



MARITIME EXCHANGE

for the Delaware River and Bay

Leading the Way to Port Progress

John T. Reynolds, Chairman
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July 24, 2014

U.S. Department of Agriculture
Animal and Plant Health Inspection Service
Regulatory Analysis and Development, PPD,
Station 3A-03.8
4700 River Road Unit 118
Riverdale, MD 20737-1238.

Re: Docket No. APHIS-2009-0047
Fee Increases for Overtime Services

Dear Sir or Madam:

Thank you for the opportunity to submit comments on the above-referenced rulemaking. As information, the Maritime Exchange for the Delaware River and Bay is a non-profit trade association representing the interests of port and related businesses in Delaware, Southeastern Pennsylvania, and New Jersey.

We recognize that costs have increased over the last several years, and acknowledge that fee adjustments may be appropriate at this time. Further, we appreciate the efforts taken to assess the increase and the depth of the explanations provided. However, our members have several concerns about the proposal; these are outlined below.

Operating Hours: In many instances, vessels and cargoes are ready for inspection during normal business hours, however, the appropriate federal agency, generally the CBP Agriculture Division, often times lacks sufficient resources to perform those services during normal business hours, resulting in the need for users to request overtime services. In addition to the federal costs, the trade community must also pay for its own costs to conduct business during off hours, such as labor and operations personnel. We do not believe users should be made to directly fund activities that can and should be conducted during normal hours; in some cases overtime expenses would not be necessary if the federal agencies deployed sufficient personnel when needed. Overtime rates should only be charged when services are requested and performed during off hours as a result of true scheduling demands, not insufficient personnel.

Overhead Expenses: Service recipients should not be required to pay for those costs not directly related to the service performed, and which APHIS would be required to pay whether or not the employee worked the overtime. These include such items as training; general supplies for offices, washrooms, cleaning, etc.; contract services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; and utilities. Imputed and departmental costs to the agency to maintain its normal operations should be paid by appropriated funds, not by service recipients. While we recognize that it is allowable to charge service recipients for overhead expenses, it does not necessarily follow that it is fitting and just.

Rate of Increase: At 45% or greater increases for Inspection, testing certification, or quarantine of animals and animal or agricultural products during off hours, the proposed rates seem inordinately high, certainly much greater than the rate of inflation over the last nine years. Going forward, it is much easier to absorb minimal increases at more frequent intervals than it is larger increases all at once.

However, before we would be able to support a rate increase of this magnitude, it would be necessary to review the full revenue-costs statements as well as the full economic impact assessment, which was not included as part of the rulemaking discussion.

Clarification of Responsibilities: Although not specifically addressed in the proposal, this comment period provides an opportunity for us to reiterate that there remains a good deal of confusion among your stakeholder constituency about which agencies have responsibility for and jurisdiction over various functions. The rule should clearly delineate which functions are performed by APHIS, and it would be helpful to include those functions which are performed on behalf of APHIS by CBP Agriculture. Appropriate fees should be listed only in the relevant sections of the Code of Federal Regulations, and there must be no question – as there currently is – that both APHIS and CBP are billing individually for the same services.

Return of Revenues: The regulation should stipulate that funds collected are to be returned to the port where the services are performed. This will ensure sufficient funds are available where needed, and the agencies would not be required to utilize appropriated funds or cash reserves to cover expenses paid by user fees.

Consistency in Rates: To the extent APHIS and CBP are performing the same services, the shipping community has a reasonable right to expect that the rates charged will be consistent across the agencies. Any internal conflicts in pay and rate schedules should be transparent to the service recipient. Further, to the extent one agency is acting on behalf of the other, it is imperative that the agency which is incurring the costs retains the appropriate percentage of the revenues collected.

Timely Invoicing: Along this same line, APHIS and CBP Agriculture must both be able to provide invoices for all fees on a timelier basis. The regulations should stipulate that invoices will be provided within 30 days of performing the service. If invoices cannot currently be provided within 30 days, there are clearly internal process improvements that can be made. When invoices are delayed, there is no guarantee that the local contact, such as a vessel agent, will be able to collect the funds from the carrier. Today, these agents can be held liable for those costs, which is wholly inappropriate.

As indicated above, there are clearly a number of questions which must be answered before we can fully analyze the proposal. In addition, we would appreciate receiving information from APHIS showing how it has worked with the regulated community to ascertain their views in advance of this rulemaking process as stipulated in Executive Order No. 13563. Most importantly, we would request additional time to collaborate with APHIS to identify further efficiencies that might be realized in lieu of a rate increase.

The Maritime Exchange is included among the 30 other regional and national associations which requested an additional 60 days to comment on this rulemaking. The views expressed herein represent our best effort at providing a response based on the limited data included in the rulemaking discussion. However, we reiterate our request for additional time to consider the proposal and discuss it further with the many stakeholders within the vessel and cargo transportation chains who would not normally follow APHIS regulatory processes but who are equally subject to the economic disadvantage which will accrue should the rulemaking be implemented as proposed.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, reading "Dennis Rochford", with a long horizontal flourish extending to the right.

Dennis Rochford
President