($60,000), miscellaneous general and administrative, $1,700 ($1,000), marketing, $146,500 ($132,000), $6,500 for retirement, which was included in the employee benefits category last year, and $25,400 for a newly created compliance category. Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Equipment purchases, $2,000 ($3,000), FICA employer, $3,100 ($4,250), employee benefits (health and dental), $7,000 ($13,500), research, $48,500 ($80,000), and ($8,000) for contract outside labor, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 3,017,500 50-pound bags or equivalents of Vidalia onions, would yield $301,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional $5,000 in assessment income. This, along with $4,250 in interest income and $32,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve of $167,766 are within the maximum permitted by the order of three fiscal periods' expenses.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on September 16, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 955.208 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 955.208 Expenses and assessment rate.

Expenses of $343,000 by the Vidalia Onion Committee are authorized, and an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions is established for the fiscal period ending September 15, 1996. Unexpended funds may be carried over as a reserve.

Dated: September 13, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–23192 Filed 9–18–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 77, 78, and 80

[Docket No. 95–006–2]

Tuberculosis, Brucellosis, and Paratuberculosis in Cattle and Bison; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the tuberculosis, brucellosis, and paratuberculosis regulations by requiring brands for certain cattle and bison to be placed on the hip rather than the jaw. This action will reduce distress to cattle and bison that need to be identified with a brand by moving the brand to a location that is less sensitive, but that is still clearly visible. We are also allowing certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an Animal and Plant Health Inspection Service or State representative or are moved in vehicles closed with official seals. These actions respond to increasing public concern that branding on the jaw causes unnecessary distress to cattle and bison.

EFFECTIVE DATE: October 19, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. J.D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–6188.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations in 9 CFR parts 50, 51, 77, and 78 (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate tuberculosis and brucellosis in cattle and bison. As part of these programs, hot-iron branding on the jaw and on the tailhead has been used to identify certain cattle and bison. Specifically, hot-iron branding on the jaw has been required or allowed in the following cases: (1) To identify cattle or bison that have contracted or been exposed to tuberculosis or brucellosis; (2) to identify certain cattle or bison to be moved interstate to slaughter because of tuberculosis or brucellosis; and (3) to identify adult cattle or bison that have been immunized against brucellosis.

There has been increasing public concern that hot-iron branding on the jaw may cause undue distress to cattle and bison. A number of animal rights groups and other members of the public have requested that APHIS remove hot-iron branding on the jaw from our regulatory programs.

On May 17, 1995, we published in the Federal Register (60 FR 26377–26381, Docket No. 95–006–1) a proposal to remove hot-iron branding on the jaw from the regulations in 9 CFR parts 50, 51, 77, and 78. In places where branding has been required to be on the jaw, we proposed to move the required location of the brand to high on the hip near the tailhead. In places where the regulations have offered an owner the option of branding either on the jaw or on the hip, we proposed to remove the option of

branding on the jaw, but retain the brand on the hip. We also proposed several alternatives to branding certain cattle and bison that are to be moved interstate for slaughter. We proposed to allow brucellosis reactor and exposed cattle or bison moving directly to slaughter to be moved without branding if they are accompanied directly to slaughter by an APHIS or State representative. We proposed to allow tuberculosis reactor and exposed cattle or bison moving interstate directly to slaughter to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We proposed to allow brucellosis reactor and exposed cattle or bison moving interstate in slaughter channels (e.g, to a specifically approved stockyard or an approved intermediate handling facility, and then to slaughter) and brucellosis exposed cattle and bison moving interstate to quarantined feedlots to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We also proposed that tuberculosis reactor cattle and bison would have to be identified by a permanent and legible ''TB'' tattooed in the left ear, and by spraying the left ear with yellow paint, in order to be moved interstate without branding.

We solicited comments concerning our proposal for 30 days ending June 16, 1995. We received 11 comments by that date. They were from livestock associations, animal welfare organizations, veterinarians, and members of Congress. Three commenters opposed the proposed rule; four commenters supported the proposed rule completely; and the remaining four commenters supported the proposed rule but asked APHIS to consider making some additions and changes. We carefully considered all of the comments we received. They are discussed below by topic.

Several commenters supported the proposed amendments to the tuberculosis and brucellosis regulations, but asked that we make the same amendments to the regulations in 9 CFR part 80, ''Paratuberculosis in Domestic Animals,'' which have required a ''T'' brand on the left jaw for paratuberculosis reactor cattle. We have chosen to make this amendment in our final rule. The amendment is in keeping with the intent of the proposal to remove branding on the jaw from all APHIS disease control programs, and our failure to include part 80 in the proposed rule was an oversight. In addition, we are making a change to require that paratuberculosis reactors be branded with the letter ''J'' instead of the letter ''T''. Paratuberculosis is also commonly known as Johne's disease. A ''J'' brand would distinguish paratuberculosis reactors from bovine tuberculosis reactors (which are branded with the letter ''T''). We are therefore amending 9 CFR part 80 to require that paratuberculosis reactors be branded with the letter ''J'' high on the left hip near the tailhead. We are also adding the option for paratuberculosis reactor cattle moving interstate directly to slaughter to be moved without branding if they are accompanied by an APHIS or State representative; and for paratuberculosis reactor cattle moving interstate in slaughter channels to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We are also making another change to part 80. Section 80.4 currently states that the inscription on the metal eartags for paratuberculosis reactors must read ''U.S.B.A.I. Reacted'' or ''U.S. Reacted.'' These inscriptions are out of date, so we are amending § 80.4 to require that the inscription read ''U.S. Reactor.'' This inscription is consistent with the inscriptions required by the regulations for other disease reactors.

One commenter was opposed to the proposed options for moving tuberculosis and brucellosis reactor and exposed cattle and bison to slaughter without branding. The commenter argued that branding ensures that such animals are slaughtered, and said that the agency will be unable to accomplish its goals of disease eradication if identification requirements are weakened. We have made no changes based on this comment. As discussed in the proposed rule, we believe that the provisions under which we would allow disease-affected animals to be moved without branding will provide owners with an alternative to branding without negatively affecting APHIS' ability to conduct its disease eradication activities.

Two commenters stated that the location of the brands should either remain on the jaw or be moved to the neck or high on the shoulder. They argue that some State livestock agencies have set aside the jaw for brands used in State and Federal animal disease control programs. They also argue that a Federal brand on the hip may be confused or conflict with registered ownership brands on the hip—a number of which are similar to the ''S'', ''T'', ''B'', and ''V'' brands called for in the proposed rule. We have made no changes based on these comments. The same location specified in the proposed rule for all brands required by 9 CFR parts 50, 51, 77, and 78 has been used by APHIS for the placement of ''S'' and ''V'' brands under the regulations in 9 CFR part 78 since 1983, and for ''M'' brands under 9 CFR part 92 since the beginning of this year. We are unaware of any identification problems resulting from those existing brands. Further, the proposed location of ''high on the hip near the tailhead'' is a different location on the hip from where registered ownership brands are placed, and we therefore do not believe that any confusion will result.

One commenter stated that it is unnecessary to require tuberculosis reactors moved without branding in sealed vehicles to be tattooed and spray-painted on the ear. The commenter believes that properly sealed vehicles, eartags, accompanying shipping permits, and good communication with meat inspection personnel would provide adequate assurance that tuberculosis reactors are not diverted from slaughter. Conversely, another commenter stated that the proposed requirement to tattoo and spray-paint tuberculosis reactors should also be applied to tuberculosis exposed animals and brucellosis reactors and exposed animals that are moved interstate to slaughter without branding. The latter commenter argues there are numerous opportunities to divert cattle and bison from slaughter—for example, in slaughter pens, or when cattle and bison must be transferred from one truck to another due to equipment failure—and that for this reason it is important that all cattle and bison moving to slaughter because of tuberculosis or brucellosis be permanently identified.

We have made no changes to the rule based on these comments. We recognize that there may be incentives to divert valuable, but diseased, cattle or bison from slaughter channels in order to avoid the monetary loss from the slaughter of the animal. We stated in the proposed rule that we believe this incentive is significantly greater for tuberculosis reactors than for other diseased cattle or bison, because unlike tuberculosis exposed or brucellosis reactor and exposed cattle or bison, tuberculosis reactors can only be sold for consumption if the meat is cooked.

Currently, there are only four slaughtering facilities in the United States that have established markets for meat required to be cooked, so this option is not available to the majority of cattle and bison owners. Consequently, most tuberculosis reactor cattle and bison sent to slaughter constitute an average monetary loss of $400 or more to the owner, creating an incentive to divert valuable animals that are tuberculosis reactors from slaughter to be used for some other purpose. Since tuberculosis exposed animals and brucellosis reactor and exposed animals do not have to be cooked before they can be sold for consumption, their slaughter value is potentially greater, and the incentive to divert is not as significant. In light of this, we believe that the precautions we proposed for moving tuberculosis exposed animals and brucellosis reactor and exposed animals to slaughter without branding are adequate to prevent diversion of the animals and dissemination of the diseases they carry. Perhaps more importantly, the post-mortem examination and specific disposition of tuberculosis reactor carcasses required by the United States Department of Agriculture's Food Safety and Inspection Service (FSIS) regulations is more stringent than that required of tuberculosis exposed and brucellosis reactor and exposed carcasses. It is imperative that tuberculosis reactors are identified at slaughter to ensure they are properly examined and disposed of in accordance with FSIS requirements.

One commenter stated that APHIS should consider eliminating the need for branding altogether by requiring that all brucellosis and tuberculosis reactor and exposed cattle and bison moved interstate to slaughter be accompanied by an APHIS or State representative or be moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We have made no changes based on this comment.

It is our belief that most cattle and bison owners will choose to move their animals to slaughter without branding using one of the options provided in the proposed rule. Branding a herd of cattle or bison is time-consuming, difficult, and costly because of the effort and personnel needed to restrain each animal. It is far easier to simply herd the animals into a truck which is then sealed by the APHIS representative, State representative, or accredited veterinarian who identified the herd. However, there are always circumstances under which it is impractical or unfeasible for owners to move their animals in this manner, such as lack of a proper vehicle, unavailability of APHIS or State personnel, or inability to market the animals immediately. Under such circumstances, it would be necessary for owners to have the cattle or bison branded.

The same commenter also asked that we amend numerous paragraphs in § 78.9 of the brucellosis regulations, ''Cattle from herds not known to be affected,'' to allow such cattle to be moved interstate without branding if they are accompanied directly to slaughter by an APHIS or State representative. Section 78.9 concerns movement of cattle from brucellosis Class Free, Class A, Class B, and Class C States and areas to quarantined feedlots, specifically approved stockyards, or approved intermediate handling facilities, and then to slaughter. Section 78.9 requires certain cattle moving from Class B and Class C States and areas to be branded. We proposed to amend this section to allow those cattle which are required to be branded to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We have made no changes based on this comment.

We did not propose the option which the commenter requests because, given the large number of movements under § 78.9 to feedlots, stockyards, and handling facilities, and given the limited number of APHIS and State personnel available to accompany such shipments, it would be impractical, if not impossible, to offer this option. It is for this reason that we proposed to allow reactor and exposed cattle and bison to be moved without branding and accompanied by an APHIS or State representative only if they are moving directly to slaughter. We believe that allowing cattle that would otherwise be branded to be moved without branding in slaughter channels if they are moved in a sealed vehicle is adequate to allow owners to move their animals without branding if they so choose. Further, there are currently no Class B or Class C States or areas. Therefore, no cattle are branded under the regulations in § 78.9.

One commenter asked that APHIS allow owners to mark their cattle in some way other than with a hot iron, such as freeze-branding. The commenter said that, according to previous APHIS policy, a mark for a disease-affected animal must be ''permanent, distinct, and legible''; APHIS' assertion in the proposed rule that a mark must also be ''instantly recognizable'' is a novel criteria. Relative to this, the commenter said that ''(c)learly what APHIS intends here is not that all letter marks be instantaneously readable, but, rather, that letter marks be readable *at the time animals begin their interstate journeys to slaughter*.'' Accordingly, even though freeze-branding takes a minimum of 18 to 21 days to become readable, and in order to claim indemnity for cattle and bison destroyed because of tuberculosis or brucellosis the owner must destroy the animals within 15 days, APHIS should allow identification options such as freeze-branding for cattle and bison owners who do not wish to claim indemnity. We have made no changes based on this comment.

In the past, APHIS has set forth its criteria that a mark for identifying cattle and bison must be permanent, distinct, and legible. In a recent rulemaking, which is cited by the commenter, we offered these criteria as justification for allowing marking methods such as freeze-branding to be employed when identifying certain cattle from Mexico for importation into the United States (Docket No. 93–006–3, 59 FR 65893–65897). The Mexican cattle of concern in that rulemaking are not known to be diseased. We require that such animals be identified by a distinct, permanent, and legible mark for traceback purposes, in the event that they are diseased and U.S. livestock are exposed to them. The mark must be visible at the time the Mexican cattle are presented for importation, but the owner may brand them at any time prior to the importation, making branding methods that take several weeks to become visible a viable option.

This rulemaking, in contrast, concerns cattle and bison which are known to be affected with tuberculosis or brucellosis, or are known to have been exposed to an animal that is affected with tuberculosis or brucellosis. It is imperative that animals known to be affected with a disease as destructive as brucellosis or tuberculosis be either identified immediately or moved to slaughter in such a manner that there is no significant risk the animals will be diverted from their destination. For this reason we did not propose to allow marking methods that are not instantly recognizable for identifying brucellosis and tuberculosis reactor and exposed cattle and bison.

As we stated in the proposal, the necessity for an instantly recognizable mark is so that the animals are not unknowingly commingled with healthy

animals after they leave the premises where they were identified for slaughter. Even if the ''instantly recognizable'' requirement were to be waived to allow freeze-branding, the owners of reactor or exposed cattle and bison would have to keep those animals under quarantine for the 18–21 days that it takes for a freeze-brand to become visible. That extra time on the farm would increase the chances that healthy animals might become exposed or infected. A central goal of the brucellosis and tuberculosis eradication programs is to identify diseased animals and get them away from other animals before the disease can spread. To require the animals to be kept on the farm runs counter to that goal. The owners of the quarantined cattle and bison would also be subject to economic losses associated with feeding and caring for the animals, potential decreases in market prices, and animals dying before sale.

The same commenter asked that we allow a tattoo and paint as an alternative to hot-iron branding. Since we say in the proposal that we believe a tattoo and yellow paint would be permanent and legible, the commenter asserts that it follows that it would be distinct as well, and would therefore fulfill the three criteria of distinct, permanent, and legible. We have made no changes based on this comment. We proposed that tuberculosis reactor cattle and bison that are moved to slaughter without branding be moved in a sealed vehicle or accompanied by an APHIS or State representative, and also be marked in the left ear with a tattoo and the ear be sprayed with yellow paint. Marking the ear with a permanent and legible tattoo will help eliminate the possibility that a tuberculosis reactor could be sold for any purpose other than slaughter, because the seller would risk a civil lawsuit should the buyer discover the tattoo in the reactor's ear. We proposed this type of mark as an alternative to branding in this case because we needed to provide an alternative, but did not believe we could safely allow tuberculosis reactors to move to slaughter without some sort of permanent mark.

There are problems with tattooing that prevent us from offering it as a general alternative for all disease-affected animals. One is that the tattoo must be on skin (not hair) in order to be legible. We have chosen the inside of the ear as the most accessible and reliable area on which to place a tattoo. Further, the animal's head must be restrained in order to tattoo the ear, and in order to see the tattoo at a later time. Yellow paint on the ear can help identify an animal which has a ''TB'' tattoo, but it is not foolproof, as paint can wear or rub off. Tuberculosis reactor animals are moved directly to slaughter, making it less likely that this will occur. Brucellosis exposed animals are often shipped through feedlots and other slaughter channels, increasing the possibility that the paint will have worn off by the time the animal reaches the slaughtering facility. For these reasons, we have chosen to confine the use of a tattoo as disease identification to tuberculosis reactors that are moved to slaughter without branding.

One commenter asked that we state in the regulations that the proposed shipments in sealed vehicles for unmarked cattle and bison would be subject to the requirements of the Twenty-Eight Hour Law. In conjunction with this, the commenter asked that we add to the regulations definitions for ''moved directly'' and ''sealed vehicle'' to clarify that these stipulations do not conflict with the requirements of the Twenty-Eight Hour Law. We have made no changes based on this comment.

The commenter is referring to a statute at 45 U.S.C 71–74, which requires, among other things, that animals may not be confined during transport for a period longer than 28 consecutive hours without unloading them in a humane manner for rest, water, and feeding. The regulations in 9 CFR part 89, ''Statement of Policy Under the Twenty-Eight Hour Law,'' set forth APHIS policy concerning the authorizing statute at 45 U.S.C. 71–74, and are written to apply only to transport by railcar. Virtually no transportation of tuberculosis and brucellosis affected cattle and bison is done today by railcar, as nearly all such transport today is by truck. The Twenty-Eight Hour Law does not apply to transport by truck.

In our proposal, we state that the official seals on a sealed vehicle must be ''applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.'' The operator of the conveyance in which the animals are being transported will have been furnished with the telephone numbers of APHIS representatives in the States of origin and destination prior to his or her departure from the State of origin. If, for any reason, the operator is unable to reach the slaughtering establishment as planned, or otherwise determines that it is necessary to unload the animals from the sealed vehicle, the operator will be able to contact an APHIS representative, who will make the necessary arrangements for APHIS or State personnel to travel to the location of the conveyance in order to remove the seal, apply a new seal when the animals are reloaded, and take whatever precautions are necessary in the interim to ensure that the animals are maintained in isolation sufficient to prevent dissemination of the diseases they carry. This practice is standard, and we do not believe it is necessary to describe it in the regulations.

The same commenter suggested that APHIS create an incentive for cattle and bison owners to ship their tuberculosis- and brucellosis-affected cattle and bison to slaughter without branding by awarding certificates of recognition to owners who regularly opt to ship their animals in sealed vehicles or under APHIS or State escort as an alternative to branding. The commenter said that APHIS should publicize the award of these certificates periodically through agency press releases and reports. The commenter reasons that most cattle producers and brokers will continue to brand their disease-affected animals despite the alternative offered in the proposed rule, and that if APHIS is committed to reducing distress to cattle and bison, some further incentive will need to be offered.

We are making no changes based on this comment. As stated in response to a previous comment, it is our belief that most cattle and bison owners will choose to move their animals to slaughter without branding using one of the options provided in this rule. Branding a herd of cattle or bison is time-consuming, difficult, and costly because of the effort and personnel needed to restrain each animal. It is far easier to simply herd the animals into a truck which is then sealed. Regardless of this belief, the primary concern of APHIS is to move these animals to slaughter without disseminating the diseases they carry to healthy animals. While we are attempting to achieve this in the most humane manner possible, there are circumstances under which we would advise branding over the other alternatives we proposed, such as if the cattle or bison cannot be moved immediately to slaughter. For this reason, we are not promoting the consistent use of one alternative over another. Further, it is likely that most owners of tuberculosis or brucellosis affected herds would not elect to publicize the fact that their animals were slaughtered because of these diseases. We are offering owners several options for moving their animals, and we are available to advise them about which option would be most appropriate, and safe, given the circumstances under which their

animals will be moved. If a private entity wishes to award such certificates of recognition, and they find that cattle and bison owners are willing to accept such recognition, they may feel free to do so.

One commenter pointed out that, although the Supplementary Information in the proposal states that ''(w)e would allow brucellosis reactor and exposed cattle or bison moving directly to slaughter to be moved without branding if they are accompanied directly to slaughter by an APHIS or State representative,'' we do not include this allowance in the regulatory amendments to part 78. Our failure to make the change was an oversight, as it was clearly our intention to allow exposed cattle and bison to be moved directly to slaughter without branding if they are accompanied directly to slaughter by an APHIS or State representative, and we did make the necessary changes to part 51 to allow for that. We are, therefore, in this final rule amending § 78.8(a)(2)(iii)(D) to allow brucellosis exposed cattle and bison to be moved directly to slaughter without branding if they are accompanied directly to slaughter by an APHIS or State representative.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

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.

We do not anticipate that this rule will have an economic impact on any entities, large or small. Cattle and bison that have contracted or been exposed to tuberculosis, brucellosis, or paratuberculosis, or that have been immunized against brucellosis, are already required to be identified by a brand; this rule will simply change the location of the brand. Under the tuberculosis, brucellosis, and paratuberculosis eradication programs, the Animal and Plant Health Inspection Service and cooperating States bear the costs of branding cattle and bison, and changing the location of the brand will not result in any change in costs to APHIS or the States. Further, although branding is generally done on the ranch or farm where the cattle or bison are located, no new equipment will be necessary for branding the cattle or bison on the hip, so there will be no new costs to the owner of the animals.

This rule will also allow certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an APHIS or State representative, or if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. Such movement will be a voluntary alternative to branding, and will not impose any additional costs to owners of cattle or bison that are to be moved interstate.

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 12778

This rule has been reviewed under Executive Order 12778, 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 information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 50

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

9 CFR Part 51

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

9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 80

Animal diseases, Livestock, Transportation.

Accordingly, 9 CFR parts 50, 51, 77, 78, and 80 are amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 50.6, paragraphs (a) and (b) are revised to read as follows:

§ 50.6 Identification of animals to be destroyed because of tuberculosis.

* * * * *

(a) *Reactor cattle and bison.* Reactor cattle and bison shall be identified by branding the letter ''T,'' at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription ''U.S. Reactor'', or a similar State reactor tag. Reactor cattle and bison may be moved interstate to slaughter without branding if they are permanently identified by the letters ''TB'' tattooed legibly in the left ear, they are sprayed on the left ear with yellow paint, and they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(b) *Exposed cattle and bison.* Exposed cattle and bison shall be identified by branding the letter ''S,'' at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number. Exposed cattle and bison may be moved interstate to slaughter without branding if they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

3. 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 2.17, 2.51, and 371.2(d).

4. In § 51.5, paragraph (b) is revised to read as follows:

§ 51.5 Identification of animals to be destroyed because of brucellosis.

* * * * *

(b) Except as provided in paragraph (b)(4) of this section, cattle and bison to be destroyed because of brucellosis shall be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription ''U.S. Reactor,'' or a similar State reactor tag, and must be:

(1) ''B'' branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

(4) Reactor and exposed cattle and bison in herds scheduled for herd depopulation may be moved interstate without eartagging or branding if they are identified by USDA approved backtags and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 77—TUBERCULOSIS

5. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

6. In § 77.5, the heading is amended by removing the word ''comtaining'' and adding the word ''containing'' in its place, and paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 77.5 Interstate movement of cattle and bison that are exposed, reactors, or suspects, or from herds containing suspects.

(a) *Reactor cattle and bison.* * * *

(1) Reactor cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number and the inscription ''U.S. Reactor'', or a similar State reactor tag, and must be:

(i) Branded with the letter ''T,'' at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Permanently identified with the letters ''TB'' tattooed legibly in the left ear and sprayed with yellow paint on the left ear, and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

(b) *Exposed cattle and bison.* * * *

(1) Exposed cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number, and must be:

(i) Branded with the letter ''S,'' at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Accompanied directly to slaughter by an APHIS or State representative; or

(iii) Moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 78—BRUCELLOSIS

7. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—General Provisions

§ 78.1 [Amended]

8. Section 78.1 is amended as follows:

a. In the definition for *''B'' branded,* the phrase ''at least 5 sq. cm. (2X2 inches) in size on the left jaw'' is removed and ''high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size'' is added in its place.

b. In the definition for *Official adult vaccinate,* paragraph (b)(1) is amended by removing ''on the right jaw or'' and by adding ''at least 5 by 5 centimeters (2 by 2 inches) in size'' immediately after ''tailhead''.

c. In the definition for *''S'' branded,* the phrase ''at least 5 sq. cm. (2X2 inches) in size on the left jaw or high on the tailhead (over the fourth to the seventh coccygeal vertebrae)'' is removed and ''high on left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size'' is added in its place.

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

9. In § 78.7, paragraph (b) is revised to read as follows:

§ 78.7 Brucellosis reactor cattle.

* * * * *

(b) *Identification.* Brucellosis reactor cattle must be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription ''U.S. Reactor,'' or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors, and must be:

(1) ''B'' branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

* * * * *

10. Section 78.8 is amended as follows:

a. Paragraph (a)(2)(iii)(D) is redesignated as paragraph (a)(2)(iii)(E); and a new paragraph (a)(2)(iii)(D) is added to read as set forth below.

b. The period at the end of paragraphs (a)(3)(iii)(C), (a)(5)(iii)(C), and (b)(3)(ii) is removed, and ''; or'' is added in its place; and new paragraphs (a)(3)(iii)(D), (a)(5)(iii)(D), and (b)(3)(iii) are added to read as set forth below.

§ 78.8 Brucellosis exposed cattle.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(D) Accompanied directly to slaughter by an APHIS or State representative; or

* * * * *

(3) * * *

(iii) * * *

(D) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or ''S'' brand permit.

* * * * *

(5) * * *

(iii) * * *

(D) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or ''S'' brand permit.

* * * * *

(b) * * *

(3) * * *

(iii) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or ''S'' brand permit.

* * * * *

11. Section 78.9 is amended by removing the period and adding ''; or'' in its place at the end of the following paragraphs:

a. (c)(1)(v)(C).

b. (c)(1)(vii)(C).

c. (c)(2)(i)(C).

d. (c)(2)(ii)(B).

e. (d)(1)(v)(C).

f. (d)(1)(vii)(C).

g. (d)(2)(i)(C).

h. (d)(2)(ii)(B).

12. Section 78.9 is amended by adding new paragraphs (c)(1)(v)(D), (c)(1)(vii)(D), (c)(2)(i)(D), (c)(2)(ii)(C), (d)(1)(v)(D), (d)(1)(vii)(D), (d)(2)(i)(D), and (d)(2)(ii)(C) to read as follows:

§ 78.9 Cattle from herds not known to be affected.

* * * * *

(c) * * *

(1) * * *

(v) * * *

(D) They are accompanied by an ''S'' brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying ''S'' brand permit.

* * * * *

(vii) * * *

(D) They are accompanied by an ''S'' brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying ''S'' brand permit.

(2) * * *

(i) * * *

(D) A quarantined feedlot, a specifically approved stockyard and then directly to a quarantined feedlot, or an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are accompanied by an ''S'' brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying ''S'' brand permit.

(ii) * * *

(C) They are accompanied by an ''S'' brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying ''S'' brand permit.

* * * * *

(d) * * *

(1) * * *

(v) * * *

(D) They are accompanied by an ''S'' brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying ''S'' brand permit.

* * * * *

(vii) * * *

(D) They are accompanied by an ''S'' brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying ''S'' brand permit.

(2) * * *

(i) * * *

(D) A quarantined feedlot, a specifically approved stockyard and then directly to a quarantined feedlot, or an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are accompanied by an ''S'' brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying ''S'' brand permit.

(ii) * * *

(C) They are accompanied by an ''S'' brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying ''S'' brand permit.

* * * * *

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

13. In § 78.22, paragraph (b) is revised to read as follows:

§ 78.22 Brucellosis reactor bison.

* * * * *

(b) *Identification.* Brucellosis reactor bison must be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription ''U.S. Reactor,'' or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors, and must be:

(1) ''B'' branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

* * * * *

PART 80—PARATUBERCULOSIS IN DOMESTIC ANIMALS

14. The authority citation for part 80 is revised to read as follows:

Authority: 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, and 125; 7 CFR 2.17, 2.51, and 371.2(d).

15. In § 80.4, paragraph (a) is revised to read as set forth below.

§ 80.4 Movement of paratuberculosis reactors.

* * * * *

(a) Cattle and other domestic animals that have reacted to such a test must be individually identified by attaching to

the left ear an approved metal eartag bearing a serial number and the inscription ''U.S. Reactor'', or a similar State reactor tag. Cattle must also be:

(1) Branded with the letter ''J,'' at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

Done in Washington, DC, this 13th day of September 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–23191 Filed 9–18–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 21

RIN 3150–AF01

Procurement of Commercial Grade Items by Nuclear Power Plant Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide added flexibility in procuring commercial grade items for safety-related service by nuclear power plant licensees. This action provides the requirements for the procurement of basic components, which will be procured initially as commercial grade items with subsequent dedication for safety-related service, in a manner that avoids unnecessary delay and expense while maintaining an adequate level of plant safety.

EFFECTIVE DATE: October 19, 1995.

ADDRESSES: Copies of the public record, including the final regulatory analysis and any public comments received on the proposed rule, may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: M. L. Au, P.E., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6181; E-mail MLA@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1994 (59 FR 53372), the NRC published a proposed rule in the Federal Register that would clarify and add flexibility to 10 CFR Part 21 requirements for the procurement of commercial grade items for safety-related service by nuclear power plant licensees. This action was in response to a petition for rulemaking (PRM–21–2) from the Nuclear Management and Resources Council (NUMARC), which has been incorporated into the Nuclear Energy Institute (NEI). The notice of receipt of the petition for rulemaking was published on October 14, 1993 (58 FR 53159). The petitioner contended that many of the manufacturers and suppliers of original equipment no longer maintain programs that meet the requirements of Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' because of the high cost of maintaining and implementing these programs relative to the diminishing demand for plant parts. Thus, according to NEI, an increasing number of safety-related items are being purchased as commercial grade items from manufacturers and suppliers who no longer maintain quality assurance programs required by Appendix B to 10 CFR Part 50. Because this is a relatively small market, the petitioner stated that many vendors are unwilling to develop and maintain evaluation and notification procedures that meet the reporting requirements in 10 CFR Part 21. With fewer vendors agreeing to comply with these requirements, the petitioner claimed that it is becoming increasingly difficult for nuclear power plant licensees to procure items for safety-related applications.

The petitioner believed that the sections in 10 CFR Part 21 that relate to procurement of commercial grade items, the dedication of these items for use in safety-related applications, and the reporting requirements associated with these items are unworkable and ineffective and consequently may adversely affect safety. Furthermore, the petitioner believed that the effect of these provisions has been to discourage vendors from maintaining programs that meet NRC requirements and to even refuse to provide parts to licensees. To alleviate these problems, the petitioner proposed the following three changes to 10 CFR Part 21:

First, the petitioner suggested that the NRC broaden the definition of ''commercial grade item'' in 10 CFR 21.3 to read as follows: ''Commercial grade item means any item that has not been dedicated for use as a basic component.'' Essentially this definition would cover any item obtained on the open market. The petitioner believed that allowing commercially available items to qualify as commercial grade items would result in more reasonable prices and delivery times with no adverse impacts on safe plant operations.

Second, the petitioner suggested a more flexible generic definition of ''dedication'' in 10 CFR 21.3 to read as follows: ''Dedication is the evaluation process undertaken to provide reasonable assurance that a commercial grade item to be used as a basic component will perform its intended function.'' According to the petitioner, dedication methods could include testing, inspection, surveying the commercial grade supplier to determine that the appropriate quality control is in place, observing the manufacturing process, and analyzing the historical record of the item for acceptable performance. The petitioner also proposed that the dedicating entity maintain documentation of the dedication process for an audit or inspection.

The petitioner believed that the benefits of establishing this approach would be that the licensee or third-party performing the dedication:

(1) Understands the safety significance and function of the proposed component;

(2) Is able to identify the characteristics necessary to perform its intended function better than the manufacturer; and

(3) Is responsible for the quality of the commercial grade item.

This would require the party performing the dedication to determine the suitability of the component by analyzing its ability to perform successfully in a safety-related application.

Third, the petitioner suggested that the responsibility for reporting defects and failures to comply for commercial grade items that have been dedicated should reside with the entity responsible for performing the dedication process. The petitioner suggested that the following language be added to 10 CFR 21.21(b): ''The entity that performs the dedication is responsible for identifying, evaluating and reporting the deviations and failures to comply associated with substantial safety hazards of a commercial grade item.'' Since the manufacturers, suppliers, and sub-tier suppliers of commercial grade items do