

1, and such oranges grown in the production area grade at least U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot grading at least U.S. No. 1).

* * * * *

Dated: March 9, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95-6368 Filed 3-14-95; 8:45 am]

BILLING CODE 3410-02-W

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. 92-158-2]

Animal Welfare; Licensing and Records

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare regulations to require dealers, exhibitors, and operators of auction sales who apply for license renewal to certify that, to the best of their knowledge and belief, they are in compliance with the regulations before a renewal is issued. We are also amending the regulations to require dealers and exhibitors to use certain forms to make, keep, and maintain the animal identification records required by the regulations, unless a variance has been granted that would allow the use of a computerized recordkeeping system that has been determined by the Administrator to meet the requirements of the regulations. These changes will help ensure that applicants for license renewal are in compliance with the regulations and that dealers and exhibitors keep accurate and complete records, thus promoting compliance with the Animal Welfare Act.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Debra E. Beasley, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Regulatory Enforcement and Animal Care, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations contained in 9 CFR part 2 (referred to below as the regulations) pertain to the administrative and institutional responsibilities of regulated persons

under the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act).

On December 28, 1993, we published in the **Federal Register** (58 FR 68559-68561, Docket No. 92-158-1) a proposal to amend the regulations to require that an applicant for license renewal certify that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to be in compliance upon issuance of a renewed license. In that same document, we also proposed to amend the regulations to require dealers and exhibitors to use Veterinary Services (VS) Form 18-5, "Record of Dogs and Cats on Hand," and VS Form 18-6, "Record of Disposition of Dogs and Cats," to make, keep, and maintain the information required by § 2.75(a)(1) of the regulations. We also proposed to add Animal and Plant Health Inspection Service (APHIS) form numbers in front of the VS form numbers that appear in several places in the regulations.

We solicited comments concerning our proposal for a 60-day comment period ending February 28, 1994. We received 11 comments by that date. The comments were submitted by a scientific society, animal breeders and distributors, humane and animal rights organizations, and private citizens. We carefully considered all of the comments we received. They are discussed below by topic.

Recordkeeping

Comment: The use of VS Forms 18-5 and 18-6 should remain optional since many facilities have accurate and efficient computerized recordkeeping systems. The forms that APHIS proposes to require are cumbersome, repetitive, and outdated and they do not provide spaces for all the information that is required by the regulations.

Response: We understand that many dealers and exhibitors, especially the larger operations, may be using computerized systems to make, keep, and maintain the records required by § 2.75(a)(1) of the regulations. Because it would be difficult for some dealers and exhibitors to switch over to a paper system, we have added a provision to the regulations that will enable a dealer or exhibitor to apply for a variance from the requirement to use VS Forms 18-5 and 18-6. If APHIS determines that a dealer or exhibitor is maintaining a computerized recordkeeping system that is adequate to keep the required information, a variance will be granted. An appeal procedure is also included for dealers or exhibitors who have had their request for a variance denied. The variance is an option only for those

dealers and exhibitors who are using a computerized recordkeeping system; a variance will not be granted for alternative paper records. With regard to the complaint that the forms are outdated, APHIS is currently developing updated forms that reflect the requirements of the regulations. The updated forms will be distributed as supplies of the existing forms are depleted.

License Renewal

Comment: The proposed certification will be effective only if it supports APHIS in denying the license renewal applications of facilities not in compliance with the regulations and standards. Otherwise, the certification will not encourage compliance any more than the statement that applicants are currently required to sign.

Response: The regulations in § 2.5 state that a license will be renewed if, before the expiration of the license, the licensee files an application for license renewal, submits an annual report as required by § 2.7, and pays the required fees. There are no provisions in the regulations for denying a license renewal application as long as the licensee has complied with those requirements. However, as provided in § 2.1(f) of the regulations, a person who fails to comply with any provision of the Act or any provision of the regulations and standards shall be liable to having his or her license suspended or revoked.

Comment: If a facility was in the process of correcting a deficiency, it would be unable to certify that it is in compliance with the regulations and standards until the deficiency was completely corrected, which could take up to 30 days or even longer. Similarly, it would be difficult for a licensee with more than one facility to be certain that all his or her facilities were, at any given time, in compliance with the regulations and standards. The delays that could result from having to be certain that all the regulations and standards had been satisfied could cause a facility to miss its deadline for license renewal.

Response: If a licensee who had been cited for a deficiency was actively working to correct that deficiency, APHIS would be aware—or could be informed—that the licensee was addressing the problem and was making a good-faith effort to comply with the regulations. Such a situation would be no reason for a licensee to delay filing a license renewal application. With regard to the example of a licensee with more than one facility, it is the responsibility of a licensee, either personally or through his or her

employees, to ensure that each facility is maintained and operated in compliance with the regulations. If a licensee is aware of a deficiency in one of his or her facilities, it is incumbent upon the licensee to address the deficiency in order to remain in compliance with the regulations. Having responsibility for more than one facility is not an excuse for knowingly operating in violation of the regulations and standards.

Comment: Prior to 1979, APHIS allowed license applicants to submit an affidavit stating that their premises, facilities, and equipment were in compliance with the regulations and standards, in lieu of an APHIS inspection. However, in 1979, APHIS amended the regulations to remove the applicant affidavit method of ascertaining compliance because of misrepresentation and misuse of the method by some applicants. In light of that experience, there does not appear to be any advantage to requiring license applicants to agree to comply with the regulations and standards. Therefore, if APHIS finalizes its proposed certification requirement in § 2.2, the text of § 2.2 must contain a reference to the inspection provisions of § 2.3.

Response: The proposed certification requirement was not presented as an alternative means of ascertaining compliance or as a substitute for inspections. The certification requirement will have no effect on the provisions of § 2.3, which requires applicants for an initial license or license renewal to make their animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection so that an APHIS inspector may ascertain the applicant's compliance with the standards and regulations.

Comment: It is unclear how APHIS intends licensees to certify that they are in compliance. A simple statement would be ineffective, and any documented statement would entail the use of lengthy forms, which impose a significant additional paperwork burden on licensees. Either way, new regulations are no substitute for APHIS performing rigorous inspections.

Response: As described in the proposed rule, an applicant for license renewal would certify that he or she is, to the best of the applicant's knowledge and belief, in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards by signing the application form, which will contain a statement to that effect. The certification will not necessitate the use of lengthy forms or the imposition of significant additional

paperwork burdens. As mentioned above, APHIS does not intend for the certification to take the place of inspections.

Comment: The proposed certification requirement should help encourage compliance. However, to promote even greater compliance, the certification should actually take the form of an affidavit, signed by the applicant, stating that the applicant has read the Act, its amendments, and the applicable regulations and standards in their totality and understands their contents fully. Further, the applicant should verify that he or she is in compliance with, and will continue to comply with, the Act and its implementing regulations and standards. The applicant should have to have paid any outstanding fines levied by the USDA for violations of the Act. Additionally, the application should include a warning stating that, under 18 U.S.C. 1001, anyone making a false, fictitious, or fraudulent statement on the application could be subject to a fine of \$10,000 and 5 years in prison.

Response: We believe that an affidavit would accomplish no more than the signed statement currently required. Similarly, because APHIS already supplies each applicant a copy of the applicable regulations and standards, we do not believe that supplying a copy of the Act and its amendments would add to an applicant's knowledge of his or her responsibilities, which are spelled out in the regulations and standards. Because a person who fails to comply with the Act or the regulations and standards is liable to having his or her license suspended or revoked, it is in each licensee's best interests to know what is required of him or her. We cannot, however, reasonably require a person to swear that he or she has read the Act, its amendments, and the applicable regulations and standards in their totality and understands their contents fully. With regard to denying renewals to persons with unpaid fines, we stated above that the regulations make no provision for the denial of a license renewal as long as the licensee filed an application for license renewal on time, submitted an annual report as required by § 2.7, and has paid the required fees. Other avenues are utilized by APHIS to collect unpaid fines. Finally, the commenter mentioned the penalties provided under 18 U.S.C. 1001. Those penalties can be applied in matters within the jurisdiction of APHIS, and we will post a warning to that effect on the license renewal application form that we are developing.

Addition of APHIS Form Numbers

Three commenters mentioned our proposal to add APHIS form numbers in front of the VS form numbers that appear in several places in the regulations. Each of those commenters supported the proposed change.

Comments Outside the Scope of This Rulemaking

One commenter strongly supported the mandatory use of VS forms, but added that a photograph of each individual dog or cat should be required as part of the record. Similarly, another commenter suggested that additional information be required, such as a second piece of identification, a notarized verification of exempt status and a signed statement, when applicable, verifying that a random-source animal was held for the mandated period. However, the proposed rule did not propose any changes to the type of information that dealers and exhibitors must keep as part of the required animal identification records. Rather, we proposed that specific forms be used to record and maintain the information already required by the regulations in § 2.75(a)(1). Because of this, such comments are outside the scope of the proposed rule and no changes have been made in this final rule as a result of those comments. Any such changes would have to be proposed as part of a separate proposed rule.

Other commenters submitted comments concerning individual identification of animals, the definitions of Class A and B dealers, requiring the use of other forms, individually notifying licensees of proposed rules and other regulatory actions, and the development of new forms. Again, such comments are outside the scope of the proposed rule and, therefore, no changes have been made in this final rule as a result of those comments. Any such changes would have to be proposed as part of a separate proposed rule.

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, with the changes discussed in this document.

Miscellaneous

As mentioned above, APHIS is currently developing an updated version of VS Form 18-5, "Record of Dogs and Cats on Hand." The updated form includes new spaces for the recording of information pertaining to the acquisition of the dogs or cats

covered by the form. To reflect the inclusion of the new spaces, VS Form 18-5 has been renamed "Record of Acquisition and Dogs and Cats on Hand." The two places in the regulations where the title of VS Form 18-5 is mentioned—in §§ 2.35(d)(1) and 2.75(a)(2)—have been amended in this document to reflect the title change.

We have slightly adjusted the language of § 2.2(b) for the purpose of greater clarity.

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 purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Animal Welfare regulations to require applicants for license renewal to certify that they are in compliance with the regulations before a renewal is issued. We are also amending the regulations to require dealers and exhibitors to use certain forms to make, keep, and maintain the animal identification records required by the regulations. These changes will help ensure that applicants for license renewal are in compliance with the regulations and that dealers and exhibitors keep accurate and complete records. We do not expect there to be an economic impact on any entities, large or small, that will be affected by these changes in the regulations.

Because all licensees are currently required to operate in compliance with the regulations, the requirement for license renewal applicants to certify that they are in compliance with the regulations will have no effect in terms of increased operational costs or burdens. Similarly, requiring dealers and exhibitors to use VS Form 18-5 and VS Form 18-6 to make, keep, and maintain the required animal identification records will involve no new costs or burdens. Dealers and exhibitors are already required to keep the records, so they will not have to gather or record any new information in order to complete the forms. The forms are provided by APHIS to dealers and exhibitors free of charge, and we will not require any existing records to be converted over to the new forms. Additionally, a dealer or exhibitor who wished to do so could obtain a variance from the requirement to use the forms if the computerized recordkeeping system has been determined by the Administrator to meet the requirements of the regulations.

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 final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule does 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

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 final rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 2

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

Accordingly, 9 CFR part 2 is amended as follows:

PART 2—REGULATIONS

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

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 2.2 is revised to read as follows:

§ 2.2 Acknowledgment of regulations and standards.

(a) *Application for initial license.* APHIS will supply a copy of the applicable regulations and standards to the applicant with each request for a license application. The applicant shall acknowledge receipt of the regulations and standards and agree to comply with them by signing the application form before a license will be issued.

(b) *Application for license renewal.* APHIS will supply a copy of the applicable regulations and standards to the applicant for license renewal with each request for a license renewal. Before a license will be renewed, the applicant for license renewal shall

acknowledge receipt of the regulations and standards and shall certify by signing the application form that, to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards.

§ 2.5 [Amended]

3. In § 2.5, paragraph (b), the first sentence is amended by adding the words "APHIS Form 7003/" immediately before the words "VS Form 18-3".

§ 2.35 [Amended]

4. In § 2.35, paragraph (d)(1) is amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18-1"; by adding the words "Acquisition and" before the words "Dogs and Cats on Hand"; and by adding the words "APHIS Form 7005/" immediately before the words "VS Form 18-5".

5. In § 2.35, paragraph (d)(2) is amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18-1" and by adding the words "APHIS Form 7006/" immediately before the words "VS Form 18-6".

§ 2.38 [Amended]

6. In § 2.38, paragraph (h)(3) is amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18-1".

7. In § 2.38, paragraph (i)(3), the beginning of the second sentence is amended by removing the words "Veterinary Services" and adding the words "APHIS Form 7009/VS" in their place.

8. Section 2.75 is amended as follows:

a. Paragraph (a)(2) is revised to read as set forth below.

b. In paragraph (a)(3), the words "APHIS Form 7001/" are added immediately before the words "VS Form 18-1", and the words "paragraph (a)(1) of this section and" are removed.

c. In paragraph (b)(2), the words "APHIS Form 7019/" are added immediately before the words "VS Form 18-19", and the words "APHIS Form 7020/" are added immediately before the words "VS Form 18-20".

§ 2.75 Records: Dealers and exhibitors.

(a) * * *

(2) Each dealer and exhibitor shall use Record of Acquisition and Dogs and Cats on Hand (APHIS Form 7005/VS Form 18-5) and Record of Disposition of Dogs and Cats (APHIS Form 7006/VS Form 18-6) to make, keep, and maintain the information required by paragraph

(a)(1) of this section: *Provided*, that if a dealer or exhibitor who uses a computerized recordkeeping system believes that APHIS Form 7005/VS Form 18-5 and APHIS Form 7006/VS Form 18-6 are unsuitable for him or her to make, keep, and maintain the information required by paragraph (a)(1) of this section, the dealer or exhibitor may request a variance from the requirement to use APHIS Form 7005/VS Form 18-5 and APHIS Form 7006/VS Form 18-6.

(i) The request for a variance must consist of a written statement describing why APHIS Form 7005/VS Form 18-5 and APHIS Form 7006/VS Form 18-6 are unsuitable for the dealer or exhibitor to make, keep, and maintain the information required by paragraph (a)(1) of this section, and a description of the computerized recordkeeping system the person would use in lieu of APHIS Form 7005/VS Form 18-5 and APHIS Form 7006/VS Form 18-6 to make, keep, and maintain the information required by paragraph (a)(1) of this section. APHIS will advise the person as to the disposition of his or her request for a variance from the requirement to use APHIS Form 7005/VS Form 18-5 and APHIS Form 7006/VS Form 18-6.

(ii) A dealer or exhibitor whose request for a variance has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the request for a variance should not be denied. The denial of the variance shall remain in effect until the final legal decision has been rendered.

* * * * *

§ 2.78 [Amended]

9. In § 2.78, paragraph (d) is amended by adding the words "APHIS Form 7001/" immediately before the words "VS Form 18-1".

§ 2.102 [Amended]

10. In § 2.102, paragraph (a)(3), the beginning of the second sentence is amended by removing the words "Veterinary Services" and adding the words "APHIS Form 7009/VS" in their place.

Done in Washington, DC, this 9th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-6369 Filed 3-14-95; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Parts 91 and 92

[Docket No. 94-076-1]

Cattle Imported In-Bond for Feeding and Return to Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal exportation and importation regulations by removing provisions that allow the temporary, in-bond importation of cattle from Mexico into the United States for feeding and return to Mexico for slaughter. We are taking this action because the U.S. Customs Service, to comply with provisions of the North American Free Trade Agreement, has discontinued its collection of duties and bonds on cattle imported into the United States from Mexico. Without a bond, we are unable to meaningfully penalize importers who fail to return those cattle to Mexico. We believe, therefore, that the current in-bond program must be terminated to prevent the dissemination into the United States of animal diseases by in-bond cattle that remain in the United States in violation of the regulations.

DATES: Interim rule effective March 30, 1995. Consideration will be given only to comments received on or before May 15, 1995.

ADDRESSES: Please send an original and three copies of your comments to APHIS, PPD, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 94-076-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. **FOR FURTHER INFORMATION CONTACT:** Dr. David Vogt, Senior Staff Veterinarian, APHIS, Veterinary Services, Import/Export Animals Staff, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 92 (§§ 92.400

through 92.435), referred to below as the regulations, pertains to the importation of ruminants. Sections 92.424 through 92.429 of the regulations contain specific provisions regarding the importation of ruminants, including cattle, from Mexico.

Before the effective date of this rule, § 92.427(e) of the regulations provided for the temporary importation of cattle from Mexico into the United States under United States Customs bond for feeding and return to Mexico for slaughter. Cattle imported under this in-bond program were exempt from some requirements that applied to the importation of other cattle from Mexico, but were subject to additional restrictions during the time they were in the United States that did not apply to other cattle imported from Mexico.

Specifically, in-bond cattle from Mexico could be imported without meeting the requirements of § 92.427(c)(1) regarding herd tests for tuberculosis and without meeting the requirements of § 92.427(d)(1) regarding herd tests for brucellosis if the cattle were: (1) Moved directly by land from the port of entry to an approved quarantined feedlot; (2) removed from the quarantined feedlot only to be moved directly to a Mexican port of entry for return to Mexico for slaughter; and (3) moved only in trucks or railway cars that had been sealed with a seal applied by a U.S. Department of Agriculture inspector.

Additionally, in-bond cattle from Mexico could be imported without the official record of negative brucellosis test required by § 92.424(b) and without meeting the requirements of § 92.427(d) regarding brucellosis if the cattle were under 24 months of age and were accompanied by a certificate stating that the cattle had been vaccinated for brucellosis.

The movement, quarantine, and vaccination requirements discussed above were designed to prevent the transmission of animal diseases from in-bond Mexican cattle to other animals in the United States. However, if the importer of the in-bond Mexican cattle did not adhere to those requirements, there was a serious risk that those cattle, which had not been tested for tuberculosis or brucellosis prior to entering the United States, would spread disease to domestic livestock. As a means of ensuring that the in-bond Mexican cattle were maintained in accordance with the regulations while in the United States and were actually returned to Mexico upon completion of their feeding period in the United States, the regulations required that the importer of the Mexican cattle post a