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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; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; Technical Amendment.

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 (AQI) program. The final rule went into effect on October 1, 2024, with the exception of the removal of an exemption from paying the AQI user fee for commercial aircraft with 64 or fewer seats meeting certain conditions. The removal of the exemption would have taken effect on April 1, 2025. On March 21, 2025, we published a notice in the *Federal Register* delaying the effective date of the removal of the exemption from paying the AQI user fee for small commercial passenger aircraft, until June 2, 2025, and requesting information. As a result of the comments we received on that notice, we decided to delay implementation of the removal of the exemption indefinitely. However, as a result of an editorial error, the exemption had already been removed from the regulations. In this document, we are amending the regulations to restore the exemption from paying the AQI user fee for commercial aircraft with 64 or fewer seats meeting certain conditions.

DATES: Effective [Insert date of publication in the Federal Register].

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:

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 costs 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 and was applied 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).

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 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 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 on March 21, 2025 we published a notice in the *Federal Register* (90 FR 13272-13273, Docket No. APHIS-2022-0023)³ delaying the effective

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/>.

³ To view the request for information and the comments received, go to Regulations.gov. Enter APHIS-2022-0023 in the Search box.

date until June 2, 2025 of the removal of the exemption from paying the AQI user fee for small commercial passenger aircraft, and requesting information.

In that document, we solicited 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. Specifically, we requested 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.

We solicited comments for 30 days ending April 21, 2025. We received 92 comments by that date. They were from aviation industry associations, operators of small commercial passenger aircraft, operators of regional airports, representatives of foreign governments, and private citizens. Some of these commenters presented information supporting their contention that in certain circumstances, some small commercial passenger aircraft may not present

significant sanitary and phytosanitary risk, or engage in activities that result in a lower sanitary and phytosanitary risk profile that would merit less intensive AQI services and a lower corresponding user fee than other types of commercial aircraft operators. For example, several aircraft operators presented data that they operated solely over the Great Lakes region during temperate months carrying passengers to and from cottages on Pelee Island, Ontario, lack cargo holds, and allow only non-agricultural carry-on passenger baggage.

For this reason, and because an editorial error inadvertently resulted in the Office of the Federal Register removing the exemption on October 1, 2024, we have decided to restore to the regulations the exemption from paying the AQI user fee for commercial aircraft with 64 or fewer seats meeting certain conditions. We will address the specific circumstances and potential fee structures for small commercial passenger aircraft within the context of future rulemaking.

Specifically, small commercial passenger aircraft do not need to pay the user fee provided that:

- They have 64 seats or fewer;
- They do not carry the following cargo: Fresh fruits, fresh vegetables, plants, unprocessed plant products, cotton or covers, sugarcane, or fresh or processed meats; and
- They do not offer meal service other than beverages and prepackaged snacks that do not contain meats derived from ruminants, swine, or poultry or fresh fruits and fresh vegetables.

List of Subjects in 7 CFR part 354

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

As discussed in the preamble, APHIS is amending 7 CFR part 354 as follows:

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

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

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

2. Amend § 354.3 by adding paragraph (e)(2)(iv) to read as set forth below:

§ 354.3 User fees for certain international services.

* * * * *

(e) * * *

(2) * * *

(iv) Any passenger aircraft with 64 or fewer seats, which is not carrying the following cargo: Fresh fruits, fresh vegetables, plants, unprocessed plant products, cotton or covers, sugarcane, or fresh or processed meats; and which does not offer meal service other than beverages and prepackaged snacks that do not contain meats derived from ruminants, swine, or poultry or fresh fruits and fresh vegetables. Aircraft exempt from the user fee under this paragraph would still be subject to the garbage handling requirements found in § 330.400 of this chapter and 9 CFR 94.5;

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Done in Washington, DC, this 8th day of August 2025 .

Michael Watson

Administrator, Animal and Plant Health Inspection Service.