sea to ensure that the animals are healthy.

One commenter expressed concern about the effect of this rulemaking on the Breeders' Cup, an organization which conducts an annual international championship event. The commenter said that this event will be held in Canada in 1996, and that the rule would create a hardship for individual horsemen and airline carriers by requiring them to coordinate inspections for horses leaving racing facilities across the United States, and by requiring the horses to leave from only USDA designated ports of embarkation. We have made no changes based on this comment. We have already explained our reason for requiring the horses to be inspected. As for requiring the inspection to take place at USDA designated ports of embarkation, there are approximately 30 designated ports of embarkation in the United States for the exportation of animals. Furthermore, our regulations provide that, in special cases, other ports may be designated by the Administrator, with the concurrence of the Director of Customs, when the exporter can show to the satisfaction of the Administrator that the animals to be exported would suffer undue hardship if required to move to one of the designated ports. These provisions have proved successful for the movement of animals, including horses, to other foreign countries, and we are confident that they will prove sufficient for the movement of animals by air or sea to Canada or Mexico.

One commenter stated that the proposed amendments would create an economic hardship on horse owners, because they would have to pay an hourly user fee, for a minimum of 5 hours, plus applicable reimbursable overtime expenses, while the horses are held at the port of embarkation for the final inspection. The commenter stated that these costs would be proportionally greater for horse owners than for owners of other animals, since horses are shipped in smaller volumes than are other animals. We have made no changes based on this comment. We do not believe that horse owners will be disproportionately affected by this rulemaking. In accordance with 9 CFR 130.21, a user fee of \$50.00 per hour is charged for inspection and supervision services provided by APHIS personnel for export animals. The total user fee for these services is based on the amount of time it takes APHIS personnel to actually inspect the horses or other animals, not on the 5-hour holding period specified in §91.15(a). Smaller shipments will normally take less time,

and incur a lower user fee, than larger shipments. Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

# 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 rule will require a final inspection at an export inspection facility at a designated port of embarkation for all animals intended for export to Canada and Mexico by air or sea. Animals intended for export to Mexico and Canada by air or sea will first be inspected by an APHIS representative or an accredited veterinarian in the State of origin. The APHIS representative or an accredited veterinarian will issue an origin health certificate, which an authorized APHIS veterinarian in the State of origin will endorse. At the port of embarkation, the animals will receive a final inspection by an APHIS veterinarian before they will be allowed to leave the United States.

The exporter will be charged a user fee (\$50.00 an hour plus reimbursable overtime when applicable) for the final inspection as provided in 9 CFR part 130. This inspection could require 6 to 8 hours of work for one or two veterinarians. The total cost of inspection for an air shipment of gilts or heifers from Miami ranges from about \$200 to \$600 a shipment. The total cost of inspection for a sea shipment of heifers from Hawaii ranges from \$1,000 to \$2,000 a shipment.

These costs are very small compared to the value of the animals being shipped. For example, gilts (young, female pigs or immature sows) may be valued at \$500 to \$1,000 or more a head, depending upon breed. Heifers (young cows that have not borne calves) may be worth \$2,000 a head. One air shipment may contain as many as 240 gilts or 80 heifers. One sea shipment from Hawaii may contain 1,000 to 2,000 heifers.

Relatively few exporters of horses will be affected by this rule. Our records indicate that during fiscal year 1994, exporters moved fewer than 10 shipments of horses (totalling less than 20 horses) to Mexico by air (there were no shipments of horses to Mexico by sea) and no shipments of horses by air or sea to Canada. By far, most shipments are by land, with the number of horses exported to Mexico ranging from 1,000 to 2,500 annually, and to Canada ranging from 50,000 to 60,000 annually.

Generally, the entities that will be affected by this rule are not small (defined as having 100 or fewer employees). They are large companies, often with worldwide operations that handle large volumes of traded animals. For example, about 14,000 swine were exported by air from Miami last year, all by a few large companies. There are now only two exporting companies operating out of Hawaii, one of which is a "small" entity.

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 12778**

This rule has been reviewed under Executive Order 12778, 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**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0020.

#### List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

# PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

**Authority:** 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).