection costs if the country-of-origin exemption for Canada, Mexico, and the adjacent islands were lifted.

Another difference between the customs fee and the other two passenger inspection fees is that although the immigration and agriculture fees are to be used for any costs related to inspection activities (referred to in this report as full cost recovery fees), the customs fee is structured to recover only a portion of the cost of the customs inspection activities (referred to in this report as a partial cost recovery fee). In its draft legislative proposal, CBP officials said it will request both the authority to recover the full costs of the customs inspections and to fund all international air passenger inspection-related activities. Stakeholders said they would support these changes, which helps bring the customs fee more in line with principles of effective user fee design, but were concerned that the agencies do not have reliable cost data to determine the actual cost of conducting inspections.<sup>38</sup>

Passenger exemptions are also factors in whether fee collections can recover the costs of inspections. As previously discussed, passengers whose travel into the United States originates in Canada are exempt from paying the customs fee. Since exempt passengers receive but do not pay

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<sup>38</sup>Reliable cost information is critical to setting user fees because if the data are wrong, the resulting analysis can lead to improper fee-setting decisions.

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for inspections, either nonexempt passengers bear these costs by paying higher fees, or the inspections must be funded with appropriations.<sup>39</sup> Although passengers originating in Canada are often “precleared”—meaning that passengers are inspected before departing Canada rather than upon arrival in the United States<sup>40</sup>—preclearance inspections are allowable reimbursable activities per the customs inspection fee statute. Therefore, passengers originating in Canada are exempted from paying the customs inspection fee, even though their inspections are funded by it.

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### Airlines Collect Fees When Tickets Are Sold Rather Than When Passengers Travel, Which Makes It Difficult for Agencies to Verify Collection and Payment

Despite a unified collection process for the three fees, CBP faces challenges in verifying individual passenger payment and accurately determining each airline’s liability. By law, the ticket seller (i.e., the airline or ticket agent) must collect the applicable passenger inspection fees from the passenger at the time the ticket is sold.<sup>41</sup> Tickets can be sold up to a year in advance, and CBP has no independent documentation on which to calculate liability. Therefore, CBP cannot match the fees paid to individual passengers.<sup>42</sup> The only way CBP can independently confirm that passengers traveling to the United States have paid the requisite inspection fees is through postremittance audits. To remedy this, CBP would like to move to a system wherein airlines remit fees based on the passengers transported into the United States. CBP could then track the remittances to the number of passengers per flight by comparing them to the airplane manifest data and “onboard” counts that airlines already provide to CBP. According to CBP officials, if the fees were remitted based on passengers

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<sup>39</sup>Currently, only the customs fee exempts air passengers originating in Canada and Mexico from paying the inspection fee. The Canadian agriculture air passenger exemption was eliminated in January 2007.

<sup>40</sup>The United States preclears passengers at 15 airports around the world.

<sup>41</sup>According to CBP, if the fees are not collected at the time of purchase, the airline is responsible for collecting the fee from the passenger at the airport. If the ticket is sold by a travel agent or online travel service, they collect and transfer the fee as part of the overall ticket transaction to the airline. The Court of Federal Claims has ruled that the immigration and agriculture user fee statutes and implementing regulations do not impose liability on airlines for payment of any uncollected inspection fees. *American Airlines v. United States*, 68 Fed. Cl. 723 (2005); *Continental Airlines v. United States*, No. 06-432C (Fed. Cl. July 12, 2007). CBP and APHIS argue that airlines must remit immigration and agriculture fees, regardless of whether airlines collected them from passengers. CBP reported to us that it is appealing both cases, as well as submitting a legislative proposal to Congress that would hold carriers liable even for those fees that should have been collected but were not.

<sup>42</sup>Since fees are collected when the ticket is sold, fees may be remitted in advance of passenger travel.

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transported, there would be little need for auditing carrier remittance since CBP would be able to automatically calculate and verify airline liability.

Airline and Air Transport Association (ATA) officials with whom we spoke said that changing from a ticket-based collection system to a passenger-transported collection system poses challenges to airlines. First, the airline that transports the passenger is not always the airline that sold the ticket. This means that in a manifest-based system the airline responsible for remitting a fee might not be the airline that collected it from the passenger. Nearly all United States airlines use the “interlining” system, in which one airline can contract with another to provide transportation for one or more segments of a passenger’s journey. Under the current ticket-based collection system, on an interlined ticket the airline that sells the ticket remits the fee, regardless of which airline transports the passenger into the United States. For example, a passenger who purchases a Madrid-Paris-New York ticket from ABC airline pays the fee to ABC airline even if he flies ABC from Madrid to Paris and XYZ from Paris to New York. Airline ABC is liable for the fee and remits it to the U.S. government. However, under CBP’s original proposed passenger-transported system, the liability for remitting the fee would fall on airline XYZ—the airline that brought the passenger into the country—even though ABC airline sold the ticket and collected the fee.<sup>43</sup> As a result, airline XYZ—the airline that transported the passenger into the United States—would have to ensure not only that ABC paid airline XYZ for the ticket but also that it collected and transferred the correct fees.

According to CBP officials many foreign-owned airlines already remit the fees based on passengers transported, though these payments are in violation of the statute, and the International Air Transport Association (IATA) reports that the manifest-based remittance system is common in other countries that collect similar fees.<sup>44</sup> Nevertheless, airlines and ATA officials said that transition costs would be significant—though limited to the first year—because airlines begin selling tickets for a flight 1 year in

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<sup>43</sup>According to CBP officials, CBP’s draft legislative proposal has been amended such that “when feasible,” the Secretary of DHS may establish an alternative system to remit user fees.

<sup>44</sup>According to airline officials we spoke with, domestically-owned carriers—responsible for 60 percent of the international flights into the United States—generally believe their positions are better represented by ATA, while IATA is more in line with foreign-owned carriers, which represent 40 percent of the international flights into the United States.

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advance, and as a result they would have to maintain two separate remittance systems—ticket-based and passenger-transported-based—for a full year. Airlines question the need for such a change. Officials from two major airlines noted that CBP’s audits put their remittance error rate at less than 1 percent. CBP officials concur that for the six to seven major domestic airlines the remittance error rate is extremely low, but as we will discuss, error and timely remittance rates for small and medium-sized airlines are more problematic. A shift to a passenger-transported system would, they argue, increase the ability of CBP’s finance office to determine the compliance of smaller airlines and potentially reduce CBP’s audit costs.

In addition, the airlines also see fee collection as a cost they incur over and above the cost of the audits. To help offset collection costs, airlines are permitted to keep the “interest float”—that is, the interest income that accrues between the quarterly remittances. Airline representatives view this as minimal for two reasons. First, in the recent era of low interest rates, the interest float is small; airline officials told us that it covered as little as 38 percent of collection costs. This would decline even further if CBP moves to monthly remittance as it suggests it will in its legislative proposal. Second, airline and airline industry officials said credit card transaction fees averaging 2.15 percent on the total transaction—including taxes and fees as well as the ticket price—further reduce the benefit. Another user fee collected by airlines on behalf of the government—the passenger facility charges<sup>45</sup> (PFC)—has a provision that is designed to compensate for the actual cost of collections, in addition to the interest float. The airlines told us they would prefer this type of direct compensation for their collection role, similar to the PFC.

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<sup>45</sup>Passenger facility charges are fees airports use to fund FAA-approved projects that enhance safety, security, or capacity; reduce noise; or increase air carrier competition. In evaluating how much the carrier compensation should be for the collection of PFCs, the FAA asked carriers to submit their incremental costs associated with PFC collection, handling, remittance, reporting, recordkeeping, and auditing. These categories consisted of the following: credit card fees, audit fees, PFC disclosure, reservations, passenger service, revenue accounting, data entry, accounts payable, tax, legal, corporate property department, training reservations, ticket agents, and other departments, carrier ongoing information systems, computer reservation systems ongoing, PFC absorption, airline tariff publishing company, airline reporting corporation, and interest income. From the analysis of these data, the FAA determined the average carrier cost was \$0.11 per PFC.

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## Compliance Tools Do Not Provide a Graduated Penalty System to Encourage Airline Remittance

The tools used to ensure airline compliance do not provide optimal incentives for airlines to make accurate and timely payments. We have previously reported that rewards and penalties should correspond to performance.<sup>46</sup> Although each fee contains enforcement mechanisms meant to encourage airlines to remit the correct fee amount on time—namely the carrier bond associated with the customs fee, the denial of landing rights for the customs and immigration fees, and the penalties and interest associated with the agriculture and immigration fees—none are designed in this manner. For the customs fee, CBP is authorized to require airlines to maintain a carrier bond, which is used both to enforce payment of inspection fees and to encourage airlines to comply with inspection-related requirements, such as submitting complete Advance Passenger Information System (APIS) data prior to takeoff. In addition, airlines that do not remit the customs fee timely—or not at all—are charged liquidated damages for breach of bond conditions that are equal to twice the fee amount owed for each violation, whether it is the first violation or a repeat violation. CBP officials said they have issued liquidated damages against 20–25 airlines on average per quarter since 2003 for late payment or nonpayment.<sup>47</sup>

For the immigration and agriculture fees, the agencies may require airlines to pay interest and penalties because of late payment or nonpayment. CBP officials said the interest and penalty rates charged for late payments are set by the Treasury Department and do not provide for increasing interest or penalty rates, or both, for repeated instances of late or nonpayment.<sup>48</sup> Thus an airline that repeatedly pays late—or not at all—is charged the same interest and penalty amount each time, which may just offset the interest the airline earned by not remitting user fee collections in the first place. Therefore, CBP officials said the penalty is not high enough to discourage violations.

CBP is also authorized to deny landing rights if the airline does not remit customs and immigration fees. However, this tool suffers from the very

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<sup>46</sup>GAO, *Grants Management: Enhancing Performance Accountability Provisions Could Lead to Better Results*, GAO-06-1046 (Washington, D.C.: Sept. 29, 2006).

<sup>47</sup>Because customs fees are treated as duties for administration and enforcement purposes, CBP also has the authority to charge interest on unremitted customs user fees at the tariff rate of interest, however, in practice interest charges are included in the liquidated damages calculation.

<sup>48</sup>31 U.S.C. Section 3717(a)(1).

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opposite design flaw: it is perceived to be too severe to invoke. CBP officials said that denying landing rights is such a severe penalty that its very existence—infrequent application notwithstanding—is effective enough to discourage late payment or nonpayment of passenger inspection fees by the airlines. However, even in cases of carrier nonremittance or chronic late remittance, CBP officials said CBP has threatened to use this authority to deny landing rights on four occasions—twice against the same airline—in nearly 20 years. Three of these instances occurred in 2007. We have previously reported that penalties may lose their effectiveness and credibility over time if they are not executed consistently.<sup>49</sup>

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### CBP Does Not Employ a Systematic Process for Selecting Airlines for Audit

Officials said there is no standard set of criteria used to guide the selection of airlines for audit. The audit function for all three inspection fees is consolidated within CBP's Office of Regulatory Audit, and all audits cover all three fees. Approximately 385 airlines remit immigration and agriculture fees, and 290 airlines remit the customs fee. CBP audits about 50 carriers annually to test for compliance. CBP's Office of Finance recommends airlines for audit based on a number of factors, including whether a carrier's remittance dropped substantially from one quarter to the next, news articles about changes in flights or airline financial issues, and prior audit findings. Experience and judgment also come into play. Officials are responsible for processing the same airlines' payments every quarter and become "experts" on those airlines and the normal trends in their remittances. Although this flexibility and individualized understanding of the airlines is important, we have previously reported that developing internal controls is key to minimizing the risks that may prevent an agency from meeting its objective.<sup>50</sup> Documenting selection criteria could also protect the agency when experienced officials leave the agency. CBP officials told us that although the larger airlines generally present a much lower risk of noncompliance or incomplete remittance, they are audited every couple of years because the record-keeping requirements are so burdensome. In addition, if CBP audited a large airline only once every 5 years, the audit would be very resource-intensive. Nevertheless, the fact that there is significantly more volatility in compliance by small and mid-sized airlines and those offering seasonal

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<sup>49</sup>GAO-06-1046.

<sup>50</sup>GAO, *Internal Control Management and Evaluation Tool*, GAO-01-1008G (Washington, D.C.: August 2001).

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flights means they require more audit attention. For context, in a 5-year sample of 16 airlines,<sup>51</sup> the 11 airlines with the smallest passenger volume rate remitted the passenger inspection fees late 35 times. These 11 airlines represented 14.6 percent of total international passenger volume—slightly larger than that of the single largest airline in the sample.

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### Certain Elements Have the Potential to Undermine Any Effort to Consolidate the Fees

As we have discussed, the challenges related to the passenger inspection user fees result both from inconsistencies among the fees—making them difficult to administer—and from specific design elements within the individual fees. For example, agencies face difficulties distributing the fee collections, both because they disagree on how to allocate the receipts among them, and because the process of transferring the funds from one agency or appropriation to another complicates agency budget execution. Moreover, the statutory structure does not permit the administering agencies to easily verify collection and payment, and the customs fee does not permit reimbursement for many activities directly associated with air passenger inspections. These issues should be considered regardless of whether the fees are consolidated.

As discussed earlier, we have previously reported on a number of principles that could inform efforts such as these to redesign or consolidate these fees. Understanding the trade-offs inherent in various fee design elements and the likely consequences of various design choices with respect to efficiency, equity, revenue adequacy and administrative burden can help policy makers carefully weigh the likely effects of various policy decisions and move discussion and debate to a more informed plane.

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## Conclusions

Although the *need* to address some of the user fee challenges presented in this report may appear obvious, *how* to accomplish this is less clear. Any changes made to one fee should be designed to complement rather than conflict with the other two fees. Moreover, although whether and how to consolidate the international passenger inspection fees is ultimately a policy decision Congress must make, it is important to note that consolidating the passenger inspection fees absent other changes will not eliminate some of the administrative and operational challenges agencies

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<sup>51</sup>The sample included airlines whose total passengers transported represented top, middle, and low shares or segments of total passenger volume.

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and stakeholders currently encounter. In some cases the origins of these challenges lie in the statutory structure of the fees themselves, and not their lack of consolidation.

Any consolidation effort that neglects to consider these issues is unlikely to have the desired effect:

- Unless agencies present a comprehensive picture of the three fees, including the full scope of inspection activities and their costs, Congress will lack a complete picture of whether the fees work in concert or conflict with each other, which could hamper oversight. Furthermore, agencies will be less able to develop and maintain the partnerships necessary to collect and distribute the fees as efficiently and effectively as possible.
- The lack of complete cost data and regular, formal opportunities to share such information can prevent the agencies from addressing existing issues, including differences in forecasting assumptions and lack of agreement on activity costs, standardized audit selection criteria, and the design and implementation of a graduated penalty system to encourage and enforce airline compliance.
- More broadly, if agencies cannot determine whether these fees are recovering costs, Congress cannot be sure that resources are allocated to the activities it most values.
- Likewise, without substantive, transparent coordination between agencies and stakeholders, agencies will not be able to effectively address administrative burdens such as disparate airline record-keeping requirements among the fees.

The principles of effective user fee design discussed earlier in this report can both offer a framework for considering the implications of various statutory structures and help clarify and illuminate the trade-offs associated with various policy choices available to Congress associated with amending the individual statutes related to passenger inspection fees or consolidating all or part of them into a single passenger inspection fee. Such a framework could also provide the basis for future reviews of federal user fees as Congress works to ensure that user fee financing mechanisms remain relevant and up-to-date.

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## Recommendations for Executive Action

We recommend that the Secretaries of Agriculture and Homeland Security take the following seven actions:

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- direct CBP, ICE, and APHIS to make information on the estimated cost of inspections as well as the basis for these cost estimates readily available to affected parties to improve the transparency and credibility—and hence the acceptance by stakeholders and payers—of the processes for setting, collecting, and distributing the fees;
  - direct CBP, ICE, and APHIS to collaborate on agendas, presentations, and discussions with stakeholders for the CBP Airport and Seaport Inspections User Fee Advisory Committee (Advisory Committee) meetings in order to improve the usefulness of these meetings for both agencies and fee stakeholders;
  - consolidate reporting of the passenger inspection fees, to include the activities and proportion of fees for which CBP, ICE, and APHIS are each responsible to provide a comprehensive picture of the user fees supporting the passenger inspection process;
  - develop a legislative proposal in consultation with Congress on a consolidated, graduated penalty system that reflects airline payment history and includes specific administrative procedures regarding when penalties should be invoked in order to improve the effectiveness of the tools for enforcing payment of passenger inspection fees;
  - develop a legislative proposal in consultation with Congress on a single, common set of airline record-keeping requirements for all three passenger inspection fees that reflects the consolidated audit function for these fees and reduces the administrative burden on airlines;
  - develop a legislative proposal in consultation with Congress to eliminate key differences among the fourth quarter remittance requirement for the immigration fee; and
  - develop and implement common assumptions used to forecast the collections of agriculture quarantine inspection activities in order to more closely tie the fee rate to CBP's and APHIS's agriculture fee distribution to actual collections.

Further, we make the following three recommendations to the Secretary of Homeland Security:

- develop and implement formal written guidance on factors to be considered in selecting airlines for audit, including factors intended to reflect the risk of non- or incomplete payment;
- complete development of and report on ICE's activity costs to ensure the immigration fee is divided between ICE and CBP according to their respective proportion of immigration inspection activity costs. Further, if the study shows that immigration activity costs exceed collections, develop a legislative proposal in consultation with Congress to adjust the immigration fee to recover costs as closely as possible, per statute; and

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- direct CBP and ICE to develop and implement a fee-sharing memorandum of understanding (MOU) to include time frames for when funds would be transferred and to provide for periodic review and update.

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## Matter for Congressional Consideration

Congress should consider

- harmonizing the passenger exemption and statutory definitions across the various inspections fees,
- eliminating the differences among the three fees in the authority to set fee rates,
- whether it wishes the customs fee to be a full cost recovery fee, and
- reviewing the activities that may be reimbursed by the customs fee collections.

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## Agency Comments & Our Evaluation

We provided a draft of this report to the Secretaries of the Departments of Homeland Security (DHS) and Agriculture for review and received comments from both agencies that are reprinted in appendixes II and III. In addition, DHS provided technical corrections, which were incorporated as appropriate. DHS and USDA concurred with our recommendations, and provided additional comments for our consideration. We also provided portions of the report for non-federal stakeholder review and made technical corrections where appropriate.

While DHS concurred with our recommendations to work with Congress to (1) develop a graduated penalty system, (2) develop a common set of airline record-keeping requirements, (3) eliminate the differences in the fourth quarter remittance requirements for airlines, and, if needed, (4) increase the immigration passenger inspection fee, by developing legislative proposals to address these issues, DHS officials said implementing these individually could take several years and only address the challenges in the air passenger environment. In recommending these separately we did not intend to imply that they should be addressed separately and recognize that the agencies could address these issues in a single legislative proposal. Further, since this engagement only reviewed air passenger inspection fees we limited our recommendations to those fees.

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We are sending copies of this report to the Secretaries of Homeland Security and Agriculture and interested congressional committees. We will also make copies available to others on request. In addition, this report

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will be available at no charge on the GAO Web site at <http://www.gao.gov>. If you or your staff have any questions about this report, please contact me at (202) 512-9142 or [irvings@gao.gov](mailto:irvings@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff making major contributions to this report are listed in appendix IV.

A handwritten signature in black ink that reads "Susan J. Irving". The signature is written in a cursive, flowing style.

Susan J. Irving  
Director for Federal Budget Analysis,  
Strategic Issues

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# Appendix I: Objectives, Scope, and Methodology

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The objectives of this report were to identify how the three separate passenger inspection user fees are set, collected, and distributed and the benefits and challenges of this process for agencies and stakeholders, and implications of consolidating these fees under the Department of Homeland Security (DHS).

To meet these objectives, we reviewed the passenger inspection user fee legislation and guidance, agency documents, and literature on user fee design and implementation characteristics, and interviewed officials responsible for managing user fees at the Customs and Border Protection (CBP) offices in Washington, D.C., and from the New York/New Jersey, Miami and Seattle Regional Offices, Immigration and Customs Enforcement (ICE), and Animal and Plant Health Inspection Service (APHIS). We observed the inspections process and interviewed CBP officials responsible for port management and certain airport and airline officials involved with international passenger processing or the three passenger inspection fees. We did not assess the effectiveness of these inspections. We reviewed audit and cost data related to air passenger inspection activities. We also asked questions about CBP's and APHIS's internal controls for the data we used and determined that the data are sufficiently reliable for the purposes of this report. However, it was beyond the scope of this report to evaluate the reliability of the cost data for purposes beyond this report.

We also interviewed APHIS, CBP, and ICE officials responsible for managing the user fees and auditing the user fee collections at DHS and the Department of Agriculture.

We also met with officials from Continental Airlines, American Airlines, Air Transport Association, International Air Transport Association, Airports Council International-North America, Miami-Dade County International Airport, New York/New Jersey Port Authority, Bush Houston-Intercontinental International Airport, Dallas-Fort Worth International Airport, San Francisco International Airport, and Seattle-Tacoma International Airport. We also met with and reviewed documents from the travel industry organization, the Discover America Partnership.

To select the airlines and airports to meet with, we reviewed Bureau of Transportation Statistics data on the volume of international air passengers and number of international flights and consulted with officials from government and industry associations. To select industry stakeholders to meet with, we consulted government agency officials and

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reviewed CBP's Airport and Seaport User Fee Advisory Committee membership.

We performed our work from October 2006 through August 2007 in accordance with generally accepted government auditing standards.

# Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

September 6, 2007

Ms. Susan Irving  
Director, Strategic Issues  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Ms. Irving:

Thank you for providing us with a copy of the draft report entitled, "FEDERAL USER FEES: Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees are Consolidated," GAO-07-1131, dated September 2007. This report addresses how the three user fees charged for the inspection of arriving international airline passengers are set, collected, and distributed and the benefits and challenges of this process for agencies and stakeholders, including examining the implications of consolidating these fees under the Department of Homeland Security's (DHS) authority.

The U.S. Customs and Border Protection (CBP) appreciated the opportunity to work with the Government Accountability Office (GAO) team in constructing a balanced and accurate report. CBP agrees with the overall substance and findings of the report. DHS is pleased that the report highlights the same operational and coordination problems CBP has identified and has been working to resolve. As stated in the report "the process of setting fees, collections, and distributing separate, dissimilar fees creates challenges for agencies and stakeholders." DHS notes that the challenges described in the report are not limited to the air passenger inspection user fees. CBP faces these and other challenges in managing user fees collected for inspecting passengers, conveyances, animals, plants, and agriculture goods entering the United States.

CBP concurs with the ten recommendations for Executive Action included in the draft report. CBP realizes the benefits that the adoption and implementation of these recommendations will produce for DHS, CBP, U.S. Immigration and Customs Enforcement (ICE), the US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), and nonfederal stakeholders. However, if the recommendations were adopted separately, as suggested by GAO, DHS would need to develop and submit at least four legislative proposals to the Congress. In addition, a series of regulations will need to be issued to implement some of the recommendations. If GAO's recommendations were implemented individually, their full implementation will take several years and only address the challenges in the air passenger environment.

[www.dhs.gov](http://www.dhs.gov)

To address the challenges described in the draft report, CBP in consultation with DHS, ICE, and APHIS, initiated an effort to develop a legislative proposal to consolidate the authorities that govern the customs, immigration, and agriculture inspection user fees. CBP's original proposal included the consolidation of the customs, immigration, and agriculture inspection user fees authorities into a single law. However, CBP decided to restructure its proposal due to the expressed opposition by APHIS and the House Agriculture Committee to any effort aimed at transferring the authority over the agriculture inspection fees to DHS. The resulting proposal's main goal is to create DHS/CBP user fees that recover, to the extent possible, CBP and ICE's costs of providing inspection services. Under this proposal, APHIS retains the authority to set and adjust user fees to recover their costs associated with agriculture inspections. If the legislative proposal is enacted APHIS will no longer have to transfer a portion of their user fee collections to CBP. Meanwhile, CBP will split a portion of the consolidated user fees with ICE to ensure that both agencies fully recover the costs related to immigration inspection at airports and seaports. Attached to this memorandum is a table that summarizes the GAO recommendations that CBP will address in the proposal to consolidate the authorities that govern the customs, immigration, and agriculture inspection user fees.

The ten recommendations and CBP's corrective actions to address these recommendations are included below:

Recommendation 1

Direct CBP, ICE, and the Animal and Plant Health Inspection Service (APHIS) to make information on the estimated cost of inspections as well as the basis for these cost estimates readily available to affected parties to improve the transparency and credibility – and hence the acceptance by stakeholders and payers – of the process for setting, collecting, and distributing the fees.

CBP Response

In an effort to simplify and streamline the process of setting, collecting, and distributing user fees, CBP has begun developing legislation that will consolidate current user fee authorities. During the user fee consolidation proposal requirements process, stakeholders had been actively involved in providing their input and CBP has been diligent in maintaining open dialogue to increase transparency and ease understanding and adherence to the revised legislation.

Advisory committee meetings afford stakeholders an opportunity to address CBP representatives with questions and comments on the status of collections and cost data for each fee and activity. At the last advisory committee meeting, CBP provided the membership with documentation showing CBP's costs and collections for the various user fees. CBP will continue to work with ICE and APHIS to streamline the reporting process and collaborate on improving the availability and accessibility of data. CBP will

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also explore additional opportunities for sharing this information with the trade community.

Recommendation 2

Direct CBP, ICE, and APHIS to collaborate on agendas, presentations, and discussions with stakeholders for the CBP Airport and Seaport Inspections User Fee Advisory Committee meetings in order to improve the usefulness of these meetings for both agencies and fee stakeholders.

CBP Response

CBP agrees that the advisory committee should address issues related to airport and seaport passenger inspection fees that are relevant to its membership. Prior to each meeting, CBP asks the membership for input on the agenda. To date, CBP has not received requests for information on ICE or APHIS functions.

In the future, CBP will strive to communicate the usefulness and importance of these meetings to the committee members, as well as the services offered by ICE and APHIS that are relevant to the fee stakeholders. CBP will work with ICE and APHIS to determine the level of involvement they desire and with DHS to determine whether the charter of the committee should be amended to include these agencies or if their role can be broadened under the current committee charter.

Recommendation 3

Consolidate reporting of the passenger inspection fees, to include the activities and proportion of fees for which CBP, ICE, and APHIS are each responsible to provide a comprehensive picture of the user fees supporting the passenger inspection process.

CBP Response

In keeping with CBP's Memorandum of Agreement (MOA) with APHIS, CBP shares the costs of our agriculture fee activities with APHIS on a periodic basis, which they can use in their reports. Also, starting in FY 2007, APHIS and CBP are submitting a joint report to the Office of Management and Budget (OMB) on the Agriculture Quarantine Inspection (AQI) user fees, for use in evaluating the agencies' budget requests. This report includes current and projected collections and costs by activity, FTE to be funded from the user fees, and performance measures on the effectiveness of the AQI program.

In the past, CBP has only reported its own costs and collections in its reports, in part because ICE did not have data available on the costs of their activities. Now that this data is available from ICE, we can start submitting a joint Immigration User Fee (IUF) report to Congress. For the required biennial user fee review, we will continue to follow DHS' guidance by submitting CBP's fee costs and collections to DHS, which then issues a consolidated user fee report for the entire Department.

Recommendation 4

Develop a legislative proposal in consultation with Congress on a consolidated, graduated penalty system that reflects airline payment history and includes specific administrative procedures regarding when penalties should be invoked in order to improve the effectiveness of the tools for enforcing payment of passenger inspection fees.

CBP Response

The absence of a strong and cohesive penalty system does not effectively deter air carriers for failing to comply with CBP rules and regulations. Under the status quo CBP's authority to issue penalties to air carriers are dispersed across three different user fee regulations. This fact reduces CBP's ability to effectively enforce penalty provisions. CBP is addressing this problem in the short term by working to incorporate more definitive enforcement provisions into the existing Immigration and Customs user fee regulations. For a more complete solution to this problem, DHS is proposing to establish a penalty provision by statute as a part of its Unified User Fee legislative proposal. This proposed authority will give the Secretary of DHS the ability to create a robust system of penalties via regulation and also provide the trade appropriate opportunities to comment on the proposed changes.

Recommendation 5

Develop a legislative proposal in consultation with Congress on a single, common set of airline record-keeping requirements for all three passenger inspection fees that reflects the consolidated audit function for these fees and reduces the administrative burden on airlines.

CBP Response

CBP plans to solve this problem as part of the Unified User Fee initiative. The proposed authority will give the Secretary of DHS the ability to establish record keeping requirements via regulation, giving the trade appropriate opportunities to comment on the proposed changes.

Recommendation 6

Develop a legislative proposal in consultation with Congress to eliminate key differences among the fourth quarter remittance requirement for the immigration fee.

CBP Response

The current cycle of payments is problematic because air passenger inspection expenses occur throughout the year, but payments are received far less often. The Immigration User Fee's provision for the fourth quarterly payment further complicates the matter as it

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leaves an even longer gap in collections. CBP plans to solve these payment problems as part of the Unified User Fee initiative. Under our proposed payment system, payments will be due 30 days after the month in which the fees are collected.

Recommendation 7

Develop and implement common assumptions used to forecast the costs of agriculture quarantine inspection activities in order to more closely tie the fee rate to CBP's and APHIS' agriculture inspection costs.

CBP Response

Projecting collections accurately is important because it affects how much revenue the agencies can spend on agriculture inspections and also when CBP receives the revenue. Now that CBP is submitting a joint report to OMB, it has become even more important that we agree on how to project collections. CBP has already brought this matter to APHIS's attention in the past and we will work to schedule a meeting to come to an agreement on the assumptions used. At CBP's next quarterly meeting with APHIS in September 2007, CBP will suggest that those responsible for the forecasting meet separately to make sure the agencies use the same assumptions.

Recommendation 8

Develop and implement formal written guidance on factors to be considered in selecting airlines for audit, including factors intended to reflect the risk on non-or incomplete payment.

CBP Response

Formal written guidance on factors to be considered in selecting airlines for audit will be completed and implemented.

Recommendation 9

Complete development of and report on ICE's activity costs to ensure the immigration fee is divided between ICE and CBP according to their respective proportion of immigration inspection activity costs. Further, if the study shows that immigration activity costs exceed collections, develop a legislative proposal in consultation with Congress to adjust the immigration fee to recover costs as closely as possible.

CBP Response

CBP plans to adjust the fees to cover the full costs both agencies incur in providing inspection services as part of the Unified User Fee legislative proposal. CBP has already included ICE's estimated costs for the new fee calculation in our draft proposal. When we receive their final costs, CBP will update the legislative package as necessary.

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Recommendation 10

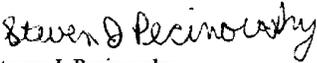
Direct CBP and ICE to develop and implement a fee-sharing memorandum of understanding to include timeframes for when funds would be reimbursed and to provide for periodic review and update.

CBP Response

As noted in the report, ICE is finalizing its cost analysis. Once the analysis is complete, CBP will revisit the split of user fees and expand the scope of the existing MOU to provide for periodic review and update. CBP would also take advantage of the available cost data by including provisions for periodic meetings and data sharing between the agencies. Timeframes for when funds will be transferred are included in the current MOU. In drafting the MOU language, CBP will follow the guidance already provided by DHS.

We thank you for the opportunity to review the draft report and provide comments.

Sincerely,

  
Steven J. Pecinovsky  
Director  
Departmental GAO/OIG Liaison Office

# Appendix III: Comments from the Department of Agriculture



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

SEP 17 2007

Ms. Susan J. Irving, Director  
Strategic Issues  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Irving:

The United States Department of Agriculture (USDA) has reviewed the U.S. Government Accountability Office's (GAO) draft report, "Federal User Fees: Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated (07-1131)." We are impressed with the high level of detail contained in this report and the thorough explanations and charts that covered some of the highly complex issues and differences between the USDA, Department of Homeland Security's Office of Customs and Border Protection (DHS, CBP), and Immigration and Customs Enforcement's (ICE) authorities, fees, penalties, and exemptions. The well-organized explanations and visual diagrams make this report useful for purposes beyond GAO's original intention to examine how fees are set, collected, and distributed; to evaluate the impact of these Federal processes on the industry; and to discuss any implications of consolidating fees.

USDA considers fair and efficient user fees and related administrative processes a high priority for the Department. While we concur with each recommendation that pertains to USDA, we also offer the following perspectives on each recommendation.

**Direct CBP, ICE and APHIS to make information on the estimated cost of inspections as well as the basis for these cost estimates readily available to affected parties to improve the transparency and credibility-and hence the acceptance by stakeholders and payers-of the processes for setting collecting, and distributing the fees.**

USDA concurs with this recommendation. However, we believe it is important to note that the funds we collect in our international air passenger user fees are used to fund all direct and indirect costs for this program. International air passengers pay our user fees because all air passengers are *subject to* inspection, regardless of whether they are actually inspected.

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**Ms. Susan J. Irving**  
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Further, we believe that full disclosure of all costs and what the user fees were used for is the best way to add credibility and acceptance of the user fees for the industry. Starting in Fiscal Year 2007, USDA's Animal and Plant Health Inspection Service (APHIS) filed reports with the U.S. Office of Management and Budget to not only marry our actual costs with our upcoming budget submissions, but to provide outputs and outcomes to the public on the results of our Agriculture Quarantine and Inspection (AQI) Program. This contains information on the number of plant pest interdictions to protect the fruit, vegetable, and grain industries in the U.S. and other valuable accomplishments.

Regarding the action to make information available on setting fees, we already provide full disclosure on exactly how we set our international airline passenger user fees in our fee proposal rules in the "Federal Register." In our last rate-setting, we provided detailed calculations for each and every penny of each and every AQI user fee including any amounts included in the fees for rounding. We remain, of course, open to any suggestions for enhancements or improvements on rate-setting.

Regarding the action to make information available on our process for distributing the fees, we currently provide this information through a Memorandum of Agreement (MOA) between USDA and DHS. As shown by your later suggestion for DHS and ICE to use a similar vehicle for this process, we believe a MOA between USDA and DHS is our proper course of action. We can make that information available on a wider basis as needed.

**Direct CBP, ICE, and APHIS to collaborate on agendas, presentations, and discussions with stakeholders for the CBP Airport and Seaport Inspections User Fee Advisory Committee meetings in order to improve the usefulness of these meetings for both agencies and fee stakeholders.**

USDA concurs with this recommendation. We are happy to cooperate, participate, and provide any assistance we can. We agree our participation on certain agenda topics could be mutually beneficial to both the industry and to USDA.

**Consolidate reporting of the passenger inspection fees, to include the activities and proportion of fees for which CBP, ICE, and APHIS are each responsible to provide a comprehensive picture of the user fees supporting the passenger inspection process.**

USDA concurs with this recommendation. We realize that it is essential for Congress to have a complete source of information on how the interrelated inspection functions of all three agencies work together, so Congress can properly oversee our programs and their related user fees.

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**Develop a legislative proposal in consultation with Congress on a consolidated graduated penalty system that reflects airline payment history and includes specific administrative procedures regarding when penalties should be invoked in order to improve the effectiveness of the tools for enforcing payment of passenger inspection fees.**

USDA concurs with this recommendation. In accordance with the Debt Collection Act, as codified in 31 U.S.C. 3701, we do charge penalties and interest though not using a potentially more effective graduated penalty system as recommended here. As our current process allows us to make changes of this nature directly to our regulations without a change in our legislative authority, as DHS obtains such authority and establishes a GAO-recommended graduated penalty system, USDA will amend our regulations to be consistent.

**Develop a legislative proposal in consultation with Congress on a single, common set of airline record-keeping requirements for all three passenger inspection fees that reflects the consolidated audit function for these fees and reduces the administrative burden on airlines.**

USDA concurs with this recommendation. Although our regulations are silent in this regard, we plan to propose rulemaking for a five year record retention requirement. We believe it would be beneficial for all three entities to require a common set of airline record-keeping requirements not just for the airlines, but to also help our joint Federal audit programs run smoothly. As our current process allows us to make changes of this nature directly to our regulations without a change in our legislative authority, as DHS obtains such authority and establishes a new record-keeping requirement, USDA will amend our regulations to be consistent.

**Develop and implement common assumptions used to forecast the collections of agriculture quarantine inspection fee in order to more closely tie to CBP's and APHIS' agriculture fee distribution to actual collections.**

USDA concurs with this recommendation. USDA fully understands the benefits for DHS, CBP to receive more money earlier in the year to better plan and meet mission goals. Because no appropriated funding is available to pay for inspection work, APHIS has been conservative in volume projections. In fact, if we had based volume projections on the Canadian exemption taking place on November 24, 2006, we would have over-estimated the available funding and subsequently overspent. As the reserve balance continues to

**Ms. Susan J. Irving**  
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slowly build in the AQI Program's account, and a better projection of the Canadian passenger volumes can be made, APHIS will be more comfortable using less conservative forecasting approaches as long as there is no compromise in our ability to provide the necessary program services.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce I. Knight", written over a horizontal line.

**Bruce I. Knight**  
Under Secretary  
Marketing and Regulatory Programs

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Susan Irving, (202) 512-9142 or [irvings@gao.gov](mailto:irvings@gao.gov)

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## Acknowledgments

Jacqueline M. Nowicki (Assistant Director) and Chelsa Gurkin managed this assignment. Robin Freshwater and Amy Rosewarne made key contributions to all aspects of the report. Susan Etzel, Terrance N. Horner Jr., Jessica Nierenberg, Kathleen Padulchick, and Jack Warner also provided assistance. In addition, Carlos Diz and Pedro Briones provided legal support and Donna Miller developed the report's graphics.

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