

provided for in the proposed rule, and no comments were received.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

2. A new subpart titled “Assessment Rates” and a new § 911.234 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 911.234 Assessment rate.

On and after April 1, 1998, an assessment rate of \$0.16 per bushel container is established for Florida limes.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

3. A new subpart titled “Assessment Rates” is added and § 915.235 is revised to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 915.235 Assessment rate.

On and after April 1, 1998, an assessment rate of \$0.08 per bushel container is established for South Florida avocados.

Dated: March 25, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–8392 Filed 3–30–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 98–016–1]

Brucellosis; Increased Indemnity for Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing Federal indemnity paid under the brucellosis eradication program to increase the amount of indemnity that may be paid for certain cattle and bison destroyed because of brucellosis. This action will accelerate the eradication of brucellosis from the United States by giving owners sufficient financial incentive to destroy brucellosis-exposed cattle and bison by promptly depopulating brucellosis-affected herds. A number of owners of cattle and bison are reluctant to depopulate their affected herds, thereby increasing the risk of disease spread in the eradication program's last scheduled year.

DATES: Interim rule effective March 24, 1998. Consideration will be given only to comments received on or before June 1, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–016–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–016–1. 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. R. T. Rollo, Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 36, Riverdale, MD 20737–1231, (301) 734–7709.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans caused by bacteria of the genus *Brucella*. In humans, brucellosis initially causes flulike symptoms, but the disease may

develop into a number of chronic conditions, such as arthritis. In cattle and bison, brucellosis causes, among other things, decreased milk production, weight loss, and loss of young through abortion or birth of weak calves.

Humans can be treated for brucellosis with antibiotics; there is no feasible means of curing brucellosis in animals.

Brucellosis is commonly transmitted to susceptible animals by direct contact with infected animals. The disease is also transmitted to susceptible animals in contact with an environment that has been contaminated by discharges from infected animals. Infected pregnant cows may discharge billions of *Brucella* bacteria at calving or abortion. Although it is not common, infected bulls can spread the disease to cows during breeding. Because brucellosis is transmitted by sexually intact animals, steers and spayed heifers do not pose a risk of transmitting brucellosis.

The regulations in part 78 of title 9 of the Code of Federal Regulations (CFR) govern the interstate movement of cattle, bison, and swine to help prevent the interstate spread of brucellosis. The regulations are part of a cooperative Federal and State program, administered by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), to eradicate brucellosis from the United States. Program officials are striving to eradicate the field strain of *Brucella abortus* from domestic cattle and bison herds by December 1998. The regulations in part 78 provide, among other things, a system for classifying States or portions of States (areas) according to the rate of *B. abortus* infection present and the general effectiveness of the brucellosis control and eradication program conducted in the State or area. The classifications are Class Free, Class A, Class B, Class C, and quarantined States or areas. Quarantined States or areas indicate States or areas with the highest rates of brucellosis infection, and Class Free States or areas are those in which there have been no findings of brucellosis infection for the 12 months preceding classification. As of March 1998, there were only 9 known affected cattle herds and 1 known affected bison herd, and APHIS had declared 41 States, Puerto Rico, and the U.S. Virgin Islands free of the disease. The nine remaining States are all Class A States.

The basic approach to brucellosis eradication in cattle and bison has been to test cattle and bison for infection and send infected and exposed animals to slaughter. Brucellosis-exposed cattle and brucellosis-exposed bison have a high probability of contracting

brucellosis, and may, in fact, be contagious before they react to an official test for brucellosis. The incubation period varies: Usually, cattle and bison develop a positive reaction to the blood test for brucellosis within 2 to 12 weeks after infection, but some may not do so for 8 months or longer. Meanwhile, any exposed sexually intact cattle and bison are potential transmitters of the disease. Because the continued presence of brucellosis in a herd seriously threatens the health of animals in that herd and other herds, the prompt destruction of brucellosis-affected cattle or bison is critical.

To encourage destruction of sexually intact cattle and bison infected with or exposed to brucellosis, USDA offers indemnity to certain owners. The regulations in 9 CFR part 51 (referred to below as the regulations) provide for payment of Federal indemnity to owners of certain animals destroyed because of brucellosis. Paragraphs (a)(1) through (a)(4) of § 51.3 of the regulations, "Payment to owners for animals destroyed," pertain to cattle and bison. According to § 51.3(a), the APHIS Administrator may authorize the payment of Federal indemnity by the USDA to any owner whose cattle or bison are destroyed as affected with brucellosis. Specifically, in accordance with paragraphs (a)(1) through (a)(4), the APHIS Administrator may authorize the payment of Federal indemnity by the USDA to any owner: Whose cattle or bison are destroyed as brucellosis reactors, whose herd of cattle or bison is destroyed because the Administrator has determined that destruction of all cattle and bison in the herd will contribute to the brucellosis eradication program, whose exposed female calf or calves are destroyed because of brucellosis, and who has brucellosis-exposed cattle or bison destroyed that were previously sold or traded from any herd that has, subsequent to the sale or trade, been found to be affected with brucellosis.

Currently, § 51.3 (a)(1) through (a)(4) allow, with a few exceptions, the following maximum per-head amounts for Federal indemnity:

(1) For reactors that are not part of a whole-herd depopulation: \$250 for registered cattle and nonregistered dairy cattle and \$50 for bison and nonregistered cattle other than dairy cattle.

(2) For cattle and bison in herds approved for depopulation:

- In States other than Class Free States: \$250 for any nonregistered cattle other than dairy cattle; \$250 for bison; and the lesser of 95 percent of appraised value, minus salvage value, or \$750, for

any registered cattle or nonregistered dairy cattle.

- In Class Free States: For any registered cattle, nonregistered dairy cattle, and any cattle or bison from herds affected with brucellosis, the lesser of 95 percent of appraised value, minus salvage value, or \$750.

(3) For sexually intact exposed female calves: \$50 (except for sexually intact female calves destroyed as part of a whole-herd depopulation, in which case the owners of such calves would receive the amounts listed in (2) above).

(4) For exposed cattle and bison sold or traded from a herd that has subsequently been found to be affected with brucellosis: \$250 for registered cattle and nonregistered dairy cattle and \$150 for bison and nonregistered cattle other than dairy cattle.

The regulations also include different indemnity rates for certain types of animals approved for indemnity under the brucellosis eradication program in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands because transportation costs to those locations make market prices for replacement animals higher than for animals in the contiguous United States.

Without sufficient financial incentive to destroy exposed animals or depopulate affected herds, many owners prefer to quarantine exposed animals or, when the exposed animals in a herd cannot be isolated, the entire herd. Quarantining is a lengthy and expensive process for both an owner and the USDA. The USDA has to pay to have the quarantined herd tested periodically, until the herd is found to be free of brucellosis, and the owner may not sell or move any animals while they are under quarantine, except for slaughter, which provides less revenue than sales for breeding purposes.

To provide additional financial incentive for owners to choose depopulation when USDA offers to pay indemnity for destruction of a herd, we are amending § 51.3 (a)(1) through (a)(4). The amendments change the method of determining the indemnity to be paid for all cattle and bison destroyed under the program, except for individual reactors and sexually intact exposed female calves that are not part of a whole-herd depopulation. Under this rule, the Administrator may authorize the payment of indemnity by USDA to any owner of the following animals destroyed under the brucellosis eradication program: (1) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves (defined in § 51.1 as "a female bovine less than 6 months of age that is nursed by a

brucellosis reactor at the time such reactor is condemned, and that has not been altered to make it incapable of reproduction"), (2) cattle and bison in a herd that has been approved by APHIS for depopulation, and (3) brucellosis-exposed cattle and bison that were previously sold or traded from any herd that has, subsequent to the sale or trade, been found to be affected with brucellosis. In the case of the brucellosis-exposed cattle and bison, epidemiological information such as test results, herd history, and related evidence would be used to establish a probable date when the herd was first affected with brucellosis. Animals sold after that date would be considered to be exposed; those sold before that date would not.

Also under this rule, all owners of cattle and bison offered Federal indemnity, except owners of cattle and bison reactors and any sexually intact exposed female calves identified as a result of a complete herd test and destroyed other than as part of a whole-herd depopulation, may choose one of two methods, described below, for determining the indemnity amounts. The method chosen must be used for all animals to be destroyed. Owners that destroy cattle and bison reactors and sexually intact exposed female calves other than as part of a whole-herd depopulation are eligible to receive fixed rates for their animals: \$250 for any registered cattle and nonregistered dairy cattle and \$50 for any bison, nonregistered cattle other than dairy cattle, or sexually intact exposed female calves. Owners that destroy cattle and bison in herds approved for depopulation or brucellosis-exposed cattle and bison that meet the conditions described above may choose the appraisal method or fixed-rate method for determining the indemnity amounts. Under the appraisal method, each eligible animal will be appraised to determine its fair market value, and the indemnity shall be the appraised value minus the salvage value. Under the fixed-rate method, the indemnity will not exceed \$250 per animal.

Owners have the option of having an appraisal done prior to choosing the method used. Appraisals will be conducted by an independent appraiser selected by the APHIS Administrator, and the cost of the appraisals will be borne by APHIS. In all cases, the amount of Federal indemnity will be determined in accordance with the regulations in 9 CFR part 51 that were in effect on the date that reactors were found or the date that depopulation or removal of individual exposed animals was approved. Prior to payment of

indemnity, proof of destruction¹ must be furnished to the Veterinarian in Charge.

In accordance with § 51.3 of the regulations, the Administrator shall authorize the maximum per-head amount for animals approved for indemnity under the brucellosis eradication program unless: (1) Sufficient funds are not available, (2) the State or area in which the animal is located is under Federal quarantine, (3) the State does not request payment of Federal indemnity, or (4) the State requests a rate lower than the maximum. The total compensation that APHIS will provide in fiscal year 1998 will be limited by available appropriated funding and will not exceed \$3.41 million on a nationwide basis.

We are making these changes to the regulations at this time for many reasons, including accomplishing the regulatory reform goal of simplifying the regulations so that owners of brucellosis-affected animals can easily determine eligibility of their animals for indemnity and the maximum allowable indemnity rates. More importantly, program officials are striving to reach the goal of eradicating brucellosis from domestic cattle and bison herds by the end of 1998. As of March 1998, only 10 herds in the United States (9 cattle herds in Texas and 1 bison herd in South Dakota) remained under quarantine for brucellosis. We believe that depopulation of all affected herds is the most effective way to achieve eradication and prevent spread of the disease to unaffected herds. However, at the current indemnity rates specified in the regulations, some owners of affected herds are reluctant to depopulate their herds. Destruction of all affected animals is especially critical at this time as the program is in its last scheduled year, and severe funding cuts are expected next year. This rule provides an economic incentive for the timely removal of brucellosis-exposed animals from any herd, thus minimizing the risk of those animals spreading brucellosis to a new herd.

We want to encourage owners to depopulate entire herds when program officials have determined that such action is appropriate. By offering owners of affected herds the opportunity to receive fair market value for their animals, we believe that more owners will choose to depopulate their herds, rather than maintain their herds under quarantine. We are excluding reactors and sexually intact exposed female calves not destroyed as part of a whole-herd depopulation from the new system of determining indemnity rates to encourage owners to depopulate affected herds rather than remove individual reactors and sexually intact exposed female calves for destruction and maintain the rest of the herd under quarantine. Under this rule, owners of reactors and sexually intact exposed female calves destroyed as part of a whole-herd depopulation may choose to receive the appraised value, minus the salvage value realized, for these animals as they could for any other animal in their herd. Owners who choose not to depopulate herds containing reactors or sexually intact exposed female calves, but instead remove and destroy those animals only, will receive the fixed rates described previously in this document: For reactors, \$250 for any registered cattle and nonregistered dairy cattle and \$50 for any bison, nonregistered cattle other than dairy cattle, and sexually intact exposed female calves.

We are also making provision in this rule to increase the amount of indemnity offered to owners for certain brucellosis-exposed cattle and bison. When an epidemiological investigation reveals that certain animals in a herd were obtained from a herd that was, subsequent to the sale or trade, determined to be affected with brucellosis, a complete herd test is performed of the herd into which the animals from the affected herd were introduced. If the complete herd test reveals negative test results for the entire herd, including the newly introduced animals, program officials generally want to remove those newly introduced animals from the herd anyway because they could be incubating the disease, but program officials might not recommend depopulation of the entire herd at that point. (Whole-herd depopulation could become advisable at a later date if subsequent herd tests reveal brucellosis infection or if so indicated by further epidemiological investigation.) Therefore, we want to be able to offer a financial incentive to the owner to destroy the animals introduced from the affected herd as soon as possible.

We are also adding to § 51.1 definitions for "appraisal" and "complete herd test." These terms are used in § 51.3(a) as revised by this rule, and defining these terms is important for clarity and accuracy in interpreting the regulations.

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 spread of brucellosis. The brucellosis eradication program is in its final critical stage with program officials striving for completion by December 1998. Depopulation of all remaining affected herds is the most effective means of achieving eradication. Owners of affected animals must be offered sufficient financial incentive to destroy their affected animals. Under the indemnity rates in effect prior to this interim rule, some owners have been reluctant to depopulate their herds. Maintaining these herds under quarantine is expensive for the Federal Government, which must bear the cost of testing them periodically, and, more importantly, allows the infection to remain in the cattle and bison herds, and potentially to spread to other herds.

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 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.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604

¹ The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1-27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

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 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 rule contains no new 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 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 51 is amended as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 51.1 is amended by adding definitions, in alphabetical order, for *Appraisal* and *Complete herd test* to read as follows:

§ 51.1 Definitions.

* * * * *

Appraisal. An estimate of the fair market value of an animal to be destroyed because of brucellosis. The estimate shall be based upon the meat, dairy, or breeding value of the animal.

* * * * *

Complete herd test. An official test for brucellosis (as defined in 9 CFR 78.1) performed under APHIS supervision in a cattle or bison herd on all cattle or bison that are (1) 6 months of age or more and not official vaccinates, except steers and spayed heifers; or (2) Official calfhood vaccinates of any age that are parturient or postparturient; or (3) Official calfhood vaccinates of beef

breeds or bison with the first pair of permanent incisors fully erupted (2 years of age or more); or (4) Official calfhood vaccinates of dairy breeds with partial eruption of the first pair of permanent incisors (20 months of age or more).

* * * * *

3. In § 51.3, paragraph (a) is revised to read as follows:

§ 51.3 Payment to owners for animals destroyed.

(a) *Cattle and bison.* The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose cattle or bison are destroyed after having been approved for destruction by APHIS under the brucellosis eradication program.³ In all cases, the amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date that reactors were found or the date that whole-herd depopulation or destruction of individual animals was approved. Prior to payment of indemnity, proof of destruction⁴ must be furnished to the Veterinarian in Charge.

(1) *Eligibility for indemnity.* Owners of the following types of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals:

(i) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves;

(ii) Cattle and bison in a herd that has been approved for depopulation; and

(iii) Brucellosis-exposed cattle and brucellosis-exposed bison that were previously sold or traded from any herd that was, subsequent to the sale or trade, found to be affected with brucellosis. Epidemiological information such as

³ "The Administrator shall authorize payment of Federal indemnity by the U.S. Department of Agriculture at the maximum per-head rates in § 51.3: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

⁴ The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

test results, herd history, and related evidence will be used to establish a probable date when the herd was first affected with brucellosis. Animals sold after that date will be considered to be exposed; those sold before that date will not.

(2) *Maximum per-head indemnity amounts.* Owners of the types of animals described in § 51.3(a)(1) are eligible to receive Federal indemnity for their animals in the following amounts:

(i) *Brucellosis reactors and sexually intact exposed female calves.* Except for brucellosis reactors and sexually intact exposed female calves destroyed as part of a whole-herd depopulation, the indemnity for cattle and bison that are brucellosis reactors shall not exceed \$250 for any registered cattle and nonregistered dairy cattle or \$50 for any bison or nonregistered cattle other than dairy cattle, and the indemnity for sexually intact exposed female calves shall not exceed \$50.

(ii) *Herd depopulations and individual exposed animals.* Owners of herds that have been approved for depopulation and owners of brucellosis-exposed cattle and brucellosis-exposed bison that meet the conditions of § 51.3 (a)(1)(iii) may choose either of the two methods described in paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this section, involving fair market value of the animal to be destroyed or a fixed rate, for determining the maximum amounts of indemnity they may receive.³ The method chosen must be used for all animals to be destroyed. Owners have the option of having an appraisal done prior to choosing the method used. Appraisals will be conducted by an independent appraiser selected by the Administrator. The cost of the appraisals will be borne by APHIS.

(A) *Appraisal method.* Each eligible animal will be appraised to determine its fair market value. The indemnity shall be the appraised value, minus the salvage value.

(B) *Fixed-rate method.* The indemnity shall not exceed \$250 per animal.

* * * * *

Done in Washington, DC, this 24th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–8305 Filed 3–30–98; 8:45 am]

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