

In an interim rule effective and published in the **Federal Register** on January 5, 2004 (69 FR 247–249, Docket No. 03–082–1), we amended the regulations to add a field in Steuben County, NY, to the list of generally infested regulated areas. This action was necessary to prevent the artificial spread of golden nematode to noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending March 5, 2004. We did not receive any comments. However, after the interim rule was published, we noted an editorial error in the regulations. Specifically, the regulations at § 301.85(b)(6)(iii) incorrectly reference the location of certain treatment requirements for Irish potatoes harvested from a field where golden nematode is present. In this final rule, we are correcting that reference.

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

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, the interim rule amending 7 CFR part 301 that was published at 69 FR 247–249 on January 5, 2004, is adopted as a final rule with the following change:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

#### § 301.85 [Amended]

■ 2. In § 301.85, paragraph (b)(6)(iii) is amended by removing the words “paragraph (b)(6)(ii)(A), (B), or (C)” and adding the words paragraph (b)(6)(iii)(A), (B), or (C)” in their place.

Done in Washington, DC, this 14th day of April, 2004.

**Kevin Shea,**

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

[FR Doc. 04–8895 Filed 4–19–04; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 93

[Docket No. 99–071–3]

#### Cattle From Australia and New Zealand; Testing Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations regarding the importation of cattle to exempt cattle imported from Australia and from New Zealand from testing for brucellosis prior to their export to the United States. We have determined that the testing of cattle imported from Australia and New Zealand for brucellosis is not necessary to protect livestock in the United States from the disease. This action relieves certain testing requirements for cattle imported from Australia and New Zealand while continuing to protect against the introduction of communicable diseases of cattle into the United States.

**EFFECTIVE DATE:** April 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anne Goodman, Supervisory Staff Officer, Regionalization and 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 93 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including brucellosis and tuberculosis. Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. In its principal animal hosts, brucellosis may cause abortion and impaired fertility. Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other

species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, lymph nodes, and other body parts, causes weight loss and general debilitation, and can be fatal.

Paragraph (a) of § 93.406 includes procedures for the importation of cattle from other parts of the world into the United States. This paragraph details tuberculosis and brucellosis testing and certification requirements for all cattle offered for importation from any part of the world, except those intended for immediate slaughter.

On April 20, 2001, we published in the **Federal Register** (66 FR 20211–20213, Docket No. 99–071–1) a proposal to amend the regulations by exempting cattle from Australia and New Zealand from testing for brucellosis prior to their export to the United States, and by exempting cattle from Australia from testing for tuberculosis prior to their export to the United States. These proposed changes were based on requests from Australia and New Zealand. In accordance with the provisions of 9 CFR part 92 for requesting recognition of the animal health status of a country or other region, when Australia and New Zealand requested exemption from the brucellosis testing requirements and Australia from the tuberculosis testing requirements, both countries submitted extensive documentation to the Animal and Plant Health Inspection Service (APHIS) that included information regarding disease history and control, livestock demographics and marketing practices, surveillance, and veterinary policies and infrastructure. The information was considered in assessing the disease risk of importing live cattle from those two countries under the conditions of the proposed rule and documented Australia and New Zealand's freedom from the diseases in question. (The information submitted by Australia and New Zealand, along with the risk assessment, may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet at <http://www.aphis.usda.gov/vs/ncie/reg-request.html>.)

Following publication of the proposed rule, however, we were made aware of two outbreaks of tuberculosis that had occurred in Queensland, Australia, after we had completed our risk assessment. In order to take these outbreaks into account, we are conducting an updated assessment of the risk of tuberculosis from cattle imported from Australia and are not making final in this document our proposed provisions to exempt cattle from Australia from tuberculosis

testing. We intend to make the results of our updated assessment available to the public and to allow for public comment on the results of that assessment. We will then address any comments we receive on the updated assessment in a document to be published in the **Federal Register**. In addition to addressing comments we receive on our updated risk assessment in that document, we will address all comments we received regarding tuberculosis testing in Australia in response to our April 2001 proposed rule. In this final rule, therefore, we address only those issues raised by commenters that concern subjects other than tuberculosis testing in Australia.

We solicited comments concerning our April 2001 proposal for 60 days ending June 19, 2001. On June 4, 2001, we published in the **Federal Register** (66 FR 29921, Docket No. 99-071-2) a notice announcing that we would host a public hearing in Riverdale, MD, on June 19, 2001, to give the public an opportunity for the oral presentation of data, views, and arguments regarding the proposed rule. We received two written comments on the proposal by the June 19, 2001, close of the comment period and one oral comment at the public hearing. The comments were from representatives of a State animal health commission, an organization of research councils, and a cattle industry association. We discuss the comments below by topic.

One commenter said that testing requirements for cattle to be imported into the United States should not be reduced or eliminated until APHIS has independently verified the validity of documentation regarding the health of the livestock in the exporting region.

We are making no changes based on this comment. We are confident of the validity of brucellosis reporting in Australia and New Zealand. Brucellosis is notifiable in Australia and New Zealand to the national government animal health officials.

One commenter requested that, during quarantine in the United States, cattle from Australia and New Zealand be tested by APHIS for brucellosis to verify that the information provided by the exporting governments or entities is accurate.

In considering the import requests from Australia and New Zealand, we assessed the legal authority and veterinary infrastructure and organization of those countries, and determined them to be effective in recognizing, responding to, and giving notice of disease occurrences, and in providing reliable certification of the health status and testing history of

animals intended for exportation. We accept the same type of official certification from Australia and New Zealand that those and other countries accept from the United States. Therefore, we believe that there is no need to conduct testing once the cattle arrive in the United States, and we are making no changes based on the comment.

One commenter stated that the data used in the risk assessment for Australia and New Zealand were from 1988 and 1989. The commenter asked whether there were more recent data available regarding disease surveillance in those countries.

There have been no reported diagnoses of brucellosis in Australia and New Zealand since the risk assessments were completed.

One commenter asked whether, in assessing the need for the tests to be required or not required, any distinction was made between those cattle that would ultimately move into slaughter channels and those that would go into the breeding herd.

When we conducted our risk assessments, no outbreaks of brucellosis had been reported in either New Zealand or Australia since 1989. (The statement in the risk assessment for cattle from Australia indicating the most recent outbreak there was in 1990 should read "1989" instead.) That information and the other data available to us, as discussed in our risk assessment, indicated cattle could be safely imported into the United States without testing for brucellosis. Likewise, we would not expect a trading partner to require that U.S. cattle intended for export be tested for a disease that had not been reported in the United States for more than 10 years.

One commenter stated there is no way to guarantee the health status of animals shipped through Australia or New Zealand from other countries for export to the United States.

The concern raised by the commenter is addressed by a number of safeguards. By protocol, we will not consider an animal that is moved into Australia or New Zealand to be part of the national herd of the country until 60 days following its release from all import quarantine restrictions in those countries, except that the waiting period is 90 days for offspring of animals or germplasm legally imported into Australia or New Zealand from a region not recognized by APHIS as being free of foot-and-mouth disease and rinderpest. With regard to the brucellosis status of animals moved into Australia or New Zealand, both of those

countries have safeguards in place to ensure that animals imported from other countries are not affected by the disease.

New Zealand requires that all live cattle intended for export to that country have been resident in herds negative for brucellosis for at least 12 months prior to going into pre-export isolation at a facility managed by the national veterinary authority of the exporting country. Australia's quarantine regulations require that imported cattle originate from a herd or region recognized as free of brucellosis according to the standards of the World Organisation for Animal Health (also known as OIE).

One commenter recommended requiring permanent identification of cattle coming into the United States, particularly breeding animals.

We agree there would be benefits to establishing an identification plan for cattle entering the United States, as well as for domestic cattle, and are in the process of developing such a plan.

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 in this document.

#### **Effective Date**

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule will provide relief to those persons who are adversely affected by testing requirements we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

#### **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.

Exempting cattle imports from Australia and New Zealand from brucellosis testing will reduce costs for exporters of cattle from these two countries to the United States. Impacts for U.S. entities will depend on the number of cattle exported to the United States, the cost savings per animal, and what portion of these savings may be passed on to U.S. buyers through lower prices.

To date, there have been no recorded imports of cattle from New Zealand.

Cattle imports by the United States from Australia have been minimal, as reflected by data for the last 5 years. Trade statistics divide cattle into two groups—purebred and not purebred. Purebred cattle imported from Australia numbered only 17 head in 1998 and 21 head in 1999. None were imported in 2000, 2001, or 2002. The small numbers imported in 1998 and 1999 represented only 0.4 percent of U.S. imports of purebred cattle in those 2 years.

The number of not purebred cattle imported from Australia averaged fewer than eight animals per year from 1998 through 2002. Given that annual total U.S. imports of not purebred cattle over this 5-year period averaged more than 2.2 million per year, the number that came from Australia is negligible. Because the United States has not imported cattle from New Zealand, we do not have comparable statistics for that country.

While these numbers are very small, the average value of cattle imported from Australia has been much higher than the value of imported cattle generally. For purebred cattle from Australia, the average value was \$5,082 per head, compared to an average value for all purebred cattle imports of \$1,051. For not purebred cattle from Australia, the average value was \$3,083 per head, compared to an average value for all not purebred cattle imports of \$556.

It is unlikely the number of cattle imported from Australia will be affected by removing testing requirements for brucellosis. Brucellosis testing costs, assumed to range between \$7.50 and \$15 per head including veterinary fees and handling expenses, represent from 0.15 percent to 0.30 percent of the value of purebred cattle imported from Australia in 1998 and 1999, and from 0.24 percent to 0.49 percent of the value of not purebred cattle imported from Australia from 1998 through 2002.

A small cost savings will be realized by exporters of Australian cattle for a negligible number of animals, if quantities imported in recent years continue into the future. Cost savings of such small proportion are not expected to affect the number of Australian cattle offered for export to the United States. Any benefit realized by U.S. buyers of cattle from Australia will be negligible as well. If cattle are imported from New Zealand, impacts of this rule for U.S. buyers are expected to be similarly negligible.

As a part of the rulemaking process, APHIS evaluates whether regulations will have a significant economic impact on a substantial number of small entities. If any entities are affected by this rule, they will likely be U.S. cattle

operations, nearly all of which are small entities. According to the 1997 Census of Agriculture, over 99 percent of farms with cattle sales had annual receipts that did not exceed \$750,000, the small-entity criterion set by the Small Business Administration (SBA).

It is unlikely high-valued cattle imported from Australia would be destined for slaughter. Nonetheless, it is noted that feedlots that could purchase the cattle may or may not be small entities. 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, about 93,000 (nearly 98 percent) of which had capacities of fewer than 1,000 head and can be considered small entities. However, the 2 percent of the Nation's feedlots that have capacities of at least 1,000 head held 82 percent of all cattle and calves on feed on January 1, 2003. These larger feedlots have average annual receipts of over \$9 million, well above the small-entity criterion.

In any case, the rule will have little, if any, impact on U.S. entities, large or small. Brucellosis testing exemptions will result in small cost savings for exporters of cattle from Australia or New Zealand. The rule is not expected to affect the negligible number of cattle imported from Australia or cause cattle to be imported from New Zealand for the first time.

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 proposed 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 final 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 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.

■ 2. Section 93.406 is amended as follows:

■ a. In the introductory text of paragraph (a), in the first sentence, the words “in paragraph (d) of this section and” is added immediately after the words “Except as provided”.

■ b. A new paragraph (d) is added to read as follows:

#### § 93.406 Diagnostic tests.

\* \* \* \* \*

(d) *Testing exemptions.* Cattle from Australia and New Zealand are exempt from the brucellosis testing requirements of paragraph (a)(1) of this section.

Done in Washington, DC, this 14th day of April, 2004.

**Kevin Shea,**

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 94 and 98

[Docket No. 98–090–7]

RIN 0579–AB03

### Classical Swine Fever Status of France and Spain

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning the importation of animals and animal products to recognize France and Spain as regions in which classical swine fever (CSF) is not known to exist, and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions, in the absence of restrictions associated with other foreign animal diseases of swine. This rulemaking will ensure that breeding swine, swine