

of this section, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(3) If the Board has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f) of this section, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(4) Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exceptions regarding motions to reopen that are provided for in 8 CFR 3.2(c)(3) and 3.23(b).

Dated: June 28, 2001.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 01-16767 Filed 7-16-01; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 74

[Docket No. 00-016-3]

#### Importation and Interstate Movement of Certain Land Tortoises

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with two changes, two interim rules concerning the importation and interstate movement of certain land tortoises. The first interim rule established regulations to prohibit the importation and interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. The second interim rule amended the regulations by allowing the interstate movement of these land tortoises if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks. This document amends the second interim rule by allowing that certificate to be either a health certificate or a certificate of veterinary inspection and

by providing that only an accredited veterinarian may sign the certificate. This action is necessary to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease. This action will also relieve an unnecessary burden on Federal veterinarians.

**EFFECTIVE DATE:** July 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. D. D. Wilson, Senior Staff Entomologist, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737-1231; (301) 734-8073.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 22, 2000, we published in the **Federal Register** (65 FR 15216-15218, Docket No. 00-016-1) an interim rule that prohibits, until further notice, the importation of the following tortoises into the United States: All species and subspecies of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*). The interim rule also prohibits the interstate movement of all species and subspecies of these land tortoises. These prohibitions were established in order to prevent the spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants.

We solicited comments on our interim rule for 60 days, ending May 22, 2000. We received 53 comments by that date. They were from tortoise breeders and owners, representatives of the reptile industry, animal advocacy groups, and other interested individuals. Many commenters supported the prohibition on importation of these tortoises, but most expressed concerns about the effect of prohibiting the interstate movement of these tortoises. Because of the prohibition on interstate movement, these tortoises could not be moved interstate for sale, health care, or adoption. In addition, many domestic tortoise breeders who must move their tortoises interstate prior to exporting them could no longer export these tortoises.

Based on these comments, on July 21, 2000, we published in the **Federal Register** (65 FR 45275-45277, Docket No. 00-016-2) an interim rule that allowed the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises had been examined by that

veterinarian and found free of ticks. This action was necessary to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease.

We solicited comments on our second interim rule for 60 days, ending September 19, 2000. We received two comments by that date. They were from a State department of agriculture and an association. We discuss the comments we received on the second interim rule, as well as comments we received on the first interim rule that were not addressed by the action we took in the second interim rule, below.

#### Public Comments on Interim Rules

*Comment:* You should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks. This would allow the importation of these tortoises while protecting against the introduction of exotic ticks and could help decrease the potential for smuggled tortoises.

*Response:* Allowing the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks would require long-term preparation both for exporting regions and for the United States. Currently, most regions, including the United States, do not have a national export certification program for reptiles. Establishing such a program would require time, resources, and review by trading partners of the proposed components of the program. We are in the process of determining whether regions that export reptiles to the United States have any interest in establishing export certification programs.

In addition, if we were to allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks, we would have to hire additional port personnel and train our inspectors to examine documents, as well as tortoises, at U.S. ports of entry. We would also have to ensure that adequate facilities for tortoise inspection are available at U.S. ports. At this time, we do not have the resources necessary to implement such a program, but we are working to establish effective treatment and biosecurity controls for tortoises and other reptiles. Until those treatment and biosecurity controls are in place, we believe that it is necessary to continue to prohibit the importation

into the United States of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise.

Therefore, we are making no changes to the interim rules in response to this comment.

*Comment:* You should prohibit the importation and interstate movement of only wild-caught leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. If a tortoise can be documented or certified as captive-bred, it should be allowed to be imported and to move interstate without restrictions.

*Response:* We are considering a certification program for captive-bred tortoises. Before instituting such a program, however, we would need to develop standards for establishments that breed tortoises in captivity and to inspect and certify those establishments as free of ticks. If we decide to pursue a certification program, we will publish a proposed rule for public comment in the **Federal Register**.

However, at this time, because it is impossible to certify that a tortoise has been captive-bred based on a visual inspection of the tortoise, we are making no changes to the interim rules in response to this comment.

*Comment:* You should limit the prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from Africa.

*Response:* International trade in leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises is very active. We fear that limiting our prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from Africa would encourage transshipment of these animals from Africa through other countries to the United States. Our wider prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises from all foreign regions ensures that these tortoises will not be transshipped and, therefore, provides protection against the introduction of exotic ticks into the United States. Therefore, we are making no changes to the interim rules in response to this comment.

*Comment:* Florida, the location of the primary U.S. port of entry for importations of leopard tortoise and African spurred tortoise, developed a comprehensive set of protocols for imported tortoises. The set of protocols includes mandatory inspection of all shipments of tortoises and treatment and quarantine of all shipments found to possess ticks. The set of protocols has proven effective in ensuring that

imported tortoises do not introduce exotic ticks into the United States. You should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise under a similar set of protocols.

*Response:* If we were to allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise under a set of protocols like the one Florida developed, we would have to hire additional port personnel and train our inspectors to examine tortoises at U.S. ports of entry. We would also have to ensure that adequate facilities for tortoise inspection and quarantine are available at U.S. ports throughout the country. At this time, we do not have the resources necessary to implement this kind of national program, but we are working to establish practical, effective treatment and biosecurity controls for tortoises and other reptiles. Florida's protocols will offer us important data as we build our national program. However, until our treatment and biosecurity controls are in place, we believe that it is necessary to continue to prohibit the importation into the United States of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. Therefore, we are making no changes to the interim rules in response to this comment.

*Comment:* Exotic ticks known to be vectors of heartwater disease cannot survive in all climates. Therefore, you should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise to States where the climate ensures that the ticks will not survive.

*Response:* Leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises need a specific temperature and humidity range for survival, and that range adequately supports the survival of ticks. Therefore, although it is true that owners of these tortoises may live in areas with climates that seasonally do not support exotic ticks known to be vectors of heartwater disease (such as the northernmost United States during the winter months), these owners must house their tortoises indoors, where ticks can easily survive on their host during harsh, inclement, or otherwise unsuitable weather. Because of this, it is possible that when the season changes and an indoor tortoise is placed outside, that tortoise may still carry ticks that could act as vectors of heartwater disease to local wildlife or livestock. Therefore, we are making no changes to the interim rules in response to this comment.

*Comment:* You should also prohibit the importation of Savannah monitor

lizards, plated lizards, ball pythons, and other reptiles and amphibians that may carry exotic ticks known to be vectors of heartwater disease. Alternately, you could prohibit the importation of all reptiles and amphibians from regions known to have heartwater disease and allow the importation of reptiles and amphibians from regions that do not have heartwater disease with veterinary inspection and certification that the reptiles or amphibians have been found free of ectoparasites.

*Response:* We are gathering information on whether other reptiles and amphibians present a risk of introducing exotic ticks known to be vectors of heartwater disease into the United States. At this time, however, we are prohibiting the importation of only leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise because interception records from 1995-1999 report that 90 percent of the tropical bont ticks, African tortoise ticks, and ticks of the species *Amblyomma sparsum* found on reptiles entering the United States occurred on these three species of land tortoise. Further, tortoises generally live outdoors, unlike most other reptiles and amphibians, and, therefore, obviously present a greater risk of coming into contact with and spreading ticks to other potential hosts.

Regarding the commenter's alternate suggestion, we fear that limiting our prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises to only those tortoises imported from countries known to have heartwater disease would encourage transshipment of these animals from those countries through countries known to be free of heartwater disease to the United States. Our wider prohibition on the importation of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises from all foreign regions ensures that these tortoises will not be transshipped and, therefore, provides protection against the introduction of exotic ticks into the United States.

Therefore, we are making no changes to the interim rules in response to this comment.

*Comment:* U.S. exporters, in an effort to profit from the huge demand for turtle meat in many Asian countries, may decimate our native tortoise populations. Therefore, you should also ban the exportation of tortoises from the United States.

*Response:* This comment requests an action outside of our authority. Therefore, we are making no changes to the interim rules in response to this comment.

*Comment:* Ensuring that tortoises are free of ticks before importation or interstate movement may not be enough to protect against the introduction or spread of heartwater disease via tortoises. Research points out that an African tortoise was infected with heartwater rickettsia and remained a latent carrier, infective to ticks, for at least 3 months. In addition, at least three ticks native to the United States have been shown experimentally to be vectors of the rickettsia.

Therefore, a tick-free tortoise infected with the rickettsia could infect native ticks, which could in turn transmit the disease to domestic livestock or wildlife. Any changes made to the prohibition on importation and interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise should include either a test for infection in tortoises, a minimum period of quarantine for tortoises, or a course of antibiotics.

*Response:* According to Dr. Michael Burridge, very recent research (unpublished data) conducted in Zimbabwe in conjunction with the University of Florida indicates that leopard tortoise is not a carrier of heartwater disease. Further, we have no evidence that either African spurred tortoise or Bell's hingeback tortoise is a carrier of the disease. Therefore, we are making no changes to the interim rules in response to this comment.

*Comment:* Instead of issuing health certificates for each shipment of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises moving interstate, you should inspect each tortoise breeder's facility, certify those facilities that are free of ticks, and then allow tortoises to be moved interstate from certified facilities without further restrictions. This would significantly reduce expenses for breeders who move their tortoises interstate.

*Response:* If we were to allow interstate movement of these tortoises based on inspection of each tortoise breeder's facility and certification that facilities are free of ticks, then APHIS personnel would have to inspect each facility and all of its tortoises. We would likely not approve other individuals to conduct these inspections. Therefore, it would take us months, if not years, to complete these initial inspections. This would mean that while many breeders wait for an undetermined amount of time to move their tortoises interstate, which would increase expenses for these breeders, a few breeders would be free to move their tortoises interstate and reap the profits that may be associated with a smaller supply of these types of tortoises. This would also

mean that, at the outset of such a program, we would have to spend time establishing the criteria we would use to determine the order of such inspections. In addition, the inspections would have to be conducted on a regular basis, such as annually or every other year, to ensure that facilities remain free of ticks. Instead, we elected through our second interim rule to allow the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises had been examined by that veterinarian and found free of ticks. We believe that this system ensured that every breeder's tortoises could move interstate as quickly as possible following the effective date of the second interim rule and, therefore, provided a method to allow interstate movement of these tortoises that is fair to all affected breeders. Therefore, we are making no changes to the interim rules in response to this comment.

*Comment:* In addition to Federal and accredited veterinarians, you should allow also State veterinarians to examine leopard tortoises, African spurred tortoises, or Bell's hingeback tortoises and sign the health certificate required for their interstate movement.

*Response:* We believe that State veterinarians should not sign health certificates for the interstate movement of leopard tortoise, African spurred tortoise, or Bell's hingeback tortoise for three reasons. First, several States have indicated to APHIS that they believe that the time spent performing the thorough inspection that would be required prior to the issuance of a health certificate would take time away from the State veterinarian's primary mission activities. Second, if State veterinarians were allowed to sign these health certificates, many accredited veterinarians, who are generally private practitioners, would lose business, and its accompanying revenue, to State veterinarians. Third, and perhaps most important, we believe that accredited veterinarians who have experience dealing with tortoises and other reptiles can perform a more knowledgeable and thorough examination of leopard tortoises, African spurred tortoises, or Bell's hingeback tortoises than could many State and Federal veterinarians, who are less likely to have experience with tortoises and other reptiles. Upon further consideration, we also believe that these same reasons provide a sound basis for withdrawing Federal veterinarians from those eligible to sign the health certificate for the interstate

movement of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. Therefore, we are amending the second interim rule by allowing only an accredited veterinarian to sign the health certificate for the interstate movement of leopard tortoises, African spurred tortoises, and Bell's hingeback tortoises. Further, in order to ensure that those tortoises are accompanied by a health certificate that can be reasonably expected to reflect their status at the time they are moved interstate, we are also amending the second interim rule to state that the certificate must be signed within the 30 days prior to the interstate movement.

*Comment:* You should change the name of the certificate required for the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. Instead of "health certificate," you should call it a "certificate of veterinary inspection."

*Response:* "Health certificate" is the term we use most often in our regulations and is consistent with our approved forms. However, we agree that a certificate of veterinary inspection, which is used by many States, would also provide the necessary certification that tortoises have been examined by an accredited veterinarian and found free of ticks. Therefore, we are amending the regulations to allow the accredited veterinarian to sign either a health certificate or a certificate of veterinary inspection for the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise.

Therefore, for the reasons given in the interim rules and in this document, we are adopting the interim rules as a final rule, with the changes discussed in this document.

#### **Effective Date**

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rules adopted as final by this rule were effective on March 22, 2000, and July 17, 2000. This rule revises the second interim rule by allowing the certificate for interstate movement to be either a health certificate or a certificate of veterinary inspection and by providing that only an accredited veterinarian may sign the certificate. Immediate action is necessary to relieve an unnecessary burden on Federal veterinarians, who cannot be compensated through user fees for the time they spend inspecting and certifying tortoises for interstate movement. Therefore, the Administrator of the Animal and Plant Health

Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

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

The United States accounts for about 80 percent of the world's live reptile trade. In 1998, a total of 1,921,272 reptiles were imported, valued at approximately \$6.37 million. Of these, turtles, including tortoises, accounted for about 26.5 percent of imports. Three states, California (48 percent), Florida (33.2 percent), and Louisiana (11.7 percent), accounted for nearly 93 percent of turtle imports. Almost all turtles imported into the United States are wild caught.

The United States exports about 9 million live reptiles annually. Red-eared slider turtles make up about 85 percent of these exports every year. South Korea, Japan, and European countries are the major importers of U.S. turtles. However, Canada appears to be the major importer of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. In 1995, the United States exported to Canada 32 leopard tortoises, 527 African spurred tortoises, and 2,332 Bell's hingeback tortoises. During the same year, U.S. imports of these species were 2,683, 1,223, and 952, respectively.

In 1996, between 1.5 million and 2.5 million households in the United States owned various reptiles as pets. Of these, about 534,000 households, or about 35 percent, owned a total of 950,000 turtles, including tortoises. Overall, turtles represented about 27 percent of the total reptile pet population. The prices paid for turtles ranged between \$25 and \$750, depending on species, size, and age. Between 1993 and 1996, the average price in the United States for a leopard tortoise was \$190, for an African spurred tortoise \$578, and for a Bell's hingeback tortoise \$35.

This rule will require persons wishing to move these tortoises interstate to acquire a health certificate or a certificate of veterinary inspection from an accredited veterinarian. We estimate that a certificate will cost about \$25 to \$50 for the first tortoise, plus \$2 to \$5 for each additional tortoise in the shipment. These costs are small when compared to the potential losses in revenue and animals that could result from a reinstatement of the prohibition on the interstate movement of these

species of tortoises. The health certificate will also help ensure the acceptability of these animals in international markets and prevent the spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants, including cattle, sheep, goats, white-tailed deer, and antelope.

Heartwater disease has a 60 percent or greater mortality rate in livestock and a 90 percent or greater mortality rate in white-tailed deer. The direct contribution of the U.S. livestock industry to the gross domestic product is close to \$60 billion; with indirect and induced impacts taken into account, that figure could reach about \$150 billion. Considering the virulence and high mortality rate of heartwater disease, its introduction and spread in the United States could have severe economic consequences, even when a less than worst-case scenario is considered. Thus, the costs associated with this rule are far outweighed by the benefits of maintaining the United States' freedom from heartwater disease.

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.

This final rule also affirms the information contained in the interim rules concerning Executive Orders 12372 and 12988.

#### **Paperwork Reduction Act**

The information collection and recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under control number 0579-0156.

#### **List of Subjects in 9 CFR Part 74**

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rules amending 9 CFR part 74 which were published at 65 FR 15216-15218 on March 22, 2000, and 65 FR 45275-45277 on July 21, 2000, are adopted as a final rule with the following changes:

#### **PART 74—PROHIBITION OF INTERSTATE MOVEMENT OF LAND TORTOISES**

1. The authority citation for part 74 is revised to read as follows:

**Authority:** 21 U.S.C. 111-113, 114a, 115, 117, 120, 122-126, 134b, 134f; 7 CFR 2.22, 2.80, and 371.4.

2. Section 74.1 is revised to read as follows:

#### **§ 74.1 General prohibition.**

The interstate movement of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*) is prohibited except when tortoises are accompanied by either a health certificate or a certificate of veterinary inspection. The health certificate or certificate of veterinary inspection must be signed by an accredited veterinarian within 30 days prior to the interstate movement and must state that the tortoises have been examined by that veterinarian and found free of ticks.

Done in Washington, DC, this 11th day of July 2001.

(Approved by the Office of Management and Budget under control number 0579-0156)

**Bobby R. Acord,**

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

[FR Doc. 01-17841 Filed 7-16-01; 8:45 am]

**BILLING CODE 3410-34-U**

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 23**

**[Docket No. CE168, Special Condition 23-108-SC]**

#### **Special Conditions; Raytheon C90A; Protection of Systems for High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to Raytheon Aircraft Services, Inc., 1115 Paul Wilkens Road, San Antonio, Texas, 78216, for a Supplemental Type Certificate for the Raytheon C90A airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays manufactured by Collins for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to