

Dated: October 28, 2005.

Maureen Cooney,

Acting Chief Privacy Officer, Department of Homeland Security.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 05-041-1]

Importation of Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of cattle from Mexico by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States. A new facility for the handling of animals is to be constructed on the Mexican side of the border at the port of San Luis, AZ, that will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required for such cattle under the regulations. We would also amend the regulations to remove provisions that limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas and that prohibit the movement of such cattle into areas of Texas quarantined because of fever ticks. The statutory requirement that limited the admission of those cattle to the State of Texas has been repealed, and we believe that the current provisions of our domestic fever tick quarantine regulations will effectively address any risk of the spread of tick-borne diseases associated with the subsequent movement of imported cattle from the quarantined area of Texas. These proposed changes would make an additional port of entry available and relieve restrictions on the movement of imported Mexican cattle within the United States.

DATES: We will consider all comments that we receive on or before January 9, 2006.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box,

select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2005-0101 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 05-041-1, 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. 05-041-1.

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: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Arnaldo Vaquer, Senior Staff Veterinarian, National Center for Import and Export, Technical Trade Services Team, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-8364.

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; within subpart D, §§ 93.424 through 93.429 specifically address the importation of various ruminants from Mexico into the United States.

In § 93.426, paragraph (a) states that all ruminants offered for entry into the United States from Mexico must be inspected at the port of entry and found to be free from communicable diseases and fever tick infestation and to not have been exposed to communicable diseases and fever tick infestation. Ruminants found to be affected with or

to have been exposed to a communicable disease, or infested with fever ticks, are to be refused entry except as provided in § 93.427(b)(2).

Under § 93.427(b)(2), cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico for admission into the State of Texas, except that portion of the State quarantined because of fever ticks, either at one of the land border ports in Texas listed in § 93.403(c) of the regulations, or at the port of Santa Teresa, NM, provided that certain conditions are met. Those conditions are spelled out in paragraphs (b)(2)(i) through (b)(2)(v) of § 93.427.

In this document, we are proposing to amend § 93.427(b)(2) by:

- Removing the limitation that allows the imported cattle admission only into the State of Texas;
- Removing the limitation that prohibits the imported cattle from being moved into areas in Texas quarantined because of fever ticks; and
- Adding San Luis, AZ, as an additional port through which the cattle may be imported into the United States.

Each of these proposed changes is explained in more detail below.

Admission Only Into the State of Texas

The limitation that allows the imported cattle admission only into the State of Texas originated in statutory language (21 U.S.C. 104) that, prior to 1993, authorized the Secretary of Agriculture to permit "the admission into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom." However, in 1993, as part of the North American Free Trade Agreement (NAFTA) Implementation Act (Public Law 103-182), 21 U.S.C. 104 was amended to state more generally that the Secretary may permit the importation of cattle, sheep, or other ruminants, and swine from Canada and Mexico, effectively removing the restriction that prohibited cattle from moving into States other than Texas. The provisions of 21 U.S.C. 104 were subsequently repealed by the Animal Health Protection Act, which constitutes the Secretary's current authority and places no restrictions on the destination within the United States of cattle imported from Mexico.

Following the passage of the NAFTA Implementation Act, our permitting procedures were modified to allow cattle that had been infested with or exposed to fever ticks to be moved into States other than Texas under the conditions described in § 93.427(b)(2), but we did not make a corresponding

change in the regulations to reflect the removal of the statutory restriction. We are, therefore, proposing to make that change in this document. Given that cattle from Mexico that have been exposed to splenetic, southern, or tick fever or that have been infested with or exposed to fever ticks must meet the conditions listed in § 93.427(b)(2)(i) through (b)(2)(v) before entering the United States, the likelihood of these cattle introducing splenetic, southern, or tick fever into the U.S. cattle population is very low. Thus, we do not believe it is necessary to maintain the restriction in § 93.427(b) that limits the admission of those cattle to the State of Texas.

Quarantined Areas in Texas

Second, § 93.427 currently provides that cattle from Mexico may be imported into the State of Texas except into areas quarantined because of disease or tick infestation. These quarantined areas are listed in § 72.5. Once cattle enter the quarantined area, certain requirements must be met in order for the cattle to leave the quarantined area. If a quarantined area is not participating in a tick eradication program, the cattle must meet the conditions in § 72.6, while if a quarantined area is conducting tick eradication, the cattle must meet the conditions in § 72.7. These regulations require either inspection for ticks and certification or dipping and certification, which ensures that cattle moving from quarantined areas do not carry ticks that can transmit cattle fever. Because any cattle from Mexico that entered the quarantined area would have to meet the same conditions before leaving the quarantined area, we are proposing to remove the additional movement restriction and to allow cattle from Mexico to enter Texas' tick quarantine zone.

Addition of San Luis, AZ, as an Approved Port

The port of San Luis, AZ, is currently listed in § 93.403(c) among the land border ports designated as having the necessary inspection facilities for the entry of ruminants from Mexico. However, as noted previously, the regulations in § 93.427(b) provide that any cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported only through one of the border ports in Texas listed in § 93.403(c) or through the port of Santa Teresa, NM. We are proposing to amend § 93.427(b) to add San Luis, AZ, as a port through which such cattle may be imported.

A new commercial port of entry is to be constructed in San Luis, AZ, approximately 5 miles to the east of the current border crossing; the current crossing will be improved as well and will continue to be used for noncommercial crossings (passenger vehicles and pedestrians). The purpose of the project is to provide more direct access to major transportation routes between the United States and Mexico and to provide higher levels of service to users of the port of entry. As part of this project, the Mexican Government intends to construct facilities to make the movement of cattle from Mexico into the United States less logistically challenging for both exporters and importers.

Based on the information provided to us by the Mexican Government, the new cattle-handling facilities will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required under the regulations for cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases. We will coordinate, as necessary, with the Mexican Government during the construction of the new port facilities and will inspect the new cattle-handling facilities upon their completion to confirm that they are properly equipped to allow for the necessary chute inspection, dipping, and testing of cattle. Any final action on this proposal to add San Luis, AZ, to the list in § 93.427(b) of ports through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported from Mexico will be contingent upon our determination that the necessary facilities are in place.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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 proposed rule would amend the regulations regarding the importation of cattle from Mexico by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States and would remove provisions that (1) limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas and (2) prohibit the movement of such cattle into areas of Texas quarantined

because of fever ticks. These proposed changes would make an additional port of entry available and relieve restrictions on the movement of imported Mexican cattle within the United States.

The proposed changes in the regulations would benefit certain cattle operations in the United States by facilitating the importation of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases, mainly by reducing transport costs from the port of entry. At present, such cattle may enter the United States only at ports located in Texas and New Mexico. The proposed port of entry for these cattle at San Luis, AZ, would benefit cattle operations to the west of the current ports of entry; transport costs would be lower since the cattle would be moved over shorter distances.

Cattle from Mexico are usually purchased by stocker operations that graze the animals before they are shipped to feedlots. We do not know the number or size distribution of stocker operations (neither overall, nor for the subset of operations that may use the port at San Luis, AZ). According to the 2002 Census of Agriculture, it is reasonable to assume that most are small entities. This assumption is based on aggregate data for all beef producers in the United States. In 2002, there were 664,431 U.S. farms primarily engaged in raising beef cattle (North American Industrial Classification System [NAICS] code 112111, Beef Cattle Ranching and Farming). Of the 664,431 farms, 659,009 (99 percent) had annual receipts that year of less than \$500,000. The Small Business Administration's small entity threshold for farms classified within NAICS code 112111 is annual receipts of not more than \$750,000.

APHIS does not have information on the number of entities that may choose to import infested or exposed cattle using the San Luis, AZ, facilities, nor the cost savings that would be realized. We welcome information that the public may offer that would allow the Agency to better determine the number of enterprises that would be affected and the probable magnitude of their cost savings.

APHIS does not expect the proposed changes would result in a net increase in the number of cattle imported from Mexico. According to the chairman of the Greater Yuma Port Authority (San Luis, AZ), the average number of cattle from Mexico crossing at San Luis, AZ, over the past few years has been approximately 30,000 annually. With the addition of San Luis, AZ, as an

approved port for the importation of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases, 30,000 to 50,000 head of such cattle could potentially enter the United States through San Luis; these animals would most likely be animals that otherwise would enter through the existing approved ports in Texas and New Mexico. Any positive impacts of the proposed rule for small entities in the San Luis, AZ, area, such as an increased volume of business for firms that transport cattle, would be matched by business declines for firms operating from the Texas and New Mexico ports. There may also be positive effects at the Texas and New Mexico ports to the extent that the diversion of cattle to San Luis, AZ, would reduce operational delays when the demand for imports is beyond the capacity of the facilities; however, APHIS has no information on whether such periods of insufficient capacity have occurred, and if so, how frequently.

There are no significant alternatives to the proposed rule. The Mexican Government has requested that a port be established on the Mexico-Arizona border for the entry into the United States of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases. APHIS has determined that with the construction of new facilities at the port of San Luis, AZ, this request can be satisfied.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed 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, we propose to amend 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 would continue 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.

2. In § 93.427, the introductory text of paragraph (b)(2) would be revised to read as follows:

§ 93.427 Cattle from Mexico.

* * * * *

(b) * * *

(2) Cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico at one of the land border ports in Texas listed in § 93.403(c) or at the ports of Santa Teresa, NM, or San Luis, AZ, provided that the following conditions are strictly observed and complied with:

* * * * *

Done in Washington, DC, this 3rd day of November 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–22337 Filed 11–8–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–271–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration, Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 series airplanes, that would have required inspecting the pilot's and co-pilot's seat tracks for proper locking of the seats, and adjusting or replacing the seat tracks, if necessary. This new action revises the proposed rule by revising the applicability statement, and requiring replacement of the seat locking pin on certain SICMA-brand seats. The actions specified by this new proposed AD are intended to prevent uncommanded movement of the pilot's or co-pilot's seat, which could interfere with the operation of the airplane and consequent temporary loss of airplane control. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 5, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–271–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain “Docket No. 2003–NM–271–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such