

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule removes a requirement in § 71.1 for veterinary inspections, at intervals no greater than 30 days, of swine that have already completed their interstate movement within a swine production system.

The entities likely to be affected by this final rule are swine owners and swine finishing houses or other final receiving destinations in swine production systems. Data from the 1997 Census of Agriculture suggest that approximately 109,754 swine farms may be affected, and that 98 percent of these swine farms can be classified as small entities under the Small Business Administration criterion of \$750,000 or less in revenue per year.<sup>1</sup>

The overall economic impact of this rule is likely to be positive but small. Swine operations will be able to forgo certain costs of inspections at the finishing houses or other final receiving premises in the swine production system. The annual savings that may be realized by each swine operation are difficult to estimate because many of the accredited veterinarians who perform the inspections are held under a retainer and perform other services for the swine operation. However, this rulemaking will allow the time and resources of the accredited veterinarian to be redirected to other issues at the finishing houses or other receiving premises, like caring for sick animals, thereby benefitting swine owners.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations

that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR 71**

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 9 CFR part 71 as follows:

**PART 71—GENERAL PROVISIONS**

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 71.1, in the definition of *swine production health plan*, in the second paragraph, the first sentence is removed and four new sentences are added in its place to read as follows:

**§ 71.1 Definitions.**

\* \* \* \* \*

*Swine production health plan.* \* \* \* The plan must identify all premises that are part of the swine production system and that receive or send swine in interstate commerce and must provide for health monitoring of all swine within the system. Such health monitoring must include inspections by the swine production system accredited veterinarian(s). Inspections of all identified premises that contain swine that are or will be in the process of moving interstate within the swine production system and of all swine on those premises must be conducted by the accredited veterinarian(s) at intervals of no greater than 30 days. Inspections of all identified receiving premises that contain only swine that have completed their interstate movement within a single swine production system and of all swine on those premises must be conducted in accordance with State regulations.

\* \* \* \* \*

**§ 71.3 [Amended]**

■ 3. In § 71.3, paragraph (c)(3), the citation “§ 77.5” is removed and the citation “§ 77.17” is added in its place.

**§ 71.18 [Amended]**

■ 4. In § 71.18, paragraph (a)(5), redesignate footnote 2 as footnote 6.

**§ 71.20 [Amended]**

■ 5. In § 71.20, paragraph (a), redesignate footnote 6 as footnote 7.

Done in Washington, DC, this 28th day of October, 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–27540 Filed 10–31–03; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 130**

[Docket No. 02–041–2]

**Veterinary Services User Fees; Fee for Use of Animal Ramp at Miami International Airport**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to establish a user fee for a Government-owned ramp at Miami International Airport used to move animals off of and onto airplanes. Prior to the establishment of this user fee, we were able to recover the cost of labor in supervising and assisting importers and exporters in the ramp’s use through existing user fees, but we had to absorb all other costs associated with the ramp. The new user fee will ensure that we recover costs incurred by the ramp’s purchase and use and will shift the cost of the ramp to those who receive benefits from its use.

**EFFECTIVE DATE:** December 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations for Veterinary Services, contact Ms. Inez Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231, (301) 734–7517.

For information concerning rate development of the user fee, contact Mrs. Kris Caraher, Accountant, User Fees Section, Financial Management Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

**SUPPLEMENTARY INFORMATION:**

**Background**

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS)

<sup>1</sup> 1997 Census of Agriculture, Hogs and Pigs Inventory (<http://www.nass.usda.gov>).

for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). APHIS receives no directly appropriated funds to provide these services; our ability to provide them depends on user fees.

On May 12, 2003, we published in the **Federal Register** (68 FR 25308–25310, Docket No. 02–041–1) a proposal to amend the regulations by establishing a user fee for a Government-owned ramp at Miami International Airport used to move animals off of and onto airplanes. We solicited comments concerning our proposal for 60 days ending July 11, 2003. We received one comment by that date, from a private citizen. This commenter supported the proposed user fee but requested that funds collected from the proposed user fee be used to construct a quarantine station.

User fees are intended to reimburse APHIS for the costs of providing the specific services for which they are charged. Using the fee for the use of the animal ramp at Miami International Airport for any purpose other than reimbursing APHIS for the cost of the operation of that animal ramp would therefore be inappropriate. We are making no changes in response to this comment.

**Note:** In the proposed rule that preceded this action, we proposed to add the paragraph detailing the new animal ramp user fee to § 130.8, “User fees for other services.” We have determined that the new fee would be more appropriately placed in § 130.2, which contains fees for certain animals and birds quarantined in APHIS-owned or -operated quarantine facilities. For this reason, in this final rule, we are adding the user fee for the animal ramp at Miami International Airport to § 130.2 as a new paragraph (d) and changing the heading of that section to read “User fees for individual animals and certain birds quarantined in APHIS-owned or -operated quarantine facilities, including APHIS Animal Import Centers; and fee for use of animal ramp.”

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed above.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule establishes a user fee of \$151 for the animal ramp APHIS operates at Miami International Airport.

Though the fee is \$151 per use regardless of the number of animals being moved across the ramp, in the past clients have moved, on average, approximately 50 animals per ramp use. Thus the average cost per animal for use of the ramp will be approximately \$3. This is a negligible fee compared to the market value of the breeding animals and other upper-end livestock that are transported by air and that may be moved using the ramp. For example, the average import/export price per head of purebred cattle in 2001 was \$1,186, while the price of purebred horses was \$9,653. Our customers, usually brokers, are likely to pass this fee on to their clients.

This new user fee is also similar to the fees charged for the use of similar ramps elsewhere. For example, O’Hare International Airport in Chicago charges approximately \$150 for use of its ramp, while one private horse-transporting entity charges approximately \$800 for the use of the ramp it owns.

#### **Impact on Small Entities**

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has published criteria for determining which economic entities meet the definition of a small business. The entities affected by this new user fee are most likely to be brokers and livestock owners importing or exporting animals. The SBA considers an entity engaged in importing and exporting live animals, poultry, and birds to be small if its total sales are less than \$5 million annually. The total revenue of livestock brokers who transport animals through Miami International Airport is not available, but we expect that a majority of these brokers can be classified as small entities. While the majority of entities affected by the new user fee may be small, this final rule is not expected to have a significant impact on them, due to the fact that the average fee per animal is quite small in comparison to the value of the livestock being transported.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 9 CFR Part 130**

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

■ Accordingly, we are amending 9 CFR part 130 as follows:

#### **PART 130—USER FEES**

■ 1. The authority citation for part 130 continues to read as follows:

**Authority:** 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 130.2 is amended as follows:

■ a. By revising the section heading to read as set forth below.

■ b. By adding a new paragraph (d) to read as set forth below.

**§ 130.2 User fees for individual animals and certain birds quarantined in APHIS-owned or -operated quarantine facilities, including APHIS Animal Import Centers; and fee for use of animal ramp.**

\* \* \* \* \*

(d) *Animal ramp.* The user fee for the transport ramp used to move animals on or off aircraft at APHIS’s Animal Import/Export and Plant Inspection Station at Miami International Airport is \$151 per use. For labor services associated with the ramp, the hourly user fees in § 130.30 will apply.

Done in Washington, DC, this 28th day of October, 2003.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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