country pursuant to a bilateral or multilateral agreement, only with respect to aliens whom DHS has chosen to place in removal proceedings under section 240 of the Act, as provided in 8 CFR 1240.11(g). For DHS regulations relating to determinations by asylum officers on this subject, see 8 CFR 208.30(e)(6).

* * * * *

5. Section 1208.30 is amended by:

a. Revising paragraphs (a) and (e); and by

b. Removing and reserving paragraphs (c), (d), (f) and (g)(1).

The revisions read as follows:

§ 1208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) Jurisdiction. The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B), asylum officers have exclusive jurisdiction to make credible fear determinations, and the immigration judges have exclusive jurisdiction to review such determinations.

* * * * *

(e) Determination. For the standards and procedures for asylum officers in conducting credible fear interviews and in making positive and negative credible fear determinations, see 8 CFR 208.30(b), (c), (d), (e), (f), and (g)(1). The immigration judges will review such determinations as provided in paragraph (g)(2) of this section and 8 CFR 1003.42.

* * * * *

PART 1212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

6. The authority citation for part 1212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103.

7. Section 1212.5 is revised to read as follows:

§ 1212.5 Parole of aliens into the United States.

Procedures and standards for the granting of parole by the Department of Homeland Security can be found at 8 CFR 212.5.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

8. The authority citation for part 1240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; sec. 1101, Pub. L. 107–269, 116 Stat. 2135.

9. Section 1240.11 is amended by adding a new paragraph (g), to read as follows:

§ 1240.11 Ancillary matters, applications.

* * * * *

(g) Safe third country agreement. (1) The immigration judge has authority to apply section 208(a)(2)(A) of the Act, relating to a determination that an alien may be removed to a safe third country pursuant to a bilateral or multilateral agreement, in the case of an alien who is subject to the terms of the agreement and is placed in proceedings pursuant to section 240 of the Act without being processed under section 235 of the Act. In an appropriate case, the immigration judge shall determine whether under the Agreement the alien should be returned to the safe third country, or whether the alien should be permitted to pursue asylum or other protection claims in the United States.

(2) An alien described in paragraph (g)(1) of this section is ineligible to apply for asylum, pursuant to section 208(a)(2)(A) of the Act, unless the immigration judge determines, by preponderance of the evidence, that:

(i) The agreement does not apply to the alien or does not preclude the alien from applying for asylum in the United States; or

(ii) The alien qualifies for an exception to the agreement as set forth in paragraph (g)(3) of this section.

(3) The immigration judge shall apply the applicable regulations in deciding whether the alien qualifies for any exception under the agreement that would permit the United States to exercise authority over the alien's asylum claim. The exceptions under the agreement are codified at 8 CFR 208.30(e)(6)(iii). The immigration judge shall not review, consider, or decide any issues pertaining to any discretionary determination on whether the alien should be permitted to pursue an asylum claim in the United States notwithstanding the general terms of the agreement, as such discretionary public interest determinations are reserved to the Department of Homeland Security. However, an alien in removal proceedings who is otherwise ineligible to apply for asylum under the agreement may apply for asylum if the Department of Homeland Security files a written notice in the proceedings before the immigration judge that it has decided in the public interest to allow the alien to pursue claims for asylum or withholding of removal in the United States.

(4) An alien who is found to be ineligible to apply for asylum under section 208(a)(2)(A) of the Act is ineligible to apply for withholding of removal pursuant to section 241(b)(3) of the Act and the Convention against Torture. However, the alien may apply for any other relief from removal for which the alien may be eligible. If an alien who is subject to section 208(a)(2)(A) of the Act is ordered removed, the alien shall be ordered removed to the safe third country in which the alien will be able to pursue his or her claims for asylum or protection under the laws of that country.

Dated: March 1, 2004.

John Ashcroft,

Attorney General.

[FR Doc. 04–5065 Filed 3–5–04; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. 03–080–2]

RIN 0579–AB73

Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the regulations regarding the importation of animals and animal products to recognize, and add Canada to, a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States via live ruminants and ruminant products. The proposed rule also set out conditions under which we would allow the importation of certain live ruminants and ruminant products and byproducts from such regions. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before April 7, 2004.

ADDRESSES: You may submit comments by any of the following methods:

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–0801, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–080–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–080–1'' on the subject line.

• Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James-Preston, Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2003, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (68 FR 62386–62405, Docket No. 03–080–1) a proposal to amend the regulations regarding the importation of animals and animal products to recognize a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy (BSE) into the United States via live ruminants and ruminant products, and proposed to add Canada to this category. We also proposed to allow the importation of certain live ruminants and ruminant products and byproducts from such regions under certain conditions. Comments on the proposed rule were required to be received on or before January 5, 2004. In addition to inviting comments on the proposed rule itself, APHIS invited comments on an analysis the Agency had conducted of the risk of importing the animals and animal products in question from Canada under the conditions of the proposed rule. At the time the proposed rule was published, BSE had never been detected in the United States and only a single case had been reported in Canada (in Alberta in May 2003).

On December 23, 2003, the U.S. Department of Agriculture (USDA) announced a presumptive positive case of BSE in a Holstein cow in Washington State. The diagnosis was verified on December 25, 2003, by an international reference laboratory. The investigation that was conducted following detection of the disease revealed the animal was born in Canada and had most likely been exposed to the BSE agent in that country.

Since the date of detection of BSE in the cow in Washington State, the USDA and other Federal and State agencies have worked together closely to perform an epidemiological investigation, trace any potentially infected cattle, trace potentially contaminated rendered product, increase BSE surveillance, and take additional measures to address human and animal health. Additionally, an international panel of scientific experts appointed by the Secretary of Agriculture has provided a review of U.S. BSE response actions and has made recommendations for enhancements of the national BSE response program in the United States.[1]

Detection of BSE in the imported cow in Washington State occurred after APHIS conducted its analysis of the risk of importing ruminants and ruminant products and byproducts from Canada under the conditions of the proposed rule. Therefore, it is important for us to explain the extent to which we believe that detection may affect the conclusions of the risk analysis, and, consequently, the validity of the proposed rule. Therefore, we have prepared an explanatory document, discussed below, that addresses the effect of the detection of the imported cow on the analysis of risk that we conducted for the November 2003 proposed rule.

Effect of the Detection of BSE on APHIS's Analysis of Risk

The epidemiological investigation that was conducted following detection of BSE in an imported cow in Washington State [2] revealed several points that are relevant to whether and how that detection affects our analysis of the risk of importing ruminants and ruminant products from Canada under the conditions of the November 2003 proposed rule.

• The infected heifer was approximately 6 years and 8 months old at the time the disease was diagnosed. Its age indicated that it was born before implementation of a ban in Canada on feeding mammalian protein to ruminants and was most likely to have become infected before that feed ban was implemented.

• The animal was imported into the United States in 2001 at approximately 4 years of age.

Among the conditions for importing cattle from Canada under the proposed rule was the requirement that the animals be no more than 30 months old. This restriction was based on research indicating the most likely cattle to have infectious levels of the BSE agent are those older than 30 months. Additionally, the proposed rule required that the animals not have been fed ruminant protein.

Although the BSE-infected cow identified in Washington State was more than 30 months of age when it was diagnosed, it was obviously not imported under the conditions of the yet-to-be-implemented proposed rule, and would not have been allowed to be imported under the proposed rule. Further, as discussed in the risk analysis, a ban on feeding mammalian protein to ruminants was implemented in Canada in 1997 and compliance with that feed ban appears to have been, and to continue to be, good. The cow identified with BSE in the United States was born in Canada before the feed ban was implemented. Therefore, we continue to believe that the import controls of the proposed rule would be effective.

The analysis of risk we conducted addressed the issue of the prevalence of BSE in Canada. The risk analysis

[1] You may view the international panel's report on the Internet by accessing the APHIS Web site at *http://www.aphis.usda.gov/lpa/issues/bse/bse.html*. At the BSE page, click on the listing for ''The Secretary's Foreign Animal and Poultry Disease Advisory Committee's Report on Measures Relating to Bovine Spongiform Encephalopathy (BSE) in the United States.''

[2] A summary of the epidemiological investigation is included in our explanatory note document. Instructions for accessing the explanatory note document are included in this notice under the heading ''How to View APHIS Risk Documents Related to this Notice.''

presented evidence that the prevalence was very low and that Canada had strong BSE controls in place. Although the detection of an imported BSE-infected cow in Washington State means an additional animal of Canadian origin has been diagnosed with BSE since completion of the risk analysis and publication of the proposed rule, the total number of diagnosed cases attributed to that country remains low. Further, Canada has implemented strong measures to prevent the establishment, propagation, and spread of BSE among cattle in that country, to detect infected animals through surveillance, and to protect the Canadian animal and human food supplies.

Given the conditions APHIS is proposing for the importation of ruminants and ruminant products from Canada, we believe it is highly unlikely that BSE would be introduced from Canada under the proposed rule. Based on the factors discussed in the original risk analysis, along with risk mitigation measures currently in place and those that would be added by the proposed rule, we have concluded that a BSE case in a second cow of Canadian origin does not alter our risk estimate.

Canadian Investigation Following Detection of a BSE-Infected Cow in Washington State

The Canadian Food Inspection Agency (CFIA) initiated an epidemiological investigation specifically in response to the confirmation of a BSE-infected cow of Canadian origin in Washington State. This investigation was conducted concurrently and cooperatively with the U.S. investigation of animals from the same Canadian herd of origin. CFIA is continuing its epidemiological investigation.

The Government of Canada has also announced plans to enhance existing measures being taken in that country regarding BSE surveillance and animal tracking by increasing the number of animals tested for BSE annually and by strengthening Canada's animal identification program.[3]

Actions Taken in the United States After Detection of the Imported BSE-Infected Cow

Although the detection of an imported BSE-infected cow does not, in our view, alter the conclusions of our original risk analysis, it did raise consciousness of BSE challenges that might exist for the United States. As noted above, the United States is redirecting resources toward planning, implementation, and enforcement of measures to enhance BSE surveillance and to protect human and animal health.

Both the USDA and the U.S. Department of Health and Human Services' Food and Drug Administration (FDA) have either put in place or have announced additional safety measures in response to the detection of the case of BSE.[4] USDA requested a review of the U.S. BSE program by an international scientific panel and has received its recommendations. Although the U.S. Government has already taken significant actions that directly address many of the expert panel's recommendations, and is considering policy options to further address the recommendations, we believe the recent detection and investigation of the BSE case in a cow of Canadian origin demonstrate the effective nature of the surveillance and response measures currently in place.

The risk analysis we conducted for our November 2003 proposal was developed after, and took into consideration, the diagnosis of BSE in a cow in Canada in May 2003. In that analysis, we considered the sum total of the control mechanisms (*e.g.*, effectiveness of surveillance, import controls, and feed ban) in place in Canada at the time of the diagnosis and the actions taken by Canada following that diagnosis. The conclusion of our analysis was that those control mechanisms and actions were adequate to mitigate the risk of BSE being brought into the United States from Canada through the importation of ruminants and ruminant products, provided the conditions of the proposed rule were met. Enhancements the United States has made to its own BSE control program since the December 2003 detection—such as elimination of nonambulatory disabled cattle from the food chain, the removal of ''specified risk materials'' from human food, and increased surveillance—and the adoption of equivalent measures by Canada, continue to support our basic conclusions that ruminants and ruminant products can be safely imported.

Requirements of the November 2003 Proposed Rule in Light of Recent U.S. Measures

As noted above, the USDA has responded to the detection of the case of BSE in an imported BSE-infected cow with significant BSE risk mitigation measures in this country. Perhaps most importantly, parts of slaughtered animals that are considered at particular risk of containing the BSE agent in an infected animal (referred to as ''specified risk materials'' or ''SRM's'') have been banned from the human food supply. The USDA's Food Safety and Inspection Service (FSIS) has established as SRM's the skull, brain, trigeminal ganglia, eyes, vertebral column, spinal cord, and dorsal root ganglia of cattle over 30 months of age, as well as the tonsils and small intestine of cattle of all ages, and prohibits such SRM's from the human food supply. In addition, FSIS has, among other measures, required that nonambulatory, disabled cattle be excluded from the food supply. The Canadian Government has established similar safeguards in Canada.

The measures taken by FSIS do not restrict the slaughter of cattle in the United States based on the age of the animals—*i.e.*, meat from cattle 30 months of age or older will continue to be allowed into the human food supply. However, measures are in place to ensure that SRM's from such cattle do not enter the food supply. We now believe it would not be necessary to require that beef imported from BSE minimal-risk regions be derived only from cattle less than 30 months of age, provided equivalent measures are in place to ensure that SRM's are removed when the animals are slaughtered, and that such other measures as are necessary are in place. We believe such measures are already being taken in Canada. We invite comment from the public regarding this change to the provisions we proposed in November 2003 regarding the importation of beef.

With regard to the importation of live animals from BSE minimal-risk regions, APHIS is currently evaluating the appropriate approach regarding such animals and intends to address that issue in a supplemental rulemaking proposal in the **Federal Register**.

Extension of Comment Period

In order to give interested persons an opportunity to comment on our November 2003 proposed rule in light of recent developments described above, we are reopening the comment period on Docket No. 03–080–1 for an additional 30 days. We will also

[3] These measures are discussed in greater detail in our explanatory note to the risk analysis we conducted for our November 2003 proposed rule, and may also be viewed on the Internet by accessing the CFIA Web site at *http:www.inspection.gc.ca.*

[4] A listing of each of the measures taken or announced is included in our explanatory note document. Instructions for accessing the explanatory note document are included in this notice under the heading ''How to View APHIS Risk Documents Related to this Notice.''

consider all comments received between January 6, 2004 (the day after the close of the original comment period), and the date of this notice.

How To View APHIS Risk Documents Related to This Notice

You may view the original analysis we conducted for our November 2003 proposed rule and the explanatory note to that analysis in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). You may also request a copy of each document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the analysis and the explanatory note when requesting copies. You may also view the analysis and the explanatory note [5] on the Internet by accessing the APHIS Web site at *http://www.aphis.usda.gov.* At the APHIS website, click on the ''Hot Issues'' button. On the next screen, click on the listing for ''Bovine Spongiform Encephalopathy (BSE).'' On the next screen, click on the listing for ''BSE Canada.'' On the next screen, click on the listing for either ''Risk Analysis'' or ''Explanatory Note: Risk Analysis.''

Authority: 7 U.S.C. 450, 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.

Done in Washington, DC, this 4th day of March, 2004.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–5265 Filed 3–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes; and Model MD–88 airplanes. This proposal would require repetitive inspections and functional tests of the static port heater assemblies, an inspection of the static port heaters and insulators, and corrective actions if necessary. This action is necessary to prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–198–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–198–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has received the results of studies, done by Boeing, on the wiring of the static port heaters found on McDonnell Douglas Model

[5] The analysis is titled ''Risk Analysis: BSE Risk from Importation of Designated Ruminants and Ruminant Products from Canada into the United States.'' The explanatory note is titled ''Explanatory Note-Risk Analysis: BSE Risk from Importation of Designated Ruminants and Ruminant Products from Canada into the United States.''