



DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. APHIS-2022-0023]

RIN 0579-AE71

User Fees: Agricultural Quarantine and Inspection Services; Delay of Effective Date and Request for Information

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; delay of effective date and request for comment.

SUMMARY: On May 7, 2024, the Animal and Plant Health Inspection Service published in the *Federal Register* a final rule amending the user fee regulations associated with the agricultural quarantine and inspection program. The final rule went into effect on October 1, 2024, with the exception of the removal of an exemption to the commercial aircraft user fee for small commercial passenger aircraft, which was scheduled to go into effect on April 1, 2025. In this document, we are issuing a postponement of the effective date of the removal of the exemption to the commercial aircraft user fee for small commercial passenger aircraft for 60 days, from April 1, 2025, to June 2, 2025.

DATES: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] the effective date of the rule published on May 7, 2024 (89 FR 38596) for the removal of 7 CFR 354.3(e)(2)(iv), is delayed until June 2, 2025. We will consider all comments that we receive on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Enter APHIS-2022-0023 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2022-0023, Regulatory Analysis and Development, PPD, APHIS, Station 2C-10.16, 4700 River Road Unit 25, Riverdale, MD 20737-1238.

Any comments we receive on this docket may be viewed at Regulations.gov or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

Response to this action is voluntary. Each individual or institution is requested to submit only one response. Responses should include the name of the person(s) or organization(s) filing the response.

Comments submitted in response to this action are subject to the Freedom of Information Act. Responses to this action may be posted without change online.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Regulatory Policy Specialist, PPQ, APHIS, 67 Thomas Johnson Drive Ste. 2, Frederick, MD 21702-4865; (301) 851-2338; aqi.user.fees@usda.gov.

SUPPLEMENTARY INFORMATION: With this document we are also seeking information on whether: (1) There are any circumstances under which small commercial passenger aircraft (those with 64 or fewer seats) can be considered to have lower sanitary and phytosanitary risk than larger commercial passenger aircraft under similar conditions; (2) if those small commercial passenger aircraft merit reduced agricultural quarantine and inspection user fees as a result of that lower risk, and (3) whether the user fee could be structured differently, in a manner

commensurate with the services being provided, along with evidence to support any alternate user fee structures.

Background

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

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

- Providing AQI services “in connection with the arrival at a port in the customs territory of the United States” of the conveyances and the passengers listed above;
- Providing “preclearance or preinspection at a site outside the customs territory of the United States” to the conveyances and the passengers listed above; and
- Administering 21 U.S.C. 136a, concerning the “collection of fees for inspection services.”

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

- The amount of the fees shall be “commensurate with the costs of [AQI] services with respect to the class of persons or entities paying the fees.”
- The cost of AQI services “with respect to passengers as a class” shall “include the cost of related inspections of the aircraft or other vehicle.”

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

On May 7, 2024, we published a final rule in the *Federal Register*, (89 FR 38596-38644, Docket No. APHIS-2022-0023),¹ amending the user fee regulations associated with the AQI program. The final rule went into effect on October 1, 2024, with the exception of the removal of 7 CFR 354.3(e)(2)(iv), which contains an exemption from paying the AQI user fee for commercial aircraft with 64 or fewer seats meeting certain conditions. Because small commercial passenger aircraft have not previously been subject to the fee, we delayed implementation of the commercial aircraft fee for passenger aircraft with 64 or fewer seats until April 1, 2025 (89 FR 38621). In this document, we are postponing the implementation of the removal of § 354.3(e)(2)(iv) for an additional 60 days, until June 2, 2025.

This postponement is in accordance with the Presidential Memorandum titled “Regulatory Freeze Pending Review” issued January 20, 2025, which orders all agencies to consider postponing for 60 days the effective date of any rule that has not taken effect, for the purpose of reviewing any question of fact, law or policy that the rule may raise.²

Request for Information

The memorandum also directs agencies, during this 60-day period of delay of effective date, where appropriate and consistent with applicable law, to consider opening a comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by the rules postponed under this memorandum. Accordingly, we are soliciting public information about small commercial passenger aircraft operations, for the reasons discussed below.

Since the final rule was published, some operators of small commercial passenger aircraft stated that their aircraft do not pose a sanitary or phytosanitary risk because they do not have cargo holds and, therefore, do not carry cargo that requires AQI services. These same small

¹ To view the proposed rule, final rule, supporting documents, and the comments received, go to Regulations.gov. Enter APHIS-2022-0023 in the Search box.

² To view the memorandum, go to <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/>.

commercial passenger aircraft operators further stated that they should continue to be exempt from the AQI user fees for commercial aircraft. Other small commercial passenger aircraft operators stated that they were not of an equivalent risk profile to larger commercial carriers and should pay a lower fee that correlates to this lower risk.

In the May 2024 final rule, we created a separate, lower fee structure for certain commercial vessels operating in the Great Lakes and Cascadia based on comments received during the comment period on the proposed rule (88 FR 54796-54827, Docket No. APHIS-2022-0023) that the area of departure, route, and arrival were bounded and routine for many of those vessels (89 FR 38607-38609). Based on the comments received and available information, APHIS determined that depending on their cargo, vessels operating in the Great Lakes and Cascadia could pose a lower sanitary and phytosanitary risk than other types of commercial vessels traveling internationally warranting a lower fee rate provided that certain requirements are met (89 FR 38608-38609). APHIS is therefore open to the possibility of a lower AQI user fee for small commercial passenger aircraft, if warranted and adequately supported by data.

We are soliciting public information about small commercial passenger aircraft operations; in particular, whether small commercial passenger aircraft operators have additional data regarding the nature of their activities and whether those activities result in a lower sanitary and phytosanitary risk profile that would merit less intensive AQI services and a lower corresponding user fee. We are thus soliciting information about whether APHIS should consider modifying the commercial aircraft fee for small commercial passenger aircraft in a similar way to the fee structure we created for the Great Lakes and Cascadia commercial vessels. Specifically, we request information about whether:

- Small commercial passenger aircraft predominately operate (and seldom depart from) a distinct geographical or environmental area;
- Aircraft departures and arrivals are often more frequent than those of larger commercial aircraft;

- There is information that indicates that these small commercial passenger aircraft take the same or substantially similar routes per flight;
- There is information that indicates that these small commercial passenger aircraft carry the same or substantially similar cargo per shipment and that the cargo carried does not present a significant sanitary or phytosanitary risk;
- There are any other considerations that could help us differentiate aircraft into categories based on sanitary and phytosanitary risk; and
- There are other ways that the fee could be structured differently, in a manner commensurate with the services being provided, and evidence to support any alternate fee structures.

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

Done in Washington, DC, this 17th day of March 2025.

Michael Watson,

Administrator,

Animal and Plant Health Inspection Service, USDA.

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