

Rules and Regulations

Federal Register

Vol. 69, No. 138

Tuesday, July 20, 2004

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 03–081–1]

Tuberculosis in Cattle; Import Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal importation regulations to require that steers and spayed heifers with any evidence of horn growth that are entering the United States meet the same tuberculosis testing requirements as sexually intact animals entering the United States. In their current form, the regulations do not distinguish between steers and spayed heifers imported strictly as feeders and those with horn growth, which may be used for exhibitions, rodeos, and roping and bulldogging practices. Animals used for these purposes are often maintained longer than feeder cattle. The longer the life span of an animal, the greater the chances are that, if exposed to tuberculosis, it will contract the disease, develop generalized disease, and spread it to other animals. We believe that the risks of tuberculosis transmission associated with steers and spayed heifers with horn growth justify regulating the importation of such animals in a manner equivalent to the way we regulate sexually intact cattle, which also have longer life spans than feeder cattle and are consequently more likely to spread tuberculosis if they have been exposed to that disease. This action is necessary to reduce the risk of imported cattle transmitting tuberculosis to domestic livestock in the United States.

DATES: This interim rule is effective August 19, 2004. We will consider all comments that we receive on or before September 20, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the “View Open APHIS Dockets” link to locate this document.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–081–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–081–1.

- E-mail: Address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 03–081–1” on the subject line.

- Agency Web site: Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Terry Beals, National Tuberculosis Program Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4020 N. Lincoln Blvd., Suite 101, Oklahoma City, OK 73105; (405) 427–2998.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435, referred to below as the regulations) governs the importation of ruminants. Section 93.406 of the regulations contains requirements for diagnostic tests for brucellosis and tuberculosis. Section 93.427 contains some additional safeguards against tick-borne diseases, brucellosis, and tuberculosis for cattle imported into the United States from Mexico.

Bovine tuberculosis is an infectious disease caused by the bacterium *Mycobacterium bovis*. Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis*, the disease has been reported in several other species of both domestic and nondomestic animals and in humans. Currently, all areas of the United States are considered to be free of bovine tuberculosis except for Texas, Michigan, New Mexico, and California.

Currently, the regulations for tuberculosis treat imported steers and spayed heifers differently from imported sexually intact cattle. Under § 93.406(a)(2)(i), steers and spayed heifers must have come from a herd of origin that tested negative to a whole herd test for tuberculosis within 1 year prior to the date of exportation to the United States; each of the animals must have tested negative to an additional official tuberculin test conducted within 60 days prior to the date of exportation to the United States; and any individual cattle that had been added to the herd

must have tested negative to any individual tests for tuberculosis required by the Administrator. For sexually intact cattle from an accredited herd (a herd that has passed at least two consecutive annual official tuberculin tests and has no evidence of tuberculosis), the herd must have been certified as an accredited herd for tuberculosis within 1 year prior to the date of exportation to the United States. Sexually intact cattle not from an accredited herd must have originated from a herd of origin that tested negative to a whole herd test for tuberculosis within 1 year prior to the date of exportation to the United States. Each of these animals must also have tested negative to one additional official tuberculin test conducted no more than 6 months and no less than 60 days prior to the date of exportation to the United States, unless the animals are exported within 6 months of when the herd of origin tested negative to a whole herd test, in which case the additional test is not required. In addition, any individual cattle that had been added to the herd must have tested negative to any individual tests for tuberculosis required by the Administrator.

The higher level of risk of tuberculosis transmission associated with sexually intact cattle accounts for their more stringent regulatory treatment. Steers and spayed heifers are often imported as feeders and slaughtered before the age of 2 years. They usually graze with other feeders before being taken to feedlots and, subsequently, to slaughter. Sexually intact cattle, on the other hand, are typically imported for breeding purposes, and their average life span ranges from 7 to 12 years. The longer the life span of an animal, the greater the chances are that, if exposed to tuberculosis, it will contract the disease, develop generalized disease, and spread it to other animals. In addition, since bovine tuberculosis may be spread by nursing or aerosolization, an infected breeding cow may not only spread the disease to the other breeding cattle with which she is kept, but also to her offspring or the offspring of other breeding cattle.

Some imported steers and spayed heifers, however, have also been associated with higher levels of tuberculosis risk. Cattle with horn growth (*i.e.*, cattle that are not polled or dehorned; hereafter referred to as exhibition animals) may be used for exhibitions, rodeos, and roping and bulldogging practices. Cattle used for these purposes are more expensive than feeder animals and are often maintained longer. In addition, exhibition animals

are managed much differently than feeder animals. Exhibition animals are housed in or near arenas for rodeo events and practice sessions. When the season is over, these animals may be commingled with breeding animals or herds during the winter. This routine practice may be repeated over the course of 2 to 5 years. Consequently, exhibition animals have historically exhibited a significantly higher risk of spreading tuberculosis than have feeder cattle. It is our view that the risks presented by exhibition animals justify regulating their importation in a manner equivalent to the way we regulate sexually intact cattle.

In their current form, the regulations do not distinguish between steers and spayed heifers imported strictly as feeders and those whose horn growth may enable them to be used in exhibitions. Because steers or spayed heifers with horn growth are far more likely to be imported for use in exhibitions than those without horn growth, they may be associated with the additional risk factors described in the previous paragraph. Therefore, in order to offer greater protection to U.S. livestock herds against tuberculosis, we are amending the regulations in § 93.406(a)(2) to require that steers or spayed heifers intended for importation into the United States that have any evidence of horn growth meet the same tuberculosis testing requirements as sexually intact cattle imported into the United States. In addition, we are amending § 93.427(c)(3), which provides, among other things, for the detention at the U.S. port of entry of sexually intact cattle from Mexico until the cattle are tested for tuberculosis with negative results. Under this rulemaking, steers or spayed heifers from Mexico with any evidence of horn growth will also be subjected to this requirement.

Emergency Action

This rulemaking, which requires that steers and spayed heifers with any evidence of horn growth that are entering the United States meet the same tuberculosis testing requirements as sexually intact animals entering the United States, is necessary on an emergency basis to reduce the risk of imported cattle transmitting tuberculosis to domestic livestock in the United States. Under these circumstances, the Administrator has determined that there is good cause under 5 U.S.C. 553 for issuing this rule as an interim rule rather than by publishing a notice of proposed rulemaking. We are making this rule effective 30 days after publication in the

Federal Register to provide sufficient notice of the new requirements to Mexican animal health authorities and cattle exporters.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

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.

This interim rule amends the animal importation regulations in §§ 93.406 and 93.427 to require that steers and spayed heifers with any evidence of horn growth that are entering the United States meet the same tuberculosis testing requirements as sexually intact animals entering the United States. This action is necessary to reduce the risk of imported cattle transmitting tuberculosis to domestic livestock in the United States.

The cattle industry plays an important role in the U.S. economy. Cash receipts from sales of meat, animals, and milk totaled about \$65 billion in 2001.¹ Additionally, cattle and related product exports generated over \$3 billion in sales. Other agricultural and nonagricultural sectors are highly dependent on the cattle industry for their economic activity. Maintaining favorable economic conditions for U.S. agriculture depends, in part, on continued aggressive efforts to eradicate tuberculosis from the U.S. cattle population.

Historically, most U.S. imports of live cattle and calves have come from Canada and Mexico. The United States imported 2,502,973 live cattle and calves in 2002, which were valued at \$1,447 million. Of these, 1,686,508 were from Canada, and 816,460 were from Mexico.² Steers and spayed heifers that have horn growth and may be used for rodeo exhibitions are most likely to come to the United States from Mexico. In 2002, the number of steers from which roping steers were likely to be

¹ USDA/ERS, U.S. and State Farm Income Data/ Farm Cash Receipts, 1924–2001, Table 5—Cash Receipts, by Commodity groups and Selected Commodities, United States and States, 1997–2001. Revised July 23, 2002.

² USDA/ERS, Foreign Agricultural Trade of the United States, February 2003.

drawn totaled 747,069 or 91.5 percent of total imports from Mexico.³ Of this total, about 6 percent are believed to be roping steers.

This interim rule will result in an additional tuberculosis testing requirement for steers and spayed heifers with horn growth imported into the United States, entailing some additional costs for importers. The cost of tuberculin testing is between \$7.50 and \$10 per head. The weighted average price of an imported steer from Mexico, which is likely to be the source of most of the animals affected by this interim rule, in 2002 was \$364. The cost of the additional tuberculosis test represents about 2.4 percent of that value. If supply does not change as a result of the cost increase, U.S. importers will incur overall additional costs of between \$336,180 and \$549,000 annually. The exact impact of a 2.4 percent increase in cost on the supply of cattle from Mexico is unknown, but the possibility exists that the cost increase may decrease the supply of cattle from Mexico and increase lease fees and/or roping steer purchase prices.

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. Entities that may be affected by this interim rule include U.S. order buyers that import steers from Mexico and cow-calf operations that sell steers comparable in age and size to those imported from Mexico. The Small Business Administration (SBA) classifies cow-calf and stocker operations as small entities if their annual receipts are not more than \$750,000. There were 1,032,000 of these operations in the United States in 2002, and over 99 percent were considered small. This interim rule will also affect industries that purchase and lease roping steers for their shows. The number and size distributions of this industry are not available, but their sizes are likely to be small.

Additionally, as these animals retire from roping service, they are likely to be sold to feedlots, so some feedlots might also be affected. The SBA classifies cattle feedlots as small entities if their annual receipts are not more than \$1.5 million. There were 95,189 feedlots in the United States in 2002, of which about 93,000 (nearly 98 percent) had capacities of fewer than 1,000 head. Average annual receipts for these small feedlots totaled about \$35,300, a figure well below the SBA's small-entity

criterion. However, as of January 1, 2003, the remaining 2 percent of the Nation's feedlots, which had capacities of at least 1,000 head, held 82 percent of all U.S. cattle and calves on feed.

This interim rule may lead to increased costs for U.S. importers of roping steers and a decrease in the number of roping steers imported from Mexico. Any negative economic impacts for U.S. importers may be offset somewhat by the benefits that may accrue to U.S. cow-calf operations that sell or lease domestic roping steers if the price of those steers rises. In addition, if any increase in U.S. feeder cattle prices results from this rule, U.S. cow-calf and stocker domestic operations will gain from a stronger market.

The overall benefits to the U.S. livestock industry of reducing the risk of importing tuberculosis-infected cattle by requiring additional testing for steers and spayed heifers with horn growth are expected to be of far greater significance than any other economic impacts, whether positive or negative, of this interim rule.

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 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 new 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, we are amending 9 CFR part 93 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.

§ 93.406 [Amended]

■ 2. Section 93.406 is amended as follows:

- a. In paragraph (a)(2)(i), by adding the words “without evidence of horn growth (polled or dehorned)” after the word “heifers”.
- b. In paragraph (a)(2)(ii), by adding the words “and steers or spayed heifers with any evidence of horn growth” after the word “cattle”.
- c. In paragraph (a)(2)(iii), by adding the words “and steers or spayed heifers with any evidence of horn growth” after the words “intact cattle”.

§ 93.427 [Amended]

■ 3. In § 93.427, paragraph (c)(3) is amended by adding the words “and steers or spayed heifers with any evidence of horn growth” after the word “cattle”.

Done in Washington, DC, this 13th day of July, 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–16282 Filed 7–19–04; 8:45 am]

BILLING CODE 3410–34–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 36

Exempt Commercial Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) is promulgating final rules relating to electronic trading facilities that operate in reliance on the exemption in section 2(h)(3) of the Commodity Exchange Act (“the Act”). First, the Commission is amending Rule 36.3(b), which governs Commission access to information regarding transactions on such trading facilities, to provide for access to more relevant and useful information from all such markets. Second, the Commission

³ Source: Global Trade Information Services Inc., the World Trade Atlas—United States Edition, June 2003; APHIS/VIS Import Tracking System National Database.