

facilities for inspection at the port of entry.

#### Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

#### 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 process required by Executive Order 12866.

We have determined that Dayton, OH, meets the requirements for being designated as a limited port of entry for horses and horse products. A limited port of entry has inspection capabilities for animals and products that do not appear to require restraint and holding facilities for inspection.

This rule will allow imported horses and horse products that do not require restraint and holding facilities for inspection at the port of entry to be imported into the United States through Dayton, OH. Allowing these horses and horse products to be imported through Dayton, OH, is not expected to result in any significant increase in the number of horses and horse products imported into the United States. The opening of Dayton, OH, as a limited port only

provides an alternative point of entry for horses and horse products already allowed to be imported into the United States. It is expected that the number of horses imported through Dayton, OH, will be quite small, probably fewer than 20 a year. A similarly small quantity of horse products is also expected to be imported through the port.

The entities affected by this rule will be those importers who wish to use the port. We believe that most of these entities will be considered small entities by the Small Business Administration's standards, but we do not know how many of them will opt to use the port. The port in Dayton, OH, will provide these importers with an alternative point of entry for horses and horse products, which could result in added convenience and lowered costs for the importers. We do not anticipate that there will be a significant economic impact on any small entities as a result of this rule.

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 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 9 CFR Part 92

Animal disease, 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, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

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 2.22, 2.80, and 371.2(d).

#### § 92.303 [Amended]

2. In § 92.303, paragraph (d) is amended by adding the words “Dayton, Ohio;” immediately after “Montana;”.

Done in Washington, DC, this 19th day of May 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–13501 Filed 5–21–97; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 94

[Docket No. 96–077–2]

#### Change in Disease Status of Costa Rica Because of Exotic Newcastle Disease

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

**ACTION:** Final rule.

**SUMMARY:** We are declaring Costa Rica free of exotic Newcastle disease (END). Declaring Costa Rica free of END is appropriate because the country has had no clinical, pathological, or laboratory confirmation of END for the last 5 years. This action removes the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products.

**EFFECTIVE DATE:** June 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael David, Senior Staff Veterinarian, Animal Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1228, (301) 734–5034.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including exotic Newcastle disease (END). END is a contagious, infectious, and communicable disease of poultry.

Section 94.6(a)(1) of the regulations provides that END exists in all countries of the world except those listed in § 94.6(a)(2), which have been declared to be free of END. We will consider declaring a country to be free of END if there have been no reported cases of the

disease in that country for at least the previous 1-year period.

There has been no documented case of END in Costa Rica for the last 5 years. The government of Costa Rica has requested that the U.S. Department of Agriculture (USDA) declare Costa Rica free of END.

On December 31, 1996, we published in the **Federal Register** (61 FR 69051-69052, Docket No. 96-077-1) a proposed rule to amend § 94.6(a)(2) by adding Costa Rica to the list of countries declared to be free of END. This proposed action would remove the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products.

We solicited comments concerning our proposal for 60 days ending March 3, 1997. We received one comment by that date. The commenter opposed the proposal because the commenter believes that buying imported chicken is extremely risky from both health and economic standpoints. The commenter said that we need to reconsider the disease issues. The commenter also said that U.S. poultry farmers may not be able to compete with wholesale prices offered by Costa Rican importers.

APHIS bases its decisions to allow animals and animal products to be imported into the United States on whether these importations can be made without significant risk of animal disease introduction. Declaring Costa Rica free of END would remove the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products.

APHIS reviewed the documentation submitted by the government of Costa Rica in support of its request to be declared free of END, and a team of APHIS officials traveled to Costa Rica in 1994 to conduct an on-site evaluation of the country's animal health program with regard to the END situation in Costa Rica. The evaluation consisted of a review of Costa Rica's official veterinary services, laboratory and diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of END into Costa Rica through the importation of animals, meat, or animal products. The results of this on-site visit, and subsequent evaluation, allows APHIS officials to conclude that Costa Rica is free of END. Based on that conclusion, we believe that live birds, game birds, poultry, and their products may be imported from Costa Rica without posing a risk of introducing END into the United States.

In response to the commenter's concerns about the economic impact of the proposal, we do not expect a significant change in the importation of live birds, game birds, poultry, or their products from Costa Rica into the United States as a result of the rule. Even so, as explained previously, APHIS bases its decisions to allow animals and animal products to be imported into the United States on whether these importations can be made without significant risk of animal disease introduction. We do not have the authority to maintain a prohibition on importing animals or animal products based on economic factors. Therefore, we are making no changes to the proposed rule based on this comment.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

#### **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**. This rule removes the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products. We have determined that approximately 2 weeks are needed to ensure that the Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed 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.

We are amending the regulations in 9 CFR part 94 by adding Costa Rica to the list of countries declared to be free of END. This action removes the prohibition on the importation into the United States, from Costa Rica, of live birds, game birds, poultry, and their products, although they would be subject to import health requirements, such as permits, certificates, and quarantines. Based on available information, the Department does not anticipate a major increase in exports of poultry or poultry products from Costa

Rica into the United States as a result of this rule.

The commercial chicken industry in Costa Rica is very small relative to the industry in the United States. Costa Rica has about two million mature multipliers (those birds producing other birds for human consumption). By comparison, there are nearly 120 million multiplier hens and pullets of laying age in the United States. We do not expect any movement from Costa Rica into the United States of live chickens, chicks, or hatching eggs. These products are used for genetic stock, and, as Costa Rica imports most of its genetic stock (much of it from the United States), it would not be economically feasible for them to produce genetic stock for export.

We also do not expect a significant change in the importation of poultry products from Costa Rica as a result of this rule. We expect that any poultry product imports from Costa Rica will most likely be chicken meat. Costa Rica produced 60,424 metric tons of chicken meat in 1995, while the United States produced 11.5 million metric tons of chicken meat in the same year. Before any poultry meat can be imported into the United States from Costa Rica, the packing facilities in Costa Rica will require the approval of the Food Safety and Inspection Service (FSIS), USDA. Further, it is unlikely that Costa Rica will or can direct a significant portion of its chicken meat production exclusively to the United States. Even if Costa Rica were to export all of its chicken meat production to the United States, however, that amount would represent less than one percent of U.S. production. Therefore, declaring Costa Rica free of END should not lead to a significant change in the importation of chicken meat into the United States. Thus, this rule is expected to have no more than a minimal impact on domestic producers of poultry products, whether small or large.

In addition, there should be no significant increase in imports of live exotic birds as a result of this rule. In addition to participation in international agreements restricting the movement of exotic birds, Costa Rica itself prohibits the movement of exotic birds for commercial purposes (i.e. other than pets).

This action also would remove a prohibition on the importation of live game birds and their carcasses into the United States from Costa Rica. Although we do not have specific information on the number of such possible importations, we believe the number would be very small, if any, and that

such importations would be by individuals for personal use.

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 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 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

#### **PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

1. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

#### § 94.6 [Amended]

2. In § 94.6, paragraph (a)(2) is amended by adding "Costa Rica," immediately after "Chile,"

Done in Washington, DC, this 19th day of May 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 318

[Docket No. 96-023DF]

RIN 0583-AC14

#### Use of Liquid Nitrogen for Contact Freezing of Meat and Meat Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) will permit the use of liquid nitrogen for the contact freezing of meat and meat products. The use of liquid nitrogen to contact freeze poultry and poultry products is already permitted and the effects are the same. The substance is completely safe for the consumer, and, with the use of reasonable safety precautions as prescribed by Occupational Safety and Health Administration (OSHA) standards, safe for inspectors and workers in the establishment as well.

**EFFECTIVE DATE:** This rule will be effective on July 21, 1997, unless adverse or critical comments within the scope of the rulemaking or notice of intent to submit adverse comments within the scope of the rulemaking are received on or before June 23, 1997.

**ADDRESSES:** Send an original and two copies of adverse written comments within the scope of the rulemaking to: FSIS Docket Clerk, DOCKET #96-023DF, Room 102 Cotton Annex Building, 300 12th Street, SW, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700. Data submitted by the petitioner and all comments received will be available for public inspection from 8:30 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday, in the FSIS Docket Room.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Edwards, Director, Facilities, Equipment, Labeling, and Compounds Review Division, (202) 418-8900.

**SUPPLEMENTARY INFORMATION:** BOC Gases petitioned the Department to change the Federal meat inspection regulations to permit liquid nitrogen to be used for the contact freezing of meat and meat products. The petitioner made the point that this substance is already permitted to contact freeze poultry and poultry products under the poultry products inspection regulations. In addition, the petitioner submitted correspondence from the Food and Drug Administration (FDA) which indicated that liquid nitrogen is generally

recognized as safe for use as a propellant, aerating agent and gas under 21 CFR 184.1540. Although not specifically listed as a freezant, FDA has advised that it does not object to the use of liquid nitrogen as a freezant, so long as it is of a purity suitable for its intended use. FSIS also knows of no food safety concerns with respect to this substance.

Further, because the liquid nitrogen has a temperature of  $-320^{\circ}\text{F}$ , such chilling is ideal for achieving rapid freezing which halts bacterial growth, thus both increasing food safety by inhibiting the multiplication of pathogens and improving shelf life and meat quality by inhibiting spoilage organisms. The possibility of cross contamination from exchange of marinade or breading is virtually nonexistent because of the extremely fast chill, creating an immediate stabilization of the exterior surfaces upon contact.

Liquid nitrogen is an asphyxiant and is dangerously cold. However, the Occupational Safety and Health Administration (OSHA) requirements include a 19% oxygen atmosphere and the use of venting and warning signs to prevent human exposure. This method of chilling has been used in a number of poultry plants for some time without incident.

Therefore, FSIS is amending the table of approved substances in 9 CFR 318.7 (c)(4) to allow the use of liquid nitrogen as a contact freezant for meat and meat products. FSIS expects no adverse public reaction from this change in regulatory language. Therefore, unless the Agency receives adverse or critical comments within the scope of the rulemaking or a notice of intent to submit adverse comments within 30 days, the action will become final 60 days after publication in the **Federal Register**. If such adverse comments are received, the final rulemaking will be withdrawn and a proposed rulemaking notice will be published. The proposed rulemaking notice will establish a comment period.

#### 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 regulation 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.