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May 17, 2024

The Honorable Debbie Stabenow
Chairwoman
The Honorable John Boozman
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Glenn Thompson
Chairman
The Honorable David Scott
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Animal and Plant Health Inspection Service: User Fees for Agricultural Quarantine and Inspection Services*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) entitled “User Fees for Agricultural Quarantine and Inspection Services” (RIN: 0579-AE71). We received the rule on April 26, 2024. It was published in the *Federal Register* as a final rule on May 7, 2024. 89 Fed. Reg. 38596. The rule is effective on October 1, 2024, except for the removal of section 354.3(e)(2)(iv), which is effective on April 1, 2025.

According to APHIS, section 2509(a) of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990¹ authorizes APHIS to prescribe and collect user fees for agricultural quarantine and inspection (AQI) services. In this final rule, APHIS stated that it is amending the user fee regulations associated with the AQI program, including adjusting fees, adjusting caps on prepaid fees, and removing certain fee exemptions. The rule also revises requirements pertaining to remittances and statements.

Enclosed is our assessment of APHIS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

¹ Pub. L. No. 101-624, title XXV, 104 Stat. 3359, 4069 (Nov. 28, 1990), *codified at* 21 U.S.C. § 136a.

the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Wanda L. Moore
Congressional Review Coordinator
Animal and Plant Health Inspection Service
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
ENTITLED
“USER FEES FOR AGRICULTURAL QUARANTINE AND INSPECTION SERVICES”
(RIN: 0579-AE71)

(i) Cost-benefit analysis

The Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) conducted an economic analysis of this final rule. According to APHIS, the rule will better align the fees received from users with the expenditures associated with providing agricultural quarantine and inspection (AQI) services. APHIS estimates that under the final rule, \$1,139,000,000 in user fees will be collected assuming a 7 percent discount rate, and \$1,141,000,000 will be collected assuming a 3 percent discount rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

APHIS prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for and objectives of the rule, (2) a description of significant issues raised by public comments, (3) a description of the small entities subject to the rule, (4) projected reporting, recordkeeping, and other compliance requirements, and (5) a description of agency actions to minimize effects on small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

APHIS determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million, updated annually for inflation, or more in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative

Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

APHIS did not discuss the Act in this final rule. In its submission to us, APHIS stated that the Act is not applicable to the rule.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On August 11, 2023, APHIS published a proposed rule. 88 Fed. Reg. 54796. APHIS received 70 comments from airlines, shipping companies, treatment providers, industry associations, and private citizens. APHIS responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

APHIS determined that this final rule contains information collection requirements under the Act. According to APHIS, the rule has been submitted to OMB for approval under OMB Control Numbers 0579-0055 and 0579-0489. APHIS estimates the rule will create a total annual burden of 1,391 hours for respondents.

Statutory authorization for the rule

APHIS promulgated this final rule pursuant to section 136a of title 21, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

APHIS determined this final rule is economically significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

APHIS determined that this final rule does not have federalism implications and does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.