

Rules and Regulations

Federal Register

Vol. 76, No. 64

Monday, April 4, 2011

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. APHIS-2009-0078]

RIN 0579-AD25

Removal of the List of Ports of Embarkation and Export Inspection Facilities From the Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the live animal export regulations by removing the list of designated ports of embarkation and their associated export inspection facilities. As a result of this rulemaking, those ports and facilities will be listed on the Internet rather than in the regulations, thus enabling us to amend the list, when necessary, in a timelier manner than we have been able to heretofore and allowing us greater flexibility in regulating animal exports.

DATES: *Effective Date:* May 4, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Courtney Bronner Williams, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, 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. The regulations state, among other things, that all animals, except animals exported by land to Canada or Mexico, must be exported through designated ports of embarkation, unless

the exporter can show that the animals would suffer undue hardship if they were required to be moved to a designated port of embarkation.

On September 17, 2010, we published in the **Federal Register** (75 FR 56914-56916, Docket No. APHIS-2009-0078) a proposal¹ to amend the live animal export regulations by removing the list of designated ports of embarkation and their associated export inspection facilities contained in § 91.14(a). We proposed to replace the list with text referring the reader to an Animal and Plant Health Inspection Service (APHIS) Veterinary Services area office for obtaining the list or the APHIS Web site for viewing it. Our proposal was intended to enable us to amend the list, when necessary, in a timelier manner than we previously had been able to and allow us greater flexibility in regulating animal exports. Because the designated ports of embarkation and associated export inspection facilities had been listed in the regulations, the list could only be amended to add or remove ports or export inspection facilities or to update contact information by means of rulemaking.

We also proposed to make some changes to the regulations in § 91.14(d) pertaining to approval and denial, revocation, or suspension of approval of export inspection facilities in order to clarify the regulations and ensure that standards are being maintained at ports and facilities covered under these regulations. Specifically, we proposed to add a requirement to § 91.14(d) that designated ports of embarkation and export facilities be reevaluated annually for compliance with the regulations by means of an APHIS inspection. We also proposed to simplify § 91.14(d) by eliminating references therein to suspension of approval, since the paragraph did not draw a clear distinction between suspension and revocation, and for enforcement purposes, the two were essentially the same. Finally, we proposed to add to § 91.14(d) procedures for reinstatement following revocation of approval, since the existing regulations did not address the subject directly.

We solicited comments concerning our proposal for 60 days ending

November 16, 2010. We received one comment by that date, from a livestock exporter. The commenter supported the proposed rule.

Though we are not making any changes to this final rule in response to the comment, we are making one editorial revision. In the September 2010 proposed rule, § 91.14(a) indicated that the determination that an export inspection facility met our requirements would be made by an APHIS veterinarian. To make paragraph (a) consistent with the rest of § 91.14, we are amending that paragraph to indicate that such determinations will be made by the Administrator.

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

Executive Order 12866 and Regulatory Flexibility Act

This final 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.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule amends the live animal export regulations by removing the list of designated ports of embarkation and their associated export inspection facilities. As a result of this rulemaking, those ports and facilities will henceforth be listed on the Internet rather than in the regulations, allowing us to amend the list, when necessary, in a timelier manner than we were able to previously.

Those entities most likely to be economically affected by the rule are exporters of live animals and domestic livestock producers. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers). Affected entities may include beef cattle ranching and farming operations, dairy cattle and milk production operations, hog and pig farming operations, sheep

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0078>.

and goat farming operations, and cattle feedlots.

The Small Business Administration has established guidelines for determining which businesses are to be considered small. Based on the most recent data we have regarding annual receipts, it is likely that most of the entities that will be affected by this rule are small.

However, this rulemaking only amends APHIS' administrative process for changing the list of designated embarkation ports and associated export inspection facilities. This action does not make any changes in the status of any designated embarkation port or associated export inspection facility, nor does it alter the technical criteria by which designated embarkation ports and associated export inspection facilities are added to or removed from this list. We expect that this final rule will have little effect on U.S. entities other than benefits they may derive from timelier changes to the list of designated ports of embarkation and associated export inspection facilities.

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 final 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 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 91.14 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) All ports that have export inspection facilities which the Administrator has determined satisfy the requirements of paragraph (c) of this section are hereby designated as ports of embarkation. A list of designated ports of embarkation can be viewed on the Internet at <http://www.aphis.usda.gov/regulations/vs/iregs/animals/> or obtained from a Veterinary Services area office. Information on area offices is available at http://www.aphis.usda.gov/animal_health/area_offices/. All animals, except animals being exported by land to Mexico or Canada, shall be exported through said ports or through ports designated in special cases under paragraph (b) of this section.

(b) In special cases, other ports may be designated as ports of embarkation by the Administrator, with the concurrence of the Commissioner of the Bureau of Customs and Border Protection, when the exporter can show to the satisfaction of the Administrator that the animals to be exported would suffer undue hardship if they are required to be moved to a port listed as a designated port of embarkation in accordance with paragraph (a) of this section. Ports shall be designated in special cases as ports of embarkation only if the inspection facilities are approved as meeting the requirements of paragraph (c) of this section.

(d) *Approval and denial or revocation of approval.* Approval of each export inspection facility for designation under paragraph (a) of this section, and in special cases under paragraph (b) of this section, shall be obtained from the Administrator. Approval of an export inspection facility under paragraph (a) or (b) of this section will be denied or revoked for failure to meet the standards in paragraph (c) of this section. Designated ports of embarkation and export facilities shall be reevaluated annually, by means of an APHIS site inspection, for continued compliance with the standards contained in

paragraph (c) of this section. If the port or facility fails to pass the annual inspection, its designation will be revoked, and it will be removed from the list of designated ports and facilities. A written notice of any proposed denial or revocation shall be given to the operator of the facility, and he or she will be given an opportunity to present his or her views thereon. Such notice shall list in detail the deficiencies concerned. After remedying the deficiencies, an operator may request another inspection. Approval of a port of embarkation in connection with the designation of an export inspection facility in special cases shall be limited to the special case for which the designation was made.

* * * * *

■ 3. In § 91.15, paragraph (a) is revised to read as follows:

§ 91.15 Inspection of animals for export.

(a) All animals offered for exportation to any foreign country, except by land to Mexico or Canada, shall be inspected within 24 hours of embarkation by an APHIS veterinarian at an export inspection facility at a port listed as a designated port of embarkation in accordance with § 91.14(a), or at a port or inspection facility designated by the Administrator in a special case under § 91.14(b).

* * * * *

Done in Washington, DC, this 29th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–7897 Filed 4–1–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB10

Required Scale Tests

AGENCY: Grain Inspection, Packers and Stockyards Administration.

ACTION: Correcting amendments.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** on January 20, 2011 (76 FR 3485), defining required scale tests. That document incorrectly defined limited seasonal basis in § 201.72(a) (9 CFR 201.72(a)). This document corrects the final regulation by revising this section.