

February 2008

# FEDERAL USER FEES

## Substantive Reviews Needed to Align Port-Related Fees with the Programs They Support





Highlights of [GAO-08-321](#), a report to congressional requesters

### Why GAO Did This Study

America’s port infrastructure is vital to U.S. foreign trade and a bulwark for national security. One way the federal government funds port-related programs is to levy user fees. GAO was asked to examine (1) what is known about the way selected fees assessed on air and sea port users are set, collected, used, and reviewed and (2) the effects of these attributes on program operations. GAO examined the Harbor Maintenance Fee (HMF), the Merchandise Processing Fee (MPF), and the Customs, Immigration, and Agricultural Quarantine Inspection (AQI) user fees assessed on air and cruise passengers and commercial vessels using criteria that have often been used to assess user fees and taxes—equity, efficiency, revenue adequacy, and administrative burden.

### What GAO Recommends

GAO suggests Congress review the link between the HMF fee and expenditures, and establish an HMF stakeholder advisory body. GAO is making eight recommendations to the Secretaries of Homeland Security, Agriculture, and the Army to better align the fees with the activities they support, and to improve collections, oversight, and reporting. All three agencies generally agreed with our findings and recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-321](#). For more information, contact Susan J. Irving at (202) 512-9142 or [irvings@gao.gov](mailto:irvings@gao.gov).

## FEDERAL USER FEES

### Substantive Reviews Needed to Align Port-Related Fees with the Programs They Support

#### What GAO Found

The port-related fees GAO examined vary in how they are set, collected, used, and reviewed, creating misalignments between the fees and corresponding services, as well as administrative and oversight challenges.

- Although the customs, immigration, and AQI inspections have largely been consolidated under U.S. Customs and Border Protection (CBP), the corresponding fees remain separate and distinct and differ in how the rates are set and adjusted, the portion of costs they recover, and on whom the fees are levied (see table below). For example, overtime charges are handled differently for each type of inspection, creating confusion about the circumstances under which overtime must be paid, at what rate, and for which services.
- Certain collection methods increase administrative costs and reduce compliance. For example, quarterly remittance delays availability of funds and failure to charge interest and penalties on certain late payments is costly and discourages compliance. Further, lack of coordination between CBP and the U.S. Army Corps of Engineers inhibits oversight of certain HMF payments.
- All of the fees GAO reviewed suffer from some misalignment—for example, with their respective costs or activities—which affects how the fees are used. For example, since 2003, HMF collections have far exceeded funds appropriated for harbor maintenance, resulting in a large and growing surplus in the trust fund. Also, not all MPF and customs inspection activities are reimbursable and not all reimbursable activities are inspection related.
- Finally, agency user fee reviews are not always comprehensive. For example, CBP’s review of the MPF does not detail program costs, project collections, or provide enough information to determine if the amount, structure, or authorized uses of the fee should be updated. Further, limited opportunities for substantive communication with HMF stakeholders hamper their understanding of the fee.

**Select Fees Levied on Vessel Owner/Operators and Passengers**

Payer	Inspection fees		
	Customs	Agricultural quarantine	Immigration
Vessel owners/operators (for inspection of vessel and vessel crew)	✓	✓	By statute, no fee, although the crew is inspected.
Sea passengers	✓	Costs of inspecting sea passengers are charged to vessel owners/operators as part of the vessel fee.	✓
Air passengers	✓	✓	✓

Source: GAO analysis of information from the Departments of Homeland Security and Agriculture.

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**Abbreviations**

APHIS	Animal and Plant Health Inspection Service
AQI	Agricultural Quarantine Inspection
CBP	U.S. Customs and Border Protection
CFO Act	Chief Financial Officers Act of 1990
CMTS	Committee on the Marine Transportation System
Corps	U.S. Army Corps of Engineers
DHS	Department of Homeland Security
DOD	Department of Defense
FDA	Food and Drug Administration
HMF	Harbor Maintenance Fee
HMTF	Harbor Maintenance Trust Fund
ICE	U.S. Immigration and Customs Enforcement
IOAA	Independent Offices Appropriation Act of 1952
MPF	Merchandise Processing Fee
OMB	Office of Management and Budget
OPM	Office of Personnel Management
RABA	Revenue Aligned Budget Authority
USDA	U.S. Department of Agriculture

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United States Government Accountability Office  
Washington, DC 20548

February 22, 2008

### Congressional Requesters

The United States has long depended on its port infrastructure to facilitate both the import and export of manufactured goods; agricultural products; and other commodities such as gravel, oil, and liquefied natural gas. Access to world markets is important to the nation's economy: for example, more than 80 percent of U.S. foreign trade flows through the nation's 361 seaports.<sup>1</sup> Port infrastructure is also important to America's national security: transportation of personnel and supplies supports America's military services during national emergencies. At the same time, ports are potential targets for terrorists and potential conduits for weapons concealed in cargo.

One of the means by which the federal government generates funding to support and secure America's port infrastructure is by levying assessments, including user fees, on port users. These fees include ship registry fees, commercial fishing fees, and inspection charges; they are levied on various air and sea port users, including shippers, vessel owners and operators, brokers, and individual passengers.<sup>2</sup>

In response to your request and to provide context and insights as you consider funding options for port programs, we examined (1) what is known about the way selected fees assessed on air and sea port users are set, collected, used, and reviewed (including the views of stakeholders) and (2) the effects of these attributes on program operations.

To achieve our objectives, we examined several fees assessed on air and sea port users—which vary in the ways in which they are set, collected, used, and reviewed—related to maritime, safety, and homeland security programs. Specifically, we examined the Harbor Maintenance Fee; the Merchandise Processing Fee; and the Customs, Immigration, and Agricultural Quarantine Inspection (AQI) user fees assessed on air and

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<sup>1</sup> See GAO, *Maritime Security: The SAFE Port Act and Efforts to Secure Our Nation's Seaports*, [GAO-08-86T](#) (Washington, D.C.: Oct. 4, 2007).

<sup>2</sup> See GAO, *Commercial Maritime Industry: Updated Information on Federal Assessments*, [GAO/RCED-99-260](#) (Washington, D.C.: Sept. 16, 1999).

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cruise passengers and commercial vessels.<sup>3</sup> We examined the fees using the following criteria that have often been used to assess user fees and taxes.<sup>4</sup>

- **Efficiency:** By requiring identifiable beneficiaries to pay for services, user fees can simultaneously constrain demand and reveal the value that beneficiaries place on the service. If those benefiting from a service do not bear the full social cost of the service, they may seek to have the government provide more of the service than is economically efficient. User fees may also foster production efficiency by increasing awareness of the costs of publicly provided services, and therefore increasing incentives to reduce costs where possible.
- **Equity:** Equity has multiple facets, in part because beneficiaries and users may not be the same. Under the benefits-received principle, the beneficiaries of a service should pay for the service. Under the cost-imposed principle, fees should be designed to impose a cost on the user in proportion to the cost that that user imposes on the program. Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more in fees than those with less ability to pay.
- **Revenue Adequacy:** The extent to which the fee collections cover the intended share of costs. It encompasses the extent to which collections may diminish over time relative to the cost of the program. For the purposes of our work, revenue adequacy also incorporates the concept of revenue stability, which generally refers to the degree to which short-term fluctuations in economic activity and other factors affect the level of fee collections.
- **Administrative Burden:** The cost of administering the fee, including the cost of collection and enforcement, as well as the compliance burden (the administrative costs imposed on the payers of the fee).<sup>5</sup>

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<sup>3</sup> The rates for all but the AQI fees are set in statute; the AQI fee rates are set by the Department of Agriculture through regulation. Further, some of these fees are a flat dollar amount and some are *ad valorem* (i.e., a percentage of value). For more information on these fees, see table 1 in this report.

<sup>4</sup> See GAO, *Understanding the Tax Reform Debate: Background, Criteria & Questions*, GAO-05-1009SP (Washington, D.C.: September 2005).

<sup>5</sup> An important factor to consider when establishing a fee to recover costs associated with an agency program or service is the agency's capability to record and accumulate timely, reliable data relating to those costs, consistent with applicable accounting standards, and analyze that data. The costs associated with financial management systems needed to provide this capability must be considered. According to the Statement on Federal Financial Accounting Standard 4 (July 31, 1995), reliable information on the costs of federal programs and activities is crucial for effective management of government operations, which includes setting user fees.

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These criteria interact and are often in conflict with each other; as such, there are tradeoffs to consider between the criteria when designing a fee. Every fee design will have pluses and minuses, and no design will satisfy everyone on all dimensions. The weight that different policymakers may place on different criteria will vary, depending on how they value different attributes. Focusing only on the pros and cons of each element of reform could make it difficult to build the bridges necessary to achieve consensus. Policymakers will ultimately have to balance the relative importance they place on each of these criteria and focus on the overall fee design. To that end, understanding the tradeoffs associated with different aspects of a fee's design can provide decision makers with better information and support more robust deliberations about user fee financing.

We reviewed user fee legislation, implementing regulations, agency documents and guidance, and literature on user fee design and implementation characteristics. To better understand the programs and services on which the fees are levied, as well as how the fees are administered, we observed vessel, passenger, and cargo inspection processes at eight U.S. seaports.<sup>6</sup> We also interviewed officials at the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP), U.S. Army Corps of Engineers (Corps), and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) involved in administering these fees<sup>7</sup> and the programs the fees support, including regional officials at the ports we visited. CBP

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<sup>6</sup> To select the ports that we visited, we consulted with port security experts from within and outside of GAO, with CBP and Corps officials, and with outside stakeholders, in order to choose ports that varied in their type and volume of trade and commerce (including cruise lines, container ships, petroleum products, and liquefied natural gas); maintenance dredging needs; and specific issues facing them such as a high volume of commercial cargo, security challenges, or proximity to a land border or intricate river system. We also considered travel costs in selecting the site visits. In light of the significant amount of ongoing audit work in the Gulf region, and because other ports in our selection are representative of important characteristics associated with Gulf ports, we did not include a Gulf port in our selection so as not to unnecessarily burden an area in crisis. The ports we selected include medium and large ports, natural deepwater ports, and those that require frequent dredging. The eight ports at which we conducted site visits were (1) Los Angeles/Long Beach, California; (2) Miami, Florida; (3) Port Everglades, Florida; (4) Baltimore, Maryland; (5) Boston, Massachusetts; (6) Newark, New Jersey/New York, New York; (7) Charleston, South Carolina; and (8) Seattle, Washington.

<sup>7</sup> By "administer" we mean that the agency has some administrative responsibility for the fee, which could include collecting the fee, adjusting the fee, tracking program costs, or reporting requirements.



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administers the Merchandise Processing and Customs inspection fees, and it collects the Harbor Maintenance Fee on behalf of the Corps. CBP administers the immigration user fees jointly with U.S. Immigration and Customs Enforcement (ICE) and the Agricultural Quarantine Inspection user fees jointly with APHIS. To obtain stakeholder perspectives on the impacts of the designs of the fees, we interviewed entities involved with the fees and the programs that they support, including cruise lines, shipping lines, customs brokers, shipping agents, and port authorities. In addition, we spoke with national organizations, including the American Association of Port Authorities, the World Shipping Council, and the Cruise Lines International Association. We asked questions about APHIS, CBP, and Corps internal controls for the data we used and determined that the data were sufficiently reliable for the purposes of this report.

We performed our work from February 2007 through February 2008 in Washington, D.C.; Los Angeles and Long Beach, California; Miami and Port Everglades, Florida; Baltimore, Maryland; Boston, Massachusetts; Newark, New Jersey; New York, New York; Charleston, South Carolina; and Seattle, Washington, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. For more information on our scope and methodology, see appendix I.

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## Results in Brief

Although all of the fees we examined vary in how they are set and adjusted, these differences are a particular issue with the inspection fees. Specifically, the passenger and vessel inspection processes in both the air and sea environments have been largely consolidated within CBP, but the legacy fees for passenger and vessel inspections remain separate and distinct, which increases administrative costs and creates confusion. In addition, the fees are not uniform in terms of the portion of costs they recover or on whom the fees are levied. For example, the Agricultural Quarantine Inspection (AQI) fees are adjusted through the regulatory process and the customs and immigration fees are set in statute. According to APHIS officials, the AQI fee rates are set to recover all

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program costs except for certain indirect and imputed costs.<sup>8</sup> In contrast, the customs and immigration inspection fees are structured to recover partial costs. Furthermore, the statutory authorities governing overtime charges are different for each type of inspection, creating confusion about the circumstances under which vessel owners/operators must pay overtime charges, at what rate, and for which services. This complicates how and when overtime charges are both calculated and paid.

Collection methods for some of the fees not only increase administrative costs but also may reduce compliance. Specifically, ineffective and outdated collection methods for vessel inspection fees increase administrative costs for both agencies and payers. This is exacerbated by the recent increase in the customs vessel inspection fee rate without a corresponding increase in the annual fee cap (maximum payment). A quarterly remittance schedule delays the availability of certain passenger inspection fees. Furthermore, a lack of coordination between the Corps and CBP inhibits oversight of Harbor Maintenance Fee (HMF) payments made by passenger vessel owners/operators, domestic shippers, and importers shipping into foreign trade zones. When these HMF payments are late, CBP does not charge interest or penalties, therefore failing to use an important tool to encourage timely payment. Collection methods function best when they minimize administrative costs and maximize compliance, as seen in the automated system CBP uses to process the Merchandise Processing Fee (MPF) as well as HMF assessed on imports. This system allows entry summaries to be electronically transmitted, validated, confirmed, corrected, and paid.

The misalignment between fees and the services for which they are charged reduces both equity and economic efficiency and does not provide policymakers with information on the level of service for which users are willing to pay. All of the fees we reviewed suffer from some misalignment—although the nature of that misalignment varies—which affects how the fees are used. For example, as is the case with the airline passenger inspection fees,<sup>9</sup> not all authorized, reimbursable activities for

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<sup>8</sup> Imputed costs of an agency are costs of goods or services incurred on behalf of the agency that are paid by another federal entity, such as certain retirement benefits paid to retirees by the U.S. Office of Personnel Management.

<sup>9</sup> See GAO, *Federal User Fees: Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated*, [GAO-07-1131](#) (Washington, D.C.: Sept. 24, 2007).

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the sea passenger and vessel inspection customs fees are associated with conducting inspections, and not all inspection-related activities may be charged to these fees. Furthermore, the difference between HMF collections and funds appropriated for harbor maintenance has resulted in a large and growing surplus in the Harbor Maintenance Trust Fund (HMTF). Although both Corps officials and port stakeholders say many federally managed harbors and channels are undermaintained, the Corps has not yet completed cost estimates or time frames for addressing the backlog, and according to Corps officials, they do not know when these estimates will be finalized. Each fiscal year, CBP receives approximately \$3 million in appropriated HMTF funds for its costs to collect the HMF, but preliminary CBP estimates indicate that it only costs \$2 million to collect the fee.

Without regular, substantive fee reviews, agencies, stakeholders, and Congress lack complete information about changing program costs and whether authorized, reimbursable activities align with program activities. 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>10</sup> However, CBP and APHIS report separately on the customs, immigration, and AQI vessel fees, and the reviews generally do not reflect input from the other. Furthermore, CBP's review of the MPF does not detail program costs and project fee collections, or provide enough information to determine if the amount, structure, or authorized uses of the fee should be updated. Because user fees represent a charge for a service or benefit received from a specific government program, payers may expect a tight link between payments and services, including expectations about the quality of the related service. We have previously reported on both the need to accommodate stakeholder input as well as various models for doing so.<sup>11</sup> Although there are opportunities at the local level for payers to provide input on fees and the services they support, opportunities for payers to communicate with the Corps and CBP at the national level are either limited or do not encourage substantive, two-way communication. Ineffective communication may reduce stakeholder

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<sup>10</sup> See 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>11</sup> See GAO, *Reexamining Regulations: Opportunities Exist to Improve the Effectiveness and Transparency of Retrospective Reviews*, [GAO-07-791](#) (Washington, D.C.: July 16, 2007) and *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance*, [GAO-04-328](#) (Washington, D.C.: Apr. 16, 2004).

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cooperation and support for the fees, contribute to misunderstandings about how the fees work and what activities they may fund, and inhibit the agencies' ability to obtain input from stakeholders.

In light of these challenges, we suggest Congress review the link between the Harbor Maintenance Fee and expenditures, and establish a harbor maintenance advisory committee to improve communication with stakeholders. Further, we are making eight recommendations to the Secretaries of Homeland Security, Agriculture, and the Army to improve the cost estimates, collection, distribution, remittance, compliance, and review of these user fees.

We provided a draft of this report to the Secretaries of Homeland Security and Defense and to the Acting Secretary of Agriculture for review. We received written comments from the Department of Homeland Security (DHS), which are reprinted in appendix III, and oral comments from the Departments of Agriculture (USDA) and Defense (DOD). In addition, each agency provided technical comments, which we incorporated as appropriate. We also provided portions of the report to nonfederal stakeholders for their review and made technical corrections as appropriate.

DHS characterized the report as balanced and accurate and agreed with the overall substance and findings of the report. Of the six recommendations directed at DHS, DHS concurred with five of them and partially concurred with the sixth. Specifically, DHS concurred in part with our recommendation to automate collections of the customs and AQI fees assessed on commercial vessels, stating that the agency will analyze the feasibility of this approach and work to identify and obtain funding to implement the recommendation if it is deemed cost beneficial. We appreciate that DHS recognizes the importance of using cost-effective methods to collect fees and look forward to receiving regular updates on DHS's and CBP's progress in this area.

In its oral comments, USDA noted it was impressed with the level of explanatory detail and analysis contained in the report and said it generally agreed with our recommendations. Regarding our recommendation that USDA include certain indirect and imputed costs when setting the AQI fee rates, the agency said it will review the fee and seek guidance from its Office of the Chief Financial Officer and Office of General Counsel on this issue.

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USDA noted that it has been APHIS's position that because USDA receives appropriations to pay for departmental and staff office costs, and the U.S. Office of Personnel Management (OPM) receives appropriations for imputed costs such as future retirement benefit expenses, APHIS did not have the authority to include those costs in the fee. We interpret the AQI user fee statute, however, as permitting USDA to recover all costs associated with its program, including imputed and indirect costs. We recognize that imputed costs such as retirement and unfunded pension liabilities may be more directly linked to the fee-funded activity and more easily calculated than seeking to allocate departmental and staff office costs. Further, "full cost recovery" should be viewed from a governmentwide perspective. Even though USDA would have to deposit those portions of user fee collections as miscellaneous receipts in the general fund of the Treasury, and therefore would not directly reimburse the relevant appropriation account under a specific statute, it would still defray a cost that Congress determined should be paid for by the user fees. If USDA believes that the statutory authority does not permit it to cover such indirect and imputed costs, then we believe USDA should seek additional authority from Congress consistent with our recommendation.

USDA also noted that it will need to (1) work with DHS to identify DHS's imputed costs for the AQI program and (2) consider the impact of the fee increase on payers. We recognize that if incorporating these costs will substantially increase the AQI fees, a measured approach that incorporates the costs gradually may be appropriate.

DOD provided oral comments, and concurred with the findings, conclusions, and recommendations of the report related to the Army Corps' Harbor Maintenance Fee.

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## Background

User financing—in the form of user fees, user charges, or targeted excise taxes—is one approach to financing federal programs or activities. User fees assign part or all of the costs of the benefits and services derived from these programs and activities—above and beyond what is normally available to the general public—to readily identifiable recipients of those benefits and services.

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## Definition of User Fees

We have defined “user fees” or “user charges” as fees assessed on users for goods or services provided by the federal government.<sup>12</sup> Some excise taxes, however, can also be described as a form of user financing.<sup>13</sup> For example, the excise taxes on motor fuels, tires, and heavy vehicles accrue to the Highway Trust Fund, from which Congress appropriates funds for the interstate highway system, mass transit, and transportation projects. Similarly, Federal Aviation Administration (FAA) operations are funded in part by excise taxes assessed on airline tickets, aviation fuel, and certain cargo.<sup>14</sup>

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## Requirements for Reviewing Fees

Both the Chief Financial Officers (CFO) Act<sup>15</sup> and the Office of Management and Budget (OMB) Circular No. A-25 provide that agencies review their user fees biennially and make recommendations about any needed cost adjustments.<sup>16</sup> Circular No. A-25 also states that each agency should review its programs to determine whether it could charge fees for any of its services, noting that if imposing such fees is prohibited or restricted by law, agencies will recommend legislative changes as

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<sup>12</sup> See GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005).

<sup>13</sup> The legal distinction between a “fee” and a “tax” can be complicated and depends largely on the context of the particular assessment. Generally, a tax arises from the government’s sovereign power to raise revenue, need not be related to any specific benefit, and its payment is not optional, whereas a user fee is typically related to some voluntary transaction or request for government goods or services above and beyond what is normally available to the public. For more information see GAO, *User Fee Design Guide*, [GAO-08-386SP](#).

<sup>14</sup> See GAO, *Aviation Finance: Observations on the Current FAA Funding Structure’s Support for Aviation Activities, Issues Affecting Future Costs, and Proposed Funding Changes*, [GAO-07-1163T](#) (Washington, D.C.: Aug. 1, 2007).

<sup>15</sup> The CFO Act of 1990 requires an agency’s CFO to review on a biennial basis the fees, royalties, rents, and other charges for services and things of value and make recommendations on revising those charges to reflect costs incurred. 31 U.S.C. § 902(a)(8).

<sup>16</sup> OMB Circular No. A-25 provides that each agency will review user charges biennially to include (1) assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values and (2) a review of other programs within the agency to determine whether fees should be initiated for government services or goods for which it is not currently charging fees. Circular No. A-25 further states that agencies should discuss the results of the user fee reviews and any resultant proposals in the CFO annual report required by the CFO Act.

appropriate.<sup>17</sup> OMB encourages agencies to examine potential effects of design alternatives when reviewing and proposing changes to regulations, even when the regulations are mandated by statute.

The user fees considered in this report, and summarized in table 1, are assessed under specific statutory authority and levied on air and sea passengers, vessel operators, or shippers (see app. II for a summary of the fees by payer). The fees vary in the way they are set, collected, used, and reviewed, which may affect their efficiency, equity, revenue adequacy, and administrative costs.

**Table 1: Comparison of Selected Port-Related Fees**

Fee	Fee-setting authority	Administering agency	Fee amount	Fee maximum/ minimum	Payer	Amount collected <sup>a</sup>
Harbor Maintenance Fee <sup>b</sup>	Congress	CBP, Army Corps of Engineers	0.125% of vessel passenger tickets and declared value of commercial cargo. <sup>c</sup>	None. <sup>d</sup>	Importers, domestic shippers, and passenger vessel operators.	\$1.4 billion
Merchandise Processing Fee	Congress	CBP	Formal entries: <sup>e</sup> 0.21% of declared value of cargo. Informal entries: generally \$2-\$9.	Formal entries: minimum \$25, maximum \$485 per entry. Informal entries: none.	Importers.	\$1.4 billion
Customs Passenger Inspection Fees	Congress	CBP	\$5.50/passenger with limited exceptions.	None.	International air and sea passengers.	\$285.7 million

<sup>17</sup> User fees may be assessed under specific statutory authority or under the broad authority of the Independent Offices Appropriation Act (IOAA) of 1952, 31 U.S.C. § 9701. IOAA requires that agency regulations establishing a user charge be subject to policies prescribed by the President. OMB provides such guidance to executive branch agencies under this authority through Circular No. A-25. User fees assessed under specific statutory authority should also be construed consistent with IOAA (the general, governmentwide user fee authority) to the extent possible as part of an overall statutory scheme. Thus, OMB Circular No. A-25 provides guidance regarding assessments of user charges not only under IOAA, but also under other more specific fee statutes to the extent permitted by law—that is, the provisions of a more specific user fee statute take precedence over the Circular’s guidance, and indeed over the more general provisions of IOAA itself.

Fee	Fee-setting authority	Administering agency	Fee amount	Fee maximum/minimum	Payer	Amount collected <sup>a</sup>
Customs Vessel Inspection Fees	Congress	CBP	Commercial vessels of 100 net tons or more: \$437/arrival. Barges and bulk carriers from Mexico and Canada: \$110/arrival. <sup>l</sup>	Commercial vessels: \$5,955/year. <sup>g</sup> Barges and bulk carriers: \$1,500/year. <sup>g</sup>	Commercial vessels owners/operators.	\$21.4 million
Immigration Inspection Fees <sup>h</sup>	Congress	CBP, ICE	\$7/passenger with limited exceptions. <sup>i</sup>	None.	International air and sea passengers. <sup>j</sup>	\$586.3 million
Agricultural Quarantine Vessel Inspection Fees <sup>i</sup>	USDA	CBP, APHIS	\$492 per arrival. <sup>k</sup>	15 payments per calendar year (equal to \$7,380).	Owners/operators of commercial vessels of 100 net tons or more.	\$27.3 million

Source: GAO analysis.

<sup>a</sup>Total collections data are for fiscal year 2007.

<sup>b</sup>This fee is called both the Harbor Maintenance Tax and the Harbor Maintenance Fee. The authorizing legislation—The Water Resources Development Act of 1986, Pub. L. No. 99-662—named it a “tax” and codified it in the Internal Revenue Code, but specified that it be considered a “customs duty,” not a tax, for jurisdictional, administrative, and enforcement purposes. However, the label is not legally determinative. Instead, federal courts examine the assessment’s structure and the context of its application to determine if, as applied, it is a fee or a tax. It is called a “fee” in agency regulations and in our prior work (GAO, *U.S. Customs Service: Limitations in Collecting Harbor Maintenance Fees*, GAO/GGD-92-25 (Washington, D.C.: Dec. 23, 1991)). OMB’s Analytical Perspectives also calls it a fee and lists it in the President’s annual budget proposal to Congress under user charges, which the report defines as excluding taxes (Analytical Perspectives, “User Charges and Other Collections”, *Budget of the United States Government for Fiscal Year 2008*, ch. 18 (Feb. 5, 2007)).

<sup>c</sup>The HMF is applied based on the value of the cargo (*ad valorem*) to cargo transported on a commercial vessel, including passengers transported for compensation, and loaded or unloaded at certain ports. CBP defines and administers the list of ports subject to the HMF. These ports include those receiving federal funding for construction or operation and maintenance since 1977. The fee is not imposed on any cargo associated with vessel movements on the inland waterways system, which is supported by a fuel tax. Ferry passengers and certain cargo are also exempt from the HMF.

<sup>d</sup>The HMF is not assessed on domestic cargo valued at less than \$1,000, and quarterly payment is not required if the total value of all shipments for which a fee was assessed for the quarter does not exceed \$10,000. No payment is required for imported cargo that is entitled to be entered under informal entry procedures.

<sup>e</sup>Merchandise entries are foreign shipments that require evidence of the importer’s right to bring the merchandise into the United States. Formal entries generally refer to merchandise with a value over \$2,000. Informal entries generally refer to merchandise with a value of less than \$2,000 or personal importations regardless of value.

<sup>f</sup>The \$110 fee rate only applies to barges and bulk carriers from Canada and Mexico that are either in ballast or transporting only cargo laden in Canada or Mexico.

<sup>g</sup>The annual cap is based on the calendar year.



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<sup>l</sup>The immigration air and sea passenger inspections are designed to prevent passengers from entering the United States without legal entry and immigration documents. CBP officers provide immigration inspections to individuals entering the country at all U.S. Ports of Entry—airports, seaports, and land borders—as well as pre-inspection services at select locations outside of the U.S. The immigration inspection user fee is charged for air and sea passengers, but in general, not for people who arrive across the land border, by ferry, or via a vessel that operates on a regular schedule on the Great Lakes or connecting waterways. Fees are charged for certain land border inspection programs.

<sup>j</sup>A \$3 per passenger immigration inspection fee is charged to certain commercial vessel passengers whose journey originated in Canada; Mexico; the United States, including territories and possessions of the United States; or specified adjacent islands.

<sup>k</sup>The agriculture vessel inspections are designed to prevent harmful pests or prohibited agriculture products from entering the United States. Agriculture inspection services are also provided at land border ports of entry and fees for the services are charged to commercial trucks and railcars, but not to private vehicles and individuals. AQI fees are also charged to arriving international air passengers and commercial aircraft.

<sup>l</sup>The AQI vessel fee is scheduled to increase by \$2 each fiscal year, through fiscal year 2010, when it will be \$496.

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## The Inspection Process Is Largely Consolidated but the Inspection Fees Vary in How Rates Are Set and Adjusted, the Portion of Costs Recovered, and How Costs Are Assigned to Users

Although all of the fees we examined vary in how they are set and adjusted, these differences are a particular issue with the inspection fees. Specifically, the passenger and vessel inspection processes in both the air and sea environments have been largely consolidated within CBP, but the legacy fees supporting these inspections are still governed by separate, dissimilar authorizing legislation and vary significantly in how they are set and adjusted and how they link fee rates to the cost of services. APHIS uses the federal regulatory process to propose rate increases and invites comments on its proposals and implementing regulations via a public notice and comment in the *Federal Register*. Although various Congressional committees oversee this process, Congress has delegated to APHIS the authority and responsibility to set and adjust AQI fee rates to match program costs over time. In contrast, both the immigration and customs fee rates are set in statute. These fees can only recoup authorized program costs to the extent that total reimbursable program costs do not exceed the rate caps prescribed in statute.

The AQI fee 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>18</sup> In spite of this, in 2006 we reported that financial management issues at CBP and APHIS adversely affect the AQI program's ability to perform border inspections and that, in fiscal years 2003 through 2005, user fees were not sufficient to

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<sup>18</sup> 21 U.S.C. § 136a(a)(1).

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cover program costs. Moreover, prior to fiscal year 2006, CBP was unable to provide APHIS with information on the actual costs of CBP's portion of the AQI program broken out by user-fee type—for example, fees paid by international air passengers or vessels.<sup>19</sup> In 2007, APHIS and CBP further improved the AQI cost estimates by agreeing on a common set of assumptions used to forecast the cost of AQI activities.<sup>20</sup>

According to APHIS finance officials, the fee rates are now set to recover all program costs except for certain indirect and imputed costs, such as the cost of employee retirement benefits. We have previously found that OMB Circular No. A-25 guidance and USDA policy require the inclusion of indirect and imputed costs in setting full-cost recovery fees, and that unless otherwise specified in statute such collections should be deposited in the Department of the Treasury's general fund.<sup>21</sup> However, APHIS finance officials said that because the AQI authorizing statute does not authorize APHIS to spend fee collections on such expenses, APHIS does not include these costs when calculating the fee rate. APHIS also does not list these costs in the *Federal Register* when proposing rate increases, but noted that more transparency in this area could better inform users of the full cost of the program. APHIS estimates that these indirect and imputed costs for the AQI user fee program totaled approximately \$18.9 million in fiscal year 2006.

In contrast, the customs and immigration inspection fees are structured to recover partial costs. 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 inspection services. That is, the immigration and customs user fees actually limit cost recovery to a sum certain. The customs statute further restricts cost recovery by limiting the set of activities for which collections may reimburse appropriations. The immigration statute makes immigration user fee collections available to refund any appropriation for expenses incurred in providing immigration

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<sup>19</sup> 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>20</sup> See [GAO-07-1131](#).

<sup>21</sup> See GAO, *Managerial Cost Accounting Practices: Department of Agriculture and the Department of Housing and Urban Development*, [GAO-06-1002R](#) (Washington, D.C.: Sept. 21, 2006).

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inspection and pre-inspection services as well as certain other expenses, at least one of which—administration of debt recovery—is not directly related to immigration inspections according to CBP officials.

According to CBP data, in fiscal year 2006, commercial vessel customs inspections fee collections covered about 66 percent of related program costs.<sup>22</sup> DHS does not know the portion of total immigration inspection costs covered by immigration fee collections. CBP and ICE share responsibility for reimbursable, immigration-related inspection activities and, to date, DHS has not reported final costs for ICE's inspection-related activities. According to CBP data, in fiscal year 2006, CBP's portion of vessel inspection fee collections covered about 67 percent of CBP's share of immigration vessel inspection costs, but until ICE's cost data are finalized, DHS will not know the total portion of immigration costs covered by total fee collections, or whether the fees are properly divided between CBP and ICE.

Since the fees can pay for only some inspection activities and only under certain circumstances, ensuring proper use of fee collections can require detailed cost data. Collecting these data, however, can be particularly costly given the disparate fee structures. For example, to be reimbursed for time spent on authorized activities for various fees, CBP must track the time spent on these activities. Because the inspection processes have been largely combined but the separate distinct fees supporting these activities are not uniform, correctly tracking which activities can be reimbursed by which fees can be difficult. To help address the concern that timekeeping was taking time away from officers' inspection duties, CBP implemented a standard process for tracking time in early 2007. The process includes estimating the amount of time officers conducting different functions (e.g., vessel or passenger inspections) spend on different activities, including customs, immigration, and agriculture inspections. This process, however, has not completely addressed the problem. At one port we visited, on each shift, a full-time CBP officer was assigned solely to tracking staff time. Even with an efficient process for tracking time spent on different activities, the need to separately track three inspections that have largely been consolidated adds complexity and increases the potential for error.

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<sup>22</sup> According to CBP, the balance of the related program costs are covered by appropriations.

In general, the three fees are not levied uniformly, and sometimes involve cross-subsidization (see table 2). For example, although air passengers are charged an AQI fee, sea passengers (generally cruise ship passengers) are not. According to APHIS finance officials, the costs of these passenger inspections are imbedded in the cost of the AQI fee levied on vessel owners and operators.

**Table 2: Inspection Fees Levied on Vessel Owner/Operators and Passengers**

Payer	Inspection fees		
	Customs	Agricultural quarantine	Immigration
Vessel owners/operators (for inspection of vessel and vessel crew)	✓	✓	By statute, no fee, although the crew is inspected.
Sea passengers	✓	Costs of inspecting sea passengers are charged to vessel owners/operators as part of the vessel fee.	✓
Air passengers	✓	✓	✓

Source: GAO analysis of information from the Departments of Homeland Security and Agriculture.

According to APHIS finance officials who calculate the fee rates, the costs of inspecting sea passengers, fee-exempt vessels, and vessels that have met the annual fee cap are spread among all payers of the AQI vessel fees. They said that although it is rare for most commercial vessels to exceed the annual fee cap of \$7,380—a total of 15 payments—cruise ships routinely exceed the cap because they arrive in the U.S. far more than 15 times each year. According to CBP data, fiscal year 2006 CBP costs for the AQI commercial vessel inspections were approximately \$35 million, and included about \$2.2 million for passenger inspections and about \$4 million for inspections of exempt private vessels. The cost data that CBP provides to APHIS does not indicate what portion of the \$35 million is associated with inspecting cruise ships that have exceeded the fee cap.

Sea and air passengers pay an immigration inspection fee, but no such fee is levied on vessel crew although they must undergo inspection. As a general rule, the costs of crew inspection are not charged to vessel owner/operators, although they may be charged for overtime immigration inspections of vessel crew at some ports. This makes fees unpredictable. Predictability of inspection fees enables users to plan, charge clients for, and account for related costs, but inconsistent rules for overtime

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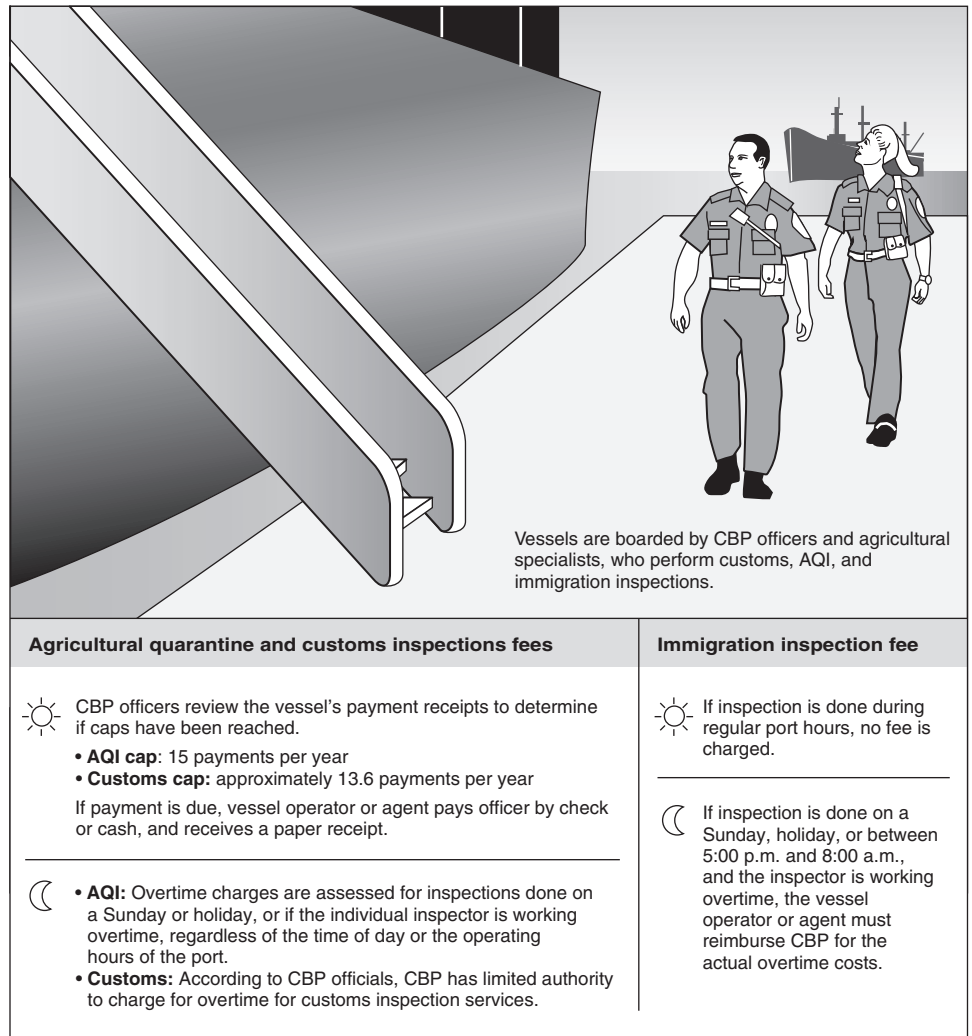
inspections lead to uncertainty. The separate statutory and regulatory structures of the three overtime inspection charges are not aligned and overtime is not handled uniformly within some of the fees (see fig. 1). For immigration inspections conducted on a Sunday, holiday, or between the hours of 5:00 p.m. and 8:00 a.m. and when a given inspector is working overtime, CBP must charge a vessel operator, owner, or agent for the overtime cost of the immigration inspections. Because regular business hours vary by port, the hours during which an inspector might be working overtime vary. In addition, the amount charged depends on the number and pay grade(s) of the officer(s) performing the inspection and the amount of time spent on the inspection, adding to unpredictability and increasing DHS's costs to administer the fee. Overtime charges for agriculture vessel inspections must, by regulation, be applied at an hourly rate for overtime inspections on a Sunday or holiday, or whenever the individual inspector is working overtime. According to CBP officials, collections for reimbursable overtime agriculture inspections total about \$1.2 million annually. Moreover, although vessels must be charged for overtime inspections, AQI regulations explicitly prohibit charging for similar overtime inspections of aircraft when passengers have already paid an AQI fee for that flight.<sup>23</sup>

Lastly, according to CBP officials, CBP has limited authority to charge for overtime for customs inspection services. CBP officials told us that as a result, in practice, overtime charges are not assessed for most customs overtime inspections.

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<sup>23</sup> 7 CFR § 354.3(f)(8).

**Figure 1: Fees Levied on Commercial Vessel Operators for CBP Inspections**



Source: GAO analysis of CBP information.

Some payers told us that they often do not know whether or when they will incur overtime fees and what the charges will be.<sup>24</sup> They said that consistent fees would offer predictability and reduce confusion. CBP officials also told us that billing vessel owners for overtime inspections is

<sup>24</sup> Payers also noted that CBP does not bill for these charges in a timely manner, which exacerbates this uncertainty and undermines the payer's ability to account for these costs.

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administratively burdensome. According to CBP estimates, CBP's costs to process and bill immigration and agriculture inspection overtime charges totaled 26 percent of those collections in fiscal year 2007. The statutory authorities governing immigration overtime inspection charges mandate that the amount of the charge be dependent upon the amount paid to the inspector, subject to specified limitations. However, CBP officers are paid under a different statutory scheme, which does not contain the same limitations. Therefore, according to CBP, the agency cannot automatically bill the vessel operator or shipping agent for immigration overtime services. Instead, CBP must make calculations manually based upon the limitations contained in the immigration overtime authorities and the amount actually paid to the CBP officer performing the inspection services. CBP officials said that although charges for overtime inspections make sense because the inspections are more costly, a consistent set of overtime charges for customs, immigration, and agriculture inspections that did not vary by port or the rank of the inspecting CBP officer would increase revenue, decrease administrative costs, and improve CBP's relations with the trade community.

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## Costly, Ineffective Collection Methods and Lack of Interagency Coordination Increase Noncompliance for Harbor Maintenance and Vessel Inspection Fees

Ineffective and outdated collection methods for vessel inspection fees increase administrative costs for both agencies and payers. Furthermore, a lack of coordination between the Corps and CBP inhibits oversight of HMF payments for passenger vessels, domestic shipments, and shipments into foreign trade zones. Also, when these HMF payments are late, CBP does not charge interest or penalties and is therefore not using an important tool to encourage timely payment. Collections methods function best when they minimize administrative costs and maximize compliance, as seen in the automated system CBP uses to process the MPF as well as HMF assessed on imports. This system allows entry summaries to be electronically transmitted, validated, confirmed, corrected, and paid.

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## Vessel Fee Collection Methods Are Ineffective and Outdated

The method of collecting the customs and AQI commercial vessel fees imposes unnecessary administrative costs on CBP and payers and may increase the likelihood of over- or underpayments. User fees function best when they minimize, to the extent practicable, administrative costs. Recognizing this, Treasury's Financial Management Service has made it a priority to increase the use of electronic collection methods for government collections. CBP is automating collections for several user fees but to date, the commercial vessel fees may still only be paid in

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person by check or cash (see fig. 2). Moreover, payers must retain each paper payment receipt and present them at each entry so that CBP can determine whether that particular vessel has reached the annual fee cap. If a payer misplaces the receipt proving that the vessel has reached the fee cap, the fee must be paid. The payer may request a refund if the receipt is later found, although several stakeholders told us this process is lengthy and burdensome. Some stakeholders and CBP field office staff expressed frustration with the paper-based system and told us that an automated payment and record-keeping system would speed the collection process, reduce the likelihood of payment errors, and reduce administrative costs for both parties.

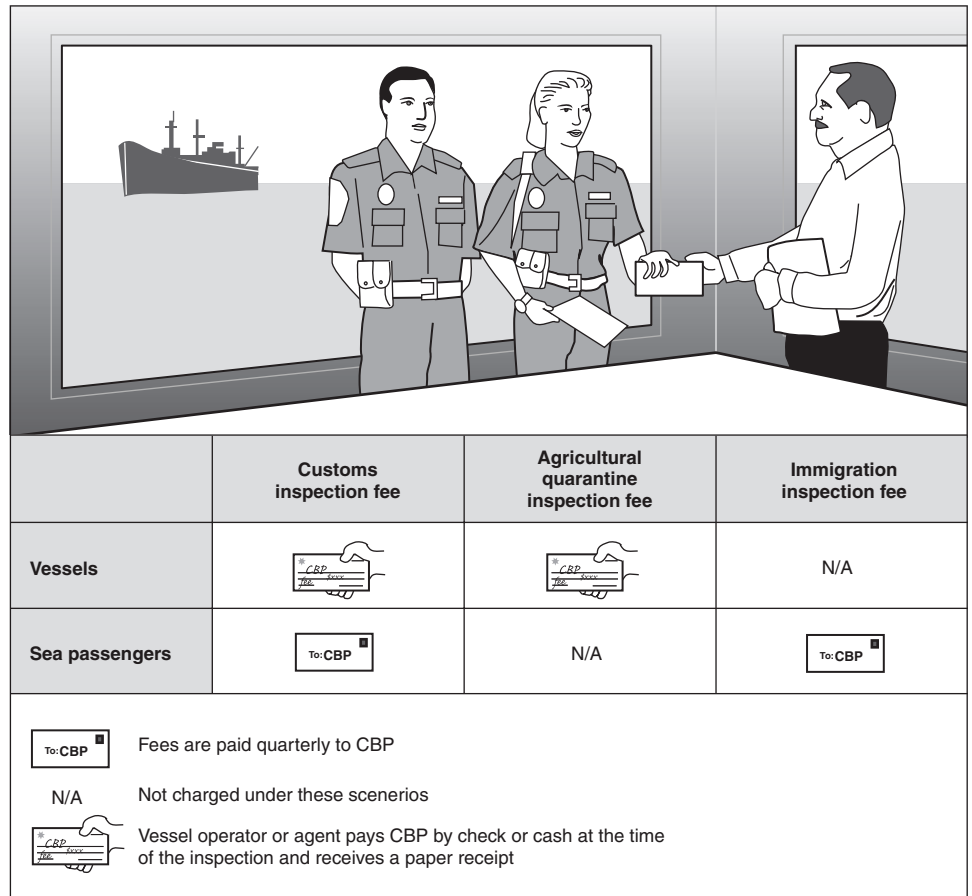
These administrative challenges are exacerbated by the recent increase in the customs vessel inspection fee rate without a corresponding increase in the annual fee cap. Before the fee was raised in April 2007, the annual cap was equal to 15 payments. Some CBP officers told us that for both the customs and AQI fees, they simply counted the number of times the fee was paid within a given year to determine if a vessel had reached the cap. The AQI vessel fee is paid at the same time as the customs vessel inspection fee and is capped at an amount equaling 15 payments per year. Because the customs fee was increased but the cap was not, the cap is now equal to approximately 13.6 payments, meaning that the 14th payment is less than the standard, per arrival fee amount.<sup>25</sup> CBP officers must be aware when processing payments that the 14th payment will be for a different amount than the typical fee rate, and that the fee cap is now structured differently than the AQI vessel fee.

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<sup>25</sup> During 2007, this issue was particularly problematic. Because the fee increase took effect April 1, 2007, vessels arriving before and after that date paid two different rates. Since the fee cap applies to payments received within a calendar year, it was even more difficult for CBP officers to calculate the total amount paid in order to determine if a vessel had reached the cap. This increased the burden on CBP officers (who must calculate payments by calculator or by hand), as well as the potential for errors.



**Figure 2: Collection Methods for the Customs, AQI, and Immigration Inspection Fees**



Source: GAO analysis of CBP information.

**Quarterly Remittance Schedule Delays Availability of Certain Passenger Inspection Fees**

According to CBP officials, the quarterly remittance schedule for the passenger inspection fees contributes to a several month delay between the use of appropriated funds and receipt of reimbursement from the immigration and AQI user fee accounts, which has delayed CBP’s ability to spend funds on critical mission areas such as hiring personnel, purchasing equipment, or travel. To address this challenge, CBP told us it has developed a legislative proposal that would, in part, require monthly

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instead of quarterly remittance.<sup>26</sup> A representative of a cruise line industry association we spoke with noted that monthly payments would increase the administrative costs to the cruise lines, but that if a steadier supply of funding helped CBP to provide better service, it would be worthwhile.<sup>27</sup>

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## Oversight of Certain HMF Collections Is Insufficient

Insufficient coordination between CBP and the Corps inhibits CBP's ability to ensure that certain HMF payments are properly made; without this information CBP cannot verify compliance with the fee. HMF payments for passenger vessels, domestic shippers, and shipments into foreign trade zones are paid quarterly by check to CBP (see fig. 3). According to Corps officials, the Corps gathers information on domestic vessel movements and could provide this information to CBP. However, CBP does not request and the Corps does not share information with CBP on these types of domestic freight movements, which would help ensure that proper payments are made. An official from CBP's Revenue Division said if CBP had information on freight movements it could reconcile them to HMF payments in order to monitor compliance rather than relying on self-reported payer information. The Revenue Division receives this type of "front-end reporting" for other, similar fees and, the official noted, front-end reporting is one of the best ways to establish a receivable and ensure proper payment.

Furthermore, CBP does not systematically review late or improper HMF payments for passenger vessels, domestic shippers, and shipments into foreign trade zones or charge interest for these late payments and therefore is not using an important tool to encourage timely payment. CBP's Revenue Division does not track whether these HMF payments are paid on time or late. During the course of our work, CBP officials said that CBP should be tracking and assessing interest and penalties on these late payments. CBP reviewed recent payment history and found that 42 percent of payments—representing approximately 18 percent of the total dollar value—were late. According to these officials, they are taking steps to begin collecting interest on past and future late payments. They estimate interest collections for last year to be about \$182,000; they do not yet have an estimate for annual penalties. Further, they said that they have

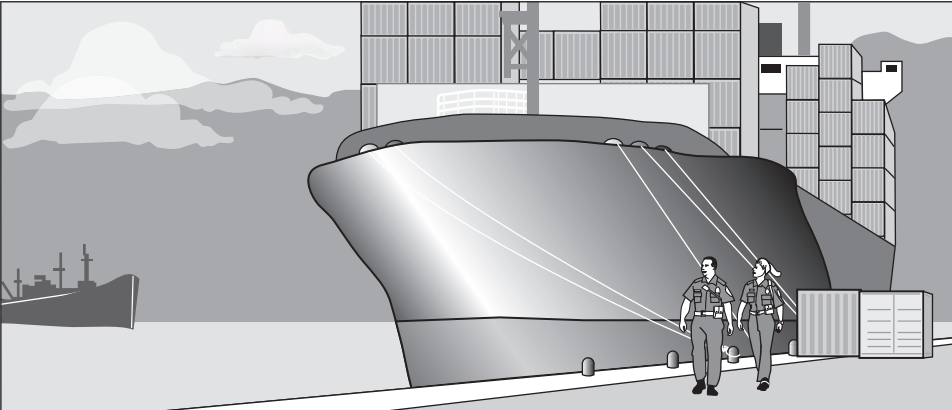
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




<sup>26</sup> We have not reviewed or evaluated this proposal, although we have been briefed on elements of it.




<sup>27</sup> Airline officials also noted that changing to a monthly remittance schedule would not be a problem.

begun reviewing the authority related to penalties in order to determine an appropriate dollar threshold that would trigger assessment and collection actions.

**Figure 3: Collection Methods for the Harbor Maintenance and Merchandise Processing Fees**



	Harbor maintenance fee	Merchandise processing fee
Formal customs entry		
Informal customs entry	N/A	
Imported merchandise enters the U.S. through a foreign trade zone		
Sea passengers		N/A
Domestic shipments		N/A

	Fees are generally paid electronically, along with customs duties, by a customs broker
	Fees are paid quarterly to CBP
N/A	Not charged under these scenarios
	Fees are paid to CBP by cash, check, or at some ports, credit card

Source: GAO analysis of CBP information.

Finally, CBP's Regulatory Audits division has not conducted any audits specific to the HMF since 1996; rather, the fee is audited incidentally during the course of audits related to other fees or duties. Although CBP's

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audit selection strategy includes referrals from within and outside CBP,<sup>28</sup> CBP has not requested and the Corps has not offered any HMF-related referrals.

In contrast to the HMF collections process for passenger vessels, domestic shippers, and shipments into foreign trade zones, CBP's collection process for both the MPF and HMF assessed on formal customs entries has several advantages.<sup>29</sup> CBP accepts electronic payment for these fees along with customs duties, which are typically paid by a customs broker on behalf of an importer. CBP's automated system allows entry summaries to be electronically transmitted, validated, confirmed, corrected, and paid, which expedites the release of merchandise. Customs brokers we spoke with said that the system works well, is efficient, and imposes minimal administrative costs. It is less costly for the government and payers of the fee for CBP to collect the fee as part of the formal entry process than it would be for the Corps or another entity to establish a new collections process because CBP already values cargo for the assessment of duties, so there is no duplication of effort. Further, when CBP conducts audits on the value of cargo to determine if the declared value of the goods is correct, CBP also determines if the correct amount was paid for HMF and MPF. Because these are *ad valorem* fees, if the value of the goods is understated, additional HMF and MPF fees may be due.<sup>30</sup>

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<sup>28</sup> For example, referrals for value and classification audits can be made by CBP's Office of Field Operations and Office of International Trade when they have concerns that importers or brokers may be reporting erroneous values on imported goods, and referrals for passenger user fees are made by agencies involved with passenger processing, including APHIS, CBP, and ICE.

<sup>29</sup> As noted, the electronic payment system works well once goods have been formally entered into U.S. commerce. However, we recently reported on problems with CBP's management of the in-bond system—a system which allows importers to delay formal entry of goods into U.S. commerce. These problems may affect CBP's ability to ensure proper collection of trade revenue, including fees. See GAO, *International Trade: Persistent Weaknesses in the In-Bond Cargo System Impede Customs and Border Protection's Ability to Address Revenue, Trade, and Security Concerns*, [GAO-07-561](#) (Washington, D.C.: Apr. 17, 2007).

<sup>30</sup> According to a CBP official, of the over 200 value and classification of goods audits conducted between 2004 and 2007, the importer had paid the HMF incorrectly more than 60 percent of the time.

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## Misalignments Exist between Fee Collections and Activities for Which They May Be Used

All of the fees we reviewed suffer from some misalignment—although the nature of that misalignment varies—which affects how the fees are used. Similar to the airline passenger inspection fees,<sup>31</sup> not all authorized, reimbursable activities for the sea passenger and vessel inspection customs fees and MPF are associated with conducting inspections, and not all inspection-related activities may be charged to these fees. HMF collections far exceed funds appropriated for harbor maintenance, resulting in a large and growing surplus in the Harbor Maintenance Trust Fund (HMTF), while Corps officials and port stakeholders assert that many federally managed channels are undermaintained.

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## For Customs Inspection and Merchandise Processing Fees There Are Disconnects between Reimbursable Activities and Activities Involved in Inspections

The customs inspection activities and the authorized uses for the customs passenger and vessel fee collections are misaligned. For example, under the customs authorizing statute, passenger inspection fee collections are only available to reimburse appropriations for a limited, prioritized set of activities—including foreign language proficiency awards and transfers to the Treasury’s General Fund of not more than \$18 million for the purposes of deficit reduction.<sup>32</sup> Further, as we discussed earlier, by statute customs inspection-related activities that occur while a CBP officer is earning overtime or premium pay, or during preclearance,<sup>33</sup> can be funded by the user fees, but the same activities conducted during regular time cannot be funded by the fee. Therefore, not all of the activities that may be funded from the customs fee are associated with conducting customs inspections, and not all customs inspection activities are reimbursable (i.e., can be covered by funds from the user fee account). Moreover, use of the customs vessel and sea passenger fee collections is not restricted to vessel and sea passenger inspections. Rather, they may be used to reimburse authorized inspection activities conducted at air, sea, or land ports of entry.

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<sup>31</sup> See [GAO-07-1131](#).

<sup>32</sup> The first use in the list of activities for which customs user fees are legally available is 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.

<sup>33</sup> Precleared passengers are inspected in the departing country rather than in the United States.

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Similar alignment issues exist with the MPF. CBP officials said that since the events of September 11, 2001, the focus of merchandise processing has shifted toward security and away from the original focus on trade compliance.<sup>34</sup> They said that certain activities associated with merchandise processing and performed by CBP officers, including screening and inspecting conveyances (including nonintrusive searches), processing seized narcotics, and inspecting vessels and containers, are not reimbursable MPF activities, but should be. According to CBP officials, the legislation governing the MPF should be explicitly consistent with CBP's mission—that revenue and commercial functions should include commercial as well as security and antiterrorism elements.

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### There Is No Link between the Amount of Annual HMF Collections and Expenditures

Since 2003, HMF collections have significantly exceeded funds appropriated for harbor maintenance, resulting in a large and growing surplus in the trust fund. This may be inconsistent with users' expectations of the fee's purpose as laid out in statute and the principles of effective user fee design. Specifically, the authorizing legislation generally designates the use of HMF collections for harbor maintenance activities.<sup>35</sup> Furthermore, according to stakeholders, this misalignment between fee collections and expenditures undermines the credibility of the HMF. According to CBP data and Treasury reports, in 2001 HMF collections

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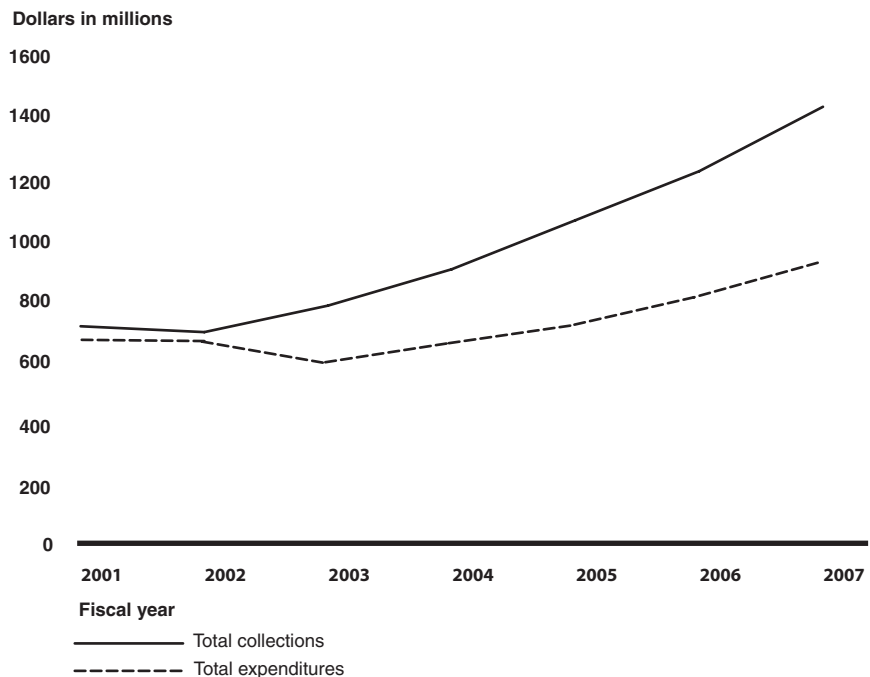
<sup>34</sup> The Homeland Security Act of 2002 required DHS to maintain at least the March 2003 level of staff in each of nine specific customs revenue positions and their associated support positions. Pub. L. No. 107-296, § 412, 116 Stat. 2135, 2179. The nine designated customs revenue positions are import specialists, entry specialists, drawback specialists, national import specialists, fines and penalties specialists, attorneys of the Office of Regulations and Rulings, customs (regulatory) auditors, international trade specialists, and financial systems specialists. In recent work, we found that although many staff other than those in the nine covered positions perform tasks related to customs revenue functions, overall staff resources contributing to customs revenue functions have declined since the formation of DHS. See GAO, *Customs Revenue: Customs and Border Protection Needs to Improve Workforce Planning and Accountability*, GAO-07-529 (Washington, D.C.: Apr. 12, 2007).

<sup>35</sup> The authorizing statute limits expenditures from the HMTF to (1) eligible harbor operations and maintenance costs assigned to commercial navigation, (2) eligible operations and maintenance costs of certain portions of the Saint Lawrence Seaway, (3) certain rebates of tolls or charges, and (4) administrative expenses related to the administration of the fee, but not in excess of \$5 million for any fiscal year (26 U.S.C. § 9505 and 33 U.S.C. § 2238).

exceeded expenditures by about \$44 million, and by 2007 that gap had grown to over \$506 million (see fig. 4).<sup>36</sup>

There are several reasons why growth in collections has outpaced growth in expenditures. Total collections grew 101 percent from \$704 million to \$1.416 billion from 2001 to 2007. Corps officials told us this was driven by the *ad valorem* nature of the fee—receipts grow with both volume and value of shipments. Annual harbor maintenance project expenditures, which are subject to annual appropriation, grew more slowly—from \$660 million in 2001 to \$910 million in 2007 (38 percent).

**Figure 4: HMF Collections Increasingly Exceed Program Expenditures**



Sources: GAO analysis of total HMF collections data from the CBP Revenue Division and expenditures data from Department of the Treasury HMTF Annual Reports, 2001-2007.

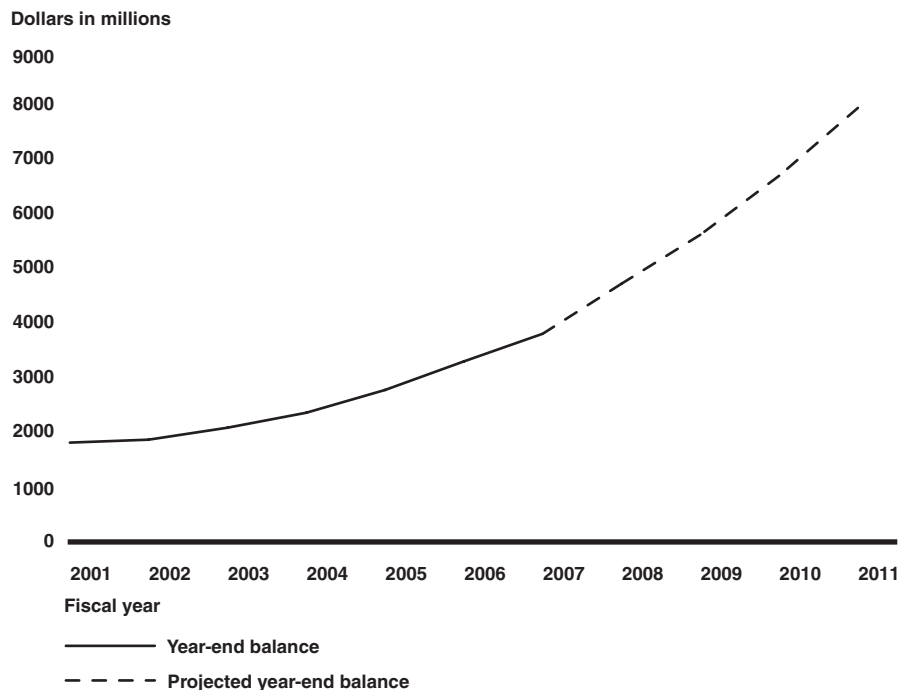
Note: Total collections exclude HMF assessments on exports, which were declared unconstitutional in 1998 and for which refunds and adjustments of collections were still being processed during these years. Total expenditures include an annual payment to CBP for its costs for collecting the HMF.

<sup>36</sup> CBP provided us with HMF collections data, by type (imported cargo, shipments into foreign trade zones, domestic movements, and vessel passengers) beginning with fiscal year 2001.

The difference between the amount collected and the amount expended has led to a growing balance in the HMTF. In addition, the HMTF is credited with interest on its surplus. Between fiscal years 2001 and 2007, the balance in the HMTF grew from \$1.8 billion to \$3.8 billion and Corps officials told us they expect it to reach \$8 billion in fiscal year 2011 (see fig. 5).

Since 1996, the President has included in his annual budget requests and Congress has appropriated \$3 million from the HMTF to compensate CBP for costs associated with collecting the fee. However, CBP finance officials told us that they estimate the annual cost of collecting the HMF to be approximately \$2 million. Officials at the Corps and CBP were unable to explain why the President’s budget request for this activity was higher than the estimated cost of collecting the fee. The Corps prepares an annual report to Congress on the Harbor Maintenance Trust Fund, which includes a substantive review of the fee, but does not include information on these costs.

**Figure 5: HMTF Actual and Projected Year-End Balances**



Sources: GAO analysis of fiscal years 2001-2007 data from Treasury, Bureau of the Public Debt, Harbor Maintenance Trust Fund Monthly Reports, and fiscal years 2008-2011 data from the Corps HMTF Annual Report to Congress.

Note: The annual balances and projections include interest accrued during each fiscal year.



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The HMTF is not the only fund for which revenues flow in automatically from earmarked taxes or fees and spending must be appropriated. In the 1990s the Highway Trust Fund also built up a surplus. At the time, Congress and the President modified the discretionary spending caps to provide for a separate cap on highway funding. In 1998, Congress specified a more automatic link between spending from the Highway Trust Fund and receipts into the Trust Fund. The experience with these annual adjustments, known as Revenue Aligned Budget Authority (RABA), highlights some problems with such links. Spending was tied to estimated receipts with a retroactive adjustment; this worked only as long as the adjustments were positive—when receipts came in below estimated levels and would have resulted in an automatic cut in highway program funding levels, the cut was overridden.<sup>37</sup> A different mechanism is used for the Food and Drug Administration (FDA) prescription drug user fee: if actual FDA fee collections are higher than the amount appropriated, FDA must adjust fee rates in a subsequent year to reduce its anticipated fee collections by that amount.<sup>38</sup>

Even if there were a tighter link between collections and expenditures, the HMTF should not necessarily aim for a zero balance. Corps officials and some stakeholders agreed that there are good reasons to consider maintaining a positive balance in the trust fund.<sup>39</sup> Where fees are expected to cover program costs and program costs do not necessarily decline with a drop in fee revenue, a reserve can be important. For example, the AQI fees are maintained with a reserve of approximately 3 months worth of program costs in case of emergency. According to APHIS, the reserve is necessary because the AQI program is funded solely through user fee collections.

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<sup>37</sup> See GAO, *Highway Financing: Factors Affecting Highway Trust Fund Revenues*, [GAO-02-667T](#) (Washington, D.C.: May 9, 2002). To even out the swings when calculating RABA, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) now “looks back” at the average of the past 2 years of revenue. Also, SAFETEA-LU allows a negative adjustment only when the balance of the Highway Trust Fund highway account is less than \$6 billion.

<sup>38</sup> 21 U.S.C. 379h(g)(4).

<sup>39</sup> As we have previously reported, the vast majority of dedicated, or “earmarked” trust funds take in more than their current needs. See GAO, *Federal Trust and Other Earmarked Funds, Answers to Frequently Asked Questions*, [GAO-01-199SP](#) (Washington, D.C.: January 2001).

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As with similar situations, deciding whether and how to link HMF collections with expenditures is complicated. On the one hand, aligning collections and expenditures can promote economic efficiency and enhance stakeholder support for the fee.<sup>40</sup> On the other hand, increased spending on harbors or reduced fee collections would increase the federal deficit, unless spending in other areas was decreased or other collections or revenues were increased. Moreover, our prior work shows that providing guaranteed funding levels to any one activity in the budget protects that activity from competition with other areas for scarce resources and limits Congressional discretion to make trade-offs in spending priorities.<sup>41</sup> Regardless of the approach taken, a reduction in fee receipts or an increase in appropriations—absent offsetting changes elsewhere—will increase the federal deficit.<sup>42</sup> Given the fiscal pressures imposed by the nation's large and growing structural deficits, decisions about changing the HMF should consider its continued relevance and relative priority within the context of reexamining the base of all major federal spending and tax programs.

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### Despite the Harbor Maintenance Trust Fund Balance, Backlogs Result in Costly Delays and Could Affect Shipping Conditions

Despite large and growing balances in the harbor maintenance trust fund, both Corps officials and other stakeholders told us that there is a backlog of harbor maintenance, which can result in costly delays and more dangerous shipping conditions. A recent Corps analysis of the 59 busiest commercial federal channels in the U.S. found that the authorized depth was available in the middle of the channel only approximately 35 percent of the time in fiscal year 2005 and 33 percent of the time in fiscal year 2006.<sup>43</sup> Although ships continue to use these channels and harbors, not maintaining them to their justified design dimensions can cause problems. For example, according to Corps officials in one port we visited, some vessels are delayed because they have to wait for high tide in order to pass through the channels. They also reported instances where ships skipped a port of call altogether if such a delay would have caused the ship to miss

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<sup>40</sup> See [GAO-08-386SP](#).

<sup>41</sup> See [GAO-01-199SP](#) and GAO, *Budget Issues: Trust Funds in the Budget*, [GAO/T-AIMD/RCED-99-110](#) (Washington, D.C.: March 1999).

<sup>42</sup> Trust fund surpluses add to the unified budget totals (increasing a surplus or reducing a deficit), and any trust fund deficits subtract from them ([GAO-01-199SP](#)).

<sup>43</sup> The study analyzed federal channels through which 10 million tons of cargo or greater are moved annually.

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its scheduled appointment at the Panama Canal. These types of disruptions affect both regional commerce and port profits. A 2007 report by the U.S. Committee on the Marine Transportation System (CMTS) found that vessels often deal with the challenges of poorly dredged and maintained channels and harbors by “light loading,” i.e., loading less cargo than their full capacity, in order to reduce their sailing draft;<sup>44</sup> this in turn increases shipping costs. Furthermore, if a port is not well maintained, it may lack the capacity to handle increasingly larger vessels and therefore lose business or drive up costs. For example, according to South Carolina State Ports Authority officials, the authorized depth of the Port of Georgetown is 27 feet, but the channel has silted in to 25 feet on numerous occasions over the past several years. With the channel at only 25 feet, a company bringing in rock for the regional construction industry can only bring in about 24,000 tons per vessel, down from 28,000 tons with a 27-foot channel. They said that this “light-loading” of vessels significantly drives up its operating cost and impacts construction costs.

The 2007 CMTS report found that channel limitations may lead to unsafe conditions and interaction with other vessels. Consistent with this finding, according to a Corps after-action report, a full oil tanker ran aground in East Rockaway, New York, in 2006 due in part to a lack of maintenance. Corps officials said the Corps now uses a performance-based budgeting model to set harbor maintenance priorities, in which projects are prioritized primarily by the amount and value of commercial tonnage moving through the harbor or channel.<sup>45</sup> As part of this effort, the Corps is developing a national estimate of the cost to make the 59 busiest channels available 95 percent of the time at their full-use dimensions, but there is no timeline for completing that study.<sup>46</sup>

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<sup>44</sup> A ship’s “draft” is the depth of the vessel in the water.

<sup>45</sup> Secondary criteria the Corps uses to set harbor maintenance priorities include whether or not the harbor is a subsistence harbor or a critical harbor of refuge.

<sup>46</sup> Although each port and district can report on what it would cost to complete all backlogged work, these estimates cannot be summed because all projects identified by the regions could not be completed simultaneously.

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## Lack of Substantive Review and Mechanisms for Substantive Stakeholder Input Impede Agency and Congressional Oversight and Ability to Align Program Costs and Activities

Without regular, substantive fee reviews, agencies, stakeholders, and Congress lack complete information about changing program costs and whether authorized, reimbursable activities align with program activities. For example, CBP and APHIS report separately on the customs, immigration, and AQI vessel fees, and the reviews generally do not reflect input from the other. Furthermore, CBP's review of the MPF does not detail program costs and project fee collections, or provide enough information to determine if the amount, structure, or authorized uses of the fee should be updated. Because user fees represent a charge for a service or benefit received from a specific government program, payers may expect a tight link between payments and services, including expectations about the quality of the related service. Although there are opportunities at the local level for payers to provide input on fees and the services they support, opportunities for payers to communicate with the Corps and CBP at the national level are limited. Ineffective communication may reduce stakeholder cooperation and support for the fees, contribute to misunderstandings and confusion about how the fees work and what activities they may fund, and inhibit the agencies' ability to obtain input from stakeholders about fees and the programs that they fund.

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## CBP Reviews of Inspection Fees Do Not Include Information from APHIS and ICE

Congress does not have a comprehensive view of the vessel and passenger AQI, customs, and immigration inspection fees and how they work together, and may therefore lack important context for reviewing them. As we found in our recent review of the related air passenger fees,<sup>47</sup> despite integration of the inspection processes for the three sea passenger and vessel fees, the administering agencies report separately on their respective fees. DHS has acknowledged that the challenges described in our previous work extend beyond air passenger inspections to other fees managed by the agency. In the case of the AQI, customs, and immigration vessel and sea passenger fees, the agencies and Congress lack information on the total costs of the combined inspections, and therefore do not know whether fee collections cover the costs of the consolidated inspection program. We have previously reported that agencies with shared responsibilities for common outcomes or related functions should reinforce agency accountability for collaborative efforts through common

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<sup>47</sup> See [GAO-07-1131](#).

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planning and reporting.<sup>48</sup> CBP prepares a biennial report with summaries and key points for each of the user fees that it administers. CBP's user fee review includes the customs fee, the portion of the AQI fee CBP receives, and the immigration fee. However, 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 the time.<sup>49</sup> APHIS's review includes the entire AQI fee, but does not include any information from CBP on its portion of the agriculture inspections and is based only on APHIS's analysis of the fee collections and inspection costs.

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### CBP Reviews of the MPF Do Not Provide Sufficient Information on Collections and Program Costs

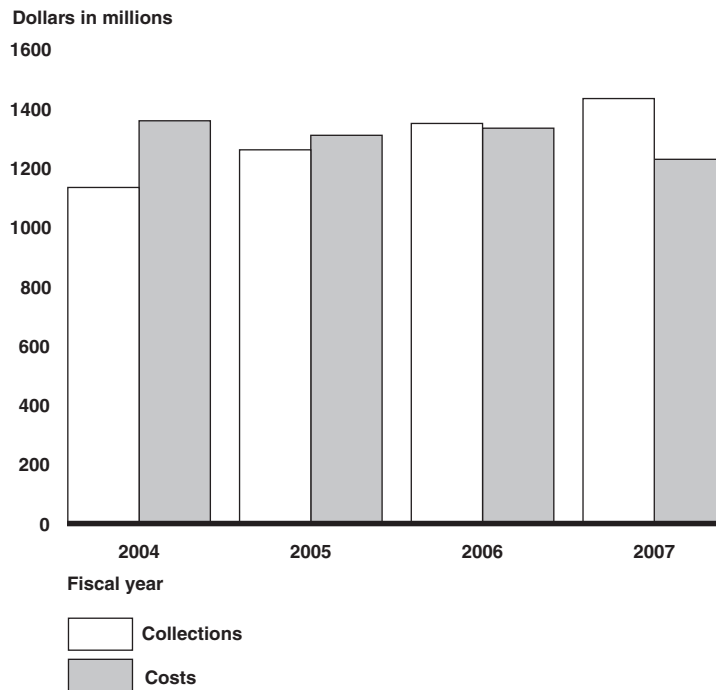
Although CBP includes the MPF in its biennial user fee review, the information provided is not sufficient to project fee collections or to provide assurance that the amount of the fee is aligned with program costs. Without this information, CBP is not able to determine if the amount, structure, or authorized uses of the fee should be updated or to recommend changes to the fee statute. According to CBP Office of Finance officials, CBP has reliable information on the extent to which MPF collections cover the costs of related activities only for the past few years. These officials noted that as recently as 2003, cost calculations have included activities that are not directly associated with processing cargo or that are covered by other fee programs. Furthermore, CBP cannot reliably project future MPF collections because the agency has not estimated the effects of exemptions, entries made through foreign trade zones, the decline in the constant dollar value of the minimum and maximum fees, or changes in import demographics on total MPF collections. CBP data on MPF collections and program costs indicate that since fiscal year 2004 collections have increased relative to program costs and in fiscal years 2006 and 2007 collections exceeded costs by a total of approximately \$221 million (see fig. 6).

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<sup>48</sup> See 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>49</sup> As we recently reported, ICE does not have finalized cost calculations for inspection-related activities. As a result, neither agency is aware if collections cover program costs, or if collections are appropriately shared between the two agencies.

**Figure 6: Total Annual Merchandise Processing Fee Collections and Program Costs**



Source: GAO analysis of CBP data.

CBP's most recent biennial report notes that a detailed analysis of the current and projected effects of MPF exemptions and an accurate cost estimate for processing merchandise is needed. CBP officials told us that they plan to conduct a detailed review of the MPF in the second phase of a three-phase review of the agency's user fees. They said that they estimate beginning the MPF review in early 2008, but the timeline depends on when the first phase is completed.<sup>50</sup>

<sup>50</sup> According to CBP officials, in the first phase of the user fees review, CBP is examining and proposing changes to the customs, immigration, and AQI inspection fees.

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## Stakeholders Have Limited Opportunities for Input on Fee Programs

Agencies can accommodate stakeholder input in various ways. We have previously reported on both the need to accommodate stakeholder input as well as various models for doing so.<sup>51</sup> Some Corps and CBP officials have established successful, two-way communication practices at the local level. For example, some Corps division offices publicly post survey results and maps showing the controlling depth reports for local harbors and channels. One local Corps official said this practice encourages more dialogue with stakeholders, noting that they will e-mail the office to find out when highlighted areas will be dredged. Also, several of the CBP field offices we visited hold regular meetings with port stakeholders to share information and address stakeholder concerns.

However, there is currently no formal vehicle for payers of the HMF and other port stakeholders to provide input to the Corps on the HMF itself or on national harbor maintenance projects and priorities supported by the fees. The HMF authorizing legislation did not establish an HMF advisory committee, though it did establish an advisory committee for a similar program that funds new work construction and rehabilitation on inland waterways. The purpose of this Inland Waterways Users Board is to make recommendations on priorities and spending for inland waterway construction and rehabilitation projects.

As we have previously reported, both the customs and immigration passenger inspection fee statutes required the establishment of advisory committees consisting of industry representatives to advise the agency on issues related to inspection services, including fee levels.<sup>52</sup> CBP's Airport and Seaport Inspections User Fee Advisory Committee meets biannually to advise the commissioner of CBP on issues related to the performance of airport and seaport agriculture, customs, or immigration inspections. The committee members represent entities subject to the fees, including airlines, airports, cruise lines, and industry associations. We recently reported that stakeholders felt that the advisory committee provided only limited opportunities for substantive two-way communication.<sup>53</sup> As a result, they said they lack data necessary to know whether the passenger

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<sup>51</sup> See [GAO-07-791](#).

<sup>52</sup> See [GAO-07-1131](#).

<sup>53</sup> 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.

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inspection fees are set fairly or accurately, or are being spent on the appropriate activities.

Our prior work found that federal advisory committees play an important role in shaping public policy by providing advice on a wide array of issues.<sup>54</sup> Their advice can enhance the quality and credibility of federal decision making. Despite the strengths associated with the federal advisory committees as a means to facilitate effective stakeholder input, agencies also need to be careful to maintain their mission to promote the public interest and take measures to safeguard against actual or perceived agency capture by the entities paying the fee. According to a Congressional Research Service report on the FDA prescription drug user fees, some critics said that giving the pharmaceutical industry a role in setting program performance goals creates conflicts of interest and gives the industry too much influence over FDA actions.<sup>55</sup> Agencies also need to ensure that all stakeholders are given the opportunity to engage substantively. Some smaller businesses have raised concerns that FAA only consults with selected major airlines and manufacturers, ignoring commuter airlines and smaller businesses also affected by FAA regulations.

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## Stakeholders Have Concerns about Port-Related Fees and the Services They Support

Many of the stakeholders we spoke with said that although the *ad valorem* structure of the HMF makes it relatively easy to administer, it raises concerns about equity. Specifically, they noted there is no link between the value of their cargo and the depth or width of the harbor needed by the ship on which it is carried. For example, importers of high-value goods, such as natural gas and pharmaceuticals, told us they essentially pay a much greater share of dredging costs than importers of low-value cargo. Stakeholders said that a ship's size and draft combined with harbor conditions drive harbor maintenance costs, and therefore may more closely link benefits received with the cost of providing the benefits. Other

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<sup>54</sup> See [GAO-04-328](#).

<sup>55</sup> See Congressional Research Service, *The Prescription Drug User Fee Act (PDUFA): Background and Issues for PDUFA IV Reauthorization*, (Washington, D.C.: Apr. 30, 2007). Under the framework established by the Prescription Drug User Fee Act, FDA works with various stakeholders, including representatives from consumer, patient, and health provider groups and the pharmaceutical and biotechnology industries, to develop performance goals for the FDA prescription drug review program. See GAO, *Food and Drug Administration: Effect of User Fees on Drug Approval Times, Withdrawals, and Other Agency Activities*, [GAO-02-958](#) (Washington, D.C.: Sept. 17, 2002).



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stakeholders noted that a benefit of the *ad valorem* structure is that it may better reflect the users' ability to pay.

Some stakeholders also said that because the HMF fee structure does not reflect the individual dredging needs of ports, i.e., lower for naturally deep west coast ports that require very little dredging and higher for shallower eastern seaboard and river ports that require annual dredging, the overall cost of moving goods through the nation's marine transportation system is artificially high. On the other hand, applying the fee equally to all eligible ports offers a relatively simple collection mechanism and helps to create a level playing field for all ports, which in turn helps minimize competition between individual ports.<sup>56</sup> Even so, officials from ports located near international borders told us the HMF disadvantages them relative to nearby foreign ports. For example, Seattle Port Authority officials consider the HMF to be a "punitive assessment" because they said it decreases Seattle's competitiveness against Canadian ports (which do not charge the fee). These officials said that the Port of Vancouver actively promotes itself as not charging the HMF, and said this partly explains why the Port of Vancouver is growing at a faster rate than the Seattle port.

Whether the fee is based on the value of the cargo (*ad valorem*) or on the size and draft of the ship is a separate decision from whether fees should vary by the dredging needs and condition of a given port. In other words, Congress could decide to impose a uniform fee structure at all ports even if it chooses to change the design of that fee from *ad valorem* to one based on a ship's size or draft.

Stakeholders expect that inspections will occur in a timely manner. Cruise lines, importers, and ships' agents all said that delays for passenger and vessel inspections are costly to industry. Because crew members cannot disembark and, in some ports, the cargo cannot be unloaded until a ship is cleared, these delays can be expensive. One agent said that a 1-hour delay can cost a carrier \$15,000 in longshoreman labor costs. Another agent said that crew changes cannot occur until a vessel has cleared its immigration inspection. During this time, the ship must pay expenses for two crews. Stakeholders told us that when multiple ships arrive at the same time, ships have waited up to 4 hours before being cleared. CBP officials told us

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<sup>56</sup> The HMF is not assessed on shippers entering into ports that have not received federal funding for construction, maintenance, or operation since 1977. Some Port Authority officials said that these ports enjoy a competitive advantage over those ports that are subject to the HMF.

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that these types of inspection delays are generally caused by staff shortages, outdated or crowded facilities, clustered arrivals, or some combination of these factors. We recently reported similar findings related to delays for arriving international air passengers.<sup>57</sup>

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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. Where appropriate, changes made to one fee should be designed to complement rather than conflict with the other fees. The separate, disparate fees supporting the largely consolidated inspection process appear to aggravate disconnects between the customs passenger and vessel fees and the corresponding inspection activities, and do not adequately account for the costs imposed by different users. Unless remedied, differences such as the way overtime charges are assessed for commercial vessel inspections, as well as misalignments between actual and reimbursable inspection activities, will persist, causing confusion and raising equity concerns. Moreover, unless CBP automates its collection methods, requires monthly remittance, and aligns fee rate increases with the annual fee caps, CBP will continue to incur unnecessary administrative costs and needlessly expose itself to delayed remittance and potential errors that can result in revenue losses. Similarly, until CBP fully implements a system to assess and collect interest and penalties on late HMF payments, the federal government will continue to incur revenue losses.

The extent and nature of the link between HMF collections and expenditures are policy choices only Congress can make. However, vital information about the tradeoffs associated with such a link is lacking. Further, absent a vehicle for substantive HMF stakeholder input and two-way communication at the national level, stakeholder cooperation as well as support and understanding of the fee will continue to suffer. Moreover, funds requested and appropriated in excess of CBP's collection costs for the HMF reduces the amount of money available in the HMTF to be appropriated for other purposes.

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<sup>57</sup> See GAO, *International Air Passengers: Staffing Model for Airport Inspections Personnel Can Be Improved*, GAO-05-663 (Washington, D.C.: July 15, 2005) and *Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry*, GAO-08-219 (Washington, D.C.: Nov. 5, 2007).

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Unless agencies present a comprehensive picture of the customs, immigration, and AQI fees, including the full scope of inspection activities and their costs, Congress will continue to 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, transparent cost and collections data for the MPF and AQI fees, and regular, formal opportunities to share such information can prevent the agencies from addressing existing issues, including possible misalignments between fee collections and program costs. More broadly, if agencies cannot determine the extent to which these fees are recovering costs, Congress cannot be sure that resources are allocated to the activities it most values.

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 tradeoffs associated with various policy choices available to Congress associated with amending the individual statutes related to the fees discussed in this report. 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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## Matters for Congressional Consideration

To support the efficiency and equity of the Harbor Maintenance Fee as well as its credibility among stakeholders, Congress should consider

- reviewing the link between the amount of the HMF and the amount of expenditures for the harbor maintenance program; and
- establishing an advisory committee on the HMF and the activities that it funds, that includes payers of the fee.

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## Recommendations for Executive Action

We recommend that the Secretary of Homeland Security take the following four actions:

- Develop a legislative proposal, in consultation with Congress, to harmonize the customs, immigration, and agricultural quarantine inspections fees. Harmonizing the fees could include
  - eliminating the differences in the way charges for overtime inspections are assessed to commercial vessel operators;

- 
- raising the cap on customs inspection fees for commercial vessels, in line with the 2007 increase in this fee, so that the cap once again corresponds to a whole number, rather than a fraction of payments;
  - revising the customs passenger and vessel inspection fees so that the inspection activities the fees are authorized to fund are more closely aligned with actual inspection activities; and
  - requiring monthly, rather than quarterly, collection of the customs and immigration inspection sea and air passenger fees.
- Direct CBP to automate its systems for collecting commercial vessel fees to reduce the reliance on paper receipts for tracking payments and to support electronic payments, rather than payment by check or cash.
  - Direct CBP to include in its biennial report on the Merchandise Processing Fee information on total program collections relative to total program costs, over time, as well as any recommendations for updating the amount and authorized uses of the fee.
  - Assess interest and penalties on late HMF payments for domestic shipments, shipments into foreign trade zones, and sea passengers.

We recommend that the Secretary of Agriculture take the following two actions:

- Improve the transparency of the regulatory process of setting the AQI fee rates by providing clearer information about how the rates for each of the fee types (vessel, air passenger, aircraft, etc.) are determined.
- In accordance with OMB Circular No. A-25 guidance and U.S. Department of Agriculture policy, include in AQI fees the indirect and imputed costs currently not considered when setting AQI fee rates and either transfer the appropriate portions of those collections to the general fund of the Treasury as required, or seek Congressional approval to spend these monies on related AQI program costs.

Further, we recommend that the Secretaries of Agriculture and Homeland Security conduct joint reviews of the customs, immigration, and agricultural quarantine inspection fees and consolidate reporting, 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 sea passenger and vessel inspections processes.

Further, we recommend that the Secretaries of Homeland Security and the Army direct CBP and the Corps to improve oversight of the HMF collections by working together to develop

- a method for the Corps to provide information on domestic vessel movements to CBP;

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- a method for the Corps to provide referrals of audit candidates to the CBP Office of Regulatory Audit to be considered in the context of CBP's risk-based system for selecting audit candidates;
  - information on CBP's costs to collect and administer the HMF, for inclusion in the Corps' annual report to Congress on the Harbor Maintenance Trust Fund; and
  - an annual budget request for CBP-related salaries and expenses equal to, rather than in excess of, CBP's actual costs associated with collecting the HMF.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Secretaries of Homeland Security and Defense, and to the Acting Secretary of Agriculture for review. We received written comments from the Department of Homeland Security (DHS), which are reprinted in appendix III, and oral comments from the Departments of Agriculture (USDA) and Defense (DOD). In addition, each agency provided technical comments, which we incorporated as appropriate. We also provided portions of the report to nonfederal stakeholders for their review and made technical corrections as appropriate.

DHS characterized the report as balanced and accurate and agreed with the overall substance and findings of the report. Of the six recommendations directed at DHS, DHS concurred with five of them and partially concurred with the sixth. Specifically, DHS concurred in part with our recommendation to automate collections of the customs and AQI fees assessed on commercial vessels, stating that the agency will analyze the feasibility of this approach and work to identify and obtain funding to implement the recommendation if it is deemed cost beneficial. We appreciate that DHS recognizes the importance of using cost-effective methods to collect fees and look forward to receiving regular updates on DHS's and CBP's progress in this area.

In its oral comments, USDA noted it was impressed with the level of explanatory detail and analysis contained in the report and said it generally agreed with our recommendations. Regarding our recommendation that USDA include certain indirect and imputed costs when setting the AQI fee rates, the agency said it will review the fee and seek guidance from its Office of the Chief Financial Officer and Office of General Counsel on this issue.

USDA noted that it has been APHIS's position that because USDA receives appropriations to pay for departmental and staff office costs and OPM

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receives appropriations for imputed costs such as future retirement benefit expenses, APHIS did not have the authority to include those costs in the fee. We interpret the AQI user fee statute, however, as permitting USDA to recover all costs associated with its program, including imputed and indirect costs. We recognize that imputed costs, such as retirement and unfunded pension liabilities, may be more directly linked to the fee-funded activity and more easily calculated than seeking to allocate departmental and staff office costs. Further, “full cost recovery” should be viewed from a governmentwide perspective. Even though USDA would have to deposit those portions of user fee collections as miscellaneous receipts in the general fund of the Treasury, and therefore would not directly reimburse the relevant appropriation account under a specific statute, it would still defray a cost that Congress determined should be paid for by the user fees. If USDA believes that the statutory authority does not permit it to cover such indirect and imputed costs, then we believe USDA should seek additional authority from Congress consistent with our recommendation.

USDA also noted that it will need to (1) work with DHS to identify DHS’s imputed costs for the AQI program and (2) consider the impact of the fee increase on payers. We recognize that if incorporating these costs will substantially increase the AQI fees, a measured approach that incorporates the costs gradually may be appropriate.

DOD provided oral comments, and concurred with the findings, conclusions, and recommendations of the report related to the Army Corps’ Harbor Maintenance Fee.

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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its date. At that time, we will send copies to the Secretaries of Homeland Security, Agriculture, Army, and Defense and interested Congressional committees. We will also make copies available to others on request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me on (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 who made major contributions to this report are listed in appendix IV.



Susan J. Irving  
Director for Federal Budget Analysis  
Strategic Issues

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*List of Requesters*

The Honorable Bennie G. Thompson  
Chairman

The Honorable Peter T. King  
Ranking Member  
Committee on Homeland Security  
House of Representatives

The Honorable Charles B. Rangel  
Chairman

The Honorable Jim McCrery  
Ranking Member  
Committee on Ways and Means  
House of Representatives



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# Appendix I: Objectives, Scope, and Methodology

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In order to provide context as Congress considers funding options for port programs, we examined (1) what is known about the way selected fees assessed on air and sea port users are set, collected, used, and reviewed (including the views of stakeholders) and (2) the effects of these attributes on program operations.

To meet this objective, we examined selected fees that are assessed on port users; specifically the Harbor Maintenance Fee (HMF), Merchandise Processing Fee (MPF), Customs Inspection Fees, Immigration User Fee, and Agricultural Quarantine Inspection (AQI) User Fees. In selecting the fees, we reviewed relevant policy and economic literature, interviewed user fee experts, and examined Office of Management and Budget data on user charges. We chose these fees because they are levied upon port users, and are related to maritime, safety, and homeland security programs. Additionally, we chose them because they vary in their key design characteristics, specifically in the way in which they are set, collected, used, and reviewed.

In examining the fees, we reviewed user fee legislation and guidance, agency documents, and literature on user fee design and implementation characteristics. We interviewed officials responsible for managing the selected user fees at the U.S. Army Corps of Engineers (Corps), the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), and the U.S. Customs and Border Protection (CBP) offices in Washington, D.C. CBP administers the MPF and Customs inspection fees, and it collects the HMF on behalf of the Corps. CBP administers the Immigration user fees jointly with U.S. Immigration and Customs Enforcement (ICE) and the AQI user fees jointly with APHIS.

To select the ports that we visited, we consulted with port security experts from within and outside of GAO, with CBP and Corps officials, and with outside stakeholders, in order to choose ports that varied in their type and volume of trade and commerce (including cruise lines, container ships, petroleum products, and liquefied natural gas); maintenance dredging needs, and specific issues facing them such as a high volume of commercial cargo, security challenges, or proximity to a land border or intricate river system. We also considered travel costs in selecting the site visits. In light of the significant amount of ongoing audit work in the Gulf region, and because other ports in our selection are representative of important characteristics associated with Gulf ports, we did not include a Gulf port in our selection so as not to unnecessarily burden an area in crisis. The ports we selected include medium and large ports, natural deepwater ports, and those that require frequent dredging. We visited the

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ports of Boston, Massachusetts; Charleston, South Carolina; Newark, New Jersey/New York, New York; Baltimore, Maryland; Miami, Florida; Port Everglades, Florida; Seattle, Washington; and Los Angeles/Long Beach, California. At these ports, we observed passenger, vessel, and cargo inspections, and interviewed officials from CBP and Corps field offices. At each port, we spoke with various stakeholders, including port authority officials, customs brokers, shipping agents, harbor pilots, importers, and cruise line officials. We also met with the following national stakeholder organizations: the American Association of Port Authorities, the Cruise Lines International Association, the Association of Ship Brokers and Agents, the National Association of Maritime Organizations, and the World Shipping Council. We coordinated our work with another GAO team that was examining the customs, AQL, and immigration air passenger inspection fees, and drew upon their audit findings as appropriate.

In addition, we reviewed collections and cost data for each of the fees, data on balances in the Harbor Maintenance Trust Fund, and data on channel availability provided by the Corps. We asked questions about APHIS, CBP, and Corps internal controls for the data we used and determined that the data were sufficiently reliable for the purposes of this report. We performed our work from February 2007 through February 2008 in accordance with generally accepted government auditing standards.

# Appendix II: Summary of Fees by Payer

**Table 3: Fees Charged to Vessel Operators**

<b>Design elements/ selected fees</b>	<b>Customs Inspection Fees</b>	<b>Agricultural Quarantine Inspection Fees</b>	<b>Immigration Inspection Fees</b>
Authorizing legislation	Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985	The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990	No commercial vessel fee for immigration inspection, except overtime charges.
Fee-setting authority	Congress	APHIS, via regulation	
Administering agency/ agencies	CBP	CBP, in coordination with APHIS	
Fee amount	Per arrival: commercial vessels of 100 net tons or more: \$437; barges and bulk carriers from Mexico and Canada: \$110. <sup>a</sup>	\$492 per arrival <sup>b</sup>	
Fee maximum/ minimum	Commercial vessels: \$5,955 annually; barges and bulk carriers: \$1,500 annually	15 payments per year (equal to \$7,380)	
Payer	Vessel operator or agent.	Owners/operators of commercial vessels. Payment is typically made by a shipping agent on behalf of the vessel owner/operator.	
Collecting entity	CBP	CBP collects the fee on behalf of APHIS.	
Remitting process	Payment is made to CBP at the time and place of inspection, usually by check.	Payment is at the time and place of inspection, usually via check to CBP.	
Authorized uses of fee collections	Fee collections are authorized to reimburse appropriation for a prioritized set of activities—including general deficit reduction, overtime and premium pay, retirement and disability contributions, preclearance services, and foreign language proficiency awards.	The fee is designed to cover the cost of providing agriculture inspections of commercial vessels.	
Overtime	According to CBP officials, CBP has limited authority to charge for overtime for customs inspection services.	AQI overtime charges for vessel inspections must be applied at an hourly rate specified in regulation whenever inspection services are provided on a Sunday or holiday, or whenever the individual inspector is working overtime.	For inspections conducted on a Sunday, holiday, or between the hours of 5:00 p.m. and 8:00 a.m. and when the inspector is working overtime, CBP must charge vessel operators for overtime costs. The amount charged depends on the number and pay grade(s) of the officer(s) performing the inspection and the amount of time spent on the inspection. Because regular business hours vary by port, the hours during which an inspector might be working overtime vary.

Source: GAO analysis.

**Appendix II: Summary of Fees by Payer**

<sup>a</sup>The \$110 fee rate only applies to barges and bulk carriers from Canada and Mexico that are either in ballast or transporting only cargo laden in Canada or Mexico.

<sup>b</sup>The AQI vessel fee is scheduled to increase by \$2 each fiscal year, through fiscal year 2010, when it will be \$496.

**Table 4: Fees Charged to Passengers**

<b>Design elements/ selected fees</b>	<b>Customs Inspection Fees</b>	<b>Immigration Inspection Fees</b>	<b>Harbor Maintenance Fee</b>
Authorizing legislation	Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985	The Department of Justice Appropriation Act of 1987	Water Resources Development Act of 1986
Fee-setting authority	Congress	Congress	Congress
Administering agency/ agencies	CBP	CBP, in coordination with ICE	Collected by CBP on behalf of the Corps
Fee amount	\$5.50 per passenger, but sea passengers whose journeys originate in certain locations are charged \$1.93.	\$7.00 per passenger, but sea passengers whose journeys originate in certain locations are charged \$3.00.	0.125% of the price of sea passenger ticket
Fee maximum/ minimum	No	No	No
Payer	International air and sea passengers	International air and sea passengers	Commercial vessel passengers
Collecting entity	Ticket sellers	Ticket sellers	Vessel operators remit to CBP
Remitting process	Payment is made quarterly to CBP via cash, check, or money order.	Payment is made quarterly to CBP via check or money order.	Payment is made quarterly to CBP by check.
Authorized uses of fee collections	Fee collections are authorized to reimburse appropriation for a prioritized set of activities—including general deficit reduction, overtime and premium pay, retirement and disability contributions, preclearance services, and foreign language proficiency awards.	The fee is authorized to cover expenses incurred in providing inspection and preinspection services and other costs specified in statute.	Fee collections are authorized to be used, subject to appropriation, to recover 100 percent of eligible operations and maintenance expenditures for commercial navigation in harbors and the St. Lawrence Seaway and administration of the fee.

Source: GAO analysis.

Note: There is no AQI fee charged to commercial vessel passengers, though commercial air passengers pay a fee.

**Table 5: Fees Charged to Shippers**

<b>Design elements/ selected fees</b>	<b>Harbor Maintenance Fee</b>	<b>Merchandise Processing Fee</b>
Authorizing legislation	Water Resources Development Act of 1986	Omnibus Budget Reconciliation Act of 1986
Fee-setting authority	Congress	Congress <sup>a</sup>
Administering agency/ agencies	Collected by CBP on behalf of the Corps	CBP
Fee amount	0.125% of declared value of commercial cargo entering the U.S. and domestic cargo on vessels using federally maintained harbor projects.	0.21% of declared value of formal merchandise entries <sup>a</sup>
Fee maximum/ minimum	No <sup>b</sup>	Minimum payment of \$25 and maximum of \$485 per entry.
Payer	Passenger vessel operators and shippers of imported and domestic cargo	Importers of cargo
Collecting entity	Usually customs brokers	Customs brokers may pay on behalf of importers.
Remitting process	Payments for imported cargo are generally made electronically to CBP, due within 10 days of merchandise's release. Payments for other cargo are made quarterly.	Payments are generally made electronically to CBP, within 10 working days of cargo's release.
Authorized uses of fee collections	Fee collections are authorized to be used, subject to appropriation, to recover 100 percent of eligible operations and maintenance expenditures for commercial navigation in harbors and the St. Lawrence Seaway and administration of the fee.	The fee is designed to offset the cost of "customs revenue functions," as defined in statute, as well as the automation of customs systems.

Source: GAO analysis.

<sup>a</sup>The Secretary of the Treasury may adjust the fee within certain set limits.

<sup>b</sup>The HMF is not assessed on domestic cargo valued at less than \$1,000, and quarterly payment is not required if the total value of all shipments for which a fee was assessed for the quarter does not exceed \$10,000. No payment is required for imported cargo that is entitled to be entered under informal entry procedures.

# Appendix III: Comments from the Department of Homeland Security

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



**Homeland  
Security**

January 24, 2008

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

Dear Ms. Irving:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled, "FEDERAL USER FEES: Substantive Reviews Needed to Align Port-Related Fees with the Programs They Support." GAO-08-321. GAO was asked by the House Committee on Homeland Security and the House Committee on Ways and Means to examine (1) what is known about the way selected fees assessed on air and sea port users are set, collected, used, and reviewed and (2) the effects of these attributes on program operations. GAO examined the Harbor Maintenance Fee (HMF), the Merchandise Processing Fee (MPF), and the Customs, Immigration, and Agricultural Quarantine Inspection (AQI) user fees assessed on air and cruise passengers and commercial vessels using criteria that have often been used to assess user fees and taxes – equity, efficiency, revenue adequacy, and administrative burden.

GAO found that the port-related fees examined vary in how they are set, collected, used, and reviewed, creating both misalignments between the fees and corresponding services, as well as administrative and oversight challenges.

The U.S. Customs and Border Protection (CBP) appreciated the opportunity to work with the GAO team in developing a balanced and accurate report. DHS and CBP agree with the overall substance and findings of the report. CBP is pleased that the report highlights the same operational and coordination problems that CBP has identified and has been working to resolve.

As GAO noted in its most recent report on air passenger user fees,<sup>1</sup> the fact that the primary inspection process has been integrated under the One-Face-at-the-Border Initiative, but the unification of the user fees that financially support this function has not occurred yet, has created additional administrative and oversight problems for CBP and federal and non-federal stakeholders. These problems have been echoed in a recent study by the Discovery America Partnership, a policy institute. The report asked for

<sup>1</sup> U.S. GAO, FEDERAL USER FEES: Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated, GAO-07-1131, September 2007.

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

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single fee to provide more transparency to CBP's cost of operations and to minimize the cost of collection and accounting for the fees."<sup>2</sup> Representatives from the American Air Transport Association have also expressed their desire to streamline the current user fee scheme.<sup>3</sup>

To address some of the challenges described in the draft report, CBP in consultation with the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Department of Agriculture/Animal and Plant Health Inspection Service (USDA/APHIS), initiated an effort to develop a legislative proposal to consolidate the authorities that govern the customs, immigration, and agriculture inspection user fees for passengers, conveyances, plants, animals, and agriculture goods entering the United States. 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 USDA/APHIS and the House Agriculture Committee to any effort aimed at transferring the agriculture inspection fees authority to DHS. The resulting proposal's main goal is to create DHS/CBP user fees that recover, to the extent possible, the inspection services, detention and removal, and investigative costs attributable to CBP and ICE. Under this proposal, USDA/APHIS retains the authority to set and adjust user fees to recover their costs associated with agriculture inspections. If the legislative proposal is enacted, USDA/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.

In its report, GAO suggests Congress review the link between the HMF fee and expenditures, and establish an advisory committee for the HMF to improve stakeholder communication. GAO also makes eight recommendations to the Secretaries of Homeland Security, Agriculture, and the Army to better align the fees with the activities they support, and to improve collections, oversight, and reporting.

Six recommendations were directed to CBP. Regarding the report's recommendations on the HMF, CBP will conduct a comprehensive cost review to estimate the Agency incurred and projected cost in collecting and administering HMF. On the MPF, CBP agrees with the need to conduct a comprehensive study on this fee. Changes in import trends, the expansion of Free Trade Agreements, and the expansion of pre-clearance and risk based inspection programs may have an impact on MPF collections and costs.

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

<sup>2</sup> Discover America Partnership, *A Blue Print to Discover America*, January 30, 2007, page 18.

<sup>3</sup> Visit [www.regulations.gov](http://www.regulations.gov) and conduct a search for Document ID APHIS-2004-0023-0313 and APHIS-2006-0096-0067.

Recommendation 1

GAO recommends that the Secretary of Homeland Security develop a legislative proposal, in consultation with Congress, to harmonize the commercial vessel inspections fees. Harmonizing the fees could include:

- Eliminating the differences in the way charges for overtime inspections are assessed to commercial vessel operators;
- Raising the cap on customs inspection fees for commercial vessels, in line with the 2007 increase in this fee, so that the cap once again corresponds to a whole number, rather than a fraction of payments;
- Revising the customs passenger and vessel inspection fees so that the inspection activities the fees are authorized to fund are more closely aligned with actual inspection activities; and
- Requiring monthly, rather than quarterly, collection of the customs and immigration inspection sea and air passenger fees.

Response

Concur. The DHS/CBP proposal to consolidate the customs, immigration, and agriculture inspection user fees for passengers, conveyances, plants, animals, and agriculture goods entering the United States includes legislative language to change and consolidate current Reimbursable Overtime (ROT) authorities. The proposal aims at striking current legislation on ROT and inserts a provision that will authorize CBP to bill for ROT in cases where a carrier's pattern of arrivals is continually outside the port regular hours of operation. CBP wants to retain the authority to charge ROT under certain conditions to provide commercial vessel operators with an incentive to align their arrival schedules with the port regular hours of operation. Costs related to overtime inspection services, previously subjected to ROT, will be recovered by a consolidated DHS/CBP commercial vessel user fee.

The DHS/CBP proposal to consolidate certain inspection user fees includes legislative language that will authorize the Agency to adjust the fee caps in proportion to changes to proposed DHS/CBP commercial vessel user fee.

The DHS/CBP proposal to consolidate certain inspection user fees includes legislative language to align the current customs passenger and vessel fees with the inspection services provided at ports of entry. If enacted, the proposed legislation will strike the spending hierarchy established in 19 USC 58c (f)(3)(A)<sup>4</sup> and replace it with a provision that authorizes DHS/CBP user fees to be set at a level that recovers the full cost of providing passenger and vessel inspections.

<sup>4</sup> Under the authorizing statute, the customs inspection fees collected are only available to reimburse appropriations for a limited set of activities (i.e., overtime and premium pay, retirement and disability contributions, preclearance services, foreign language proficiency awards, and enhanced positions and equipment).



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The DHS/CBP proposal to consolidate certain inspection user fees includes legislative language to amend the current quarterly remittance schedule in order to establish a monthly remittance mandate. The proposal states that DHS/CBP passenger inspection fees shall be remit thirty days after the end of the month in which the fees were required to be collected from the individual passengers.

**Due Date:** September 30, 2009.

Recommendation 2

GAO recommends that the Secretary of Homeland Security direct CBP to automate its systems for collecting commercial vessel fees to reduce the reliance on paper receipts for tracking payments and to support electronic payments, rather than payment by check or cash.

Response

Concur in part with this recommendation. CBP will conduct a feasibility analysis to determine whether this recommendation is cost beneficial. CBP has consistently worked to automate many of our collection processes and to convert revenue streams from cash and checks to electronic means. However, system changes to fully implement this recommendation will be extensive. Within the next few months, CBP will conduct a detailed analysis of requirements and constraints, develop cost estimates, and evaluate the economic feasibility of automating its system for collecting commercial vessel fees. If this analysis shows that implementation of the recommendation is cost beneficial, CBP will work to identify and obtain funding to implement the recommendation.

**Due Date:** September 30, 2008.

Recommendation 3

GAO recommends that the Secretary of Homeland Security direct CBP to include in its biennial report on the MPF information on total program collections relative to total program costs, over time, as well as any recommendations for updating the amount and authorized uses of the fee.

Response

Concur. -CBP will include a section on the MPF in the next biennial report due later this year. Meanwhile, CBP will initiate a comprehensive study on MPF collections and costs. Based on the findings derived from the study, CBP will recommend that Congress take the necessary corrective action(s) to ensure that the fee charges are commensurate with the costs of processing merchandise entering the United States.

**Due Date:** December 30, 2008.

Recommendation 4

GAO recommends that the Secretary of Homeland Security assess interest and penalties on late HMF payments for domestic shipments, shipments into foreign trade zones, and sea passengers.

Response

Concur. CBP has commenced with implementation of this recommendation. CBP has developed procedures and plans to immediately begin billing for current delinquencies on a quarterly basis. We expect to assess interest and penalties for an estimated 4,000 prior year delinquencies over the next twelve months.

**Due Date:** September 30, 2008.

Recommendation 5

GAO recommends that the Secretaries of Agriculture and Homeland Security conduct joint reviews of the customs, immigration, and agriculture quarantine inspection fees and consolidate reporting, to include the activities and proportion of fee for which CBP, ICE, and APHIS are each responsible, to provide a comprehensive picture of the user fees supporting the sea passenger and vessel inspections processes.

Response

Concur. In keeping with CBP's Memorandum of Agreement 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, in Fiscal Year 2008 APHIS and CBP submitted a joint report to the Office of Management and Budget on the AQI user fees for use in evaluating the agencies' budget requests. This report included current and projected collections and costs by activity, full-time equivalents to be funded from the user fees, and performance measures on the effectiveness of the Agriculture Quarantine Inspection 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. When this data is available from ICE, CBP will consider submitting a joint Immigration User Fee (IUF) report to Congress. For the required biennial user fee review, we will continue to follow DHS's guidance by submitting CBP's fee costs and collections to DHS, which will issue a consolidated user fee report for the entire Department.

**Due Date:** March 30, 2008.

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Recommendation 6

GAO recommends that the Secretaries of Homeland Security and the Army direct CBP and the U.S. Army Corps of Engineers (Corps) to improve oversight of the HMF collections by working together to develop:

- A method for the Corps to provide information on domestic vessel movements to CBP;
- A method for the Corps to provide referrals of audit candidates to the CBP Office of Regulatory Audit;
- Information on CBP's costs to collect and administer the HMF and include it in its biennial user fee review; and
- An annual budget request for CBP-related salaries and expenses equal to, rather than in excess of, CBP's actual costs associated with collecting the HMF.

Response

Concur. CBP plans to contact the Corps and schedule meetings to discuss the exchange of information. CBP will subsequently work with the Corps to implement an oversight system of the HMF collections.

CBP will conduct a comprehensive review of the costs the organization incurs when collecting and administering the HMF. The results from the review will be included in the biennial user fee review.

Based on the results derived the aforementioned review CBP will adjust its budget request in relation to the costs CBP expects to incur in collecting and administrating the HMF.

In an effort to improve oversight of HMF collections, the Office of International Trade, Office of Regulatory Audit (OT RA) will work together with the Corps to develop a method for the Corps to provide referrals of audit candidates to OT RA. These audit candidates will be considered in the context of the OT Risk Based System for selecting audit candidates and referrals.

RA's Program Manager User Fees initiated discussions on January 14, 2008 with RA's Field Oversight Director East and the Annual Audit Planning Team Representative for Oversight East on the development of the referral process. The Program Manager will formally meet with the Annual Audit Planning Representative to develop a method of incorporating the Corps into our Risked Based process. The due date for completion of this section of the process is a proposed date of February 11, 2008. We will then meet with Field Oversight Director East for final approval of the proposed audit referral process. The due date for this final approval process is a proposed date of February 29, 2008.

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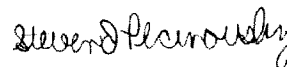
RA's Program Manager User Fees initiated contact on January 14, 2008 by telephone and email with Corps POCs to start the process in developing a method for the Corps to provide audit candidates as per the recommendation above. The proposed due date for an initial meeting with the Corps is set as March 14, 2008 and a follow-up meeting of April 30, 2008.

Final approval of the method for the Corps to provide referrals of audit candidates to the CBP Office of Regulatory Audit to be considered in the context of CBP's risk-based system for selecting audit candidates is the proposed due date of June 13, 2008.

**Due Date:** September 30, 2008.

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

Sincerely,



Steven J. Pecinovsky  
Director  
Departmental GAO/OIG Liaison Office

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

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

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## Staff Acknowledgments

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

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