

USDA's Foreign Agricultural Service (FAS), \$1,500,000 for salaries and wages, \$1,000,000 for nutrition research, \$850,332 for production research, \$823,948 for food quality programs, \$254,903 for environmental research, \$200,000 for travel, \$122,472 for office rent, \$120,750 for a crop estimate, and \$90,780 for an acreage survey.

The Board considered alternative assessment rate levels, including the portion available for handler credit-back. After deliberating the issue, the Board recommended increasing the assessment rate to \$0.025 per pound, with \$0.014 available for handler credit-back. In arriving at its budget, the Board considered information from its various committees. Alternative expenditure levels were discussed by these groups, based on the value of various activities to the industry. The committees ultimately recommended appropriate activities and funding levels, which were adopted by the Board.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2004–05 season could range between \$1.50 and \$1.80 per pound of almonds. Therefore, the estimated assessment revenue for the 2004–05 crop year (disregarding any amounts credited pursuant to §§ 981.41 and 981.441) as a percentage of total grower revenue could range between 1.2 and 1 percent, respectively.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 20, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on June 16, 2004 (69 FR 33584). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending June 28, 2004, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis and the crop year begins on August 1, 2004. Further, handlers are aware of this rule which was recommended by the Board at a public meeting. Also, a 10-day comment period was provided for in the proposed rule and no comments were received.

#### List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

#### PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 981.343 is revised to read as follows:

#### § 981.343 Assessment rate.

On and after August 1, 2004, an assessment rate of \$0.025 per pound is established for California almonds. Of the \$0.025 assessment rate, \$0.014 per assessable pound is available for handler credit-back.

Dated: July 8, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 04–15857 Filed 7–8–04; 3:39 pm]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 51

[Docket No. 00–002–2]

RIN 0579–AB42

### Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis. This action makes it easier to eliminate affected herds/flocks and infected animals as sources of infection by encouraging herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

**DATES:** *Effective Date:* August 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Debra A. Donch, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

#### SUPPLEMENTARY INFORMATION:

#### Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella*. It affects both animals and humans. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock.

Brucellosis is mainly a disease of cattle, bison, and swine. *Brucella abortus* affects mainly bovines; *B. suis* affects mainly swine. Goats, sheep, and horses are also susceptible to *B. abortus*. In horses, the disease is known as fistulous withers. A third strain of *Brucella*, *B. melitensis*, affects mainly goats and sheep.

The continued presence of brucellosis in a herd or flock seriously threatens the health of other animals. To prevent any

possible spread of infection, we ask livestock owners to promptly destroy all infected and exposed animals. To encourage them, we pay Federal indemnity for certain cattle, bison, and swine destroyed because of brucellosis. Regulations governing indemnity for cattle, bison, and swine are contained in 9 CFR part 51.

On September 13, 2001, we published in the **Federal Register** (66 FR 47593–47599, Docket No. 00–002–1) a proposal to amend the regulations in 9 CFR part 51 by creating an indemnity program for sheep, goats, and horses that must be destroyed because of brucellosis. These proposed regulations were modeled on our existing indemnity regulations for cattle and bison, making adjustments as necessary to better address brucellosis in sheep, goats, and horses. Like the cattle and bison program, the proposed indemnity program for sheep, goats, and horses was voluntary and was designed to give producers an incentive to cooperate and assist our ongoing program to eradicate brucellosis in the United States. We also proposed to reorganize and rewrite the requirements to make them easier to understand.

We solicited comments concerning our proposal for 60 days ending November 13, 2001. We received 2 comments by that date, from a national agricultural organization and a State agricultural organization. Both comments were generally supportive of the proposed rule. However, the commenters recommended that, instead of requiring that the appraisal be made by an independent appraiser selected by the Animal and Plant Health Inspection Service (APHIS), we consider allowing producers to provide evidence from a separate appraisal and having an unbiased third party make the final decision.

The position of the Department has consistently been that APHIS cannot delegate the final decision of an appraisal to a third party. Producers are free to offer evidence of value that may differ from the independent appraisal, but APHIS will make the final decision. If a producer believes that the valuation determined by the independent appraiser selected by APHIS is inaccurate, the producer can maintain the herd under quarantine rather than participate in the program to receive indemnity for destruction of infected

animals. We are making no changes in response to these comments.

However, we are making minor changes to the proposed regulations in this final rule. Section 51.26 of the proposed rule stated that the test records for animals must include individual identification, with “any unique identification” being acceptable. We are changing this phrase to read “any unique, individually numbered identification.” This will ensure that the form of identification used will allow the test record to refer to one specific animal and will make the regulations in § 51.26 consistent with the regulations in § 51.27, which use the phrase “unique, individually numbered identification” to refer to the same required identification.

In addition, the proposed definition of *brucellosis reactor animal* did not clearly state what criteria a sheep, goat, or horse had to meet to be classified as a brucellosis reactor animal under proposed 9 CFR part 51, Subpart B; instead, the definition referred readers to proposed § 51.23, “Eligibility for indemnity,” for the criteria. In this final rule, we have moved the criteria a sheep, goat, or horse must meet to be classified as a brucellosis reactor animal into the definition of *brucellosis reactor animal*, while retaining the information about eligibility for indemnity in § 51.23.

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

#### **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.

Brucellosis is a contagious, costly disease of livestock. It affects mainly ruminants and swine. However, it may also infect other animals, including horses. In addition, it is contagious to humans. Because of the serious consequences of infection in its animal hosts, which include loss of young through abortion or birth of weak offspring, reduced milk production, infertility, weight loss, and lameness, and its rapid spread among animals and potential for human infection, brucellosis is considered one of the

most serious livestock diseases. At present, there is no effective treatment for animals. Affected herds/flocks and infected animals can be quarantined. However, quarantining does not eliminate possible spread; only destroying infected and exposed animals ensures that the disease is not transmitted to other animals.

We are amending the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis, which will make it easier to eliminate affected herds/flocks and infected animals as sources of infection and will encourage herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

#### *Sheep and Goats—Operations, Inventory, and Trade*

Sheep are raised primarily for meat and wool, while goats are largely raised for meat, milk, and mohair. On January 1, 2002, there were 65,120 sheep operations in the United States that owned a total of 6.69 million head of sheep, with 4.91 million as breeding sheep and 1.77 million as market sheep.<sup>1</sup> According to industry statistics, the average value per head of sheep is \$92.00, with a reported cash value totaling over \$618 million.<sup>2</sup>

Unfortunately, limited data is collected on the goat industry as a whole. The 1997 Census of Agriculture, the last official report with data on the industry, estimated there were 57,925 goat operations with an inventory of approximately 1.99 million head of goat. Of that 1.99 million head, it is estimated 41 percent were angora goats raised for mohair, 7 percent were goats raised for milk, and 52 percent were goats raised for meat and other uses. In 1997, sales receipts for those primary markets in the goat industry totaled over \$65 million.<sup>3</sup>

The United States has limited foreign trade in live sheep, live goats, and their products. Figures for 2002 are shown in table 1.

<sup>1</sup> USDA, *Sheep and Goats*. Washington, DC: National Agricultural Statistics Services (NASS), February 2002.

<sup>2</sup> USDA, *Agricultural Statistics 2002*. Washington, DC: NASS, 2002.

<sup>3</sup> USDA, *1997 Census of Agriculture*, Table 40. Washington, DC: NASS.

TABLE 1.—SHEEP AND GOAT IMPORTS AND EXPORTS, 2002

Item	Imports		Exports	
	Number	Value (in millions)	Number	Value (in millions)
Sheep .....	72,055	\$6.16	197,900	\$9.92
Goats .....	3,683	0.35	5,580	0.39
Total .....	75,738	6.51	203,480	10.31

Source: *World Trade Atlas*, June 2003.

The United States also imports and exports sheep and goat meat. During 2002, U.S. imports of sheep and goat meat were valued at \$277.5 million and exports were valued at \$6.38 million.<sup>4</sup>

#### Horses—Operations, Inventory, and Trade

According to the *1997 Census of Agriculture*, there were 375,218 farms in the United States with a total of 2,427,277 horses. During 1997, 79,516 of these farms sold 325,306 horses for

about \$1.03 billion, with an average value per horse of \$3,165.<sup>5</sup> Using this average value, the total market value of horses in the United States was \$10.847 billion in 1997. Over 98 percent of farms with horses had gross annual sales of less than \$750,000 and thus are considered to be small entities according to the Small Business Administration size standards.<sup>6</sup>

The contribution of horses to the economy of the Nation is substantial. A

study for the American Horse Council showed that the horse industry directly contributed about \$25.3 billion to the gross domestic product. The horse industry's indirect and induced impact on the national economy is about \$112 billion.

Horses also play an important role in the international trade of the United States. Figures for 2002 are shown in table 2.

TABLE 2.—HORSE IMPORTS AND EXPORTS, 2002

Animals	Imports		Exports	
	Number	Value (in millions)	Number	Value (in millions)
Purebred .....	982	\$9.79	6,124	\$37.50
Nonpurebred .....	14,565	75.29	20,825	24.23
Total .....	15,547	85.08	26,949	61.73

Source: *World Trade Atlas*, June 2003.

#### Amount of Indemnity

Under this rule, the amount of indemnity will be the fair market value of each animal, minus salvage, if any, received for the animal. There will usually be no salvage value for sheep and goats destroyed because of *B. melitensis*, as the carcass would have to be buried, incinerated, or rendered after the animal was destroyed. Animals will have to be individually appraised before destruction to determine their fair market value. An independent appraiser selected by the Administrator and paid for by the United States Department of Agriculture will conduct all appraisals.

It is impossible to estimate indemnity expenditures, as market values vary depending upon the specific animal. However, as of January 1, 2002, the average national sales price per head of sheep was \$94, while as of January 1,

2001, it was \$100. These prices reflect the average of the sale of millions of slaughter sheep, and the sale of a few thousand registered breeding sheep.<sup>7</sup>

Average sales prices for goats, per head, vary greatly, depending on whether the animal is a slaughter goat, Angora goat, dairy goat, crossbred or purebred, etc.

There is much variation in the price of horses. In 1997, the average U.S. sales price for a horse was \$3,165. Purebred horses are more expensive than nonpurebred. State average sales prices ranged between \$794 and \$18,795, with a median price of about \$1,860 per horse. The median indicates that the average market value of a horse was above \$1,860 per head in 50 percent of States and below \$1,860 per head in 50 percent of States.

At this time, there are no goats, sheep, or horses in the United States known to

be infected with *B. abortus* or *B. melitensis*. We estimate that fewer than a dozen herds, flocks, or individual animals will be eligible for indemnity under this rule prior to the eradication of brucellosis from the United States.

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.)

<sup>4</sup> USDA, *FAS Trade Statistics*. Washington, DC: Foreign Agricultural Service, 2003.

<sup>5</sup> USDA, *1997 Census of Agriculture*, Washington, DC: NASS, 1997.

<sup>6</sup> Horse farms with less than \$0.75 million in annual sales are classified as small entities according to the SBA size standards for animal production (13 CFR part 121). According to the *1997 Census of Agriculture*, an average farm had 6.5 horses, while according to the American Horse

Council, 1.9 million people owned 6.9 million horses, yielding an average of 3.6 horses per owner.

<sup>7</sup> The average price for registered breeding sheep is in the range of \$300, with some selling for thousands of dollars.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict 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**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0185.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

**List of Subjects in 9 CFR Part 51**

Animal diseases, Cattle, Goats, Hogs, Horses, Indemnity payments, Reporting and recordkeeping requirements, Sheep.  
 ■ Accordingly, we are amending 9 CFR part 51 as follows:

**PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS**

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

**§§ 51.1 through 51.10 [Designated as subpart A]**

■ 2. Sections 51.1 through 51.10 are designated as Subpart A—Indemnity for Cattle, Bison, and Swine.

**§ 51.1 [Amended]**

■ 3. In § 51.1, in the definition of *Permit*, the word “Part” is removed and the word “subpart” added in its place.

■ 4. A new Subpart B—Indemnity for Sheep, Goats, and Horses, §§ 51.20 through 51.33, is added to read as follows:

**Subpart B—Indemnity for Sheep, Goats, and Horses**

- Sec.
- 51.20 Definitions.
- 51.21 Cooperation with States.
- 51.22 Payment to owners for goats, sheep, and horses destroyed.
- 51.23 Eligibility for indemnity.
- 51.24 Maximum per-head indemnity amounts.
- 51.25 Proof of destruction.
- 51.26 Record of tests.
- 51.27 Identification of goats, sheep, and horses to be destroyed.
- 51.28 Moving goats, sheep, and horses to be destroyed.
- 51.29 Destruction of animals; time limit.
- 51.30 Claims for indemnity.
- 51.31 Disinfecting premises, conveyances, and materials.
- 51.32 Claims not allowed.
- 51.33 Multiple indemnity payments.

**§ 51.20 Definitions.**

*Accredited veterinarian.* A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Affected herd/flock.* Any herd or flock in which any cattle, bison, breeding swine, sheep, or goat has been classified as a brucellosis reactor and which has not been released from quarantine.

*Animal.* Sheep, goats, and horses.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*APHIS representative.* An individual employed by APHIS who is authorized to perform the function involved.

*Appraisal.* An estimate of the fair market value of an animal to be destroyed because of brucellosis.

*Brucellosis exposed.* Except for brucellosis reactors, animals that are part of a herd known to be affected, or are in a quarantined feedlot or a quarantined pasture, or are brucellosis suspects, or that have been in contact with a brucellosis reactor for a period of 24 hours or more, or for a period of less than 24 hours if the brucellosis reactor has aborted, calved, or farrowed within the past 30 days or has a vaginal or uterine discharge.

*Brucellosis reactor animal.* (1) Any sheep or goat that has been determined by a designated brucellosis epidemiologist<sup>1</sup> to be affected with brucellosis, based on test results, herd/flock history, and/or culture results. Any test used for cattle and bison under the APHIS official brucellosis eradication program (*see* part 78 of this chapter) may be used, but test results must be interpreted by a designated brucellosis epidemiologist.

(2) Any horse that has been determined by a designated brucellosis epidemiologist to be affected with brucellosis, based on epidemiological information or culture results, or positive results for brucellosis in accordance with one of the following tests:

Test	Positive results
Standard plate test (SPT) .....	If antibody titer positive at 1:100 dilution or higher.
Standard tube test (STT) .....	If antibody titer positive at 1:100 dilution or higher.
Rivanol test .....	If antibody titer positive at 1:50 dilution or higher.
Particle concentration fluorescence immunoassay (PCFIA) .....	If reading is 0.3 or lower.
Complement fixation test (CF) .....	If reading is 2+:20 dilution.

(3) Any cattle, bison, or swine classified as a brucellosis reactor as

provided in the definition of official test in § 78.1 of this chapter.

*Condemn.* The determination made by an APHIS representative, State

<sup>1</sup> Requirements for designated brucellosis epidemiologists are contained in Veterinary Services Memorandum No. 551.10. A copy of this memorandum may be obtained from an APHIS

representative, the State animal health official, or a State representative.

representative, or accredited veterinarian that animals for which indemnity is sought under this subpart will be destroyed.

**Designated brucellosis epidemiologist.** An epidemiologist selected by the State animal health official and the Veterinarian in Charge to perform the functions required. The regional epidemiologist and the APHIS brucellosis staff must concur in the selection and appointment of the designated epidemiologist.

**Destroyed.** Condemned under State authority and slaughtered or otherwise dies.

**Flock.** Any group of sheep maintained on common ground for any purpose, or two or more groups of sheep under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

**Herd.** Any group of goats, or mixed sheep and goats, maintained on common ground for any purpose, or two or more groups of goats, or two or more groups of mixed sheep and goats, under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

**Herd/flock depopulation.** Removal by slaughter or other means of destruction of all sheep or goats in a flock or herd, or from a specific premises or under common ownership prior to restocking such premises with new animals.

**Mortgage.** Any mortgage, lien, or interest that is recorded under State law or identified in the indemnity claim form filed in accordance with this subpart, and held by any person other than the one claiming indemnity.

**Official seal.** A serially numbered metal strip consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened, and is applied by a representative of the Veterinarian in Charge or the State animal health official.

**Owner.** Any person who has legal or rightful title to sheep, goats, and horses, whether or not the animals are subject to a mortgage.

**Permit.** An official document for movement of animals under this subpart issued by an APHIS representative, State representative, or accredited veterinarian listing the disease status and identification of the animal, where consigned, cleaning and disinfecting requirements, and proof of slaughter certification.

**Person.** Any individual, corporation, company, association, firm, partnership,

society, or joint stock company, or other legal entity.

**Registered sheep and goats.** Sheep and goats for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the species, and for which individual registration certificates are issued and recorded by such breed association.

**State.** Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

**State representative.** An individual employed in animal health activities by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

**Veterinarian in Charge.** The APHIS veterinary official who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State or area concerned, or any person authorized to act for the Veterinarian in Charge.

#### § 51.21 Cooperation with States.

The Administrator has been delegated the authority to cooperate with the proper State authorities in the eradication of brucellosis and to pay indemnities for the destruction of brucellosis-reactor animals or brucellosis-exposed animals.

#### § 51.22 Payment to owners for goats, sheep, and horses destroyed.

(a) The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose goats, sheep, or horses are destroyed after having been approved for destruction by APHIS.<sup>1</sup> Goats or sheep must be destroyed as part of a whole herd/flock depopulation to be eligible for Federal indemnity.

(b) The amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date infected animals were found, or the date that the whole-herd/flock depopulation or destruction of individual animals was approved.

<sup>1</sup> The Administrator will authorize payment of Federal indemnity by the U.S. Department of Agriculture as provided in § 51.24: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

(c) Prior to payment of indemnity, proof of destruction must be furnished to the Veterinarian in Charge.

#### § 51.23 Eligibility for indemnity.

Owners of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals if the animals are:

(a) Sheep and goats in an affected herd or flock;

(b) Sheep and goats that were obtained from a herd or flock that was subsequently found to be an affected herd or flock. Epidemiological information such as test results, herd/flock history, and related evidence will be used to establish a probable date when the herd or flock was first affected with brucellosis. Animals removed from the herd or flock after that date will be considered exposed to the disease and eligible for indemnity; those removed before that date will not;

(c) Individual horses that have been found to be brucellosis reactor animals.

#### § 51.24 Maximum per-head indemnity amounts.

Owners of the types of animals listed in § 51.22 of this subpart are eligible to receive Federal indemnity for their animals. All animals must be individually appraised to determine their fair market value. The indemnity amount will be the appraised value minus the salvage value of the animal, up to a maximum of \$20,000 per animal in the case of horses. An independent appraiser selected by the Administrator will conduct appraisals. APHIS will pay the cost of appraisals.

#### § 51.25 Proof of destruction.

The Veterinarian in Charge will accept any of the following documents as proof of destruction:

(a) A postmortem report;

(b) A meat inspection certification of slaughter;

(c) A written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animals;

(d) A written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animals;

(e) A permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a slaughter establishment; or

(f) In unique situations where none of the documents listed above are available, other similarly reliable forms of proof of destruction.

(Approved by the Office of Management and Budget under control number 0579–0185)

**§ 51.26 Record of tests.**

An APHIS representative, State representative, or accredited veterinarian will compile, on an APHIS-approved form, a complete test record for each animal. The claimant must provide any information necessary to complete the form. The test record must include the type of test and the test results for each animal. It must also include the individual identification of each tested animal. Any unique, individually numbered identification is acceptable. The animal's owner and the appropriate State veterinarian's office will each receive a copy of the test record.

(Approved by the Office of Management and Budget under control number 0579-0185)

**§ 51.27 Identification of goats, sheep, and horses to be destroyed.**

The claimant must ensure that any goats, sheep, and horses for which indemnity is claimed are marked with unique, individually numbered identification showing they are to be destroyed. This must be done within 15 days after the animals are condemned. The Veterinarian in Charge may extend the time limit to 30 days when the Veterinarian in Charge receives a request for extension prior to the expiration date of the original 15-day period, and when the Veterinarian in Charge determines that the extension will not adversely affect the brucellosis eradication program. However, the Administrator may extend the time limit beyond 30 days when unusual or unforeseen circumstances occur that prevent or hinder the identification of the animal within 30 days, such as, but not limited to, floods, storms, or other Acts of God, which are beyond the control of the owner, or when identification is delayed due to requirements of another Federal agency.

(Approved by the Office of Management and Budget under control number 0579-0185)

**§ 51.28 Moving goats, sheep, and horses to be destroyed.**

Goats, sheep, and horses to be destroyed because of brucellosis must be accompanied by a permit and either:

(a) Accompanied directly to slaughter by an APHIS or State representative; or

(b) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

(Approved by the Office of Management and Budget under control number 0579-0185)

**§ 51.29 Destruction of animals; time limit.**

(a) The claimant must ensure that goats, sheep, and horses infected with or exposed to *B. abortus* are either:

(1) Sold under permit to a recognized slaughtering establishment;

(2) Moved to an approved stockyard for sale to a recognized slaughtering establishment; or

(3) Destroyed and buried, incinerated, or rendered in accordance with applicable State law.

(b) The claimant must ensure that goats and sheep destroyed because of *B. melitensis* are destroyed and buried, incinerated, or rendered in accordance with applicable State law.

(c) Indemnity will be paid under this part only if the animals are destroyed within 15 days after the date they are marked with identification showing they are to be destroyed. However, the Veterinarian in Charge may extend the time limit to 30 days if:

(1) The animals' owner asks the Veterinarian in Charge for an extension before the initial 15-day period expires, or the animals were sold for slaughter before the original 15-day period expires; and

(2) The Veterinarian in Charge determines that extending the time limit will not adversely affect the Brucellosis Eradication Program.

(d) The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder the destruction of the animals within 30 days, such as, but not limited to, floods, storms, or other Acts of God, which are beyond the control of the owner, or when destruction is delayed due to requirements of another Federal agency.

(Approved by the Office of Management and Budget under control number 0579-0185)

**§ 51.30 Claims for indemnity.**

(a) Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis must be made using an indemnity claim form furnished by APHIS. On the form, the owner of the animals must certify whether the animals are subject to a mortgage. If the owner states there is a mortgage, the claim form must be signed by the owner and by each mortgage holder, consenting to the payment of any indemnity allowed to the owner. Payment will be made only if the claimant has submitted a complete indemnity claim form to the Veterinarian in Charge and the claim has been approved by the Veterinarian in Charge or by an APHIS representative designated by him or her. The Veterinarian in Charge or an APHIS representative designated by the

Veterinarian in Charge will record on the APHIS indemnity claim form the amount of Federal and State indemnity payments that appear to be due to the owner of the animals. The owner of the animals will receive a copy of the completed APHIS indemnity claim form. The owner is responsible for paying all fees for holding the animals on the farm pending disposal and for all trucking fees.

(b) Claims for indemnity for registered sheep and registered goats must be accompanied by the animal's registration papers, issued in the name of the owner. If the registration papers are unavailable or if the animal is less than 1 year old and not registered at the time the claim for indemnity is submitted, the Veterinarian in Charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers. Any animal that is not registered but is eligible for registration at the time the claim is submitted will be considered unregistered unless the animal has been in the flock for less than 12 months.

(Approved by the Office of Management and Budget under control number 0579-0185)

**§ 51.31 Disinfecting premises, conveyances, and materials.**

All premises, including all structures, holding facilities, conveyances, and materials contaminated because they have been used by animals destroyed because of brucellosis, must be properly cleaned and disinfected in accordance with recommendations of the APHIS or State representative. Cleaning and disinfecting must be completed within 15 days from the date the animals were removed from the premises, except that the Veterinarian in Charge may extend the time limit for disinfection to 30 days when he or she receives a request prior to the expiration date of the original 15 days, and when the Veterinarian in Charge determines that an extension will not adversely affect the Brucellosis Eradication Program. The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder disinfection of the premises, conveyances, and materials within 30 days, such as, but not limited to floods, storms, or other Acts of God, which are beyond the control of the owner. A premises may be exempted from such cleaning and disinfecting requirements if the APHIS or State representative recommends it in writing and the Veterinarian in Charge approves.

(Approved by the Office of Management and Budget under control number 0579-0185)

**§ 51.32 Claims not allowed.**

Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis will not be allowed if any of the following circumstances exist:

(a) The claimant has failed to comply with any of the requirements of this part;

(b) The claim is based on a brucellosis test, and the person who administered the test was not properly trained, authorized, or certified at the time of the test;

(c) Testing of goats, sheep, and horses in the herd or flock for brucellosis was not done under APHIS or State supervision, or by an accredited veterinarian;

(d) There is substantial evidence that the claim is an unlawful or improper attempt to obtain indemnity; or

(e) If, at the time of test or condemnation, the animals belonged to or were upon the premises of any person to whom they had been sold for slaughter, shipped for slaughter, or delivered for slaughter.

**§ 51.33 Multiple indemnity payments.**

APHIS has indemnity programs for several other livestock diseases. However, if a claim is paid for indemnity for animals destroyed because of brucellosis, no other claims for indemnity will be paid for the same animals.

Done in Washington, DC, this 7th day of July, 2004.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-15804 Filed 7-12-04; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 94**

[Docket No. 03-009-2]

**Classical Swine Fever Status of Chile**

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations for importing animals and animal products by adding Chile to the list of regions we recognize as free of classical swine fever (CSF). We are taking this action at the request of the Government of Chile and after conducting a risk evaluation that indicates that Chile is free of this disease. We are also adding Chile to a

list of CSF-free regions whose exports of live swine, pork, and pork products to the United States must meet certain certification requirements to ensure their freedom from CSF, and amending those requirements to accommodate the addition of Chile to the list. These actions relieve restrictions on the importation into the United States of pork, pork products, live swine, and swine semen from Chile while continuing to protect against the introduction of this disease into the United States.

**EFFECTIVE DATE:** July 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charisse Cleare, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-4356.

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

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever (ASF), classical swine fever (CSF), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from regions where CSF is known to exist. Section 94.10 of the regulations prohibits, with certain exceptions, the importation of swine that originate in or are shipped from or transit any region in which CSF is known to exist. Sections 94.9 and 94.10 provide that CSF exists in all regions of the world except for certain regions listed in those sections.

On November 13, 2003, we published in the **Federal Register** (68 FR 64274-64282, Docket No. 03-009-1) a proposal to amend the regulations by adding Chile to the list of regions we recognize as free of CSF. We also proposed to add Chile to a list of CSF-free regions whose exports of live swine, pork, and pork products to the United States must meet certain certification requirements to ensure their freedom from CSF, and to amend those requirements to accommodate the addition of Chile to the list. In addition, we proposed to amend those certification requirements to require, for pork and pork products from a region listed in § 94.24, an additional statement that the swine from

which the pork and pork products were derived have not lived in a region affected with CSF.

We solicited comments concerning our proposal for 60 days ending January 12, 2004. We received three comments by that date. They were from an importer and from associations of pork producers. Two of the commenters supported the proposed rule. The third commenter asked for additional information regarding several issues in the proposed rule. These issues are discussed below by topic.

The commenter requested additional information about the ongoing surveillance that Chile's Agricultural and Livestock Service (Servicio Agrícola y Ganadero, SAG) conducts for CSF in Chilean commercial swine. The commenter stated that data referred to in material supporting Chile's request to be considered free of CSF are several years old and appear to be "point-in-time" samples related to managing and eliminating the last outbreaks of CSF in Chile in 1995 and 1996. The commenter asked whether there is a plan for federally funded, routine, ongoing surveillance for commercial and noncommercial populations of swine in Chile. The commenter also wanted to know whether both swine held on breeding farms and swine intended for slaughter were being sampled as part of the testing and what specific level of detection the current testing supports.

As stated in the evaluation that we conducted regarding the CSF status of Chile, SAG tested swine on 321 family farms, located in all 13 regions of Chile, for CSF in 2000 and 2001. The number of samples totaled 1,705. In addition, the evaluation referred to serological data for 2002 that SAG provided. Those data included samples taken at both commercial premises and backyard (family) premises that possessed or raised swine. These data reflected testing performed from January to December 2002. We based our determination that Chile is free of CSF on these data, not the data from the earlier testing conducted after the last outbreaks of CSF in Chile to which the commenter refers.

Chile does have a plan for federally funded, routine, ongoing surveillance for CSF in both commercial and noncommercial populations of swine. Both swine held on breeding farms and swine held on commercial properties that send swine for slaughter at export facilities are tested using an enzyme-linked immunosorbent assay for CSF under the surveillance plan.

As to the specific level of detection, the sampling design for 2002 was based on two sets of high-risk herds. In the