

marketing orders if the Western order is terminated. In this regard, concerns were offered, most notably, that milk currently pooled on the Western order would seek to be pooled on other orders which may give rise to disorderly marketing conditions in other markets and lower prices received by producers who pool milk under the terms of another milk marketing order.

One comment that supported the termination of the Western order was of the opinion that the current and the proposed amended Western order harmed specific dairy interests in Utah. A second comment supporting termination of the Western order stressed the dairy-farmer orientation of the Federal milk marketing order program and that the Agricultural Marketing Agreement Act (AMAA) (the enabling legislation for milk marketing orders) requires the proper endorsement of producers before milk order regulations can be implemented. This comment stressed that the Western order lacks this needed endorsement. In this regard, the comment stressed that the lack of the required two-thirds support of producers leaves the Department with no other recourse than to terminate the Western order so as to be in conformity with the requirements of the AMAA.

Termination of the Western order will remove government enforcement of minimum prices to handlers and to producers that are established by the order. It will also remove other stabilizing features of the regulatory program such as: An impartial audit of handler records to insure payment to dairy farmers and to verify the reported uses of milk; the assurance to farmers of accurate weighing, testing, classification and accounting for milk; and the existence of marketing information to evaluate market performance. Thus, it is likely that market conditions would tend to become less orderly or stable. However, it must be assumed that the consequences of the termination of the Western order have been considered by those producers who rejected the proposed amended order, and that possibly other methods have or will be made to replace the stabilizing influence of the marketing order.

Regardless of the possible economic effects of terminating the Western order, a termination is required by the AMAA. As stated in the proposed termination, less than two-thirds percent of the voting producers in the referendum approved the issuance of the proposed amended order. In these circumstances, where it has been determined that the order should be amended to effectuate the declared policy of the AMAA, and

that the amended order was not approved by producers, it is concluded that the existing Western order should be terminated because it is not in conformity with the AMAA.

#### List of Subjects in 7 CFR Part 1135

Milk marketing orders.

#### Order

It is therefore ordered, that the terms and provisions of the order, as amended, regulating the handling of milk in the Western marketing area (7 CFR part 1135), except § 1135.1 which incorporates the General Provisions in Part 1000, are hereby terminated, effective on April 1, 2004.

■ Accordingly, 7 CFR part 1135 is amended as follows:

#### PART 1135—MILK IN THE WESTERN MARKETING AREA

■ 1. The authority citation for 7 CFR Part 1135 continues to read as follows:

**Authority:** 7 U.S.C. 601–674 and 7253.

#### §§ 1135.2 through 1135.86 [Removed]

■ 2. Sections 1135.2 through 1135.86 and the undesignated center headings in part 1135 are removed, effective on April 1, 2004.

Dated: February 18, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–3952 Filed 2–19–04; 3:20 pm]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 72

[Docket No. 04–008–1]

#### Texas (Splenetic) Fever in Cattle; Incorporation by Reference

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the Texas (splenic) fever in cattle regulations by updating the incorporation by reference of the Texas Animal Health Commission's regulations that contain the description of the areas in Texas quarantined because of ticks. This action is necessary to update the incorporation by reference to reflect the Texas Animal Health Commission's changes to the organization of its regulations that describe the quarantined area.

**DATES:** This rule is effective February 24, 2004. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of February 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Glen Garris, Assistant Associate Deputy Administrator for National Animal Health Policy and Programs, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–5875.

#### SUPPLEMENTARY INFORMATION:

#### Background

The regulations in 9 CFR part 72, Texas (Splenetic) Fever in Cattle (referred to below as the regulations), restrict the interstate movement of cattle from areas quarantined because of ticks that are vectors of bovine babesiosis. This disease is referred to in the regulations as splenic or tick fever. Splenic or tick fever is a contagious, infectious, and communicable disease of cattle that causes cattle to become weak and dehydrated and can cause death.

Section 72.3 quarantines Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Previously, § 72.5 specifically described the area in Texas that was quarantined because of ticks. However, in a final rule published in the **Federal Register** on July 30, 1999 (64 FR 41265–41266, Docket No. 96–067–2), we replaced that description with an incorporation by reference of the Texas Animal Health Commission's (TAHC) regulations in § 41.2 of title 4, part II, Texas Administrative Code (4 TAC 41.2), that describe the quarantined area in Texas. The effective date of the TAHC regulations that we incorporated by reference was July 22, 1994.

In a rule effective on April 8, 2001, the TAHC amended the tick quarantine zone described in 4 TAC 41.2; consequently, we amended the incorporation by reference in our regulations in § 72.5 to reflect the effective date of the amended TAHC regulations (*see* 67 FR 18466–18467, Docket No. 01–110–1).

In a final rule published in the *Texas Register* on June 14, 2002, and effective June 23, 2002 (27 TexReg 5175–5176), the TAHC revised, in their entirety, its regulations concerning fever ticks. In that final rule, the TAHC reorganized its regulations to list each county containing quarantined areas in a separate section. Thus, the description of the quarantined area that had been found in 4 TAC 41.2 is now distributed across §§ 41.14 through 41.22 of title 4, part II, Texas Administrative Code. The boundaries of the quarantined areas described were not affected by this reorganization.

Therefore, in order for our regulations to reflect the TAHC's reorganization of its regulations concerning fever ticks, we are amending the incorporation by reference in § 72.5 to cite 4 TAC 41.14 through 41.22 as the location of the TAHC's regulations describing areas quarantined for fever ticks and to specify the June 23, 2002, effective date of the current TAHC regulations.

#### Effective Date

We are taking this action to update our regulations with respect to changes that have already occurred in the organization of the TAHC's regulations that describe the areas of Texas quarantined because of ticks. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary. We also find good cause for making this rule effective less than 30 days after publication in the **Federal Register**.

#### 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 under Executive Order 12866.

The Animal and Plant Health Inspection Service's (APHIS) regulations in 9 CFR part 72 restrict the interstate movement of cattle from areas quarantined because of the presence of ticks that are vectors of bovine babesiosis, also known as splenetic or tick fever. The TAHC's regulations describing the quarantined area in Texas are incorporated by reference in APHIS' regulations in § 72.5.

This rule updates the incorporation by reference in § 72.5 so that it reflects the changes made by the TAHC to its regulations describing the quarantined areas in Texas. The amendments in this rule are entirely administrative in nature, thus we do not expect this rule will have an economic effect on any entities, large or small.

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 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 interim 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 72

Animal diseases, Cattle, Incorporation by reference, Quarantine, Transportation.

■ Accordingly, we are amending 9 CFR part 72 as follows:

#### PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 72.5 is revised to read as follows:

##### § 72.5 Area quarantined in Texas.

The area quarantined in Texas is the quarantined area described in the regulations of the Texas Animal Health Commission (TAHC) contained in §§ 41.14 through 41.22 of title 4, part II, of the Texas Administrative Code (4 TAC 41.14 through 41.22), effective June 23, 2002, which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of 4 TAC 41.14 through 41.22 may be obtained from the TAHC at 2105 Kramer Lane, Austin, TX 78758, and from area offices of the TAHC, which are listed in local Texas telephone directories. The TAHC also maintains a copy of its regulations on its Internet homepage at <http://www.tahc.state.tx.us/>. Copies may be inspected at the Animal and Plant Health Inspection Service, Veterinary Services, suite 3B08, 4700 River Road, Riverdale, MD, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Done in Washington, DC, this 13th day of February 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–3722 Filed 2–23–04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Release No. 34–49259]

### Delegation of Authority to the Director of the Division of Market Regulation

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is amending its Rules of Practice to delegate its authority to the Director of the Division of Market Regulation to grant or deny exemptions from the rule filing requirements of section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) pursuant to section 36 of the Exchange Act, in cases of a self-regulatory organization (“SRO”) incorporating by reference the rules of another SRO. The delegation of authority is intended to conserve Commission resources by permitting the staff to review and act on exemptive applications under section 36 when appropriate.

**EFFECTIVE DATE:** February 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Florence Harmon, Senior Special Counsel, at (202) 942–0773; Geoffrey Pemble, Special Counsel, at (202) 942–0757, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

**SUPPLEMENTARY INFORMATION:** The Commission today announces an amendment to its Rules of Practice governing Delegations of Authority to the Director of the Division of Market Regulation (“Director”).<sup>1</sup> The amendment adds to Rule 30–3 a new paragraph (a)(78) authorizing the Director to grant or deny exemptions from the rule filing requirements of section 19(b) of the Exchange Act under section 36 of the Exchange Act in a case where an SRO chooses to incorporate by reference one or more rules of another SRO.<sup>2</sup>

<sup>1</sup> 17 CFR 200.30–3.

<sup>2</sup> 15 U.S.C. 78s(b) and 78mm.