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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

RIN 0563-AB54

General Crop Insurance Regulations; Cranberry Endorsement and Common Crop Insurance Regulations; Cranberry Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of cranberries. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current cranberry endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current cranberry endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563-0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance

companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Friday, September 13, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 48420-48423 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new

section, 7 CFR 457.132, Cranberry Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring cranberries found at 7 CFR 401.127 (Cranberry Endorsement). This rule also amends the Cranberry Endorsement found at 7 CFR 401.127 to limit the effect of the current provisions to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve § 401.127.

Following publication of that proposed rule, the public was afforded 60 days to submit written comments, data, and opinions. A total of 20 comments were received from the crop insurance industry and FCIC Regional Service Offices (RSO). The comments received, and FCIC's responses, are as follows:

Comment: One comment received from an FCIC RSO recommended changing the definition of "Harvest" in section 1 to read, "Removal of the cranberries from the bog." Cranberries can be picked from the vine but remain in the bog, and be susceptible to an insured peril which can cause cranberry fruit damage or loss.

Response: To be consistent with other crop policies, FCIC agrees with the comment and has amended the definition accordingly.

Comment: Three comments received from the crop insurance industry recommended changing the definition of "Irrigated practice" in section 1 to delete the references to overhead solid set irrigation systems and frost prevention. The commenters stated that overhead solid irrigation systems are not applicable to all areas and that frost prevention is not a policy requirement.

Response: FCIC agrees with the comment and has amended the definition accordingly.

Comment: One comment received from the crop insurance industry recommended adding the words "and quality" after the word "quantity" in the definition of "Irrigated practice."

Response: FCIC agrees that water quality is an important issue. However, there are no established criteria regarding the quality of water necessary to produce a crop. Such criteria would be difficult to develop and administer due to the complexity of the factors included. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended changing the definition of "Non-contiguous land" in section 1 to clarify whether land ownership is a factor in the determination.

Response: Land ownership is not a factor to determine non-contiguous land. Non-contiguous land is land on which a producer has or will have an insurable interest in the crop, and whose boundaries do not touch at any point. FCIC believes the provision is clearly stated. Therefore, no change will be made.

Comment: Two comments received from the crop insurance industry suggested the provisions contained in section 2(d), which specify that "all optional units must be identified on the acreage report for each crop year," be changed. The commenters stated that as written, the language appears to allow optional units to be established at acreage reporting time, when in fact, optional units depend on acceptable production reports being submitted by the production reporting date, which is often earlier than the acreage reporting date.

Response: FCIC has clarified this provision to indicate that only those optional units "established for the crop year" need to be identified on the acreage report.

Comment: One comment received from an RSO recommended that section 6(d) be changed to read, "that are grown on vines that have completed four growing seasons after set out, unless otherwise provided by the actuarial table or by written agreement."

Response: FCIC agrees with the statement and has amended the provisions accordingly.

Comment: One comment received from the crop insurance industry stated that the provision contained in the current cranberry endorsement that restricts insurance on vines that are being renovated and are not likely to produce a full crop for the current year was omitted from section 3(b).

Response: The current provisions have been replaced by the provisions contained in section 3(b) that require the insured to report any damage, removal of vines, changes in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based. The insurance provider will inspect the bog to determine the appropriate production guarantee based on the effect of the circumstances that actually exist. This allows insurance for such acres based on the actual expected yield, which will increase the number of insurable acres and provide yield protection for producers. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry questioned why the requirement for a 90

percent stand for insurability was removed. The commenter stated that insurability of bogs with less than 90 percent stand of bearing vines should be subject to inspection and provided by written agreement.

Response: As stated above, such acreage will now be insurable at yields commensurate with the production capabilities of the acreage. Therefore, no change will be made.

Comment: One comment received from an RSO recommended that section 6(d) "Insured Crop" be changed to read, "that are grown in a bog with at least a 90 percent stand of bearing vines based on the original planting density unless otherwise provided by the actuarial table or by written agreement."

Response: FCIC disagrees with the comment. No change will be made for the reasons stated above.

Comment: Two comments received, one from an RSO and one from the crop insurance industry, recommended adding a subparagraph to section 8 "Causes of Loss" to read, "failure or breakdown of irrigation equipment or facilities due to direct damage to it from an insurable cause of loss if the cranberry crop is damaged by freezing temperatures within 72 hours of such failure or breakdown and repair or replacement was not possible before damage occurred."

Response: FCIC agrees with the comment and has amended the provisions accordingly.

Comment: One comment received from an RSO recommended that section 10(c)(1)(i)(D) "Settlement of Claim", be revised by adding "destroyed or put to another use without our consent" as in other crop provisions.

Response: FCIC agrees with the comment and has amended the provisions accordingly.

Comment: One comment was received from the crop insurance industry stating that section 10(c)(1)(iv) "Settlement of Claim" should not allow the insured to defer settlement and wait for a later, generally lower, appraisal on insured acreage the producer intends to abandon or no longer care for.

Response: A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not care for the crop, the original appraisal will be used. No change will be made to these provisions.

Comment: One comment received from an RSO recommended changing the proposed quality adjustment requirements which state, "due to insurable causes, does not meet, or

would not if properly handled meet, the United States Standards for Fresh Cranberries for Processing” in section 10(c)(3) “Settlement of Claim.” The RSO recommended that the quality adjustment provisions contained in the current cranberry endorsement should be used.

Response: FCIC agrees with the comment for those areas where the U.S. Standards for Fresh Cranberries for processing may not be available. The provisions have been amended accordingly.

Comment: Three comments received from the crop insurance industry recommended in section 11(d) “Written Agreements,” that the requirement for a written agreement to be renewed each year should be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements by design are temporary and intended to address unusual situations. If the condition for which written agreement is needed continue year to year, they should be incorporated into the policy or Special Provisions. Therefore, no change will be made.

In addition to the changes described above, FCIC has made editorial changes for clarification on the following changes to the Cranberry Crop Provisions:

1. Section 1—Added the term “market price” to the definitions for clarification.

2. Section 3—Clarified that the insurance provider will adjust yields in response to removal of vines, damage, other changes in practices, or any other circumstance that will affect the yield.

3. Section 7(a)(1)—Clarified that an application will not be accepted after the November 21 sales closing date. For applications submitted within 10 days of the sales closing date, coverage will not attach until 10 days after the date of application.

4. Section 7(b)(2)(iii)—Added a requirement to clarify that the transferee must be eligible for crop insurance to be consistent with other crop provisions.

5. Section 9(b)—Clarify that damaged production must not be sold or disposed of until the earlier of 15 days from the date of notice of loss or when the insurer gives consent to do so.

6. Section 9(c)—Clarify that the failure to meet the requirements of this section result in the insurance providers inability to inspect the damaged production, for all such production to

be considered undamaged and included as production to count.

List of Subjects in 7 CFR Parts 401 and 457

Cranberry, Cranberry endorsement, Crop insurance.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 effective for the 1998 and succeeding crop years, as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The introductory text of § 401.127 is amended to read as follows:

§ 401.127 Cranberry endorsement.

The provisions of the Cranberry Crop Insurance Endorsement for the 1990 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS: REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

4. Section 457.132 is added to read as follows:

§ 457.132 Cranberry crop insurance provisions.

The Cranberry Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

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Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

CRANBERRY CROP PROVISIONS

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Barrel—100 pounds of cranberries.

Days—Calendar days.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward

maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Removal of the cranberries from the bog.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Market price—The cash price per barrel of cranberries offered by buyers in the area in which you normally market the cranberries.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre)—The number of barrels determined by multiplying the approved actual production history (APH) yield per acre by the coverage level percentage you elect.

Written agreement—A written document that alters designated terms of this policy in accordance with section 11.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must

be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the cranberries in the county insured under this policy.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(1) Any damage, removal of vines, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The age of the vines; and

(3) Any other information that we request in order to establish your approved yield.

We will adjust the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the removal of vines, damage, change in practices, and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the cranberries in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for harvest as cranberries;

(c) That are grown in a bog that, if inspected, is considered acceptable by us; and

(d) That are grown on vines that have completed four growing seasons after the vines were set out, unless otherwise provided by the actuarial table or by written agreement.

7. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11, but prior to November 21, insurance will attach on the 10th day after

your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the bog.

(2) The calendar date for the end of the insurance period for each crop year is November 20.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of cranberries on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

8. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the bog;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period; or

(7) Failure or breakdown of irrigation equipment or facilities due to direct damage to the irrigation equipment or facilities from an insurable cause of loss if the cranberry crop is damaged by freezing temperatures within 72 hours of such failure or breakdown and repair or replacement was not possible before damage occurred.

(b) In addition to the causes of loss excluded in section 12 (Cause of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available; or

(2) Inability to market the cranberries for any reason other than actual physical damage from an insurable cause of loss specified in

this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

9. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

(a) If you discover damage, or if you intend to claim an indemnity on any insured unit, you must give us notice of probable loss:

(1) At least 15 days before the beginning of any harvesting, or

(2) Immediately if probable loss is discovered after harvesting has begun.

(b) You must not sell or dispose of any damaged production until the earlier of 15 days from the date of notice of loss or when we give you written consent to do so.

(c) If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying the result of section 10(b)(1) by the price election;

(3) Multiplying the total production to be counted, (see section 10(c)) by the price election;

(4) Subtracting the total in section 10(b)(3) from the total in section 10(b)(2); and

(5) Multiplying the result in section 10(b)(4) by your share.

(c) The total production to count (in barrels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Damaged solely by uninsured causes;

(C) For which you fail to provide acceptable production records; or

(D) Destroyed or put to another use without our consent;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we will use the appraised amount of production or defer the claim if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general

to the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(3) Harvested production which, due to insurable causes, is determined not to meet the United States Standards for Fresh Cranberries if available, or would not meet those standards if properly handled, or does not meet the quality requirements of the receiving handler if the United States Standards for Fresh Cranberries, if not available, and such harvested production has a value less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(i) Dividing the value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(ii) Multiplying the result by the number of barrels of such cranberries.

11. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 11(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on January 31, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

[FR Doc. 97-3130 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-FA-P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96-045-2]

Brucellosis in Cattle; State and Area Classifications; New Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of New Mexico from Class A to Class Free. We have determined that New Mexico meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from New Mexico.

EFFECTIVE DATE: The interim rule was effective on November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Brucellosis Eradication Staff, VS, APHIS, suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-7708.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the Federal Register on November 18, 1996 (61 FR 58625-58626, Docket No. 96-045-1), we amended the brucellosis regulations in 9 CFR part 78 by removing New Mexico from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before January 17, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78 and that was published at 61 FR 58625-58626 on November 18, 1996.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 4th day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-3216 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

RIN 3150-AF58

Fissile Material Shipments and Exemptions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the shipment of exempt quantities of fissile material and the shipment of fissile material under a general license. This emergency final rule restricts the use of beryllium and other special moderating materials (i.e., graphite and deuterium) in the shipment of fissile materials and consigns quantity limits on fissile exempt shipments. These amendments are necessary to correct a recently discovered defect in the current regulations which could permit, in special circumstances, nuclear criticality to occur in shipments of fissile materials which are permitted to take place without specific Commission approval. The regulatory defect is not indicative of unsafe fissile material shipments in the past. Rather, it was identified by Babcock & Wilcox (B&W) during preparation for shipment of an unprecedented type of fissile material that could result in nuclear criticality under current requirements. This unique material is produced as a waste product from processing of strategic material resulting from operations to commercially downblend weapons-usable fissile material from the former Soviet Union. Although this rule is being issued as an immediately effective final rule, the Commission is requesting public comment and will revise the rule if necessary.