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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 94-047-1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of New York from a modified accredited State to an accredited-free State. We have determined that New York meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective on June 6, 1994. Consideration will be given only to comments received on or before August 5, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94-047-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal

Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is part of the regulations via incorporation by reference in part 77. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years in order to be designated as an accredited-free State.

Before publication of this interim rule, New York was designated in § 77.1 of the regulations as a modified accredited State. However, New York now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing New York from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted, as New York currently meets the criteria for designation as an accredited-free State. This action provides prospective cattle

and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the Federal Register. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

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

There are approximately 21,000 cattle herds in New York, with a total of about 1,560,000 cattle. An estimated 90 percent of these herds are owned by small entities. Changing the status of New York may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

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 12778

This rule has been reviewed under Executive Order 12778, 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 document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for *Modified accredited state*, paragraph (2) is amended by removing "New York,".

§ 77.1 [Amended]

3. In § 77.1, in the definition for *Accredited-free states*, paragraph (2) is amended by adding "New York," immediately after "New Jersey,".

Done in Washington, DC, this 31st day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13652 Filed 6-3-94; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Part 92

[Docket No. 94-032-1]

Importation of Brushtail Possums and Hedgehogs From New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal importation regulations to prohibit the importation of brushtail possums and hedgehogs from New Zealand. This action is necessary to prevent the

introduction of tuberculous animals into the United States. The intended effect is to protect domestic livestock from this disease.

DATES: Interim rule effective May 31, 1994. Consideration will be given only to comments received on or before August 5, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94-032-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import and Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:**Background**

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation into the United States of certain animals and birds to prevent the introduction of communicable livestock and poultry diseases, including bovine tuberculosis.

Bovine tuberculosis is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Bovine tuberculosis (referred to below as TB) causes weight loss, general debilitation, and sometimes death. This disease manifests itself as lung disease or draining, nonhealing abscesses, or both. It is generally transmitted by breathing in respiratory excretions from infected animals or drinking infected milk from infected animals.

New Zealand has reported that TB is endemic in the brushtail possum (*Trichosurus vulpecula*). These possums are a constant source of disease for the domestic livestock population of New Zealand. Based upon information received from the New Zealand Ministry of Agriculture and Fisheries and information available in scientific literature, we recently prepared a risk assessment regarding the importation of brushtail possums from New Zealand

into the United States. This risk assessment indicates that 45.8 percent (range 7.2 percent to 67.4 percent) of consignments of imported brushtail possums (generally imported in 4 consignments of 12 animals each) would contain 1 or more possums infected with *Mycobacterium bovis*. Additionally, there is no recognized test for detecting TB in brushtail possums. These factors present a significant risk that TB-infected brushtail possums from New Zealand could be imported into the United States.

Because hedgehogs from New Zealand occupy the same habitat and geographical areas as the brushtail possums, there is some risk that hedgehogs could contract TB from TB-infected possums. Also, as with the brushtail possums, there is no recognized test for detecting TB in hedgehogs. These factors present an unacceptable risk that TB-infected hedgehogs from New Zealand could be imported into the United States.

There have been a number of importations of brushtail possums and hedgehogs from New Zealand into the United States. Both these animals could likely survive and thrive in the wild in much of the United States. If infected with *Mycobacterium bovis* and allowed to roam freely, these animals could disseminate the TB organism over range and pasture land. Consuming grass contaminated with the TB organism by TB-infected brushtail possums is the major mode of TB infection in cattle in New Zealand. To prevent a similar situation in the United States, we are amending the regulations by adding a new subpart G to prohibit the importation of brushtail possums and hedgehogs from New Zealand into the United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of TB into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive

and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule prohibits the importation of brushtail possums and hedgehogs from New Zealand into the United States. These animals are imported as pets, for animal exhibitions, and for petting zoos.

Regulating the importation of certain animals that pose a disease risk to livestock in the United States is a continuing program. Discontinuing the importation of brushtail possums and hedgehogs from New Zealand will have no significant cost impacts, but it will produce a benefit by helping to protect domestic livestock from this disease.

The incidence of TB in domestic cattle remains relatively small; however, it has increased slightly in the past several years. Most of the incidences have occurred in States that share a border with Mexico. Mexican-origin cattle accounted for 83 percent of all TB lesions disclosed at slaughter in 1992. There are very few cases of TB in the rest of the country.

The inventory of all cattle and calves in the United States is estimated at 101.7 million head, with an estimated value of almost \$67 billion. Nationwide, there are approximately 1.2 million operations with cattle and calves, according to USDA data.

The economic impact on the domestic cattle industry if TB-infected brushtail possums and hedgehogs from New Zealand were imported into the United States would be severe. The annual costs in New Zealand for possum damage (for example, damage to the environment and bovine TB attributable to the brushtail possum), disease surveillance, control and research probably exceed \$20 million.

According to the Fish and Wildlife Service, there are probably two known importers of brushtail possums and hedgehogs from New Zealand. These importers would be considered small entities under the Small Business Administration criteria. Although the Fish and Wildlife Service could not provide data on the actual number of imported brushtail possums and hedgehogs imported from New Zealand into the United States by these importers, the Service has stated that these animals represent a very small percent of the total number of animals

imported into the United States by these importers.

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 12778

This rule has been reviewed under Executive Order 12778, 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 document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In part 92, a new subpart G is added to read as follows:

Subpart G—Hedgehogs and Possums

Sec.

92.700 Definitions.

92.701 Prohibition.

Subpart G—Hedgehogs and Possums

§ 92.700 Definitions.

Wherever in this subpart the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

Brushtail possum. Vulpine phalangers (*Trichosurus vulpecula*) of the family Phalangeridae.

Hedgehog. All members of the family Erinaceidae.

United States. All of the States of the United States, the District of Columbia,

Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

§ 92.701 Prohibition.

No brushtail possum or hedgehog from New Zealand shall be imported into the United States.

Done in Washington, DC, this 31st day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13651 Filed 6–3–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AE67

Informal Hearing Procedures for Materials Licensing Adjudications

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to provide that persons requesting a hearing in certain materials license proceedings must file their requests within 30 days of receiving actual notice of the pendency of the license application, or, if the person does not learn about the application until it has been granted, within 30 days of receiving actual notice of the grant of the application. No hearing requests filed more than 180 days after the grant of the application will be entertained. The amendment applies only to materials licensing actions which are not of sufficient importance to warrant notice in the *Federal Register*. The rule change eliminates an ambiguous provision in the Commission's current regulations and serves to ensure that hearing requests are filed as promptly as possible, in order to promote the timely identification and resolution of problems with or objections to proposed licensing actions.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Peter G. Crane, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–1634.

SUPPLEMENTARY INFORMATION:

Background

The Commission's rules governing informal hearing procedures of