

proposes to amend 7 CFR part 735 as follows:

PART 735—COTTON WAREHOUSES

1. The authority citation for 7 CFR part 735 continues to read as follows:

Authority: 7 U.S.C. 241 et seq.

§§ 735.106 through 735.199 [Added and Reserved]

2. Sections 735.106 through 735.199 are added and reserved.

3. Section 735.2 is amended by adding paragraph (jj) to read as follows:

§ 735.2 Terms defined.

* * * * *

(jj) *Force majeure*. Severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military authority, non-availability of transportation facilities, or any other cause beyond the control of the warehouseman that renders performance impossible.

4. Add an undesignated center heading entitled, "Delivery and Shipping" after reserved § 735.199.

5. Sections 735.200 through 735.202 are added under the undesignated heading "Delivery and Shipping" to read as follows:

§ 735.200 Applicability.

The cotton shipping standard set forth in § 735.201 is applicable to all cotton warehousemen licensed under the Act and to all warehousemen that issue electronic warehouse receipts through an authorized electronic warehouse receipt provider in accordance with §§ 735.100 through 735.105 regardless of whether the warehouse is licensed under the Act.

§ 735.201 Cotton Shipping Standard.

Unless prevented from doing so by force majeure, a warehouseman identified in § 735.200 shall deliver stored cotton without unnecessary delay. A warehouseman shall be considered to have delivered cotton without unnecessary delay if for the week in question, the warehouseman has delivered or staged for scheduled delivery at least 4.5% of either their licensed capacity or Commodity Credit Corporation approved storage capacity or other storage capacity as determined by the Secretary to be in effect during the week of shipment.

§ 735.202 Compliance and Dispute Resolution.

(a) Any claims for noncompliance with the cotton shipping standard will be resolved by the parties involved through established industry,

professional, or mutually agreed upon arbitration procedures. The arbitration procedures shall be nondiscriminatory and provide all persons equal access and protection relating to the cotton shipping standard.

(b) No arbitration determination or award resulting from noncompliance with the shipping standard shall affect, obligate, or restrict the Farm Service Agency's authority to provide, administer, and regulate the issuance of licenses and receipts, contractual agreements, or authorized electronic warehouse receipt provider systems in accordance with the Act.

(c) The Farm Service Agency shall not settle unresolved disputes involving the cotton shipping standard or associated damages.

(d) In the event any party requests assistance from or initiates the involvement of the Farm Service Agency in matters relating to the cotton shipping standard, the initiating party shall be responsible for all costs incurred by the Farm Service Agency. Before any such assistance is provided, the initiating party shall make payment to the Farm Service Agency in an amount equal to the Agency's good faith estimate of costs and expenses that will be incurred in fulfilling the request. Costs incurred that exceed the Agency's good faith estimate will be the responsibility of the initiating party.

Signed at Washington, D.C., on May 24, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99-13635 Filed 5-27-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. 98-065-1]

Animal Welfare; Confiscation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations to allow us to place animals confiscated from situations detrimental to the animal's health and well-being with a person or facility that is not licensed by or registered with the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, if the person or facility can offer a level of care equal

to or exceeding that required by the regulations. The change would facilitate the relocation of confiscated animals and minimize the amount of time neglected, sick, or injured animals stay in unhealthy situations.

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. 98-065-1, Regulatory Analysis and Development, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 98-065-1.

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: Dr. Bettye K. Walters, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-8100.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers and other regulated businesses. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3. Part 2 sets forth general requirements, and part 3 sets forth the standards for the humane handling, care, treatment, and transportation of covered animals by regulated entities.

In part 2, § 2.129 provides for the confiscation and destruction of animals. Paragraph (a) of § 2.129 provides that if an animal being held by a dealer, exhibitor, intermediate handler, or carrier is found by APHIS to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, or carrier to comply with the Animal Welfare regulations, APHIS will notify the dealer, exhibitor, intermediate handler, or carrier of the condition of the animal and request that the animal's suffering be alleviated, or that the animal be euthanized. If the dealer, exhibitor, intermediate handler, or carrier refuses to comply with APHIS' request, an APHIS official may confiscate the animal for care, treatment, or disposal.

Paragraph (c) of § 2.129 provides that APHIS may place confiscated animals with a person or facility that is licensed by or registered with APHIS and that complies with the regulations and can provide proper care. Alternatively, the confiscated animals may be euthanized by APHIS or the receiving facility. The dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated is responsible for all costs associated with the placement or euthanasia of the animals.

We are proposing to amend § 2.129(c) to allow APHIS to place confiscated animals with a person or facility that can offer a level of care equal to or exceeding that required by the regulations, even if the person or facility is not licensed by or registered with APHIS. Such facilities may include local animal shelters. Although confiscations of animals are relatively rare (approximately two confiscations per year), we are proposing this action because we have had problems finding licensees or registrants who have room to accommodate new animals.

We would expect a person or facility approved to accept confiscated animals to house, care for, and try to locate permanent homes for the confiscated animals. The person or facility would also be authorized to euthanize, if necessary, any animals that were in severe distress, mortally wounded, or could not be placed in a permanent home in a reasonable period of time. This action would increase the options for APHIS when placing confiscated animals and would, therefore, allow neglected, sick, or injured animals to be removed more quickly from situations detrimental to their health and well-being.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

We are proposing to amend the Animal Welfare Act regulations to allow APHIS to place animals confiscated from situations detrimental to the animals' health and well-being with a person or facility that is not licensed by or registered with APHIS. The change would increase the options for APHIS when placing confiscated animals and would, therefore, facilitate the relocation of confiscated animals and minimize the amount of time neglected, sick, or injured animals stay in unhealthy situations.

Confiscation is a complicated and expensive procedure. Currently, the regulations require that APHIS place confiscated animals with a person or facility licensed by or registered with APHIS. Finding a licensee or registrant with the capacity and ability to house and care for the animals' well-being is one of the major challenges in the confiscation process. In some cases, local humane protection groups have been willing to assist in the placement of confiscated animals at local animal shelters but have been unable to because the shelters are not licensed by or registered with APHIS.

This proposed rule would make the task of finding an adequate facility for confiscated animals faster and simpler, which would reduce APHIS' costs associated with locating a facility and the cost of the care APHIS must provide when adequate facilities cannot be located. At times, APHIS assumes the associated costs for care or euthanasia of confiscated animals when the dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated is unable to pay these costs and APHIS cannot find a facility at which to place the animals.

The Regulatory Flexibility Act requires that agencies consider the potential economic effects of rules on small businesses, organizations, and governmental jurisdictions. Businesses and organizations potentially affected by this proposed rule are those that are not licensed by or registered with APHIS but that can accommodate and provide adequate care for confiscated animals.

We expect that the types of facilities most likely to accept confiscated animals under this proposal are animal

shelters run by humane societies. The number of humane societies that are small entities under the Small Business Administration's (SBA) standards are unknown because information as to their size in terms of gross receipts and number of employees is not available. Humane societies are not-for-profit organizations where some of the employees work on a voluntary basis, and there is not a way to determine their revenue. In addition, the costs incurred by humane societies are covered by membership donations. In the United States, there are at least 121 known humane societies in 35 States. Most of these are in California (at least 14); Texas and Illinois (at least 7 each); Florida, Georgia, and Minnesota (at least 6 each); Oregon, Virginia, Maryland, and Wisconsin (at least 5 each); and Colorado, Alabama, Ohio, Michigan, and Pennsylvania (at least 4 each).

APHIS confiscates animals, on average, only about twice a year. Adoption of this proposed rule would expedite relocation of any confiscated animals. It is likely that the receiving facilities, as noted above, would be small entities. The regulations require that the dealer, exhibitor, intermediate handler, or carrier from whom the animals are confiscated bear all costs associated with performing the placement or euthanasia. If a facility accepts confiscated animals, that facility would be responsible for the future costs incurred for the care of those animals while at the facility. However, APHIS needs to place confiscated animals only about twice a year, and the acceptance of confiscated animals is voluntary.

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 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must

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.

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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