be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule contains no 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 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 2 as follows:

PART 2—REGULATIONS

1. The authority citation for part 2 would continue to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. In § 2.129, paragraph (c) would be revised and new paragraph (d) would be added to read as follows:

§ 2.129 Confiscation and destruction of animals.

* * * * *

(c) Confiscated animals may be:

(1) Placed, by sale or donation, with other licensees or registrants that comply with the standards and regulations and can provide proper care; or

(2) Placed with persons or facilities that can offer a level of care equal to or exceeding the standards and regulations, as determined by APHIS, even if the persons or facilities are not licensed by or registered with APHIS; or

(3) Euthanized.

(d) The dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated must bear all costs incurred in performing the placement or euthanasia activities authorized by this section.

Done in Washington, DC, this 24th day of May 1999.

Joan N. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–13621 Filed 5–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98–006–1]

Veterinary Services User Fees; Import or Entry Services at Ports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend existing user fees for import- or entry-related services provided for animals presented at air, ocean, and rail ports. Existing user fees for these services are set at a flat rate. We are proposing to replace the flat rate user fee with an hourly rate user fee. We are taking this action to ensure that the user fees collected are adequate for the services that are provided.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by July 27, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–006–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 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) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals, contact Dr. Morley Cook, Senior Staff Veterinarian, National Animal Programs Staff, Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–8364.

For information concerning rate development of the proposed user fees, contact Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Service Enhancement Unit, ABS, 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) for the costs of providing import- and entry-related services for animals, birds, and animal products are contained in 9 CFR part 130 (referred to below as the regulations).

Section 130.6 lists the user fees for import- or entry-related services provided at land border ports along the United States-Mexico border. The services provided at these ports include inspecting and processing imported animals and authorizing services for animals transiting the United States. Section 130.7 lists the user fees charged for import- or entry-related services for animals presented at any port of entry other than a land border port along the United States-Mexico border. These ports of entry include air, ocean, and rail ports and land border ports along the United States-Canada border. Section 130.9 lists the hourly rate user fees for miscellaneous import or entry services.

The flat rate user fees listed in §§ 130.6 and 130.7 of the regulations were based on our experience with activities at land border ports along the United States-Canada and United States-Mexico borders. These flat rate user fees were calculated as a nationwide average for the costs involved in performing import- or entry-related services for animals. We believe that these user fees are still appropriate for import- or entry-related services for animals at land border ports along the United States-Canada and United States-Mexico borders.

During a review of user fees and the import- and entry-related services, we focused on a variety of factors that can affect our services and their associated costs. These factors included the size of the shipment, the location of the port, the location of APHIS employees, the purpose of the shipment, and the method of shipment.

Often, shipments that enter ocean and rail ports contain 50 animals or more. For these large shipments, the flat rate user fees may be higher than the cost of providing the necessary services. In these cases, the flat rate user fees do not consider the economies of scale that can exist for large shipments. Therefore, the flat rate user fee may not be appropriate for large shipments that arrive at ocean and rail ports. When there are small shipments, for example two animals arriving at an airport, the flat rate user fee does not come close to covering the cost of our service because of the time required for our employees to travel to the port.

Our employees are generally located near land border ports. When shipments arrive at an air, ocean, or rail port, our employees must travel to the port to provide the required import- or entry-related services, which can require more time than it takes to provide the

services. Therefore, the basic cost for providing services at air, ocean, and rail ports is higher than the cost of providing the same services at land border ports.

We could factor the variety of shipment sizes and various locations into a new average flat rate user fee. However, we believe that, due to the wide variances in shipments at air, ocean, and rail ports versus shipments at land border ports, it would be more appropriate to establish an hourly rate user fee for import- or entry-related services for animals at air, ocean, or rail ports.

Therefore, we are proposing to charge our current hourly rate user fee of $56 per hour ($14 per quarter hour, with a minimum fee of $16.50) as listed in § 130.9 of the regulations for import- or entry-related services provided at air, ocean, or rail ports. However, as set forth in § 130.50, a premium rate user fee would apply for services provided by an APHIS employee on Sundays, holidays, or any time outside the normal tour of duty of the employee. For services provided outside the employee's normal tour of duty on Monday through Saturday and holidays, the hourly rate user fee of $65.00 ($16.25 per quarter hour, with a minimum fee of $16.50) would apply. For services provided on Sundays, the hourly rate user fee of $74.00 ($18.50 per quarter hour, with a minimum fee of $16.50) would apply. We would continue charging the flat rate user fees listed in § 130.7 for import- or entry-related services for animals at land ports along the United States-Canada border.

In some cases, for example very small shipments, the user fee could increase or decrease depending upon the number of animals in the shipment, the amount of time required to provide the required services, and the time of arrival. Currently, after-hours arrivals at air, ocean, and rail ports are subject to reimbursable overtime in addition to the flat rate user fee. However, based on this proposed rule, after-hours arrivals would be subject to the premium hourly rate user fee.

In other cases, for example very large shipments, the user fee could decrease. The amount of the decrease would reflect the economies of scale, which would effectively lower the cost per animal.

While it is difficult to determine specific increases and decreases in advance, we do not expect a significant increase in the collection of user fees. In fact, based on the increases in large shipments, we believe that many importers may save money based on this proposed change.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This 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.

We are proposing to amend existing user fees for import- or entry-related services provided for animals presented at air, ocean, and rail ports. Existing user fees for these ports are set at a flat rate. We are proposing to replace the flat rate user fee with an hourly rate user fee.

If this proposed rule is adopted, the user fees for shipments that involve large numbers of animals could decline because the user fees would be based on the time necessary to provide the services rather than the size of the shipment. For shipments that involve small numbers of animals, the user fees could increase or decrease, depending upon the number of animals in the shipment, the amount of time required to provide the required services, and the time of arrival. Currently, after-hours arrivals at air, ocean, and rail ports are subject to reimbursable overtime in addition to the flat rate user fee. However, under this proposed rule, after-hours arrivals would be subject to the premium hourly rate user fee.

Any entity that uses APHIS' services that are subject to user fees may be affected by this proposed rule. The entities who would be most affected by this proposed rule are importers. The Small Business Administration's criteria for a small entity engaged in importing and exporting live animals, poultry, and birds is one whose total sales are less than $5 million annually. However, the number of entities who specifically trade in live animals and who would qualify as a small entity under this definition cannot be determined. Data from the Bureau of Census show that in 1995 the majority of agricultural entities who dealt in grade animals can be considered small, except those entities who dealt exclusively in purebred or registered animals.

The degree to which an entity could be affected by changes in user fees depends on its market power or the ability to which costs could be absorbed or passed on to buyers. Without information on either profit margins or operational expenses of the affected entities,[1] or the supply responsiveness of the affected industry,[2] the scale of economic impacts cannot be precisely predicted.

This proposed rule should have a minimal effect on large and small importers. As previously indicated, the total hourly user fees collected should not be significantly different from the total flat rate user fees that have been previously collected for the same services. For those entities who do experience a change in the fee amount, the economic effect should be minimal.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The proposed 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 propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would be revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.7, the section heading and the introductory text in paragraph (a) would be revised to read as follows:

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) User fees, with a minimum fee of $16.50, for live animals presented for

[1] Profits for sales of small entities are proprietary in nature and are not a part of the public record.

[2] The measurement of supply responsiveness would provide information on the likely effect on an entity's production due to changes in operating costs.

importation into or entry into the United States through a land border port along the United States-Canada border, are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

3. Section 130.9 would be revised to read as follows:

§ 130.9 Hourly user fees for import or entry services.

(a) User fees for import and entry services listed in paragraphs (a)(1) through (a)(5) of this section will be calculated at $56.00 per hour, or $14.00 per quarter hour, with a minimum fee of $16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

(1) Services provided to live animals for import or entry at air, ocean, and rail ports;

(2) Conducting inspections, including laboratory and facility inspections, required to obtain permits either to import animal products, organisms and vectors, or to maintain compliance with import permits;

(3) Obtaining samples required to be tested either to obtain import permits or to ensure compliance with import permits;

(4) Supervising the opening of in-bond shipments; and

(5) Other import or entry services not specified elsewhere in this part.

(b) [*Reserved*]

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

Done in Washington, DC, this 24th day of May 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–13620 Filed 5–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–8]

Proposed Establishment of Class E Airspace; Avon Park, FL

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Avon Park, FL. A Global Positioning System (GPS) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) has been developed for Avon Park Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Avon Park Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–8, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–8.'' the postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Avon Park, FL. A GPS RWY 9 SIAP has been developed for Avon Park Municipal Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Avon Park Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (202) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation