

# Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 93

[Docket No. APHIS-2016-0050]

RIN 0579-AE38

#### Branding Requirements for Bovines Imported Into the United States From Mexico

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding the branding of bovines imported into the United States from Mexico. We are taking this action at the request of the Government of Mexico to address issues that have arisen with the branding requirement for these bovines. The changes we are proposing would help prevent inconsistencies in branding that can result in bovines being rejected for import into the United States.

**DATES:** We will consider all comments that we receive on or before June 11, 2018.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0050>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2016-0050, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0050> or in our reading room, which 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) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Betzaida Lopez, Senior Staff Veterinarian, National Import Export Services, Policy, Permitting, and Regulatory Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 851-3300.

#### 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 93.436, referred to below as the regulations) governs the importation of ruminants; within subpart D, § 93.427 specifically addresses the importation of cattle and other bovines from Mexico into the United States.

In § 93.427, paragraph (c) contains conditions to prevent the spread of tuberculosis to U.S. livestock and paragraph (e) contains conditions to prevent the entry of bovine spongiform encephalopathy (BSE) via the importation of cattle and other bovines from Mexico. Under paragraph (c)(1), steers imported into the United States must be identified with a distinct, permanent, and legible "M" mark, and spayed heifers must be identified with a distinct, permanent, and legible "Mx" mark, applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry. The brands must not be less than 2 inches or more than 3 inches high, and must be applied to the animal's right hip, high on the tailhead (over the junction of the sacral and first coccygeal vertebrae).

Under paragraph (e)(3), sexually intact bovines must be permanently and humanely identified using one of the following methods:

- An "MX" mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry. The brand must not be less than 2 inches or more than 3 inches high, and must be applied to the animal's right hip, high on the tailhead (over the junction of the sacral and first coccygeal vertebrae);

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- A tattoo with the letters MX applied to the inside of one ear of the animal; or
- Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from Mexico.

Several issues have arisen as a result of the branding requirements. The small size of the brands means that the brands may blotch when applied to the animals, making the brands difficult to read and potentially requiring the animal to be re-branded. In addition the "Mx" brand required for spayed heifers and the "MX" brand for sexually intact cattle can be easily confused, resulting in doubt over whether animals have been correctly branded and in some cases causing them to be rejected for importation at the ports. The Government of Mexico has requested that we modify the requirements to address these issues.

Accordingly, we are proposing to amend the requirements in § 93.427. In paragraph (c)(1), we would require steers and spayed heifers to be marked with a single "M" brand between 3 and 5 inches (7.5 and 12.5 cm) tall and wide to be placed on the right hip within 4 inches (10 cm) of the midline of the tailhead. This should be interpreted as the top of the brand being within 4 inches of the midline of the tailhead and placed above the hook and pin bones. The brand should also be within 18 inches (45.7 cm) of the anus.

Increasing the size of the brands and simplifying them to a simple "M" would help reduce or eliminate branding errors, which in turn would reduce the need for rebranding and the incidence of cattle rejections at port-of-entry inspection. The change to the description of the placement of the brand clarifies the requirement by making the description more specific.

Similarly, in paragraph (e)(3)(i) we would amend the branding option for sexually intact bovines from Mexico to provide for those animals to be branded with a single "M" brand between 3 and 5 inches (7.5 and 12.5 cm) tall and wide, located on the upper right front shoulder of the animal.

As with the change for steers and spayed heifers, increasing the size of the brand for sexually intact animals would reduce or eliminate branding errors.

Changing the placement of the brand for sexually intact bovines from the hip to the shoulders would allow steers and spayed heifers to be visually distinguished from breeding cattle while allowing the use of the simplified brand for both categories of animals. We are not proposing to change the tattoo option for sexually intact bovines in paragraph (e)(3)(ii) because the MX tattoo has not posed a problem with confusion or errors as the brands have.

#### **Executive Orders 12866 and 13771 and Regulatory Flexibility Act**

This proposed 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. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action may result in cost savings.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

This proposed rule would amend the regulations in 9 CFR part 93 to change the identification requirements of bovines imported from Mexico. At present, cattle from Mexico carry at least two forms of identification, generally a brand and an approved eartag. Cattle imported from Mexico for other than immediate slaughter, are required to be branded with an "M" for steers, an "Mx" for spayed heifers, and an "MX" brand or tattoo for breeding bovines. APHIS is proposing that all bovines imported from Mexico be branded with a single "M" to avoid branding uncertainties. In order to distinguish between feeder and breeding cattle, the brand for steers and spayed heifers would be placed on the back hip and the brand for breeding cattle would be placed on the shoulder. Cattle imported from Mexico would still require an approved eartag.

The new identification requirements would reduce if not eliminate questionable brands, reducing the need for rebranding and the incidence of cattle rejections at port-of-entry inspection. Revenue from hides accounts for about 75 percent of the byproduct-value of beef cattle. Damage from rebranding can reduce hide value. Also, re-inspection due to questionable

brands increases transactions costs. Currently, a \$4.00 inspection fee per head is billed to the broker who in turn charges the exporter. The single "M" brand would both minimize hide damage and the need for re-inspections. Because the approved eartag is a current requirement, we do not anticipate any additional costs would be incurred.

Entities that may be impacted by the proposed rule fall into various categories of the North American Industry Classification System. The majority of these businesses are small entities.

Based on a sample of the percentage of cattle in fiscal year 2015 that initially were not allowed entry from Mexico because of branding concerns, the decrease in the value of hides when rebranded, and the cost of re-inspection, we estimate annual cost savings attributable to the proposed rule may range from \$113,900 to \$248,700. There would also be unquantified cost savings from the expected reduction in delays at ports of entry due to branding issues. In accordance with guidance on complying with Executive Order 13771, the primary estimate of the cost savings for this rule is \$181,300. This value is the mid-point of the above range in cost savings annualized in perpetuity using a 7 percent discount rate.

#### **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 inconsistent 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**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements included in this proposed rule are approved by the Office of Management and Budget under control number 0579-0040.

#### **E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information

Collection Coordinator, at (301) 851-2483.

#### **List of Subjects in 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, FISH, 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.

■ 2. Section 93.427 is amended by revising paragraphs (c)(1) and (e)(3)(i) to read as follows:

##### **§ 93.427 Cattle and other bovines from Mexico.**

\* \* \* \* \*

(c) \* \* \*

(1) Each steer or spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible "M" mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the steer or spayed heifer is imported for slaughter in accordance with § 93.429. The "M" mark shall be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and shall be applied to each animal's right hip, within 4 inches (10 cm) of the midline of the tailhead (that is, the top of the brand should be within 4 inches (10 cm) of the midline of the tailhead, and placed above the hook and pin bones). The brand should also be within 18 inches (45.7 cm) of the anus.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) An "M" mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and must be applied to the upper right front shoulder of each animal; or

\* \* \* \* \*

Done in Washington, DC, this 9th day of April 2018.

**Kevin Shea,**  
*Administrator, Animal and Plant Health Inspection Service.*  
[FR Doc. 2018-07585 Filed 4-11-18; 8:45 am]  
**BILLING CODE 3410-34-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR 17

[Docket No. FWS-R3-ES-2018-0005;  
FXES11130900000]

**RIN 1018-BC01**

### Endangered and Threatened Wildlife and Plants; Removing the Kirtland's Warbler From the Federal List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to remove the Kirtland's warbler (*Setophaga kirtlandii*) from the Federal List of Endangered and Threatened Wildlife (List) due to recovery. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to the species have been eliminated or reduced to the point that the species has recovered and no longer meets the definition of endangered or threatened under the Act.

**DATES:** We will accept comments received or postmarked on or before July 11, 2018. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 29, 2018.

**ADDRESSES:** *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R3-ES-2018-0005, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R3-ES-2018-0005, U.S. Fish and Wildlife Service,

MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

**Document availability:** This proposed rule and supporting documents are available on <http://www.regulations.gov>. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Michigan Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823; telephone 517-351-2555.

**FOR FURTHER INFORMATION CONTACT:** Scott Hicks, Field Supervisor, Michigan Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823; telephone 517-351-2555; facsimile 517-351-1443. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

##### Purpose of Regulatory Action

This action proposes to remove the Kirtland's warbler from the Federal List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)) based on the species' recovery. Removing a species from the List ("delisting") can only be completed by issuing a rule.

##### Basis for Action

We may delist a species if the best scientific and commercial data indicate the species is neither an endangered species nor a threatened species for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered; or (3) the original data used at the time the species was classified were in error (50 CFR 424.11). Here, we have determined that the species may be delisted based on recovery. A species may be delisted based on recovery only if the best scientific and commercial data indicate that it is no longer endangered or threatened.

The threats that led to the species being listed under the Act (primarily loss of the species' habitat and effects of brood parasitism by brown-headed cowbirds) have been removed, ameliorated, or are being appropriately managed by the actions of multiple conservation partners over the past 50 years.

## Information Requested

### Public Comments

Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning this proposed rule. The comments that will be most useful and likely to influence our decisions are those supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

(1) Reasons we should or should not delist the Kirtland's warbler.

(2) New information on the historical and current status, range, distribution, and population size of the Kirtland's warbler.

(3) New information on the known and potential threats to the Kirtland's warbler on its breeding grounds, on its wintering grounds, and during migration, including brood parasitism, and habitat availability.

(4) Information on the timing and extent of the effects of climate change on the Kirtland's warbler.

(5) New information regarding the life history, ecology, and habitat use of the Kirtland's warbler.

(6) Current or planned activities within the geographic range of the Kirtland's warbler that may impact or benefit the species.

(7) The adequacy of conservation agreements that would be implemented if the species is delisted.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such