

(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.

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§ 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

bond with the U.S. Customs Service at the port of entry. The bond required by the Customs Service could be as high as three times the duty value of the cattle, so it was clearly in an importer's best interests to meet all the requirements of the regulations.

However, on January 1, 1994, the U.S. Customs Service discontinued its collection of duties and bonds on imported Mexican cattle in order to comply with provisions of the North American Free Trade Agreement. As a consequence, importers no longer had to post a bond when importing cattle from Mexico into the United States for feeding and return to Mexico, although the Customs Service continued to track such cattle entering and leaving the United States. The penalty for failing to return in-bond Mexican cattle to Mexico upon completion of their feeding period has been reduced to \$400.

Since the Customs Service discontinued its collection of bonds, the Animal and Plant Health Inspection Service (APHIS) has monitored the in-bond program to determine whether the program could remain viable despite the lack of a posted bond. Recently, some importers of cattle under the in-bond program have indicated to APHIS that they would be willing to accept the \$400 fine—a relatively insignificant amount when compared to the bond that would have been forfeited before the Customs Service discontinued collecting the bond—if the importers could move their cattle to slaughter or other destinations in the United States without returning the cattle to Mexico for slaughter, as required under the in-bond program's regulations. Evidently, those importers believe that even with the \$400 fine, it would be more profitable to sell their cattle in the United States than in Mexico. In fact, we are now aware of at least one case in which an importer did remove his in-bond Mexican cattle from a quarantined feedlot and send the cattle to slaughter in the United States. APHIS has the option of pursuing civil and criminal action against an importer in such cases, but we believe that there remains the strong possibility that importers will choose to accept the risk of criminal and civil action against them sometime in the future in order to move their in-bond Mexican cattle to slaughter or other destinations in the United States.

As stated above, in-bond Mexican cattle were exempted from meeting certain testing requirements for tuberculosis and brucellosis; clearly, cattle that have not met those testing requirements present a greater than average risk of spreading disease to domestic livestock. The quarantine and

movement restrictions of the in-bond program were specifically designed to mitigate that increased disease risk, so it follows that cattle moved in violation of those quarantine and movement restrictions would present a greater than average disease risk. It has become evident that the posting of a bond is necessary to ensure compliance with the provisions of the in-bond program, but APHIS has no statutory authority to institute a bond system similar to that which had been administered by the U.S. Customs Service at U.S. ports of entry on the Mexican border prior to January 1, 1994. Therefore, we believe that it is necessary for us to terminate the in-bond program described in § 92.427(e) in order to prevent the introduction into, and dissemination within, the United States of disease.

Therefore, we are removing § 92.427(e), "Cattle imported in bond for feeding and return to Mexico," in its entirety. The termination of the in-bond program also entails the removal of five references to the in-bond program that are found elsewhere in part 92 and in the animal export regulations in 9 CFR part 91. Specifically, we are amending:

- Section 91.3(a) by removing a provision that exempts in-bond Mexican cattle from the requirement that all animals intended for exportation to Mexico be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate;
- Section 91.5 by removing a provision that exempts in-bond Mexican cattle from certain pre-export health testing requirements;
- Section 92.424(b) by removing a provision that exempts in-bond Mexican cattle from the requirement for an official record of brucellosis testing;
- Section 92.426(a) by removing a provision requiring in-bond Mexican cattle to be inspected at the port of entry and found free from communicable disease and fever tick infestation; and
- Section 92.427(c)(2) by removing a provision that exempts in-bond Mexican cattle from the M-branding requirement.

Miscellaneous

As noted above, we are removing § 92.427(e) in its entirety, including footnote 10, which cites regulations of the U.S. Customs Service concerning movement in bond. Therefore, to keep the footnotes in the subpart numbered consecutively, we are amending §§ 92.430, 92.431, 92.433, 92.434, and 92.435 by redesignating footnotes 11 through 22 as footnotes 10 through 21.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that conditions exist that warrant publication of this interim rule without prior opportunity for public comment. The recent steep devaluation of the Mexican peso has created a strong economic incentive for importers of in-bond cattle from Mexico to send such cattle to slaughter in the United States, rather than in Mexico as required by the regulations. Because Customs has discontinued collecting bonds, prompt action is necessary to prevent the dissemination into the United States of animal diseases by in-bond Mexican cattle that remain in the United States in violation of the regulations. We are making this rule effective 15 days after its publication in the **Federal Register** to provide importers in the United States and exporters in Mexico adequate notice of this action in order to prevent undue stress on cattle already in transit from Mexico and undue hardship on the owners, importers, and exporters of cattle from Mexico.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective 15 days after its publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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

This rule amends the animal exportation and importation regulations by removing provisions regarding the temporary, in-bond importation of cattle from Mexico into the United States for feeding and return to Mexico for slaughter.

Several feedlots in the United States could be economically affected by this proposed change in the regulations, but we anticipate that the impact will be minimal. In fiscal year 1993, approximately 61,000 Mexican cattle were imported into the United States for feeding and return to Mexico for

slaughter under U.S. Customs bond. They included 24,811 cattle imported into Arizona, 3,878 into California, 69 into New Mexico, and 32,059 into Texas. APHIS estimates that as many as 18 different feedlots in Arizona, California, New Mexico, and Texas were used for the feeding of in-bond Mexican cattle during the height of in-bond activity. Currently, there are about 10 feedlots that have facilities for the feeding of in-bond Mexican cattle, but only about 5 of those feedlots have been used recently to feed in-bond Mexican cattle.

The termination of the in-bond program is expected to have a negligible impact on feedlots in the United States. Most are large businesses (defined as having more than \$1.0 million in annual gross receipts, according to Small Business Administration size criteria) and usually use only a small portion of the feedlot for in-bond Mexican cattle. The majority of the area in the feedlots is generally used to feed either other imported Mexican cattle or domestic cattle. With the termination of the in-bond program, we anticipate that any affected feedlots will use their entire areas to feed other imported Mexican cattle or domestic cattle.

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 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

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 91

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

9 CFR Part 92

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

Accordingly, 9 CFR parts 91 and 92 are amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

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

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

§ 91.3 [Amended]

2. In § 91.3, paragraph (a), the second sentence is amended by removing the words “, except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico.”.

§ 91.5 [Amended]

3. In § 91.5, the introductory text is amended by removing the words “, except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico, except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico.”.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

4. The authority citation for part 92 continues 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 2.17, 2.51, and 371.2(d).

§ 92.424 [Amended]

5. In § 92.424, paragraph (b), the second sentence is amended by removing the words “pursuant to § 92.427(e)(2), or”.

§ 92.426 [Amended]

6. In § 92.426, paragraph (a), the first sentence is amended by removing the words “or in bond for temporary entry in accordance with § 92.427(e) of this part”.

§ 92.427 [Amended]

7. In § 92.427, paragraph (c)(2), the first sentence is amended by removing the words “or in bond for temporary entry in accordance with § 92.427(e) of this part”.

8. In § 92.427, paragraph (e), including footnote 10, is removed.

§§ 92.430 through 92.435 [Amended]

9. In §§ 92.430 through 92.434, footnotes 11 through 21 and their references in the text are redesignated as footnotes 10 through 20, respectively.

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

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-6371 Filed 3-14-95; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Part 92

[Docket No. 94-085-1]

Importation of Sheep and Goats From Canada and Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations for importing sheep and goats from Canada and Mexico to require that, with the exception of sheep and goats imported through land border ports for immediate slaughter, and wethers imported through land border ports, all sheep and goats imported into the United States from Canada and Mexico be accompanied by an import permit. This change is necessary to prevent the importation of sheep and goats that may be affected with scrapie.

DATES: Interim rule effective March 10, 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 Docket No. 94-085-1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737-1228. Please state that your comments refer to Docket No. 94-085-1.

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. Joyce Bowling, Staff Veterinarian, or Dr. Roger Perkins, Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737-1228. Telephone: (301) 734-8170.