

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 93**

[Docket No. 03-004-1]

**Remove Texas From Lists of States Approved To Receive Stallions and Mares From CEM-Affected Regions****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Final rule.

**SUMMARY:** We are amending the animal importation regulations by removing Texas from the lists of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis. This action is necessary because the Texas Animal Health Commission has determined that the State of Texas is not able to continue this activity, and has requested that the State be removed from the list.

**DATES:** This rule is effective February 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Freeda Isaac, Senior Staff Veterinarian, Technical Trade Services, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737-1231; (301) 734-8364.

**SUPPLEMENTARY INFORMATION:****Background**

The animal importation regulations in 9 CFR part 93 (referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases.

In § 93.301, paragraph (c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Paragraph (c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported for permanent entry from regions where CEM exists must be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. The Administrator of the Animal and Plant Health Inspection Service (APHIS) has approved these States to receive stallions or mares over 731 days of age from regions where CEM exists because

each State has entered into a written agreement with the Administrator to enforce State laws and regulations to control CEM, and each State has agreed to quarantine, test, and treat stallions and mares over 731 days of age from any region where CEM exists in accordance with § 93.301(e).

In 1995, Texas entered into a written agreement with the Administrator and was subsequently placed on both lists. However, the Texas Animal Health Commission has recently determined that Texas is no longer able to continue the quarantine, testing, and treatment of stallions and mares over 731 days old from regions where CEM exists, and has requested that the State be removed from the lists of States approved to receive stallions and mares from CEM-affected regions. Therefore, this final rule removes Texas from the lists of States in § 93.301(h)(6) and (h)(7).

**Effective Date**

A State's decision to enter into a written agreement with the Administrator to enforce State laws and regulations to control CEM and to quarantine, test, and treat stallions and mares over 731 days of age from any region where CEM exists in accordance with § 93.301(e) is completely voluntary. Since the State of Texas has notified APHIS that it is unable to continue these activities and has withdrawn from its agreement with the Administrator, it does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary. We also find good cause for making this rule effective less than 30 days after publication in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

APHIS does not mandate that any State participate in the quarantine, testing, and treatment of stallions and mares over 731 days of age from any region where CEM exists. As a result, decisions regarding a State's compliance or noncompliance with the standards set out in § 93.301(e) are made at the State level. Since the State of Texas has notified APHIS that it is unable to

continue these activities and has withdrawn from its agreement with the Administrator, this rule simply amends the regulations to reflect the State's decision.

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 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, 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 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 93**

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

Accordingly, 9 CFR part 93 is amended as follows:

**PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS**

1. The authority citation for part 93 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

**§ 93.301 [Amended]**

2. Section 93.301 is amended as follows:

- a. In paragraph (h)(6), by removing the words "The State of Texas".
- b. In paragraph (h)(7), by removing the words "The State of Texas".

Done in Washington, DC, this 10th day of February 2003 .

**Peter Fernandez,**

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 166

[Docket No. 03-008-1]

#### Swine Health Protection

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the swine health protection regulations by removing Kansas and Oregon from the list of States that permit the feeding of treated garbage to swine and adding them to the list of States that prohibit garbage feeding. This action is necessary to reflect changes in the status of Kansas and Oregon, and thereby facilitate the administration of the swine health protection regulations.

**DATES:** This rule is effective February 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Adam Grow, National Surveillance Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737-1231; (301) 734-3752.

#### SUPPLEMENTARY INFORMATION:

##### Background

The swine health protection regulations in 9 CFR part 166 (referred to below as the regulations) were established under the Swine Health Protection Act (7 U.S.C. 3801 *et seq.*, referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

The regulations in § 166.15 categorize States according to the respective status of each with regard to the feeding of garbage to swine. Some States prohibit this activity, while other States permit the feeding of garbage to swine; these States are listed in § 166.15(a) and (b), respectively.

Under section 10 of the Act (7 U.S.C. 3809), a State will have primary enforcement responsibility for

violations of laws and regulations related to the treatment and feeding of garbage if the Secretary determines that the State: (1) Has adopted adequate laws and regulations governing the treatment of garbage to be fed to swine and the feeding thereof which laws and regulations meet the minimum standards of the Act and regulations, (2) has adopted and is implementing adequate procedures for the effective enforcement of its garbage feeding laws and regulations, and (3) will keep records and make reports showing compliance with its garbage feeding laws and regulations and their enforcement as the Secretary may require by regulation. States that have primary enforcement responsibility are listed in § 166.15(c).

Prior to this rulemaking, Kansas and Oregon were listed in § 166.15(b) as States that permitted the feeding of treated garbage to swine and in § 166.15(c) as States with primary enforcement responsibility. However, Kansas and Oregon have both repealed their laws permitting the feeding of treated garbage to swine. We are, therefore, removing Kansas and Oregon from the list of States in § 166.15(b) that permit the feeding of treated garbage to swine and are adding them to the list of States in § 166.15(a) that prohibit the feeding of garbage to swine. We are also removing both States from the list in § 166.15(c) of States that have primary enforcement responsibility.

#### Effective Date

We are taking this action to update our regulations with respect to changes that have already occurred in the laws of Kansas and Oregon regarding the feeding of garbage to swine. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary. We also find good cause for making this rule effective less than 30 days after publication in the **Federal Register**.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The decision regarding whether or not a State will permit the feeding of garbage to swine is made at the State

level. Since the State of Kansas and the State of Oregon have each notified APHIS that State law now prohibits the feeding of garbage to swine, this rule simply amends the regulations to reflect each State's decision.

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 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, 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 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 9 CFR Part 166

Animal diseases, Hogs, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 166 is amended as follows:

#### PART 166—SWINE HEALTH PROTECTION

1. The authority citation for part 166 continues to read as follows:

**Authority:** 7 U.S.C. 3801-3813; 7 CFR 2.22, 2.8, and 371.4.

##### § 166.15 [Amended]

2. Section 166.15 is amended as follows:

a. In paragraph (a), by adding, in alphabetical order, the words "Kansas," and "Oregon,".

b. In paragraph (b), by removing the words "Kansas," and "Oregon,".

c. In paragraph (c), by removing the words "Kansas," and "Oregon,".