

# Rules and Regulations

Federal Register

Vol. 74, No. 59

Monday, March 30, 2009

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 130

[Docket No. APHIS–2006–0144]

RIN 0579–AC59

#### Import/Export User Fees

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning user fees for import- and export-related services that we provide for animals, animal products, birds, germ plasm, organisms, and vectors. We are increasing those fees for fiscal years 2009 through 2013 in order to ensure that the fees accurately reflect the anticipated costs of providing these services each year. By publishing the annual user fee changes in advance, users can incorporate the fees into their budget planning.

**DATES:** *Effective Date:* April 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, 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 user fee rate development, contact Mrs. Kris Caraher, User Fees Section Head, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737–1232, (301) 734–0882.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations at 9 CFR part 130 (referred to below as the regulations) list user fees for import- and export-related services provided by the Animal and

Plant Health Inspection Service (APHIS) for animals, animal products, birds, germ plasm, organisms, and vectors. We are amending the user fees for these import- and export-related services to reflect the increased cost of providing these services.

These user fees are authorized by section 2509(c)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (21 U.S.C. 136a). APHIS is authorized to establish and collect fees that will cover the cost of providing import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors.

Since fiscal year (FY) 1992, APHIS has received no directly appropriated funds to provide import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors. Our ability to provide these services depends on user fees. We change our user fees through the standard rulemaking process of publishing the proposed changes for public comment in the **Federal Register**, considering the comments, publishing the final changes in the **Federal Register**, and making the new user fees effective 30 days after the final rule is published.

For our user fees to cover our costs so that we can continue to provide services and to inform our customers of user fees in time for advance planning, we proposed to set user fees for our services in advance for fiscal years 2009 to 2013. The proposed rule was published in the **Federal Register** on June 4, 2008 (73 FR 31771–31780, Docket No. APHIS–2006–0144).<sup>1</sup> The proposed user fees were based on our costs of providing import- and export-related services in fiscal years 2005–2007, plus anticipated annual increases in the salaries of the employees who provide the services, plus adjustments for inflation.

We solicited comments concerning our proposal for 60 days ending August 4, 2008. We received seven comments by that date. The comments were from private citizens, a council of ornithological organizations, and livestock importers and exporters. The commenters raised several issues

associated with the proposed rule. These issues are discussed below.

One commenter stated generally that the proposed fee increases were too low.

We calculate our user fees to cover the full cost of providing the services for which we charge the fee. We are confident that the user fees we proposed will be sufficient to recover the cost of providing these services. Furthermore, we intend to review these fees on at least an annual basis and will publish any necessary adjustments in the **Federal Register**.

Several commenters expressed concern that increasing the fees would hurt livestock import/export businesses economically.

APHIS needs to increase the fees in order to recover the costs of providing import/export related services. In the economic analysis for the proposed rule, we examined the potential economic effects of these user fee revisions on businesses and determined, based on the information available, that the effects of the changes should be small for both small and large entities. We have reviewed those conclusions and are confident that they are still accurate.

One commenter stated that the reserve account was designed to issue credit to commercial importers who deal in large volumes of animals or animal products. The commenter stated that all permits should be paid for at the time of application.

As we explained in the proposed rule, the reserve account consists of budgetary resources set aside to provide for future needs and unforeseen circumstances. The types of costs that are considered when developing the reserve include commitments, employee benefits, contingencies, business cycle ups and downs, capital equipment replacement, and provision for future legislative or executive actions. The reserve is not designed to provide credit to importers.

We specifically requested comments about whether import compliance assistance fees would be better charged as hourly fees rather than as flat rate fees. One commenter stated that while charging hourly fees would improve flexibility and make it easier to recover costs, it would also add a burden to agency staff to monitor their time so that the hourly rate could be charged accurately. The commenter stated that correctly calculating time for a task in

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0144>.

a busy office when one might be simultaneously conducting other tasks can be very challenging, and expressed concern that this could lead to undercharging fees. Based on these concerns, the commenter recommended not charging these fees at an hourly rate.

Another commenter asked that we add a definition for import compliance assistance to the regulations to clarify what services were covered by the fees.

We agree with this commenter and have added a definition for *import compliance assistance* to the regulations in § 130.1 in this final rule. We have defined *import compliance assistance* as “Import compliance assistance includes services provided to an importer whose shipment arrives at a port of entry without the necessary paperwork or with incomplete paperwork and who requires assistance to meet the requirements for entry into the United States. Fees for import compliance assistance are charged in addition to the flat rate user fees.”

One commenter requested that we combine the import and transport permits for untreated scientific material, and requested that we increase the duration of permits for the import and transport of untreated scientific materials from 1 to 3 years. The commenter stated that these actions would reduce agency workload and therefore reduce costs.

Import permits are issued to foreign shippers when scientific materials are brought into the United States. Transport permits are issued to domestic shippers moving these materials within the United States. The processing required for these permits is similar, which is why they are covered under the same user fee, but the requirements and restrictions for each are different. Specifically, more mitigations are required for import permits because of the greater risks involved in bringing untreated scientific materials into the United States. Combining the two permit types would result in unnecessary restrictions being placed on the domestic movement of these materials. We did not propose to change the structure or duration of any permits in the proposed rule and are making no changes in response to this comment.

One commenter stated that fees charged by the National Veterinary Services Laboratories (NVSL) for testing livestock for disease before export should be either eliminated entirely or reduced to the same amount as fees charged at State laboratories.

We did not propose to revise the NVSL user fees in the proposed rule. The current fees for NVSL services were

established in a final rule published in the **Federal Register** on December 19, 2007 (72 FR 71744–71750, Docket No. APHIS–2006–0161). As with other user fees charged by APHIS, NVSL fees are calculated to recover the actual costs of providing testing services. We are making no changes to the rule in response to this comment.

We are also making a minor change to the table in § 130.11 by adding a footnote to the entry for inspection of biosecurity level three facilities to indicate where the fees for inspection of biosecurity level two facilities are listed. We are adding this footnote for the sake of clarity.

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 changes discussed in this document.

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

This final 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.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Secretary of Agriculture is authorized by the Food, Agriculture, Conservation and Trade Act of 1990, as amended, to prescribe and collect fees to recover the costs of providing import and export related services. APHIS is amending the user fees for providing veterinary services for import and export activities (9 CFR part 130). These fees are being updated to take into account the routine increases in the cost of doing business, such as inflation, replacing equipment, maintaining databases, etc., that have occurred since the last update and those that are expected to occur over the next 5 years. In addition, the fees are being adjusted to incorporate expenditures to maintain the current level of operations, improve service, and keep up with expanding demand for services. These expenditures include things from roof replacement to the modernization of facilities.

User fees recover the cost of operating a public system by charging those

members of the public who use the system, rather than the public as a whole, for its operation. User fees result in movement toward a more socially optimal level of demand where users fully incorporate the cost of APHIS services into their private costs. In addition, by setting the fees for these veterinary services to fully recover the associated costs, we can assure that the program operates at a level considered sufficient to meet demand for these services. If APHIS continued to collect user fees at the current rates over the next 5 years, total collections would be approximately \$113 million, nearly \$54 million less than the projected cost of administering the program from FY 2009 through FY 2013. This demonstrates the magnitude of the shortfall in cost recovery that would occur absent the changes.

#### **Effects on Small Entities**

The user fee revisions included in this final rule could affect some importers and exporters of live animals, animal products, and animal byproducts. The Small Business Administration (SBA) has established guidelines for determining which businesses are to be considered small. Importers and exporters of live animals, animal products, and animal byproducts are identified within the broader wholesaling trade sector of the U.S. economy. A firm primarily engaged in wholesaling animals or animal products is considered small if it employs not more than 100 persons. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers). The North American Industry Classification System (NAICS) code 424430 covers dairy products (except dried or canned) merchant wholesalers. According to the 2002 Economic Census (the most recent census available), more than 98 percent of these wholesalers would be considered small by SBA standards.<sup>2</sup> NAICS code 424440 covers poultry and poultry product merchant wholesalers. About 97 percent of these firms would be considered small according to the 2002 Economic Census. NAICS code 424470 covers meat and meat product merchant wholesalers. About 97 percent of these firms would be considered small according to the 2002 Economic Census. NAICS code 424520 covers livestock merchant wholesalers. More than 99 percent of the firms in this category would be considered small according to the 2002 Economic Census.

<sup>2</sup> 2002 Economic Census, Department of Commerce, United States Bureau of the Census.

Thus, the vast majority of entities potentially affected by the rule are likely to be considered small. However, the total impact of the changes should be small, as the fee changes represent a tiny fraction of the value of the shipments of animals and animal products. Imports and exports of livestock, meats, dairy products, poultry, and poultry products were valued at more than \$23.8 billion in 2005. By contrast, the increase in annual collections from user fees included in this final rule would be about \$5.3 million in FY 2009, and rising to about \$14 million in 2013. We do not know the proportion of import and export services that are provided to small entities. However, the degree to which any firm, large or small, will be impacted by these changes is dependent on their level of participation in import or export trade. Based on the information that is available, the effects of the changes contained in this final rule should be small whether the entity affected is small or large.

In the proposed rule, we invited public comment on the expected economic effects of the proposed action on small entities, particularly costs estimates of compliance costs and impacts on revenue. Several commenters expressed concern that increasing the fees would hurt livestock import/export businesses economically but did not present any information which would support this contention.

#### Alternatives

One alternative to this rule was to leave the regulations unchanged. In this case, the fees would remain unchanged. The current fees do not take into account the routine increases in the cost of doing business, such as inflation, replacing equipment, maintaining databases, etc., that have occurred since the last update. In addition, the fees are being adjusted to incorporate expenditures to maintain the current level of operations, improve service, and keep up with increasing demand for services. If APHIS were to continue to collect user fees at the current rates in fiscal years 2009–2013, total collections would be nearly \$54 million short of projected program costs over that

period. Therefore, this alternative was rejected.

Another alternative to this rule was to charge hourly rate fees for all veterinary services. However, flat rate user fees are appropriate when the cost of providing a service is unchanging from user to user and the service is requested in relatively large numbers. It would be unnecessarily complex and costly to track hourly charges for services where a flat rate could be consistently used. Therefore, this alternative was rejected.

Another alternative to this rule was to change all hourly fees to flat rate fees. However, charging a flat rate is not appropriate in all situations. We charge flat rate fees in cases where a service takes a consistent amount of time to perform, but for some services there can be a disparity in the time it takes to perform a given service for one user versus another. For example, hourly rates are charged for the inspection of biosecurity level 2 (BSL–2) laboratories, including travel. The inspection covers a specific checklist and is therefore similar from facility to facility. However, the amount of travel time required of the inspector varies widely, depending on the location of the facility. It would be unfair to charge both users the same flat fee for those inspections. Therefore, this alternative was rejected.

This proposed rule contains no new information collection or recordkeeping requirements. (See “Paperwork Reduction Act” below).

#### 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 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 130.1 is amended by adding, in alphabetical order, a definition for *import compliance assistance* to read as follows:

##### § 130.1 Definitions.

\* \* \* \* \*

*Import compliance assistance.* Import compliance assistance includes services provided to an importer whose shipment arrives at a port of entry without the necessary paperwork or with incomplete paperwork and who requires assistance to meet the requirements for entry into the United States. Fees for import compliance assistance are charged in addition to the flat rate user fees.

\* \* \* \* \*

■ 3. Section 130.2 is amended as follows:

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

■ b. In paragraph (a), by revising the table to read as set forth below.

■ c. In paragraph (b), by revising the table to read as set forth below.

■ d. By removing paragraph (d).

#### § 130.2 User fees for individual animals and certain birds quarantined in the APHIS-owned or -operated quarantine facilities, including APHIS Animal Import Centers.

(a) \* \* \*

Animal or bird	Daily user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Birds (excluding ratites and pet birds imported in accordance with part 93 of this subchapter):					
0–250 grams .....	\$2.50	\$2.75	\$2.75	\$2.75	\$3.00
251–1,000 grams .....	8.25	8.50	8.75	9.00	9.25

Animal or bird	Daily user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Over 1,000 grams .....	18.00	19.00	19.00	20.00	21.00
Domestic or zoo animals (except equines, birds, and poultry):					
Bison, bulls, camels, cattle, or zoo animals .....	144.00	149.00	153.00	158.00	162.00
All others, including, but not limited to, alpacas, llamas, goats, sheep, and swine .....	38.00	39.00	40.00	42.00	43.00
Equines (including zoo equines, but excluding miniature horses):					
1st through 3rd day (fee per day) .....	382.00	393.00	405.00	417.00	429.00
4th through 7th day (fee per day) .....	276.00	284.00	292.00	301.00	310.00
8th and subsequent days (fee per day) .....	235.00	242.00	249.00	256.00	264.00
Miniature horses .....	86.00	89.00	91.00	94.00	97.00
Poultry (including zoo poultry):					
Doves, pigeons, quail .....	5.00	5.25	5.50	5.50	5.75
Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants .....	9.00	9.25	9.50	9.75	10.00
Large poultry and large waterfowl, including, but not limited to, gamecocks, geese, swans, and turkeys .....	21.00	22.00	22.00	23.00	24.00
Ratites:					
Chicks (less than 3 months old) .....	13.00	13.00	14.00	14.00	15.00
Juveniles (3 months through 10 months old) .....	20.00	20.00	21.00	22.00	22.00
Adults (11 months old or older) .....	38.00	39.00	40.00	42.00	43.00

(b) \* \* \*

Bird or poultry (nonstandard housing, care, or handling)	Daily user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Birds 0–250 grams and doves, pigeons and quail .....	\$8.25	\$8.50	\$8.75	\$9.00	\$9.25
Birds 251–1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridge, pea fowl, and pheasants .....	18.00	19.00	19.00	20.00	21.00
Birds over 1,000 grams and large poultry and large waterfowl, including, but not limited to gamecocks, geese, swans, and turkeys .....	35.00	36.00	37.00	39.00	40.00

\* \* \* \* \*

■ 4. In § 130.3, paragraph (a)(1), the table is revised to read as follows:

**§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.**  
(a)(1) \* \* \*

Animal import center	Monthly user fee				
	Apr. 29, 2009– Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning October 1, 2013
Newburgh, NY:					
Space A .....					
5,396 sq. ft. ....					
(503.1 sq. m.) .....	\$83,756.00	\$86,268.00	\$88,856.00	\$91,513.00	\$94,249.00
Space B .....					
8,903 sq. ft. ....					
(827.1 sq. m.) .....	138,190.00	142,335.00	146,605.00	150,989.00	155,504.00
Space C .....					
905 sq. ft. ....					
(84.1 sq. m.) .....	14,047.00	14,469.00	14,903.00	15,348.00	15,807.00

\* \* \* \* \*

■ 5. In § 130.4, the table is revised to read as follows:

**§ 130.4 User fees for processing import permit applications.**  
\* \* \* \* \*

Service	Unit	User fee				
		Apr. 29, 2009– Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Import compliance assistance:						
Simple (4 hours or less) .....	Per shipment .....	\$99.00	\$102.00	\$105.00	\$108.00	\$111.00
Complicated (more than 4 hours) .....	Per shipment .....	514.00	514.00	531.00	548.00	565.00
Processing an application for a permit to import live animals, animal products or by products, organisms, vectors, or germ plasm (embryos or semen) or to transport organisms or vectors <sup>1</sup>						
Initial permit .....	Per application .....	133.00	137.00	141.00	145.00	150.00
Amended permit .....	Per amended application .....	66.00	68.00	70.00	73.00	75.00
Renewed permit <sup>2</sup> .....	Per application .....	86.00	89.00	91.00	94.00	97.00
Processing an application for a permit to import fetal bovine serum when facility inspection is required.	Per application .....	455.00	469.00	483.00	497.00	512.00

<sup>1</sup> Using Veterinary Services Form 16–3, “Application for Permit to Import or Transport Controlled Material or Organisms or Vectors,” or Form 17–129, “Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs).”

<sup>2</sup> Permits to import germ plasm and live animals are not renewable.

■ 6. In § 130.6, paragraph (a), the table is revised to read as follows:

**§ 130.6 User fees for inspection of live animals at land border ports along the United States-Mexico border.**

(a) \* \* \*

Type of live animal	Per head user fee				
	April 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Any ruminants (including breeder ruminants) not covered below	\$13.00	\$13.00	\$14.00	\$14.00	\$14.00
Feeder .....	3.75	3.75	4.00	4.00	4.00
Horses, other than slaughter .....	62.00	64.00	66.00	68.00	70.00
In-bond or in-transit .....	8.25	8.50	8.75	9.00	9.25
Slaughter .....	5.50	5.50	5.75	6.00	6.00

\* \* \* \* \*

■ 7. In § 130.7, paragraph (a), the table is 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) \* \* \*

Type of live animal	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Animals being imported into the United States: Breeding animals (Grade animals, except horses):						
Sheep and goats .....	Per head .....	\$0.75	\$0.75	\$0.75	\$1.00	\$1.00
Swine .....	Per head .....	1.25	1.25	1.25	1.25	1.25
All others .....	Per head .....	4.75	4.75	5.00	5.25	5.25
Feeder animals:						
Cattle (not including calves) .....	Per head .....	2.25	2.25	2.50	2.50	2.50
Sheep and calves .....	Per head .....	0.75	0.75	1.00	1.00	1.00
Swine .....	Per head .....	0.50	0.50	0.50	0.50	0.50
Horses (including registered horses) other than slaughter and in-transit.	Per head .....	41.00	42.00	43.00	45.00	46.00
Poultry (including eggs), imported for any purpose.	Per load .....	71.00	73.00	75.00	77.00	80.00
Registered animals, all types (except horses).	Per head .....	8.50	8.75	9.25	9.50	9.75
Slaughter animals, all types (except poultry).	Per load .....	35.00	36.00	37.00	39.00	40.00

Type of live animal	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Animals transiting <sup>1</sup> the United States:						
Cattle .....	Per head .....	2.25	2.25	2.50	2.50	2.50
Sheep and goats .....	Per head .....	0.50	0.50	0.50	0.50	0.50
Swine .....	Per head .....	0.50	0.50	0.50	0.50	0.50
Horses and all other animals .....	Per head .....	9.75	10.00	10.00	10.00	11.00

<sup>1</sup> The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee in § 130.30 will apply.

\* \* \* \* \*

■ 8. In § 130.8, paragraph (a), the table is revised to read as follows:

**§ 130.8 User fees for other services.**  
(a) \* \* \*

Service	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Germ plasm being exported: <sup>1</sup>						
Embryo:						
Up to 5 donor pairs .....	Per certificate .....	\$117.00	\$121.00	\$124.00	\$128.00	\$132.00
Each additional group of donor pairs, up to 5 pairs per group on the same certificate.	Per group of donor pairs.	52.00	54.00	55.00	57.00	59.00
Semen .....	Per certificate .....	72.00	74.00	76.00	79.00	81.00
Release from export agricultural hold:						
Simple (2 hours or less) .....	Per release .....	99.00	102.00	105.00	108.00	111.00
Complicated (more than 2 hours) .....	Per release .....	254.00	262.00	270.00	278.00	286.00

<sup>1</sup> This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the hourly user fee in § 130.3 will apply.

\* \* \* \* \*

■ 9. Section 130.10 is amended as follows:

■ a. In paragraph (a), by revising the table to read as set forth below.  
■ b. In paragraph (b), by revising the table to read as set forth below.

**§ 130.10 User fees for pet birds.**  
(a) \* \* \*

Service	Per lot user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
(1) Which have been out of the United States 60 days or less ....	\$153.00	\$157.00	\$162.00	\$167.00	\$172.00
(2) Which have been out of the United States more than 60 days .....	363.00	374.00	385.00	397.00	409.00

(b) \* \* \*

Number of birds in isolette	Daily user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
1 .....	\$13.00	\$13.00	\$14.00	\$14.00	\$15.00
2 .....	16.00	16.00	17.00	17.00	18.00
3 .....	18.00	19.00	19.00	20.00	21.00
4 .....	21.00	22.00	22.00	23.00	24.00
5 or more .....	25.00	26.00	27.00	28.00	29.00

\* \* \* \* \*

■ 10. In § 130.11, paragraph (a), the table is revised to read as follows:

**§ 130.11 User fees for inspecting and approving import/export facilities and establishments.**  
(a) \* \* \*

Service	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	Per year .....	\$537.00	\$553.00	\$570.00	\$587.00	\$604.00
Inspection for approval of biosecurity level three labs (all inspections related to approving the laboratory for handling one defined set of organisms or vectors) <sup>1</sup> .	Per inspection .....	1,381.00	1,422.00	1,465.00	1,509.00	1,554.00
Inspection for approval of slaughter establishment:						
Initial approval (all inspections) .....	Per year .....	527.00	543.00	559.00	576.00	593.00
Renewal (all inspections) .....	Per year .....	457.00	470.00	484.00	499.00	514.00
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:						
Approval (compliance agreement) (all inspections for first year of 3-year approval).	Per year .....	563.00	579.00	597.00	615.00	633.00
Renewal (all inspections for second and third years of 3-year approval).	Per year .....	325.00	335.00	345.00	355.00	366.00

<sup>1</sup> The hourly user fee rate in § 130.30(2) applies to biosecurity level two laboratories.

\* \* \* \*

■ 11. Section 130.20 is amended as follows:

- a. In paragraph (a), by revising the table to read as set forth below.  
 ■ b. In paragraph (b)(1), by revising the table to read as set forth below.

**§ 130.20 User fees for endorsing export certificates.**

(a) \* \* \*

Certificate categories	User fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
Animal and nonanimal products .....	\$45.00	\$47.00	\$48.00	\$49.00	\$51.00
Hatching eggs .....	42.00	44.00	45.00	46.00	48.00
Poultry, including slaughter poultry .....	42.00	44.00	45.00	46.00	48.00
Ruminants, except slaughter ruminants moving to Canada or Mexico .....	47.00	48.00	49.00	51.00	52.00
Slaughter animals (except poultry but including ruminants) moving to Canada or Mexico .....	49.00	51.00	52.00	54.00	56.00
Other endorsements or certifications .....	34.00	35.00	36.00	37.00	38.00

(b)(1) \* \* \*

Number <sup>1</sup> of tests or vaccinations and number of animals or birds on the certificate	User fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009– Sept. 30, 2010	Oct. 1, 2010– Sept. 30, 2011	Oct. 1, 2011– Sept. 30, 2012	Beginning Oct. 1, 2012
<i>1–2 tests or vaccinations</i>					
Nonslaughter horses to Canada:					
First horse .....	\$54.00	\$55.00	\$57.00	\$59.00	\$60.00
Each additional horse .....	6.25	6.25	6.50	6.75	7.00
Other animals or birds:					
First animal .....	107.00	111.00	114.00	117.00	121.00
Each additional animal .....	6.25	6.25	6.50	6.75	7.00
<i>3–6 tests or vaccinations</i>					
First animal .....	133.00	137.00	141.00	145.00	150.00
Each additional animal .....	10.00	11.00	11.00	11.00	12.00
<i>7 or more tests or vaccinations</i>					
First animal .....	154.00	159.00	163.00	168.00	173.00
Each additional animal .....	12.00	12.00	13.00	13.00	14.00

<sup>1</sup> Rabies vaccinations are not included in this number.

\* \* \* \* \*

■ 12. Section 130.30 is amended as follows:

- a. In paragraph (a), by revising the table to read as set forth below.  
 ■ b. In paragraph (b), by revising the table to read as set forth below.

**\$ 130.30 Hourly rate and minimum user fees.**

(a) \* \* \*

	User fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Hourly rate:					
Per hour .....	\$120.00	\$120.00	\$124.00	\$128.00	\$132.00
Per quarter hour .....	30.00	30.00	31.00	32.00	33.00
Per service minimum fee .....	35.00	36.00	37.00	39.00	40.00

\* \* \* \* \*

(b) \* \* \*

Overtime rates (outside the employee's normal tour of duty)	Premium rate user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Premium hourly rate Monday through Saturday and holidays:					
Per hour .....	\$140.00	\$144.00	\$148.00	\$152.00	\$156.00
Per quarter hour .....	35.00	36.00	37.00	38.00	39.00
Premium hourly rate for Sundays:					
Per hour .....	160.00	164.00	168.00	172.00	\$176.00
Per quarter hour .....	40.00	41.00	42.00	43.00	44.00

\* \* \* \* \*

Done in Washington, DC, this 24th day of March 2009.

**Kevin Shea,**

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

[FR Doc. E9-7022 Filed 3-27-09; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2008-0137; Airspace Docket No. 08-AWP-2]

#### Establishment of Class E Airspace; Death Valley, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action will establish Class E airspace at Death Valley, CA. Controlled airspace is necessary to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to Las Vegas, NV. The FAA is taking this action to enhance the safety and management of IFR aircraft operations near Las Vegas, NV. This action also makes a minor change to the geographic coordinates of the airspace.

**DATES:** *Effective Date:* 0901 UTC, July 2, 2009. The Director of the Federal

Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

#### FOR FURTHER INFORMATION CONTACT:

Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA, 98057; telephone (425) 203-4537.

#### SUPPLEMENTARY INFORMATION:

##### History

On September 10, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Death Valley, CA, (73 FR 52638). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. A minor change to the geographic coordinates of the airspace area was provided by the FAA's Charting Office to better depict the airspace.

Class E airspace designations are published in paragraph 6006 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

#### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Death Valley, CA. Controlled airspace is necessary to accommodate IFR aircraft vectoring from en route airspace to Las Vegas, NV. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) 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 as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII,