

of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 1126.13(e)(2), the words "one-third of" and the words "(a), (b), (c), and (d)".

5. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

All persons who desire to submit written data, views or arguments about the revised proposed suspension should send two copies to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 14th day after publication of this notice in the **Federal Register**. Comments filed in response to the proposed suspension will be considered and do not need to be resubmitted unless amended due to the revision addressed in this docket.

The period for filing comments is limited to 14 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

#### Statement of Consideration

This action revises the proposed suspension of § 1126.13(e)(2) as noticed in the May 13, 1997, **Federal Register** (62 FR 26255). The proposed suspension requested the suspension of paragraph § 1126.13(e)(2) which would remove the diversion limitation applicable to cooperative associations. The revised proposed suspension of portions of § 1126.13(e)(2) would increase the diversion limitation applicable to cooperatives from one-third to an amount equal to the amount of producer milk the cooperative association delivered to pool plants.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a substantial number of dairy farmers who supply the Texas market

and the proponent of the proposed suspension of paragraph § 1126.13(e)(2), requested the modification. AMPI stated that the modification is necessary to achieve orderly marketing conditions in the Texas market. AMPI asserts that changes have occurred in the marketplace caused by a continued increase in production accompanied by a decrease in the number of dairy farms since the suspension was first granted. AMPI believes that the revised proposed suspension will maintain a balance of milk within the production area while allowing reserve supplies to move to the most efficient alternative market. AMPI contends that this will assure a more distinct association with the Class I market and limit sharing in the uniform price by cooperative associations that do not make milk available for fluid use.

Accordingly, it may be appropriate to suspend the aforesaid provision from August 1, 1997, through July 31, 1999.

#### List of Subjects in 7 CFR Part 1126

Milk marketing orders.

The authority citation for 7 CFR Part 1126 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

Dated: June 23, 1997.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 92 and 98

[Docket No. 97-014-1]

#### Canadian Border Ports; Champlain, NY, and Derby Line, VT

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the animal and animal product importation regulations by removing Champlain, NY, and Derby Line, VT, as land border ports of entry for animals and animal germ plasm imported from Canada into the United States. We want to improve the efficiency of our animal inspection operations along the U.S.-Canada border, and we do not believe that the current level of use of the animal importation facilities at these two ports justifies the cost of keeping them open. Importers may continue to use other ports along the U.S.-Canada border, including Highgate Springs, VT,

and Buffalo and Alexandria Bay, NY, to import animals and animal germ plasm from Canada. We believe that new livestock inspection facilities and extended hours of operation at the port at Highgate Springs, VT, will enable us to handle any additional needs for inspection services caused by closing the ports at Champlain, NY, and Derby Line, VT, which are currently open on a part-time basis only.

**DATES:** Consideration will be given only to comments received on or before August 26, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-014-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-014-1. 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. Gary Colgrove, Chief Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231, (301) 734-3276.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR parts 92 and 98 (referred to below as the regulations) restrict the importation of specified animals and animal products into the United States to prevent the introduction of communicable animal diseases. The regulations designate land border ports along the U.S.-Canada border having inspection facilities for the importation of certain animals and animal germ plasm that require inspection. Section 92.203(b) lists the border ports through which poultry from Canada may be imported; § 92.303(b) lists the border ports through which horses from Canada may be imported; § 92.403(b) lists the border ports through which ruminants from Canada may be imported; § 92.418(c)(2) lists the border ports through which cattle from Canada may be imported; and § 92.503(b) lists the border ports through which swine from Canada may be imported. Section 98.33(b) lists the border ports through which certain animal semen from Canada may be imported, and § 98.6 provides that

embryos regulated under subpart A of part 98 may be imported at ports of entry listed in § 92.303 for horses, § 92.403 for ruminants, and § 92.503 for swine.

The ports of Champlain, NY, and Derby Line and Highgate Springs, VT, are currently listed in all of the sections of parts 92 and 98 listed above and, therefore, are authorized ports of entry for the importation of poultry, horses, swine, cattle, other ruminants, and certain animal germ plasm from Canada. The animal importation facilities at these ports are open on a part-time basis only: The facilities at Champlain are open 1 day a week for 8 hours, the facilities at Derby Line are open 1 day a week for 4 hours, and the facilities at Highgate Springs are open 4 days a week for a total of 32 hours. Along the U.S.-Canada border, Highgate Springs is located between Champlain and Derby Line; Champlain is approximately 18 miles west of Highgate Springs, and Derby Line is approximately 48 miles east of Highgate Springs.

The amount of animals and animal germ plasm imported annually through Derby Line, VT, is extremely low compared to the amount imported annually through other U.S.-Canada border ports. The amount of animals and animal germ plasm imported annually through Highgate Springs, VT, and Champlain, NY, are roughly similar to each other and, although higher than the amount imported annually through Derby Line, still relatively low when compared to other ports. To illustrate, in fiscal years (FY) 1995 and 1996 and the first 4 months of FY 1997, the three ports processed a total of 245,588 poultry (chicks and hatching eggs)—a far higher number of importations than any other species. Bovine importations (cattle and bison) were next highest with 19,236 bovines imported through the three ports during the same 28-month period. By comparison, the port at Alexandria Bay, NY, processed 457,607 imported poultry and 122,607 imported bovines during that timeframe. Therefore, the total number of poultry imported through Derby Line, Highgate Springs, and Champlain combined was about 54 percent the number imported through Alexandria Bay. The total number of bovines imported through these three ports was less than 16 percent the number imported through Alexandria Bay.

We do not believe that the level of use of these three ports justifies the cost of keeping all of them open. The Animal and Plant Health Inspection Service (APHIS) funds import activities through user fees. In recent years, the user fees generated through these three ports have

not covered their operating expenses. Moreover, we do not believe that the relatively low level of use of these ports can be attributed solely to the fact that they are open on a part-time basis only. Over the years, we have found that the scheduled hours of operation at these ports have met the needs of the local industry who use them. In other words, we do not believe that increasing the hours of operation at these ports would greatly increase their use by importers.

As a result, we are considering closing the animal importation facilities at Derby Line, VT, and Champlain, NY, and extending the hours of operation at Highgate Springs, VT, so that the animal importation facilities there are open full time during normal business hours Monday through Friday. We anticipate that the port at Highgate Springs operating on a full-time basis would be able to handle all animal importations that would otherwise have gone through Derby Line and Champlain. Therefore, we are proposing to amend 9 CFR parts 92 and 98 to remove Champlain, NY, and Derby Line, VT, from the lists of land border ports for the importation of animals and animal germ plasm from Canada.

The Federal Government and U.S. taxpayers would benefit from the positive budgetary effect of closing these ports. The physical plants in Champlain and Derby Line are old and becoming expensive to maintain. A new livestock inspection facility at Highgate Springs is expected to open in August 1997. Veterinary medical officers travel from other official duty stations to these three ports to conduct inspections of imported animals on the days the animal importation facilities are open. Total travel time for the veterinary medical officers is 7½ hours per week. We plan to establish a full-time position for a veterinary medical officer at Highgate Springs when the new livestock inspection facility opens, so the travel time and expenses for our employees will be eliminated. In addition to Highgate Springs, VT, the land border ports of Alexandria Bay and Buffalo, NY, and two land border ports in Maine would continue to serve livestock importers in the Northeastern United States.

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

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out

below, regarding the impact of this proposed rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

The Secretary of Agriculture has the authority under 21 U.S.C. 102–105, 111, 134a, 134c, 136a, and 31 U.S.C. 9701 to regulate the importation of animals and animal germ plasm to prevent the introduction of foreign animal diseases and to collect user fees to cover the costs of conducting associated inspection services.

The proposed rule would close the land border ports of Derby Line, VT, and Champlain, NY, for the importation of animals and animal germ plasm from Canada. APHIS uses these facilities primarily for conducting inspections of animals and animal germ plasm imported from Canada, although minimal export services are also performed at these facilities. These ports are being considered for closure because the cost of keeping them open does not appear justified by the minimal level of import activity they support. If the two facilities are closed, U.S. importers would still have access to import inspection services at other entry points from Canada, including Highgate Springs, VT, Buffalo and Alexandria Bay, NY, and Houlton and Jackman, ME. Highgate Springs is 18 miles from Champlain and 48 miles from Derby Line along the U.S.-Canada border.

The proposed rule is intended to improve APHIS' operating efficiency. APHIS currently maintains part-time inspection facilities at Champlain, Derby Line, and Highgate Springs. These facilities are within close proximity of one another, and none is self-supporting; at each facility, user fees generated from import and export services are inadequate to cover the costs of providing those services. The total user fee deficit (including both import and export user fees) in New England for FY 1996 was \$85,296. Of that amount, \$73,795 was attributed to Vermont. The fact that the facilities are open on a part-time basis only is not considered to be a factor in the level of import activity. In other words, increasing the facilities' hours would not increase their use by importers. Nor are future user fee increases likely to eliminate the deficit.

APHIS is currently considering closing the Champlain and Derby Line

facilities and opening the Highgate Springs facility on a full-time basis. It is estimated that by closing both the Champlain and Derby Line facilities, APHIS will be able to cut its operating costs by approximately \$24,000 annually. In 1996, a total of \$1.4 million was collected in user fees for entry of live animals at ports (excluding Mexican border ports, which have different fees.) Presumably, the lost user fee revenue at Champlain and Derby Line would be made up at the other nearby ports, especially Highgate Springs.

APHIS considered several alternatives to the proposed rule to help reduce the user fee deficit and increase operating efficiency at these ports, including increasing import user fees and staffing the ports with lesser paid employees than veterinary medical officers. These alternatives were rejected because of the potential for adverse economic impacts on small entities and increased risk to the health of the U.S. animal population. In addition, APHIS originally considered closing only the port at Derby Line, VT, but that alternative was rejected because the cost savings achieved would not be significant enough to increase operating efficiency greatly at the ports.

In proposing to keep one of the three facilities open, APHIS is attempting to strike a balance between the agency's needs for cost savings and the industry's needs for continued nearby inspection services. The proposal to keep the Highgate Springs facility open and not one of the others is due to cost considerations. The cost of maintaining the physical plant at Highgate Springs is lower than the costs associated with maintaining the facilities at Champlain or Derby Line, where the physical plants are aging. Moreover, because Highgate Springs is located between Champlain and Derby Line, it is the logical choice to keep open in trying to inconvenience the fewest number of importers in the area.

The proposed rule should have little or no impact on U.S. consumers because animals and animal germ plasm that currently enter the United States at Champlain and Derby Line would still be available through alternative ports of entry. The proposed rule would not restrict or otherwise limit those imports.

The Champlain and Derby Line facilities are used mostly by livestock dealers. It is estimated that about 25 dealers use the Derby Line facility on a regular basis. The number of livestock dealers using Champlain is not available, but combined data for Champlain and Highgate Springs is available and show that about 50 dealers

regularly use Champlain or Highgate Springs. The number of these livestock dealers who are considered small entities under the U.S. Small Business Administration's (SBA) standards is unknown because information as to the size of the dealers' businesses (in terms of the number of employees) is not available. However, it is reasonable to assume that most are small, based on aggregate data for providers of the same or similar services in the United States. In 1992, 99 percent of all 1,992 firms in SIC 5154 (which includes livestock dealers) had fewer than 100 employees, the SBA's current small-entity size standard.

In terms of driving distance, Champlain and Derby Line are approximately 31 miles and 55 miles, respectively, from Highgate Springs. Therefore, as a result of the proposed rule, dealers who use Champlain and Derby Line would have to travel at most an additional 62 miles and 110 miles per round-trip, respectively. And, assuming Champlain and Derby Line users make one round-trip per week, they would incur additional transportation costs of, at most, \$967 and \$1,716 annually, assuming a per-mile cost of \$0.30. These costs are relatively insignificant, given that the per-firm average receipts for all firms in SIC 5154 in 1992 was \$13.8 million. The additional transportation costs (\$967 and \$1,716) represent less than 1 percent of the per-firm average receipts.

As mentioned previously, comments on the economic impact of the proposed rule on small entities are invited. There are no reporting or recordkeeping requirements associated with this proposed rule.

#### **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. 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**

This proposed 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**

##### **9 CFR Part 92**

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

##### **9 CFR Part 98**

Animal diseases and Imports.

Accordingly, 9 CFR parts 92 and 98 would be amended as follows:

#### **PART 92—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS**

1. The authority citation for part 92 would continue to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

#### **§§ 92.203, 92.303, 92.403, 92.418, and 92.503 [Amended]**

2. Sections 92.203(b), 92.303(b), 92.403(b), 92.418(c)(2), and 92.503(b) would be amended by removing the words “, Buffalo, and Champlain,” and adding “and Buffalo,” in their place; and removing the words “Derby Line and”.

#### **PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN**

3. The authority citation for part 98 would continue to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

#### **§ 98.33 [Amended]**

4. In § 98.33, paragraph (b) would be amended by removing the words “, Buffalo, and Champlain,” and adding “and Buffalo,” in their place; and removing the words “Derby Line and”.

Done in Washington, DC, this 23rd day of June 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

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