

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Oriental fruit fly regulations by removing the Santa Ana area of Orange County, CA, from the list of quarantined areas. This action also removes restrictions on the interstate movement of regulated articles from that area.

County records indicate that there are 11 farmers markets, 15 fruit sellers, 4 growers, 2 nurseries, 14 swapmeets, 1 mobile vendor, and 1 yard maintenance company within the area that has been quarantined. We expect that the effect of this interim rule on those businesses, all of which are small entities, will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in Orange County, CA, had little effect on the small entities in the area, the lifting of the quarantine in this interim rule will also have little effect.

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.)

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 information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

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

■ 2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Oriental fruit fly.

Done in Washington, DC, this 18th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–14163 Filed 7–20–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2007–0097]

Brucellosis in Cattle; State and Area Classifications; Idaho

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Idaho from Class A to Class Free. We have determined that Idaho meets the standards for Class Free status. This

action relieves certain restrictions on the interstate movement of cattle from Idaho.

DATES: This interim rule is effective July 23, 2007. We will consider all comments that we receive on or before September 21, 2007.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2007–0097 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0097, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0097.

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. Debbi A. Donch, Senior Staff Veterinarian, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5952.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States

according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class A and Class B fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percentage of all brucellosis reactor cases found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Idaho was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the consecutive 12-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

The last brucellosis-infected cattle herd in Idaho was depopulated in December 2005. Since then, no brucellosis-affected herds have been detected.

After reviewing the brucellosis program records for Idaho, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Idaho from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Idaho.

Immediate Action

Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Idaho. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Brucellosis is a contagious, costly disease of ruminants and other animals that can also affect humans. It is mainly a threat to cattle, bison, and swine. The disease causes decreased milk production, weight loss in animals, loss of young, infertility, and lameness. There is no known effective treatment. Depopulation of infected and exposed animals is the only effective means of disease containment and eradication.

The State of Idaho has met the requirements for obtaining Class Free status as outlined in the definition of "Class Free State or area" in § 78.1 of the regulations. This interim rule upgrades the brucellosis status of Idaho from Class A to Class Free. Cattle and bison that are to be moved interstate from Class A States, except those moving directly to slaughter or to quarantined feedlots, must be tested before they are eligible for movement.

Attaining Class Free status allows producers in Idaho to forgo this cost.

Brucellosis testing, including veterinary fees and handling expenses, costs about \$7.50 to \$15 per test. The expenses forgone as a result of this reclassification in status will not be significant for cattle and calves owners in Idaho. On January 1, 2005, there were 10,600 cattle and calves operations in Idaho with a total inventory of approximately 2.07 million head of cattle. The average per-head value of cattle in Idaho was \$1,080 in 2005. Thus, the cost of testing would represent between 0.6 and 1.3 percent of the average value of the animals sold. Upgrading the State to brucellosis Class Free status will result in a small savings for those entities moving cattle interstate other than directly to slaughter or to quarantined feedlots.

The Small Business Administration has established standards for determining whether an entity is considered small under the Regulatory Flexibility Act. An enterprise producing cattle and calves is considered small if it has annual receipts of \$750,000 or less. There were 10,600 farms with sales of cattle and calves in Idaho in 2005. Over 96 percent of these farms had annual receipts not exceeding \$750,000.

In sum, we expect that the majority of cattle and calves operations that will be affected by the interim rule are small entities. The interim rule will benefit producers that sell cattle and calves out of State for breeding and feeding purposes. However, the savings from the forgone testing will be very small, estimated to be about 0.6 and 1.3 percent of the value of the animals sold.

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.)

Executive Order 12988

This interim 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

This interim 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 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

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

§ 78.41 [Amended]

■ 2. Section 78.41 is amended as follows:

■ a. In paragraph (a), by adding the word “Idaho,” immediately after the word “Hawaii,”.

■ b. In paragraph (b), by removing the words “Idaho and”.

Done in Washington, DC, this 18th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–14175 Filed 7–20–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. APHIS–2006–0147]

RIN 0579Z–AC26

Cattle for Export; Removal of Certain Testing Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the livestock exportation regulations to eliminate the requirement for pre-export tuberculosis and brucellosis testing of certain cattle being exported to countries that do not require such testing. This action will facilitate the exportation of certain cattle by eliminating the need to conduct pre-export tuberculosis and brucellosis testing when the receiving country does not require such testing.

EFFECTIVE DATE: August 22, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Antonio Ramirez, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, “Inspection and Handling of Livestock for Exportation” (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.5 requires, among other things, that cattle intended for exportation be tested for tuberculosis and brucellosis prior to export.

On January 10, 2007, we published in the **Federal Register** (72 FR 1192–1195, Docket No. APHIS–2006–0147) a proposal¹ to amend the regulations by eliminating the requirement for pre-export tuberculosis and brucellosis testing of certain cattle being exported to countries that do not require such testing. Under its Restricted Feeder Cattle Program, Canada allows the importation of certain U.S. cattle without testing for tuberculosis and brucellosis, but our regulations required that these cattle be tested for these diseases. Thus, the proposal was intended both to relieve restrictions on U.S. cattle that are exported to Canada under this program and to ensure that, if other countries receiving exports of U.S. cattle suspend or remove their requirements that U.S. cattle be tested for tuberculosis or brucellosis, U.S. exporters of cattle would receive the full benefits of no longer being required to perform such tests.

We solicited comments concerning our proposal for 60 days ending March 12, 2007. We received 8 comments by that date. They were from producers, exporters, and other private citizens. Two of the comments were entirely supportive. The remaining comments are discussed below.

One commenter stated that it is the United States’ responsibility to protect the health and welfare of the people of foreign nations and that testing cattle exported from the United States would help to accomplish this goal.

We proposed to remove the testing requirement for exported cattle only when testing is not required by the receiving country. Thus, a country receiving U.S. cattle would have to determine that waiving any tuberculosis

and brucellosis testing requirements for U.S. cattle would not be detrimental to its citizens’ health and welfare before we would allow any cattle to be exported to that country without testing.

One commenter opposed the proposal on the grounds that the existing exemptions to the testing requirements in the regulations are adequate.

As we discussed in the proposed rule, we do not believe that the current exemptions are adequate. For example, cattle exported to Canada under the Restricted Feeder Cattle Program are still required under our regulations to be tested for tuberculosis and brucellosis, even though Canada does not require such testing. Paragraph (b) of § 91.3 states that the Administrator may, upon request of the appropriate animal health official of the country of destination, waive the tuberculosis and brucellosis tests referred to in §§ 91.5(a) and (b) of the regulations when he finds such tests are not necessary to prevent the exportation of diseased animals from the United States. However, this provision does not allow us to relieve the testing requirement for cattle exported under the Restricted Feeder Cattle Program, as Canadian animal health officials would have to request each time cattle are exported that the brucellosis and tuberculosis tests not be administered. A more general exemption from the testing requirement is necessary to cover all situations in which U.S. cattle may be exported to countries that do not require them to be tested for tuberculosis or brucellosis.

One commenter stated that the testing of cattle at export for tuberculosis and brucellosis is done only to increase agricultural profits. This commenter also stated that no cattle should be exported.

APHIS tests cattle upon export to help prevent the spread of disease and to facilitate exports in accordance with our responsibilities under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*). We have no statutory authority to regulate the movement of livestock except as it relates to preventing the introduction or spread of animal diseases.

One commenter asked that we relieve testing restrictions for cattle exported to Mexico as well.

The testing requirement will be relieved for exports of cattle to any country that does not require testing of cattle for tuberculosis and brucellosis when they are exported from the United States. Negotiations with other countries to establish export agreements under which testing for tuberculosis and brucellosis is not required will be conducted separately. Once we have

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0147>.