

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 94

[Docket No. 95-037-1]

#### Pork and Pork Products From Mexico Transiting the United States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to allow fresh, chilled, and frozen pork and pork products from the Mexican State of Chihuahua to transit the United States, under certain conditions, for export to another country. Currently, we allow such pork and pork products from the Mexican State of Sonora to transit the United States for export. Otherwise, fresh, chilled, or frozen pork and pork products are prohibited movement into the United States from Mexico because of hog cholera in Mexico. Chihuahua, like Sonora, appears to be a low risk area for hog cholera, and we believe that fresh, chilled, and frozen pork and pork products from Chihuahua could transit the United States with minimal risk of introducing hog cholera. This action would facilitate trade.

**DATES:** Consideration will be given only to comments received on or before October 20, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-037-1, 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. 95-037-1. 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. Michael David, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231, (301) 734-5034.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. Section 94.9 of the regulations prohibits the importation of pork and pork products into the United States from countries where hog cholera exists, unless the pork or pork products have been treated in one of several ways, all of which involve heating or curing and drying.

Because hog cholera exists in Mexico, pork and pork products from Mexico must meet the requirements of § 94.9 to be imported into the United States. However, under § 94.15, pork and pork products from Sonora, Mexico, that are not eligible for entry into the United States in accordance with the regulations may transit the United States for immediate export if certain conditions are met. This provision was added to the regulations in 1992, following a U.S. Department of Agriculture investigation of the hog cholera situation in Sonora, and a determination that pork and pork products from Sonora could transit the United States, under certain conditions, with minimal risk of introducing hog cholera.

Mexico's Director of Animal Health has requested that we allow pork and pork products from the Mexican State of Chihuahua to transit the United States for export under the same conditions that currently apply to pork and pork products from Sonora. In response, officials of the Animal and Plant Health Inspection Service (APHIS) met recently in Chihuahua with Mexican representatives knowledgeable in disease prevention, epidemiology, and diagnostic methods. The team reviewed the hog cholera situation in Chihuahua (discussed below) and recommended granting Mexico's request.

The last outbreak of hog cholera in the Mexican State of Chihuahua occurred in 1989 in the municipality of Cuauhtemoc. Vaccination for hog cholera was discontinued in early 1990. Mexico officially recognized Chihuahua as free of hog cholera in September 1993.

The team found several factors contributing to Chihuahua's apparent success in remaining free of hog cholera: Chihuahua's location; lack of any significant pork production in Chihuahua; and controls by the Division of Animal Health on the movement into Chihuahua of live swine and pork and pork products.

Chihuahua is surrounded on the north and west by other hog cholera free Mexican States and by the United States, which is free of hog cholera; on the south by the Sierra Madre Mountains; and on the east by the State of Coahuila, which is in the final stages of a hog cholera eradication program, where no cases of hog cholera have been detected for at least 12 months and a prohibition on vaccination for hog cholera has been instituted.

Swine production in Chihuahua accounts for only about 5 percent of national production. Only about 1 percent of this production is generated by commercial operations; nearly all the pork produced in Chihuahua is produced by agricultural communes or backyard operations for local consumption. Most of the pork processed in Chihuahua is imported from the Mexican State of Sonora, which is recognized by Mexico as free of hog cholera, or from the United States and Canada, which are free of hog cholera.

Five facilities in Chihuahua process pork under the official Mexican inspection system. Of these facilities, only one is a slaughter plant, and it handles mostly cattle. The other facilities further process meat (custom cuts, cooking, etc.). Market and cull hogs raised in Chihuahua are slaughtered primarily in municipal plants for local consumption.

As required by the Mexican Government, Chihuahua and other States recognized by Mexico as free of hog cholera may only import live swine and pork from other hog cholera-free States and countries. The Mexican Government requires shipments from hog cholera-free countries to be

accompanied by a certificate of origin issued by that country's veterinary authorities and by a certificate of import issued by the Mexican veterinary authorities. Chihuahua and other States recognized by Mexico as being free of hog cholera also require and issue their own permits and health certificates, further ensuring the origin of imported products. In addition, live swine and pork imported into these hog cholera-free States must be shipped in sealed trucks, and all shipments are inspected at inspection stations located either on State lines or at international ports of entry.

Under these circumstances, we believe that there would be little, if any, risk of introducing hog cholera into the United States by allowing pork and pork products from Chihuahua to transit the United States for export under the same conditions that currently apply to pork and pork products from Sonora.

These conditions will be as follows:

1. Any person wishing to transport pork or pork products from Chihuahua through the United States for export must first obtain a permit for importation from APHIS. The application for the permit tells APHIS who will be involved in the transportation, how much and what type of pork and pork products will be transported, when they will be transported, and the method and route of shipment.

2. The pork or pork products must be sealed in Chihuahua in a leakproof container, with a serially numbered seal approved by APHIS. The container must remain sealed at all times while transiting the United States.

3. The person moving the pork or pork products through the United States must inform the APHIS officer at the U.S. port of arrival, in writing, of the following information before the pork or pork products arrive in the United States: The times and dates that the pork or pork products are expected at the port of arrival in the United States; the time schedule and route of the shipments through the United States; and the permit number and serial numbers of the seals on the containers.

4. The pork or pork products must transit the United States under Customs bond.

5. The pork or pork products must be exported from the United States within the time period specified on the permit.

Any pork or pork products exceeding the time limit specified on the permit or transiting in violation of any of the requirements of the permit or the regulations may be destroyed or otherwise disposed of at the discretion of the Administrator, APHIS, pursuant

to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

We believe that applying these same safeguards to shipments of pork and pork products from Chihuahua would prevent tampering with the shipments, ensure that the shipments actually leave the United States, and otherwise ensure that shipments would not present a risk of introducing hog cholera. Therefore, we are proposing to amend § 94.15 to allow pork and pork products from the Mexican State of Chihuahua to transit the United States for export under the same conditions that currently apply to pork and pork products from Sonora.

#### **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.

This proposed rule would allow fresh, chilled, and frozen pork and pork products from the Mexican State of Chihuahua to transit the United States, under certain conditions, for export to another country. It has been determined that Chihuahua is a low risk area for hog cholera and has the veterinary infrastructure necessary to monitor for the presence of this disease.

Because Interstate Commerce Commission regulations forbid Mexican carriers from hauling pork and pork products beyond the border zone, small specialized U.S. transport companies and brokerage houses would benefit from the proposed rule. The additional economic activity from such trucking activity is estimated at \$195,865 per year, assuming the trucks make 208 total trips per year (the current level of shipments from the Mexican State of Sonora through the United States).

There appears to be little risk of hog cholera exposure from Mexican pork shipments from Chihuahua through the United States. Assuming that proper risk management techniques continue to be applied in Mexico, and that accident and exposure risk would be minimized by proper handling during transport, the risk of exposure to hog cholera from pork in transit from Mexico through the United States would be minimal. At a rate of 208 trips per year, an accident that could lead to an outbreak of hog cholera could be expected once in 4,109,139 years. Even at a rate of 1,000 trips per year, one accident capable of resulting in a United States outbreak of hog cholera could be expected once every 854,701 years.

Both the United States and Mexico are net pork importers. United States pork imports represent approximately 2–3 percent of production, and Mexican imports represent 7–8 percent of production. With favorable income growth expected in Mexico due to trade liberalization, meat imports, including pork products, are expected to grow and limit Mexican pork exports. However, facilitating export opportunities for the Mexican pork industry may provide incentives for continued efforts to eradicate hog cholera from infected Mexican States.

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 12778**

This proposed rule has been reviewed under Executive Order 12778, 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 document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 9 CFR Part 94**

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

#### **PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

1. The authority citation for part 94 would be revised to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

#### **§ 94.15 [Amended]**

2. In § 94.15, paragraph (b), the introductory text and paragraph (b)(2)

would be amended by adding the words "Chihuahua or" immediately before the word "Sonora".

Done in Washington, DC, this 14th day of August 1995.

**Terry Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-20593 Filed 8-18-95; 8:45 am]

BILLING CODE 3410-34-P

## Grain Inspection, Packers and Stockyards Administration

### 9 CFR Part 201

RIN 0580-AA45

#### Regulations Issued Under the Packers and Stockyards Act: Registration, General Bonding Provisions

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rule; review of existing regulations.

**SUMMARY:** The Agency is currently reviewing all regulations and statements of general policy issued under the provisions of the Packers and Stockyards (P&S) Act. Review of nine regulations, which have been identified as Group III, has been completed. As a result of the review, this document proposes to modify two regulations to provide uniform termination procedures for all bonds and bond equivalents and to change the requirement that funds pledged to secure bond equivalents be maintained in FDIC insured accounts to permit their deposit in any federally-insured account. It also proposes to retain seven regulations in their present form.

**DATES:** Comments must be submitted on or before October 20, 1995.

**ADDRESSES:** Comments may be mailed to the Deputy Administrator, Packers and Stockyards Programs, Room 3039, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator, Packers and Stockyards Programs.

**FOR FURTHER INFORMATION CONTACT:** Daniel Van Ackeren, Director, Livestock Marketing Division, (202) 720-6951, or Tommy Morris, Director, Packer and Poultry Division, (202) 720-7363.

**SUPPLEMENTARY INFORMATION:** Advance Notice of Proposed Rulemaking was published in the **Federal Register** (57 FR 42515) on September 15, 1992. Comments were solicited at that time

concerning the relevance and importance of each regulation and statement of general policy to today's livestock, meat, and poultry industries, and which sections should be retained, modified or removed. The Agency specifically asked for comments on three regulations included in this group, § 201.10, § 201.29, and § 201.30. The Agency was particularly interested in comments that addressed concerns or recommendations relating to bonding levels.

To complete the review process, the rules covered by the Advance Notice of Proposed Rulemaking were divided into three groupings and this document relates to those rules identified as Group III.

In response to a request for comments in the Advance Notice of Proposed Rulemaking, the Agency received a total of 10 comments relating to the rules in Group III. Comments were received from five livestock producer associations, three trade associations, and two selling agencies.

No comments were received concerning the modification of § 201.27. This regulation provides for approved sureties, authorizes bond equivalents, and requires bond or bond equivalents to be on forms approved by the Administrator.

The Agency proposes to modify § 201.27 (b)(1) and (b)(2) to broaden these subsections to permit funds pledged under bond equivalents to be on deposit or in accounts that are Federally insured and not limited to only deposits or accounts insured by the Federal Deposit Insurance Corporation (FDIC). This modification would also permit all Federally insured banks or other institutions to issue letters of credit and not just those banks or institutions insured by FDIC. The primary benefit accrues to persons choosing to meet bonding requirements with bond equivalents by permitting all Federally insured deposits and letters of credit (not just FDIC) and would expand the number of banks or other institutions available to those seeking bond equivalents without increasing the risk to livestock sellers.

No comments were received concerning § 201.34. This regulation sets forth termination of market agency, dealer, and packer bonds and trust fund agreements. The Agency proposes to modify § 201.34(c) to include termination procedures for trust agreements. This would provide uniform termination for all bonds and bond equivalents.

A review of the following regulations has been completed and the Agency

proposes to retain each in its present form:

§ 201.10 Requirements and procedures for registration.

§ 201.28 Duplicates of bonds or equivalents to be filed with regional supervisor.

§ 201.29 Market agencies, packers and dealers required to file and maintain bonds.

§ 201.30 Amount of market agency, dealer and packer bonds.

§ 201.31 Conditions in market agency, dealer and packer bonds.

§ 201.32 Trustee in market agency, dealer and packer bonds.

§ 201.33 Persons damaged may maintain suit; filing and notification of claims; time limitation; legal expenses.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

Two comments were received concerning § 201.10. This regulation specifies the requirements and procedures for registration for those persons desiring to operate as market agencies or dealers as defined in § 301 of the Act. Both comments were from producer associations and suggested § 201.10 be amended to deny registration to any applicant for registration with a prior conviction for fraud, theft, or embezzlement.

The Agency believes this concern is sufficiently addressed in § 201.10(b) which specifies that if the Administrator has reason to believe the applicant is unfit to engage in the activity for which application has been made, the applicant will be afforded an opportunity for a full hearing for the purpose of showing cause why the application should not be denied. This subsection gives the Agency authority to review each application and to deny registration to those believed unfit to engage in the business of a market agency or dealer. Therefore, the Agency proposes to retain this regulation in its present form.

No comments were received concerning §§ 201.28, 201.29, 201.31, and 201.33.

Regulation § 201.30 sets forth the formulae for computing bonds for market agencies, dealers, and packers. It also provides the Administrator authority to adjust the level of bond required whenever he determines a bond is not adequate to secure the