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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS-2016-0050]

RIN 0579-AE38

Branding Requirements for Bovines Imported Into the United States From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the branding of bovines imported into the United States from Mexico. We are taking this action at the request of the Government of Mexico to address issues that have arisen with the branding requirement for these bovines. These changes will help prevent inconsistencies in branding that can result in bovines being rejected for import into the United States.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Dr. Betzaida Lopez, Senior Staff Veterinarian, National Import Export Services, Policy, Permitting, and Regulatory Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 851-3300.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of

livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.436, referred to below as the regulations) governs the importation of ruminants; within subpart D, § 93.427 specifically addresses the importation of cattle and other bovines from Mexico into the United States.

On April 12, 2018, we published in the *Federal Register* (83 FR 15756-15758, Docket No. APHIS-2016-0050) a proposal¹ to amend the regulations by changing the branding requirements for steers and spayed heifers from Mexico and the branding option for sexually intact bovines from Mexico. At present, cattle from Mexico carry at least two forms of identification, generally a brand and an approved eartag. Cattle imported from Mexico for other than immediate slaughter are required to be branded with an “M” for steers, an “Mx” for spayed heifers, and an “MX” brand or tattoo for breeding bovines. This rule will change the requirements to increase the size of the brands, simplify them to a simple “M,” and move the brands for sexually intact bovines to the right shoulder of the animal. These changes will help reduce or eliminate branding errors, which in turn would reduce the need for rebranding and the incidence of cattle rejections at port-of-entry inspection. The changes to the description of the placement of the brand for steers and spayed heifers clarifies the requirement by making the description more specific.

We solicited comments concerning our proposal for 60 days ending June 11, 2018. We received 12 comments by that date. They were from veterinary and animal welfare organizations, agriculture and trade associations, and private citizens. Six of the commenters supported the rule as proposed. The remaining commenters asked questions or expressed concerns about the rule. The questions and concerns are discussed below.

¹ To view the proposed rule, supplementary document, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0050>.

One commenter suggested adding a visible, legible, and unequivocal name to the branding requirements for bovines in § 93.427(e)(3). The commenter stated that this would ensure consistency and uniformity of the brands.

It is not clear which name the commenter thinks should be added to the brand; however, we do not agree that adding a name to the brand would ensure consistency and uniformity. The larger size and revised placement of the brands will provide visual identification of the animals' origin. Furthermore, these animals will be bearing official ear tags that will aid in tracing the animals back to their farm of origin in the event that any of them are found to be affected with a disease of concern.

One commenter stated that people may have the same brands and locations registered in States that maintain a brand registry. The commenter expressed concern that changing the brand requirements for cattle imported from Mexico could result in confusion and disputes.

It was not clear from the comment if the concern was about changes to the brand for feeder and slaughter cattle or for sexually intact cattle. The Animal and Plant Health Inspection Service (APHIS) notes that the regulations currently require an "M" brand on the right hip for steers imported from Mexico. There have been no issues with the current requirements. If the commenter's concern is with sexually intact cattle, APHIS notes that less than 1 percent of cattle imported into the United States are sexually intact animals from Mexico. The likelihood that the change to the branding requirements for such a small number of cattle will result in confusion is low. Furthermore, the option to identify sexually intact cattle from Mexico with an ear tattoo remains available. We are making no changes to the rule in response to this comment.

Three commenters recommended that APHIS prioritize the development of alternatives to hot-iron branding. Two of the commenters specifically mentioned electronic animal identification as an alternative to branding.

Another commenter stated that while they strongly support the use of electronic eartags and the sharing of electronic information between the United States and Mexico for purposes of animal disease traceability, they also supported the retention of branding as the only permanent method of identification. The commenter stated that eartags are easily removed or lost and a permanent form of identification is necessary to protect the health of the U.S. herd.

APHIS actively monitors advances in animal identification. However, as the one commenter noted, eartags may be lost and are readily removable, and cannot be considered a permanent form of identification. For this reason we require permanent identification such as a brand or tattoo for imported live bovines. This permanent identification allows APHIS to trace an animal back to the country of origin in the event that the animal shows symptoms of a disease.

A group of three industry organizations expressed concern that the proposed movement of the M brand from the hip to the shoulder for imported breeding cattle and the increased size of the brand would result in lower value for such hides when used for leather. The commenters stated that they would prefer to see the identification requirements for imported breeding cattle be the same as the requirements for feeder cattle, and for cattle imported from Mexico to have the same requirements as cattle imported from Canada.

We agree with the commenters that harmonizing animal identification requirements is desirable. However, because of the risk of introducing brucellosis into the United States, all Mexican feeder cattle are spayed or neutered before being exported to the United States. Sexually intact cattle (that is, breeding animals) are quarantined and tested for bovine

tuberculosis and brucellosis at the border. We need to differentiate between breeding and non-breeding cattle imported from Mexico not only at the ports so we may quarantine and test them accordingly, but also through the life of the animal. For example, if an animal identified as a spayed heifer calves, we know that Mexico's spaying procedures have not been followed and we may have to consider changes to the import requirements to safeguard against the introduction of brucellosis from Mexico.

With respect to the larger brands potentially reducing the value of the hides, we anticipate that the new requirements will reduce the likelihood of blotching and therefore the need for rebranding, which also reduces the value of the hides.

As we noted above, sexually intact cattle from Mexico represent a very small percentage of cattle imported into the United States from Mexico, so the number of hides affected by the change to a shoulder brand should not be great. Ear tattoos are also still an option for sexually intact cattle.

One commenter stated that the rule should not characterize hot-iron branding as humane because branding causes pain and distress. The commenter cited both veterinary medical research and international standards in support of their statement.

The proposed rule was referring to the regulations in § 93.427(e)(3), which call for sexually intact bovines to be permanently and humanely identified. We note that those regulations provide for the use of tattoos, freeze brands, and other methods in addition to hot iron branding.

One commenter stated that the rule should specifically identify tattooing as an acceptable alternative. The commenter stated that § 93.427(e)(3) currently provides for the use of tattoos for sexually intact bovines and asked why tattooing is specifically cited as an acceptable method

of control for bovine spongiform encephalopathy (BSE), but not for tuberculosis. The commenter further stated that because a tattoo inside the ear is not visible from a distance, it is assumed that the ability to read without close examination is not a criterion for acceptable identification techniques.

The commenter is correct that tattooing continues to be an option for sexually intact cattle from Mexico. However, we do not consider tattooing a method of control for BSE; instead, it is a means of identifying non-U.S.-origin cattle that are likely to remain in the population for years. Breeding cattle are usually higher-value animals, and therefore we have always provided the option of tattooing them. In addition, the number of imports of breeding cattle is so small that traceback would be relatively easy in the event that one of these animals was diagnosed with a disease. In contrast, the number of feeder cattle imported into the United States is very large. For these animals, the brand serves not only as identification of to prevent commingling with U.S.-origin cattle as required by some States, but also differentiates these animals from breeding animals. This is important, as we explained above, to ensure that Mexico's spaying procedures are being followed and to safeguard against the introduction of brucellosis from Mexico.

One commenter stated that until branding is replaced as an identification method, APHIS should investigate pain control measures, such as analgesics or anti-inflammatories, and to require relief from the pain associated with hot iron branding.

Requiring the use of pain control measures in association with hot-iron branding is outside the scope of APHIS' regulatory authority. We are making no changes in response to this comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13771 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.

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action may result in cost savings. In accordance with guidance on complying with Executive Order 13771, the primary estimate of the cost savings (net social welfare gain) for this rule is \$181,300. This value is the mid-point estimate of cost savings annualized in perpetuity using a 7 percent discount rate.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov website (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 will amend the regulations in 9 CFR part 93 to change the identification requirements for bovines imported from Mexico. At present, cattle from Mexico carry at least two forms of identification, generally a brand and an approved eartag. Cattle imported from Mexico for other than immediate slaughter are required to be branded with an “M” for steers, an “Mx” for spayed heifers, and an “MX” brand or tattoo for breeding bovines. With this rule all bovines imported from Mexico will be branded with a single “M” to avoid branding errors. In order to distinguish between feeder and breeding cattle, the brand for steers and spayed heifers will be placed on the back hip and the brand for breeding cattle will be placed on the shoulder. Cattle imported from Mexico will still require an approved eartag.

The new identification requirements will reduce if not eliminate branding errors, reducing the need for rebranding and the incidence of cattle rejections at port-of-entry inspection. Revenue from hides accounts for about 75 percent of the byproduct-value of beef cattle. Damage from rebranding can reduce hide value. Also, re-inspection due to branding errors increases transaction costs. Currently, a \$4 inspection fee per head is billed to the broker who in turn charges the exporter. The single “M” brand will both minimize hide damage and the need for re-inspections. Because the approved eartag is a current requirement, we do not anticipate any additional costs would be incurred.

Entities that may be impacted by the rule fall into various categories of the North American Industry Classification System. The majority of these businesses are 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 2 CFR chapter IV.)

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 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0040.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

List of Subjects in Part 93

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

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93-IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 93.427 is amended by revising paragraphs (c)(1) and (e)(3)(i) to read as follows:

§ 93.427 Cattle and other bovines from Mexico.

* * * * *

(c) * * *

(1) Each steer or spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible “M” mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the steer or spayed heifer is imported for slaughter in accordance with § 93.429. The “M” mark shall be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and shall be applied to each animal's right hip, within 4 inches (10 cm) of the midline of the tailhead (that is, the top of the brand should be within 4 inches (10 cm) of the midline of the tailhead, and placed above the hook and pin bones). The brand should also be within 18 inches (45.7 cm) of the anus.

* * * * *

(e) * * *

(3) * * *

(i) An “M” mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and must be applied to the upper right front shoulder of each animal; or

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Done in Washington, DC, this 10th day of December 2018.

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.
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