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USDA Rushes to Increase APHIS Fees

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OVERVIEW

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS") has adopted an interim final rule ("IFR") and request for comments concerning emergency increases in user fees. Under the IFR, APHIS will increase, among other fees, the agricultural quarantine and inspection fees for each commercial aircraft arriving in the U.S. and the user fees for passengers arriving in the U.S. The final rule requires collection of the increased fees for each aircraft arriving on or after October 1, 2009 and for all ticket sales made on and after October 1, 2009.

The IFR was published on September 28, 2009 (74 Fed. Reg. 49311). On September 30, 2009, APHIS announced in a press release that it had delayed the effective date of the fee increases until November 1, 2009. Comments to the IFR are due by November 27, 2009.

BACKGROUND AND USER FEE CHANGES

APHIS is authorized by Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (codified at 21 U.S.C. § 136a) (the "FACT Act") to collect user fees for its agricultural quarantine and inspection services ("AQI"), which serve to protect U.S. animal and plant resources from agricultural pests and diseases. The FACT Act requires that APHIS AQI activity be self-funded through these fees. In the past, APHIS generally adjusted its fees before the end of the U.S. government's fiscal year (which ends September 30), with new fees for AQI effective as of January 1 of the next calendar year. The recent IFR provided two business days notice for air carriers to adjust to the increased fees prior to the start of the new fiscal year.

The IFR states that as a result of declining travel volumes, APHIS' fee collections have declined. Even though there are fewer passengers, APHIS still must conduct AQI. And with increasing costs, APHIS does not believe that it can ensure appropriate levels of AQI and retain a reserve funding balance at current fee levels.

Prior to the IFR, AQI fees for commercial aircraft were \$70.75 per aircraft arrival and \$5.00 per arriving passenger. The IFR has increased these fees to **\$78.00 and \$5.50**, respectively.

DELAY IN FEE INCREASES

As a result of significant industry opposition, APHIS announced on September 30, 2009, that it was delaying the fee increases for 30 days. The increased fees now apply to commercial aircraft arriving in the U.S. on and after November 1, 2009 and to international ticket sales made on and after November 1, 2009. APHIS' press release is available online at: <http://www.aphis.usda.gov/newsroom/content/2009/09/adjfees.shtml>

COMMENT PERIOD REMAINS UNCHANGED

APHIS has not changed the due date for comments to its IFR, which remains November 27, 2009. Any person may submit comments to the IFR. A copy of the IFR and any comments submitted to APHIS may be viewed on-line at: <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0048>

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