

to this subpart. This system contains identifying information of the ineligible person including, but not limited to, name, address, telephone number, SSN or EIN, reason for ineligibility, and time period for ineligibility.

(2) Information in the Ineligible Tracking System may be used by Federal agencies, FCIC employees, contractors, and private companies and their personnel who require such information in the performance of their duties in connection with any program administered under the Act. The information may be furnished to other users including, but not limited to, FCIC contracted agencies; credit reporting agencies and collection agencies; in response to judicial orders in the course of litigation; and other users as may be appropriate or required by law or regulation. The individual information will be made available in the form of various reports and notices produced from the Ineligible Tracking System, based on valid requests.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement of eligibility will be maintained by FCIC and FSA, or its contractors, private companies, and Federal and State agencies. This documentation will be maintained consistent with the electronic information contained within the Ineligible Tracking System.

(b) Information may be entered into the Ineligible Tracking System by FCIC or FSA personnel.

(c) All persons applying for or renewing crop insurance contracts issued or reinsured by FCIC will be subject to validation of their eligibility status against the Ineligible Tracking System. Applications or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

Signed in Washington, D.C., October 22, 1996.

Kenneth D. Ackerman,  
Manager, Federal Crop Insurance Corporation.

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## Animal and Plant Health Inspection Service

### 9 CFR Parts 51, 56, 71, 75, 76, 78, 80, and 85

[Docket No. 96-041-1]

#### Interstate Movement of Livestock; Approved Livestock Facilities, Hog Cholera Provisions, and Livestock Identification

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding the interstate movement of livestock by combining the provisions for the approval of livestock markets for cattle and bison, horses, and swine into a single section. These changes are the result of a comprehensive review of the Animal and Plant Health Inspection Service's regulations, programs, and policies regarding livestock markets and stockyards. We are also proposing to remove the regulations that restrict the movement of swine and swine products from areas quarantined for hog cholera and that provide for the payment of compensation to the owners of swine destroyed because of hog cholera. We would remove the hog cholera regulations because the United States has been free of hog cholera since 1978 and import requirements have proven adequate to prevent the reintroduction of the disease into this country. These proposed actions would eliminate unnecessary or duplicative regulations and remove the implication that hog cholera has not yet been eradicated in the United States.

**DATES:** Consideration will be given only to comments received on or before December 30, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-041-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-041-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. James P. Davis, Senior Staff Veterinarian, Surveillance and Animal

Identification Team, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-5970; or E-mail: jdavis@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in subchapters B and C of chapter I, title 9, of the Code of Federal Regulations contain provisions designed to prevent the dissemination of animal diseases in the United States and facilitate their control and eradication. Subchapter B, "Cooperative Control and Eradication of Livestock or Poultry Diseases," comprises 9 CFR parts 49 through 56; subchapter C, "Interstate Transportation of Animals (Including Poultry) and Animal Products," is made up of 9 CFR parts 70 through 89. In this document, we are proposing to amend or delete portions of those two subchapters in order to eliminate duplication, streamline existing provisions, and remove unnecessary regulations.

##### Approval of Livestock Facilities

The regulations in subchapter C include provisions for the approval of livestock markets and stockyards where livestock are gathered for sale purposes. Those approvals are intended to ensure that the markets and stockyards are constructed and operated in a manner that will prevent the transmission of diseases among the livestock assembled for sales or auctions on the premises. Currently, the regulations in subchapter C contain five different approvals for livestock markets or stockyards: One in part 75 for horses, two in part 76 for swine, and two in part 78 for cattle and bison. Although each approval necessarily differs in certain aspects from the others due to considerations related to the specific diseases of concern and the types of animals involved, there are many elements that are common to all five approvals. In 1995, we undertook a comprehensive review of the Animal and Plant Health Inspection Service's (APHIS') regulations, programs, and policies regarding livestock markets and stockyards, and one recommendation that resulted from that review was that the five livestock market or stockyard agreements be consolidated into a single agreement. We are, therefore, proposing to remove the stockyard and market approval provisions from parts 75, 76, and 78 and combine them into a single section that would be located in part 71, "General Provisions." We believe that having a single section dealing with the approval of markets and stockyards

would be logical, given the large number of common elements shared by the five existing market approvals. In addition, having a single market approval agreement would ease the paperwork and recordkeeping burden for both the operators of those markets and for the APHIS and State personnel tasked with supervising the markets.

The proposed new livestock facility approval provisions would be located in a new section, § 71.20. The new section would be divided into two paragraphs; paragraph (a) would set out the approved livestock facility agreement, and paragraph (b) would contain the provisions for the withdrawal or denial of approval for a livestock facility. The agreement itself would be divided into a section of general provisions followed by sections specific to cattle and bison, swine, and horses. When completing the agreement, the operator of the livestock facility would indicate which animals and classes of animals the facility would accept by initialing the appropriate paragraphs of the agreement. Most elements of the existing market approval provisions, which are found in § 75.4(c) and (d) for horses, § 76.18 for swine, and § 78.44 for cattle and bison, would be incorporated into proposed new § 71.20. Two new elements would be added to the agreement and some elements of the existing provisions would be eliminated or modified. These proposed changes are discussed below.

Currently, the livestock market approvals in parts 75 and 78 require that an APHIS representative, State representative, or accredited veterinarian must be on the premises on sale days to perform any duties required by State or Federal regulations. When an APHIS or State representative is unavailable, the operator of the livestock market must hire an accredited veterinarian to perform those duties, which increases the operating expenses for the facility. However, many livestock facilities do not necessarily need an APHIS or State representative or accredited veterinarian on the premises every sale day; depending on the type of animals being sold or the geographic origin of the animals being sold, there may be no duties to be performed under the applicable State or Federal regulations. For example, a livestock market in a tuberculosis accredited-free State may be handling, on a particular sale day, only steers and spayed heifers. Given the State's accredited-free status, there would be no restrictions on the interstate movement of the animals under the tuberculosis regulations in 9 CFR part 77, and, because the animals are steers and spayed heifers, there would be no restrictions on their

interstate movement under the brucellosis regulations in 9 CFR part 78. In this example, there would be no need for a State or APHIS representative or an accredited veterinarian to be present at the market to inspect or test the animals prior to their sale or release from the facility, but the current market approval provisions require that a State or APHIS representative or an accredited veterinarian be present nonetheless.

The current market agreements already require that the operator of the facility furnish a copy of the facility's schedule of sale days to the area veterinarian in charge and the State animal health official; the proposed new agreement would retain that requirement. Under the proposed new agreement, the State animal health official and area veterinarian in charge would review that schedule, which would have to indicate the types of animals that will be handled at the facility on each sale day, to ascertain which upcoming sale days will include categories of livestock that are regulated under State or Federal regulations. The State animal health official or area veterinarian in charge will then inform the operator of the facility which sale days will require the presence of an APHIS or State representative or accredited veterinarian. The proposed new agreement, therefore, would require the presence of an APHIS or State representative or accredited veterinarian at the livestock facility only on those days designated by the State animal health official or area veterinarian in charge.

The second element that we would add to the livestock market agreement is an explicit prohibition on the sale of any livestock that show signs of being infected with any infectious, contagious, or communicable disease without the authorization of an APHIS or State representative or accredited veterinarian. The current market approvals provide for the sale of reactor or exposed livestock—i.e., animals known to be infected with or exposed to disease—so there are mechanisms already in place for such animals to be sold with official authorization. Paragraph (f) of § 71.3 requires, in part, that persons offering livestock for interstate movement must exercise reasonable diligence to ascertain whether those animals are affected with or have been exposed to any contagious, infectious, or communicable disease. This proposed addition to the livestock market agreement would reinforce that requirement by helping to ensure that livestock that appear to be affected with disease—but that have not been officially tested and classified as reactor,

exposed, or suspect—are not sold without the knowledge and authorization of an APHIS or State representative or accredited veterinarian.

As noted above, some elements of the existing market approval provisions would be eliminated or modified. Those proposed changes are as follows:

*Section 75.4.* Paragraphs (c) and (d) of § 75.4 pertain not only to the approval of stockyards, but to the approval of laboratories and diagnostic or research facilities as well. Therefore, § 75.4(c)(1) (laboratories) and § 75.4(c)(2) (diagnostic or research facilities) would remain the same; § 75.4(c)(3) (stockyards) would be removed in its entirety and its provisions incorporated into proposed new § 71.20 with one modification: Paragraph (8) of the current agreement calls for the stockyard to retain for 1 year any documents relating to animals that have been in the stockyard. We would increase the length of the record retention period to 2 years in order to make it consistent with that of the Grain Inspection, Packers and Stockyards Administration (GIPSA). The GIPSA regulations in 9 CFR 203.4 require, among other things, that stockyards maintain for 2 years any "accounts, records, and memoranda that contain, explain, or modify its business," and many of the documents maintained to meet APHIS' requirements are also maintained to meet the GIPSA requirements. Paragraph (d) of § 75.4 addresses the denial or withdrawal of approval for laboratories, diagnostic or research facilities, and stockyards. Because proposed new § 71.20 would address denial and withdrawal of approval for stockyards, we would simply delete all the references to stockyards from § 75.4(d) and leave in place the provisions for the denial or withdrawal of approval for laboratories and diagnostic or research facilities.

*Section 76.18.* The provisions found in § 76.18, "Approval of Livestock Markets," would be incorporated into proposed new § 71.20, with four exceptions. First, paragraph (a) of § 76.18 states that lists of livestock markets approved for the purposes of the regulations in part 76 will be published in the Federal Register. As explained below, we are proposing in this document to remove all of part 76 from subchapter C, which would remove the requirement to publish the names of approved stockyards in the Federal Register. Therefore, the provisions of § 76.18(a) would not be incorporated into proposed new § 71.20. Second, paragraph 10 of the agreement in § 76.18(b)(1) and paragraph 4 of the

agreement in § 76.18(b)(2) prohibit the inoculation of swine at the livestock market with hog cholera vaccine or virulent hog cholera virus. Because hog cholera has been eradicated in the United States, such inoculations have been discontinued throughout the country and that prohibition is no longer necessary. Third, paragraph 11 of the agreement in § 76.18(b)(1) and paragraph 5 of the agreement in § 76.18(b)(2) call for records to be maintained for 1 year. We would increase that period to 2 years to make it consistent with GIPSA requirements, as discussed in the previous paragraph, and with the swine identification retention requirements of § 71.19(d)(2). Finally, we would eliminate the provisions of § 76.18(c), "Approval of livestock markets in a quarantined area," because there are no longer any areas quarantined for hog cholera.

**Section 78.44.** The provisions found in § 78.44, "Specifically approved stockyards," would be incorporated into proposed new § 71.20, with two exceptions. First, paragraph 7 of the agreement in § 78.44(c) and paragraph 6 of the agreement in § 78.44(d)(7) state, in part, that brucellosis reactors must be identified with a "B" brand on the left jaw. However, the regulations in part 78—specifically, the definition of "B" brand in § 78.1—no longer require that brucellosis reactors be branded on the jaw; that requirement was removed in a final rule published in the Federal Register on September 19, 1995 (60 FR 48362–48369, Docket No. 95–006–2), but the agreements in § 78.44 were not amended to reflect that change. To ensure that brucellosis reactor cattle and bison are properly identified in accordance with the applicable regulations, the agreement in proposed § 71.20 would simply state that brucellosis reactors must be identified in accordance with 9 CFR part 78. Second, paragraph 20 of the agreement in § 78.44(c) and paragraph 19 of the agreement in § 78.44(d) call for records to be maintained for 1 year. Again, as discussed previously, we would increase the recordkeeping period to 2 years to make it consistent with GIPSA requirements.

Our proposed consolidation of the market approval provisions into a single new section would make it necessary for us to amend several parts in subchapters B and C to update the references those parts contain to market or stockyard approvals in §§ 75.4, 76.18, or 78.44. Such references are found in §§ 51.1, 71.18(a)(5), 75.4(a), 78.1, 80.1, and 85.1; in each of those sections, we would amend the reference to read "§ 71.20." Similarly, because we would move all

the stockyard provisions into part 71, we would remove the references to stockyards that are found in the titles of § 75.4 (currently "Interstate movement of equine infections anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards"), § 75.4(c) (currently "Approval of laboratories, diagnostic or research facilities, and stockyards"), and subpart E of part 78 (currently "Designation of Brucellosis Areas, and Specifically Approved Stockyards").

#### *Related Changes*

The proposed consolidation of livestock market approvals in part 71 would make it necessary for us to add several definitions to § 71.1 to describe several terms used in the proposed new livestock facility agreement.

First, we would add the term *approved livestock facility*, which we would define as "A stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary supervision where livestock are assembled and that has been approved under § 71.20." We would also amend the existing definition in § 71.1 of *livestock market*, which is currently defined, in part, as a premises "where swine are assembled" to broaden its applicability to include cattle, bison, and horses by replacing the word "swine" with the word "livestock." We would add the term *livestock* to the definitions in § 71.1 as well, defining it as "Horses, cattle, bison, and swine." *Horses* would be defined as "Horses, asses, mules, ponies, and zebras." All these terms that would be added are used in the proposed new consolidated livestock facility agreement, and their proposed definitions are all similar to the definitions used for the same terms elsewhere in APHIS' regulations in title 9.

We are also proposing to add definitions for the terms *breeder swine*, *feeder swine*, and *slaughter swine*, which are used in the swine-specific provisions of the agreement.

*Breeder swine* would be defined as "Sexually intact swine over 6 months of age." The designation "breeder swine" is used in the proposed new livestock facility agreement to differentiate these swine, which in most cases would be sold to a herd owner for herd increase purposes, from feeder swine and slaughter swine. The interstate movement of swine in this category is subject to the general provisions of part 71, the brucellosis regulations in part 78, and the pseudorabies regulations in part 85. Under the proposed livestock facility agreement, breeder swine and

feeder swine could not be released from the facility until they had been officially identified in accordance with applicable Federal or State regulations and inspected by an APHIS representative, State representative, or accredited veterinarian, and certified in accordance with applicable Federal or State regulations. Because breeder and feeder swine are not intended to be moved to slaughter upon their sale at the facility, the identification, inspection, and certification would serve to ensure that the swine are in good health and, therefore, not likely to present any significant risk of transmitting disease to other swine.

*Feeder swine* would be defined as "Swine under 6 months of age that are not slaughter swine." Such swine would, in most cases, be brought to an approved livestock facility for sale to a feedlot for additional feeding and then moved to slaughter. The interstate movement of swine in this category is subject to the general provisions of part 71 and to the pseudorabies regulations in part 85. The proposed agreement would require that feeder swine be kept separate and apart from other swine while in the livestock facility to prevent any transmission of disease between feeder swine and other swine.

*Slaughter swine* would be defined as "Swine being sold or moved for slaughter purposes only." The applicability of this term is related to the regulations in parts 78 and 85, which provide for the interstate movement of certain swine through livestock markets for sale for slaughter. Swine infected with or exposed to brucellosis or pseudorabies, certain pseudorabies vaccinates, and even swine not known to be infected with or exposed to disease could, therefore, be characterized as slaughter swine for the purposes of the proposed new livestock facility agreement.

In § 71.1, the terms *APHIS inspector* and *State representative* are among the terms defined. In several places in part 71, however, reference is made to activities that are the responsibility of "a State inspector" or "an APHIS or State inspector." For the purposes of consistency within part 71 and consistency with parts 75 and 78, we are proposing to remove the term *APHIS inspector* from § 71.1 and replace it with the term *APHIS representative*, which is the term used in parts 75 and 78. We would then amend the remainder of part 71 by replacing references to "inspectors"—APHIS or State—with references to APHIS or State "representatives." The definition we would use in part 71 for *APHIS representative* would be the same

definition used in parts 75 and 78, i.e., "An individual employed by APHIS who is authorized to perform the function involved."

The introductory text preceding the definitions in § 71.1 states "As used in this part, the following terms shall have the meanings set forth in this section." However, § 71.1 includes the terms *accredited herd*, *designated dipping station*, *recognized slaughtering center*, and *stockers and feeders*, terms that are not used anywhere in part 71. We are, therefore, proposing to remove those terms from § 71.1.

#### Removal of Hog Cholera Provisions

The regulations in 9 CFR part 76, "Hog Cholera and Other Communicable Swine Diseases," prohibit or restrict the interstate movement of swine and swine products to suppress and eradicate hog cholera and other contagious, infectious, and communicable diseases of swine. The regulations in 9 CFR part 56, "Swine Destroyed Because of Hog Cholera," provide for the payment of compensation to the owners of swine destroyed due to hog cholera.

The regulations in parts 76 and 56 were established to promote the eradication of hog cholera within the United States by preventing its spread through restrictions on the interstate movement of swine and swine products from quarantined areas and by providing indemnity for the destruction of infected swine. In that the United States has been free of hog cholera since 1978, the objectives of those regulations have been met. The quarantine requirements contained in "Subpart E—Swine" of 9 CFR part 92 (§§ 92.500 through 92.523) contain testing and quarantine provisions that help ensure that hog cholera and other contagious, infectious, and communicable diseases of swine are not introduced into the United States.

We are, therefore, proposing to remove, in their entirety, the hog cholera regulations in 9 CFR parts 56 and 76. Further, we would remove hog cholera from the list in § 71.3(a) of diseases considered to be endemic to the United States and add it to the list in § 71.3(b) of diseases not known to exist in the United States. These proposed actions would remove the implication that hog cholera has not yet been eradicated in the United States and would eliminate unnecessary regulations.

The proposed removal of part 76 would also make it necessary for us to amend two references found in part 85, "Pseudorabies." The first reference, found in § 85.12, directs the reader to § 76.30 for provisions regarding the

cleaning and disinfection of means of conveyance; the second reference, found in § 85.13, directs the reader to § 76.31 for provisions regarding the cleaning and disinfection of livestock markets and other facilities. In both instances, we would remove the existing reference and replace it with a reference to § 71.7, "Means of conveyance, facilities and premises; methods of cleaning and disinfecting," which, like the provisions in §§ 76.30 and 76.31, contains the information needed to properly carry out the necessary cleaning and disinfection.

Another change we are proposing in this document is related to the previous two paragraphs. Specifically, we are proposing to add pseudorabies to the list in § 71.3(a) of diseases considered to be endemic to the United States (the same list from which we are proposing to remove hog cholera).

#### Livestock Identification

We are also proposing four changes in the area of livestock identification. First, we are proposing to amend the definitions of *official eartag* that appear in §§ 71.1 and 78.1. Each definition refers, in part, to a nine-character alphanumeric identification system. However, the eartags used for identifying feeder swine utilize an eight-character alphanumeric identification system that, like the nine-character system, provides individual identification for each animal. Other eartagging systems that are being considered or that are already in use have more or fewer characters. The use of any eartag numbering system would have to be approved by APHIS prior to its employment and would have to provide the level of identification for each eartagged animal required by the particular disease control or surveillance program in which it is being used. For that reason, we do not believe it is necessary to specify the number of characters to be used in an eartag numbering system. Therefore, we are proposing to amend the definitions of *official eartag* in §§ 71.1 and 78.1 to remove the requirement that an *official eartag* must utilize a nine-character identification system.

Second, we are proposing to amend § 71.19(b) to allow the use of premises identification numbers as a means of identifying swine. The regulations in § 71.19(b) currently list *official eartags*, USDA backtags, official swine tattoos, tattoos of at least four characters (for certain swine moving to slaughter), ear notches, or ear tattoos as means of swine identification approved by the Administrator. The premises identification number concept has been

developed to provide a means of reliably and accurately tracing swine moved in interstate commerce and to slaughter.

Currently, the primary method of identifying swine moved to slaughter is with a USDA backtag; however, the retention rate for those backtags is low and misidentification of herds is widespread when swine from different herds are commingled and backtags are missing. When traceback and testing of swine in a herd of origin are necessary, the lack of premises identification often leads to tracebacks to the wrong herd and unnecessary testing, which increases costs for producers and State or Federal epidemiologists. A premises identification number, which would be applied to swine either on an eartag or as a tattoo, would greatly simplify the traceback process.

The premises identification number would be assigned and tracked by the State animal health official of the State in which a producer's premises is located. A premises would be defined as a livestock production unit that is, in the judgment of the State animal health official or the area veterinarian in charge, epidemiologically distinct from other livestock production units and that could be quarantined in the event of a disease outbreak. The premises identification number would consist of the State's two-letter postal abbreviation, followed by a space, followed by the premises' assigned number. By way of example, a swine producer in Minnesota might receive the premises identification number "MN 1234." Further, a premises identification number could be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for each animal if the producer wished to do so.

Because we would not require that a premises identification number be combined with a producer's livestock production number to provide unique identification for each swine, we are proposing to amend § 71.19(a)(1), which states, in part, that swine moved in interstate commerce must be individually identified. The goal of that requirement is for each animal to be identified using one of the approved methods listed in § 71.19(a)(2); some of those methods provide unique identification for each animal and others do not. To make it clear that unique identification for each animal is not required, we would change the words "unless they are individually identified" to "unless each swine is identified," which better suits the intent of that paragraph and removes any

possible confusion as to whether non-unique methods of identification such as ear notches or the proposed premises identification number may be used.

The use of premises identification numbers would be voluntary. The State animal health official in a particular State may decide that current identification methods are sufficient and elect not to issue premises identification numbers. Similarly, a producer in a State that does issue premises identification numbers may elect not to apply for such a number. However, based on the response that the premises identification number concept has received from the swine industry, individual producers, State animal health officials, other Federal agencies, and the U.S. Animal Health Association, we believe that most States and swine producers would avail themselves of the opportunity to use this proposed new system.

Third, we are proposing to amend § 71.19(b)(6), which relates to one of the means of swine identification approved by the Administrator. Specifically, that paragraph allows ear tattoos to be used as a means of identifying swine for interstate movement if the tattoo has been recorded in the book of record of a purebred registry association. Owners of potbellied pigs have complained that the identification requirements of the regulations are not well-suited to their pigs because eartags are unsightly on animals that are kept as pets and, despite the fact that there are registry associations for potbellied pigs that could record tattoo numbers, the ears of potbellied pigs are too small to accommodate a tattoo. Therefore, at the request of numerous owners of potbellied pigs, we are proposing to allow identifying tattoos to be placed either on the ear or on the inside flank or thigh of swine. The requirement that the tattoo number be recorded by a registry association would remain, although we would no longer specify that it be a "purebred registry association" because potbellied pigs are not purebred animals. We believe this proposed change would answer the requests of certain swine owners for an alternative method of swine identification while providing a satisfactory means of identifying swine moved interstate.

Finally, we are proposing to revise § 78.33, "Sows and boars." That section, which deals primarily with the identification of sows and boars moved in interstate commerce, specifies when sows and boars moved to slaughter must be identified and sets forth the herd of origin and health requirements for sows and boars moved for breeding. However,

the methods of identifying sows and boars (e.g., eartags, backtags, tattoos) that are set out in § 78.33(a) and (b) are not unique to sows and boars; rather, they are the same methods that are generally required for swine under § 71.19. Further, there is nothing unique to sows and boars in the provisions of § 78.33(d) and (e), which simply repeat the provisions of § 71.19(d) and (e). Therefore, we are proposing to remove the references to specific identification methods from § 78.33(a) and (b) and amend those paragraphs to simply state that sows and boars must be identified in accordance with § 71.19. We would also remove § 78.33(d) and (e) in their entirety. These proposed changes would eliminate duplication and help simplify the regulations.

#### *Miscellaneous*

In addition to the proposed amendments discussed above, we would also make several nonsubstantive changes for the sake of clarity or accuracy.

First, there is a reference in § 71.3(c)(2) to provisions in § 77.8 concerning the interstate movement of tuberculin reactors, but § 77.8 does not exist. The interstate movement provisions referred to in § 71.3 are actually contained in § 77.5. We would change the reference to read § 77.5.

Second, we would rectify two incorrect paragraph references in the introductory text of § 71.18(a). The first reference is to § 78.9(a)(3)(iv), but there is no such paragraph in § 78.9. We would correct the reference to read § 78.9(a)(3)(ii), which is the proper reference. The second reference is to § 78.9(d)(3)(vii), which was removed by a final rule published in the Federal Register on January 18, 1989 (54 FR 1923-1926, Docket No. 88-171). When the paragraph was removed in that final rule, all references to the paragraph should have been removed as well, but this one was not. We would remove the reference.

Third, also in § 71.18, we would correct the paragraph designations used in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii). In each of the three paragraphs, italicized lowercase letters are used where regular uppercase letters are needed.

Finally, footnote 1 to § 71.18(a)(1)(i) states, in part, that approved backtags are available from a Veterinary Services representative and that the term *Veterinary Services representative* is defined in § 78.1. However, that definition was removed, and a definition of *APHIS representative* added in its place, by a final rule published in the Federal Register on

October 22, 1991 (56 FR 54532-54534, Docket No. 89-150). We would, therefore, correct the footnote to use the current term in both instances.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations regarding the interstate movement of livestock by combining the provisions for the approval of livestock markets for cattle and bison, horses, and swine into a single section and by removing the regulations that restrict the movement of swine and swine products from areas quarantined for hog cholera and that provide for the payment of compensation to the owners of swine destroyed because of hog cholera. The proposed changes to the livestock market approval provisions were recommended following a review of APHIS' regulations, programs, and policies regarding livestock markets and stockyards; the hog cholera regulations would be removed because the United States has been free of hog cholera since 1978 and import requirements have proven adequate to prevent the reintroduction of the disease into this country. These proposed actions would eliminate unnecessary or duplicative regulations and remove the implication that hog cholera has not yet been eradicated in the United States.

We estimate that combining livestock market approval provisions for horses, swine, cattle, and bison onto one form will reduce the number of approvals from 4,800 to fewer than 1,800 because each livestock facility and stockyard will need only one approval. Many livestock facilities and stockyards now have three approvals. APHIS does not charge a user fee for inspections or approvals, so livestock facilities would not experience a reduction in costs. However, this proposed rule change would reduce the amount of paperwork associated with livestock facility approvals.

The provisions of the proposed rule that would allow States, with APHIS concurrence, to determine how frequently State representatives, APHIS representatives, or accredited veterinarians should be present at individual stockyards and livestock facilities could potentially reduce the annual operating expenses of livestock facilities by about \$2.3 million annually. Conversely, total annual income for

accredited veterinarians could potentially be reduced by about \$2.3 million.

The proposed removal of the hog cholera regulations in 9 CFR parts 56 and 76 would not have any economic impact on livestock markets or stockyards or any other entity. Hog cholera has been eradicated in the United States since 1978 and there are no enforcement measures currently in place.

The Regulatory Flexibility Act requires that APHIS specifically consider the potential economic impacts on "small" domestic entities that could result from the implementation of the amendments proposed in this document. The Small Business Administration (SBA) has established size criteria by Standard Industrial Classification that were used as a guide in determining which economic entities meet the definition of a "small" business.

The changes proposed in this document will likely have a relatively minor economic impact on the following types of small entities: (1) Wholesale livestock traders and (2) accredited veterinarians. The SBA's definition of a "small" entity involved in the wholesale trade of livestock is one that employs no more than 100 employees. Currently, there are 1,992 domestic entities that trade livestock wholesale. About 1,965 of these entities are classified as "small" by the SBA. Livestock facilities and stockyards comprise about 1,768 (90 percent) of the "small" entities included in this category. We estimate that about 884 (50 percent) of these "small" entities currently hire accredited veterinarians. The proposed rule change could reduce annual operating costs for these 884 "small" entities by about \$2.3 million or \$2,600 per entity. This accounts for less than 1 percent of total annual receipts for "small" wholesale livestock traders according to SBA data.

The SBA's definition of a "small" entity that provides veterinary services for livestock—the category into which the accredited veterinarians potentially affected by this proposed rule would fall—is one that earns less than \$5 million in annual receipts. Currently, there are 1,111 domestic entities that provide veterinary services for livestock; 1,110 of these entities are classified as "small" by the SBA. The Agency estimates that this proposed rule could reduce total annual income for livestock veterinarians, including accredited veterinarians, by about \$2.3 million or \$2,070 per "small" entity. This accounts for less than 1 percent of total annual

receipts for this industry, according to SBA data.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

#### List of Subjects

##### 9 CFR Part 51

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

##### 9 CFR Part 71

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

##### 9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

##### 9 CFR Part 76

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

##### 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and

recordkeeping requirements, Transportation.

##### 9 CFR Part 80

Animal diseases, Livestock, Transportation.

##### 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we would amend chapter I, title 9, of the Code of Federal Regulations as follows:

### PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

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

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

#### § 51.1 [Amended]

2. In § 51.1, the definition of *Specifically approved stockyard* would be amended by removing the reference "§ 78.44" and adding the reference "§ 71.20" in its place.

### PART 56—[RESERVED]

3. Part 56 would be removed and reserved.

### PART 71—GENERAL PROVISIONS

4. The authority citation for part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

#### § 71.1 [Amended]

5. Section 71.1 would be amended as follows:

a. By removing the definitions of *accredited herd*, *APHIS inspector*, *designated dipping station*, *recognized slaughtering center*, and *stockers and feeders*.

b. By adding, in alphabetical order, definitions of *APHIS representative*, *approved livestock facility*, *breeder swine*, *horses*, *feeder swine*, *livestock*, *premises identification number*, and *slaughter swine* to read as set forth below.

c. In the definition of *livestock market*, by removing the word "swine" and adding the word "livestock" in its place.

d. In the definition of *official eartag*, by removing the words "nine-character".

#### § 71.1 Definitions.

\* \* \* \* \*

*APHIS representative.* An individual employed by APHIS who is authorized to perform the function involved.

*Approved livestock facility.* A stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary supervision where livestock are assembled and that has been approved under § 71.20.

\* \* \* \* \*

*Breeder swine.* Sexually intact swine over 6 months of age.

\* \* \* \* \*

*Feeder swine.* Swine under 6 months of age that are not slaughter swine.

\* \* \* \* \*

*Horses.* Horses, asses, mules, ponies, and zebras.

\* \* \* \* \*

*Livestock.* Horses, cattle, bison, and swine.

\* \* \* \* \*

*Premises identification number.* A unique number assigned by the State animal health official to a livestock production unit that is, in the judgment of the State animal health official or area veterinarian in charge, epidemiologically distinct from other livestock production units. A premises identification number shall consist of the State's two-letter postal abbreviation, followed by a space, followed by the premises' assigned number. A premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal.

\* \* \* \* \*

*Slaughter swine.* Swine being sold or moved for slaughter purposes only.

\* \* \* \* \*

### § 71.3 [Amended]

6. Section 71.3 would be amended as follows:

a. In paragraph (a), the words "hog cholera," would be removed and the word "pseudorabies," would be added in its place.

b. In paragraph (b), the words "hog cholera," would be added immediately after the words "African swine fever,".

c. In paragraph (c)(2), the reference "§ 77.8" would be removed and the reference "§ 77.5" would be added in its place.

d. In paragraph (d), introductory text, in the second proviso, the word "inspector" would be removed and the word "representative" would be added in its place.

e. In paragraph (d)(5), first sentence, the word "inspector" would be removed

and the word "representative" would be added in its place.

### § 71.4 [Amended]

7. Section 71.4 would be amended as follows:

a. In paragraph (a), at the end of the first sentence, the word "inspector" would be removed and the word "representative" would be added in its place; at the beginning of the second sentence, the words "such inspector" would be removed and the words "an APHIS or State representative" would be added in their place; and near the end of the second sentence, the words "such an inspector" would be removed and the words "an APHIS or State representative" would be added in their place.

b. In paragraph (b), the word "inspector" would be removed and the word "representative" would be added in its place.

### § 71.5 [Amended]

8. In § 71.5, the undesignated regulatory text would be amended by removing the word "inspector" both times it appears and by adding the word "representative" in its place.

### § 71.6 [Amended]

9. In § 71.6, paragraphs (a) and (b) would be amended by removing the word "inspector" both times it appears and by adding the word "representative" in its place.

### § 71.13 [Amended]

10. In § 71.13, the section heading and the undesignated regulatory text would be amended by removing the word "inspector" each time it appears and adding the word "representative" in its place.

### § 71.16 [Amended]

11. In § 71.16, paragraph (a) would be amended by removing the word "inspector" both times it appears and by adding the word "representative" in its place.

### § 71.18 [Amended]

12. Section 71.18 would be amended as follows:

a. In the introductory text of paragraph (a), in the first sentence, the words "§§ 78.9(a)(3)(iv), 78.9(b)(3)(iv), 78.9(c)(3)(iv), and 78.9(d)(3)(vii)" would be removed and the words "§§ 78.9(a)(3)(ii), 78.9(b)(3)(iv), and 78.9(c)(3)(iv)" would be added in their place.

b. In paragraph (a)(1)(i), footnote 1, the words "Veterinary Services" would be removed both times they appear and the word "APHIS" would be added in their place.

c. Paragraphs (a)(1)(i)(a) through (a)(1)(i)(g) would be redesignated as paragraphs (a)(1)(i)(A) through (a)(1)(i)(G).

d. Paragraphs (a)(1)(ii)(a) through (a)(1)(ii)(f) would be redesignated as paragraphs (a)(1)(ii)(A) through (a)(1)(ii)(F).

e. Paragraphs (a)(1)(iii)(a) through (a)(1)(iii)(g) would be redesignated as paragraphs (a)(1)(iii)(A) through (a)(1)(iii)(G).

f. In paragraph (a)(2), in the second sentence, the word "inspector" would be removed and the word "representative" would be added in its place.

g. In paragraph (a)(5), the words "§ 78.44 of this chapter" would be removed and the reference "§ 71.20" would be added in its place.

13. Section 71.19 would be amended as follows:

a. In the introductory text of paragraph (a)(1), the words "they are individually" would be removed and the words "each swine is" would be added in their place.

b. In paragraph (b)(5), the word "and" at the end of the paragraph would be removed.

c. Paragraph (b)(6) would be revised and a new paragraph (b)(7) would be added to read as follows:

### § 71.19 Identification of swine in interstate commerce.

\* \* \* \* \*

(b) \* \* \*

(6) Tattoos on the ear or inner flank of any swine, if the tattoos have been recorded in the book of record of a swine registry association; and

(7) An eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated.

\* \* \* \* \*

14. A new § 71.20 would be added to read as follows:

### § 71.20 Approval of livestock facilities.

(a) To qualify for approval by the Administrator as an approved livestock facility<sup>6</sup> and to retain such designation, the individual legally responsible for the day-to-day operations of the livestock facility shall execute the following agreement:

AGREEMENT—APPROVED LIVESTOCK FACILITY FOR HANDLING LIVESTOCK PURSUANT TO TITLE 9 OF THE CODE OF FEDERAL REGULATIONS

[Name of facility]

[Address and telephone number of facility]

<sup>6</sup> A list of approved livestock facilities may be obtained by writing to National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1231.

I, [name of the individual legally responsible for the day-to-day operations of the livestock facility], operator of [name of facility], hereby agree to maintain and operate the livestock facility located at [address of premises] in accordance with the applicable provisions of this agreement and Chapter I, Title 9, of the Code of Federal Regulations (9 CFR).

#### Cooperation

(1) The State animal health official and the area veterinarian in charge shall be provided with a schedule of the facility's sale days, which shall indicate the types of animals that will be handled at the facility on each sale day, and shall be apprised of any changes to that schedule prior to the implementation of the changes. The State animal health official and the area veterinarian in charge will review the schedule and inform the operator as to which sale days will require the presence of an accredited veterinarian, State representative, or APHIS representative.

(2) An accredited veterinarian, State representative, or APHIS representative shall be on the facility premises on those sale days designated by the State animal health official or area veterinarian in charge to perform duties in accordance with State and Federal regulations.

(3) State representatives and APHIS representatives shall be granted access to the facility during normal business hours to evaluate whether the facility and its operations are in compliance with the applicable provisions of this agreement and 9 CFR parts 71, 75, 78, and 85.

(4) An APHIS representative, State representative, or accredited veterinarian shall be immediately notified of the presence at the facility of any livestock that are known to be infected, exposed, or suspect, or that show signs of possibly being infected, with any infectious, contagious, or communicable disease.

(5) Any reactor, suspect, or exposed livestock shall be held in quarantined pens apart from all other livestock at the facility.

(6) No reactor, suspect, or exposed livestock, nor any livestock that show signs of being infected with any infectious, contagious, or communicable disease, may be sold at the facility, except as authorized by an APHIS representative, State representative, or accredited veterinarian.

#### Records

(7) Documents such as weight tickets, sales slips, and records of origin, identification, and destination that relate to livestock that are in, or that have been in, the facility shall be maintained by the facility for a period of 2 years. APHIS representatives and State representatives shall be permitted to review and copy those documents during normal business hours.

#### Identification

(8) All livestock must be officially identified in accordance with the applicable regulations in 9 CFR parts 71, 75, 78, and 85 at the time of, or prior to, entry into the facility.

#### Cleaning and Disinfection

(9) The facility, including all yards, docks, pens, alleys, sale rings, chutes, scales, means of conveyance, and their associated equipment, shall be maintained in a clean and sanitary condition. The operator of the facility shall be responsible for the cleaning and disinfection of the facility in accordance with 9 CFR part 71 and for maintaining an adequate supply of disinfectant and serviceable equipment for cleaning and disinfection.

#### General Facilities and Equipment Standards

(10) All facilities and equipment shall be maintained in a state of good repair. The facility shall contain well-constructed and well-lighted livestock handling chutes, pens, alleys, and sales rings for the inspection, identification, vaccination, testing, and branding of livestock.

(11) Quarantined pens shall be clearly labeled with paint or placarded with the word "Quarantined" or the name of the disease of concern, and shall be cleaned and disinfected in accordance with 9 CFR part 71 before being used to pen livestock that are not reactor, suspect, or exposed animals.

(12) Quarantined pens shall have adequate drainage, and the floors and those parts of the walls of the quarantined pens with which reactor, or suspect, or exposed livestock, their excrement, or discharges may have contact shall be constructed of materials that are substantially impervious to moisture and able to withstand continued cleaning and disinfection.

(13) Electrical outlets shall be provided at the chute area for branding purposes.

#### Standards for Handling Different Classes of Livestock

(By his or her initials, the operator of the facility shall signify the class or classes of livestock that the facility will handle.)

(14) Cattle and bison:

—This facility will handle cattle and bison: [Initials of operator, date]

—This facility will handle cattle and bison known to be brucellosis reactors, suspects, or exposed: [Initials of operator, date]

—This facility will not handle cattle and bison known to be brucellosis reactors, suspects, or exposed and such cattle and bison will not be permitted to enter the facility: [Initials of operator, date]

(i) Cattle and bison shall be received, handled, and released by the facility only in accordance with 9 CFR parts 71 and 78.

(ii) All brucellosis reactor, brucellosis suspect, and brucellosis exposed cattle or bison arriving at the facility shall be placed in quarantined pens and consigned from the facility only in accordance with 9 CFR part 78.

(iii) Any cattle or bison classified as brucellosis reactors at the facility shall be identified in accordance with 9 CFR part 78, placed in quarantined pens, and consigned from the facility only to a recognized slaughtering establishment or an approved intermediate handling facility in accordance with 9 CFR part 78.

(iv) Any cattle or bison classified as brucellosis exposed at the facility shall be

identified in accordance with 9 CFR part 78, placed in quarantined pens, and consigned from the facility only to a recognized slaughtering establishment, approved intermediate handling facility, quarantined feedlot, or farm of origin in accordance with 9 CFR part 78.

(v) The identity of cattle from Class Free States or areas and Class A States or areas shall be maintained.

(vi) The identity of cattle from Class B States or areas shall be maintained, and test-eligible cattle from Class B States or areas shall not be placed in pens with cattle from any other area until they have fulfilled the requirements of 9 CFR part 78 for release from the facility.

(vii) The identity of cattle from Class C States or areas shall be maintained, and test-eligible cattle from Class C States or areas shall not be placed in pens with cattle from any other area until they have fulfilled the requirements of 9 CFR part 78 for release from the facility.

(viii) The identity of cattle from quarantined areas shall be maintained, and test-eligible cattle from quarantined areas shall not be placed in pens with cattle from any other area until they have fulfilled the requirements of 9 CFR part 78 for release from the facility.

(ix) Test-eligible cattle that are penned with test-eligible cattle from a lower class State or area, in violation of this agreement, shall have the status of the State or area of lower class for any subsequent movement.

(x) Laboratory space shall be furnished and maintained for conducting diagnostic tests. All test reagents, testing equipment, and documents relating to the State-Federal cooperative eradication programs on the facility's premises shall be secured to prevent misuse and theft. Adequate heat, cooling, electricity, water piped to a properly drained sink, and sanitation shall be provided for properly conducting diagnostic tests.

(15) Swine:

—This facility will handle breeding swine: [Initials of operator, date]

—This facility will handle slaughter swine: [Initials of operator, date]

—This facility will handle feeder swine: [Initials of operator, date]

—This facility will handle pseudorabies reactor, suspect, or exposed swine: [Initials of operator, date].

—This facility will not handle swine known to be pseudorabies reactor, suspect, or exposed swine and such swine will not be permitted to enter the facility: [Initials of operator, date].

(i) Swine shall be received, handled, and released by the livestock facility only in accordance with 9 CFR parts 71, 78, and 85.

(ii) Slaughter swine may be handled only on days when no feeder swine or breeder swine are present at the facility, unless the facility has provisions to keep slaughter swine physically separated from feeder swine and breeder swine or unless those areas of the facility used by slaughter swine have been cleaned and disinfected before being used by feeder swine or breeder swine.

(iii) No feeder swine or breeder swine may remain in the livestock facility for more than 72 hours, and no slaughter swine may remain

in the livestock market for more than 120 hours.

(iv) Feeder swine shall be kept separate and apart from other swine while in the livestock facility.

(v) No release shall be issued for the removal of feeder swine or breeder swine from the livestock facility until the swine are officially identified in accordance with applicable Federal or State regulations and have been inspected by an APHIS representative, State representative, or accredited veterinarian, and certified in accordance with applicable Federal or State regulations.

(vi) No release shall be issued for the removal of slaughter swine from the livestock facility unless the slaughter swine are officially identified in accordance with applicable Federal or State regulations, consigned for immediate slaughter or to another slaughter market, and the consignee is identified on the release document.

(16) Horses:

—This facility will handle horses: [*Initials of operator, date*]

—This facility will handle equine infectious anemia (EIA) reactors: [*Initials of operator, date*]

—This facility will not handle horses known to be EIA reactors and will not permit EIA reactors to enter the facility: [*Initials of operator, date*]

(i) Horses shall be received, handled, and released by the livestock facility only in accordance with 9 CFR parts 71 and 75.

(ii) Any horses classified as EIA reactors and accepted by the facility for sale shall be placed in quarantined pens at least 200 yards from all non-EIA-reactor horses or other animals, unless moving out of the facility within 24 hours of arrival.

(iii) Any horses classified as EIA reactors and accepted by the facility for sale shall be consigned from the facility only to a slaughtering establishment or to the home farm of the reactor in accordance with 9 CFR part 75.

(iv) Fly Control Program: The livestock facility shall have in effect a fly control program utilizing at least one of the following: Baits, fly strips, electric bug killers ("Fly Zappers," "Fly Snappers," or similar equipment), or the application of a pesticide effective against flies, applied according to the schedule and dosage recommended by the manufacturer for fly control.

#### Approvals

(17) Request for approval:

I hereby request approval for this facility to operate as an approved livestock facility for the classes of livestock indicated in paragraphs (14) through (16) of this agreement. I acknowledge that I have received a copy of 9 CFR parts 71, 75, 78 and 85, and acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement and the applicable provisions of 9 CFR parts 71, 75, 78, and 85 constitutes a basis for the withdrawal of this approval. [*Printed name and signature of operator, date of signature*]

(18) Pre-approval inspection of livestock facility conducted by [*printed name and title of APHIS representative*] on [*date of inspection*].

(19) Recommend approval:

[*Printed name and signature of State animal health official, date of signature*]

[*Printed name and signature of area veterinarian in charge, date of signature*]

(20) Approval granted:

[*Printed name and signature of the Administrator, Animal and Plant Health Inspection Service, date of signature*]

(b) *Denial and withdrawal of approval.* The Administrator may deny or withdraw the approval of a livestock facility to receive livestock moved interstate under this subchapter upon a determination that the livestock facility is not or has not been maintained and operated in accordance with the agreement set forth in paragraph (a) of this section.

(1) In the case of a denial, the operator of the facility will be informed of the reasons for the denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the livestock facility was wrongfully denied approval to receive livestock moved interstate under this subchapter. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(2) In the case of withdrawal, before such action is taken, the operator of the facility will be informed of the reasons for the proposed withdrawal. The operator of the facility may appeal the proposed withdrawal in writing to the Administrator within 10 days after being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal of the approval of the livestock facility to receive livestock moved interstate under this subchapter. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be

effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

(3) Approval for a livestock facility to handle livestock under this subchapter will be automatically withdrawn by the Administrator when:

(i) The operator of the facility notifies the Administrator, in writing, that the facility no longer handles livestock moved interstate under this subchapter; or

(ii) The person who signed the agreement executed in accordance with paragraph (a) of this section is no longer responsible for the day-to-day operations of the facility.

#### PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

15. The authority citation for part 75 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, and 134–134h; 7 CFR 2.22, 2.80, and 371.2(d).

#### § 75.4 [Amended]

16. Section 75.4 would be amended as follows:

a. The section heading would be revised to read as set forth below.

b. In paragraph (a), the definition of *Approved stockyard* would be amended by removing the words "this part" and by adding the words "§ 71.20 of this chapter" in their place.

c. In paragraph (c), the paragraph heading would be amended by removing the words ", Diagnostic or Research Facilities, and Stockyards" and by adding the words "and Diagnostic or Research Facilities" in their place, and paragraph (c)(3) and the "Agreement" following it would be removed.

d. In paragraph (d), the introductory text of the paragraph, including the paragraph heading, and paragraphs (d)(1) and (d)(2) would be revised to read as set forth below, and paragraph (d)(5) would be removed.

#### § 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, and research facilities.

\* \* \* \* \*

(d) *Denial and withdrawal of approval of laboratories and diagnostic or research facilities.* The Administrator

may deny or withdraw approval of any laboratory to conduct the official test, or of any diagnostic or research facility to receive reactors moved interstate, upon a determination that the laboratory or diagnostic or research facility does not meet the criteria for approval under paragraph (c) of this section.

(1) In the case of a denial, the operator of the laboratory or facility will be informed of the reasons for denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the laboratory or facility was wrongfully denied approval to conduct the official test or receive reactors moved interstate. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(2) In the case of withdrawal, before such action is taken, the operator of the laboratory or facility will be informed of the reasons for the proposed withdrawal. The operator of the laboratory or facility may appeal the proposed withdrawal in writing to the Administrator within 10 days after being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal or the approval of the laboratory or facility to conduct the official test or receive reactors moved interstate was or would be wrongfully withdrawn. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, the withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the laboratory or facility. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. The withdrawal shall continue in effect pending the completion of the proceeding, and any

judicial review thereof, unless otherwise ordered by the Administrator.

\* \* \* \* \*

#### **PART 76—[REMOVED AND RESERVED]**

17. Part 76 would be removed and reserved.

#### **PART 78—BRUCellosIS**

18. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

##### **§ 78.1 [Amended]**

19. Section 78.1 would be amended as follows:

a. In the definition of *Approved intermediate handling facility*, the reference “§ 78.44” would be removed and the words “§ 71.20 of this chapter” would be added in its place.

b. In the definition of *Official eartag*, the words “nine-character” would be removed.

c. In the definition of *Originate*, paragraph (c), the reference “§ 78.44” would be removed and the words “§ 71.20 of this chapter” would be added in its place.

d. In definition of *Specifically approved stockyard*, the reference “§ 78.44” would be removed and the words “§ 71.20 of this chapter” would be added in its place.

20. Section 78.33 would be revised to read as follows:

##### **§ 78.33 Sows and boars.**

(a) Sows and boars may be moved in interstate commerce for slaughter or for sale for slaughter if they are identified in accordance with § 71.19 of this chapter either:

(1) Before being moved in interstate commerce and before being mixed with swine from any other source; or

(2) After being moved in interstate commerce but before being mixed with swine from any other source only if they have been moved directly from their herd of origin to:

(i) A recognized slaughtering establishment; or

(ii) A stockyard, market agency, or dealer operating under the Packers and Stockyards Act, as amended (7 U.S.C. 181 *et seq.*).

(b) Sows and boars may be moved in interstate commerce for breeding only if they are identified in accordance with § 71.19 of this chapter before being moved in interstate commerce and before being mixed with swine from any other source, and the sows and boars either:

(1) Are from a validated brucellosis-free herd or a validated brucellosis-free State and are accompanied by a certificate that states, in addition to the items specified in § 78.1, that the swine originated in a validated brucellosis-free herd or a validated brucellosis-free State; or

(2) Have tested negative to an official test conducted within 30 days prior to interstate movement and are accompanied by a certificate that states, in addition to the items specified in § 78.1, the dates and results of the official tests.

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart if they are identified in accordance with § 71.19 of this chapter.

21. The title of subpart E would be amended by removing the words “, and Specifically Approved Stockyards”.

##### **§ 78.44 [Removed]**

22. Section 78.44 would be removed.

#### **PART 80—PARATUBERCULOSIS IN DOMESTIC ANIMALS**

23. The authority citation for part 80 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, and 125; 7 CFR 2.22, 2.80, and 371.2(d).

##### **§ 80.1 [Amended]**

24. In § 80.1, paragraph (j) would be amended by removing the reference “§ 78.44” and by adding the words “§ 71.20 of this chapter” in its place.

#### **PART 85—PSEUDORABIES**

25. The authority citation for part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

##### **§ 85.1 [Amended]**

26. In § 85.1, in the definition of *Approved livestock market*, the words “§ 76.18 (9 CFR 76.18)” would be removed and the words “§ 71.20 of this chapter” would be added in their place.

27. In § 85.1, in the definition of *Slaughter market*, the words “§ 76.18 (9 CFR 76.18)” would be removed and the words “§ 71.20 of this chapter” would be added in their place.

##### **§ 85.12 [Amended]**

28. Section 85.12 would be amended by removing the reference “§ 76.30” and by adding the reference “§ 71.7” in its place.

##### **§ 85.13 [Amended]**

29. Section 85.13 would be amended by removing the reference “§ 76.31” and

by adding the reference “§ 71.7” in its place.

Done in Washington, DC, this 28th day of October 1996.

A. Strating,

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

[FR Doc. 96-27975 Filed 10-30-96; 8:45 am]

BILLING CODE 3410-34-P

## **Animal and Plant Health Inspection Service, USDA**

### **9 CFR Part 92**

[Docket No. 94-136-1]

#### **Zoological Park Quarantine of Ruminants and Swine Imported From Countries Where Foot-and-Mouth Disease or Rinderpest Exists**

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations concerning ruminants and swine that are imported from a country where foot-and-mouth disease or rinderpest exists into a zoological park in the United States. These animals are maintained in the zoological park under conditions to prevent the spread of animal diseases. We propose to establish conditions under which such animals may be moved from one zoological park in the United States to another. This change would benefit zoo programs that move animals for breeding and other purposes, and would facilitate the movement of animals for endangered species breeding programs, while continuing to protect against the introduction of dangerous animal diseases into the United States.

**DATES:** Consideration will be given only to comments received on or before December 30, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 94-136-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 94-136-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joyce Bowling, Senior Staff

Veterinarian, Import-Export Animals Staff, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1228, (301) 734-8688.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Animal and Plant Health Inspection Service (APHIS) animal importation regulations (contained in 9 CFR part 92 and referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock. Among other requirements, the regulations restrict the importation of ruminants and swine to prevent the introduction and spread of foot-and-mouth disease (FMD) and rinderpest.

For many years some animals imported in accordance with these regulations have been admitted under the condition that they be placed in postentry quarantine in zoological parks (zoos) that have been approved by APHIS to receive such animals. We refer to such approved zoos as PEQ Zoos, because they are approved to hold imported animals in postentry quarantine (PEQ). At these zoos, the imported animals are maintained in facilities that prevent access to them by the public and by domestic animals, and that include requirements for waste disposal and other matters that prevent the dissemination of any diseases the animals might carry.

Section 92.404(c) concerns the importation, into a PEQ Zoo where they will be maintained under postentry quarantine, of wild ruminants from countries where foot-and-mouth disease or rinderpest exists.

Section 92.504(c) concerns the importation, into a PEQ Zoo where they will be maintained under postentry quarantine, of wild swine from countries where foot-and-mouth disease or rinderpest exists.

The regulations allow APHIS to approve a zoo as a PEQ Zoo if the following conditions, among others, are met. The operator of the zoo receiving the imported animals must enter into a written agreement with APHIS for the maintenance and handling of the animals in a manner specified in the agreement and the regulations to prevent the introduction and dissemination of communicable disease. Among other things, the regulations require that the zoo must include satisfactory pens, cages, or enclosures in which the animals can be maintained so as not to be in contact with the general public and free from contact with domestic livestock; natural or

established drainage from the zoological park which will void contamination of land areas where domestic livestock are kept or with which domestic livestock may otherwise come in contact; provision for the disposition of manure, other wastes, and dead animals within the zoo; and other reasonable facilities considered necessary to prevent the dissemination of diseases from the zoo. The regulations also require the operator of the zoo to have available the services of a full-time or part-time veterinarian, or a veterinarian on a retainer basis, to make periodic examinations of all animals maintained at the zoo for evidence of disease. This veterinarian must make a post-mortem examination of each animal that dies and report suspected cases of contagious or communicable diseases to appropriate state or federal livestock sanitary officials.

We do not propose to change any of the requirements for obtaining permits to import wild ruminants or wild swine, and we do not propose to change the requirements for the PEQ zoos to which these animals are consigned after their importation.

However, the agreement between zoo operators and APHIS which is currently required by 92.404(c)(3) and 92.504(c)(3) states that wild ruminants and wild swine imported and consigned to postentry quarantine in a PEQ Zoo will not be sold, exchanged or removed from the premises of the zoo without the prior consent of APHIS. In this document, we propose to specify the circumstances under which APHIS will consent to the movement of imported wild ruminants and swine from a PEQ Zoo to a non-PEQ zoo within the United States. Many zoos wish to be able to move such animals, especially to participate in breeding programs (including breeding programs for endangered species of ruminants and swine).

We are proposing that wild ruminants or wild swine may be moved to a non-PEQ zoo after they have spent at least one year in postentry quarantine in the PEQ Zoo to which the animal(s) were consigned after importation. We propose this condition because the one year requirement allows time for the symptoms of many communicable animal diseases to manifest, and be detected by the zoo veterinarian required to make periodic examinations of the imported animals. Any imported wild ruminants or swine at a PEQ Zoo that are diagnosed with communicable diseases during this year would not be allowed to move to other zoos, thereby