

include 2 distributors, 62 fruit sellers, 19 growers, 1 landfill, 18 nurseries, 1 packer, 1 processor, and 2 swap meets. These 106 entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

These small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the distribution of these articles was not affected by the regulatory provisions we are removing. Many of these entities also handle other items in addition to the previously regulated articles. The effect on those few entities that do move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost. Therefore, the effect, if any, of this rule on these entities appears to be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.).

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

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

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR. 2.22, 2.80, and 371.2(c).

#### § 301.64–3 [Amended]

2. In § 301.64–3, paragraph (c) is amended by removing the entry and the description of the regulated area for “San Bernardino and Riverside Counties”, CA.

Done in Washington, DC, this 12th day of April 2000.

**Bobby R. Acord,**

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

[FR Doc. 00–9669 Filed 4–17–00; 8:45 am]

**BILLING CODE 3410–34–U**

### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 52

[Docket No. 98–123–6]

RIN 0579–AB10

#### Pseudorabies in Swine; Payment of Indemnity

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations regarding the payment of indemnity for herds of swine depopulated because of pseudorabies to provide that the Animal and Plant Health Inspection Service will pay owners of the swine an indemnity equal to the difference between the net salvage received and the fair market value of the swine destroyed. We are also providing for the payment of indemnity for individual breeding sows destroyed because they are infected with pseudorabies. We have determined that this action will allow for the payment of indemnity from accelerated pseudorabies eradication program funds for a greater number of swine disposed of because they are infected with pseudorabies. This action is necessary to further pseudorabies eradication efforts and to protect swine not infected with pseudorabies from the disease.

**DATES:** Interim rule effective April 12, 2000. Consideration will be given only to comments received on or before June 19, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 98–123–6, 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. 98–123–6.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Taft, Senior Staff Veterinarian, Swine Diseases, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7708.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Animal and Plant Health Inspection Service's (APHIS's) regulations in 9 CFR part 85 govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus, and is known to cause reproductive problems, including abortion and stillborn death, and death in neonatal pigs, and occasional death losses in breeding and finishing hogs. Prior to 1998, the cost of pseudorabies to pork producers alone in the United States was over \$30 million annually. Of this amount, more than half, \$17 million, represented the cost of vaccination, and another \$11 million was attributable to pig deaths. The remainder was spent on testing.

A Federal eradication program for pseudorabies was implemented in the United States in 1989. The program is cooperative in nature and involves Federal, State, and industry participation. In an interim rule published in the **Federal Register** on January 15, 1999, and effective as of

January 12, 1999 (64 FR 2545–2550, Docket No. 98–123–2), APHIS promulgated regulations to establish an accelerated pseudorabies eradication program that provided, among other things, for the payment of indemnity by the United States Department of Agriculture (Department) for the voluntary depopulation of herds of swine known to be infected with pseudorabies.

#### Indemnity Paid by the Department

In our January 15, 1999, interim rule, we explained that we considered it appropriate to accelerate the pseudorabies eradication program through whole-herd buyouts because of a combination of three factors: (1) The danger that some owners might eliminate eradication efforts, such as vaccination of swine, due to depressed market conditions; (2) the relatively small number of herds infected with pseudorabies; and (3) the fact that markedly depressed prices for swine would lessen the cost to the Federal Government of whole-herd buyouts.

We explained that a surplus of live swine, due in part to reduced export markets, had slaughter facilities operating at maximum capability. Consequently, swine producers were being forced to continue feeding swine that could not go to slaughter. Swine that were being slaughtered were being sold at prices below the costs of feeding and transportation.

Under the regulations governing the accelerated eradication program, we began paying owners fair market value for herds of swine depopulated because of pseudorabies. In addition to paying 100 percent of the fair market value of the animals, we have been paying for trucking to disposal, for euthanasia and disposal, and for cleaning and disinfection of conveyances used for transporting the swine to disposal. To date, we have disposed of the herds depopulated under the accelerated eradication program by rendering. Although pseudorabies does not affect humans, we chose rendering as the method for disposal at the outset of the program because, as noted, a surplus of live swine was causing slaughtering establishments to operate at maximum capability.

Since January 1999, a reduction in swine inventories has contributed to an increase in the market value of swine. Additionally, this has created a situation where slaughtering establishments are generally not operating at maximum capability. Although the price per pound APHIS is paying for swine destroyed under the eradication program has increased over

the past year, we consider it necessary to the eradication of pseudorabies to continue the accelerated eradication program. However, because slaughtering establishments can now handle swine to be destroyed under the accelerated eradication program, we consider it prudent to revise the method by which owners of swine will receive fair market value for their animals under the accelerated eradication program.

Instead of the Department paying each owner 100 percent of the fair market value of all swine disposed of under the accelerated eradication program, we will pay indemnity for the difference between whatever payment for net salvage an owner receives for herds of swine disposed of through slaughter and the fair market value of those animals. Net salvage is the amount derived from the sale of an animal after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner. This change will increase the number of pseudorabies-infected herds that can be depopulated using available program funds. Under either formula, a swine owner receives the fair market value of the swine.

To ensure that the swine for which indemnity is paid do not pose a pseudorabies risk to any swine not moving to slaughter, and to ensure that APHIS receives documentation that the swine have been destroyed, we are requiring that the swine be sent under permit directly to a recognized slaughtering establishment, where State or Federal meat inspection is available. We are requiring that the swine be moved to the recognized slaughtering establishment in a conveyance closed with an official seal that is applied and removed by an APHIS employee, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS employee.

We are adding definitions in § 52.1 of this interim rule for the terms *accredited veterinarian*, *official seal*, *permit*, and *recognized slaughtering establishment*.

We define *accredited veterinarian* to mean a veterinarian approved by the Administrator in accordance with the provisions of 9 CFR part 161 to perform functions specified in 9 CFR, chapter I, subchapters B, C, and D. This definition is consistent with that set forth elsewhere in 9 CFR chapter I.

We define *official seal* to mean a serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

We define *permit* to mean an official document for movement of swine that is issued by an APHIS employee, State representative, or accredited veterinarian and that lists the disease status and individual identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification by a recognized slaughtering establishment. It is standard practice for the State or Federal inspector at the recognized slaughtering establishment to submit a signed copy of the permit to the APHIS veterinarian in charge when the animal is destroyed.

We define *recognized slaughtering establishment* to mean a slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601–695) or a State meat inspection act. (A list of recognized slaughtering establishments can be obtained by contacting the person listed in this Supplementary Information under **FOR FURTHER INFORMATION CONTACT**.)

As under the program to date, the fair market value will be primarily based on a per pound compensation. The per pound compensation will continue to be based on weighted average base market prices from the previous week (as released in “USDA–AMS Livestock Market News” and as determined by calculating the average of the Wednesday through Friday prices). An additional producer cost offset will also continue to be paid according to whether the animal is a breeder pig, a baby pig, a market hog less than 200 pounds, or a market hog greater than 200 pounds.

Although we expect that the great majority of swine disposed of under the accelerated eradication program will be disposed of through sale to slaughter, we recognize that this may not be reasonable or possible for some swine. For instance, some swine may be too small to provide a profitable yield to the slaughtering facility or may not be of sufficient size to be handled by slaughtering machinery that is set for larger animals. Additionally, recognized slaughtering establishments may not accept swine that have some visible health problem, such as an abscess. Such swine are usually readily identifiable by owners and APHIS employees or State representatives without actually being sent to a recognized slaughtering establishment. In this interim rule, we are providing that we will continue to pay 100 percent of the fair market value for swine that are identified for destruction under the accelerated eradication program, even if they are not accepted by a recognized slaughtering establishment. We may

also pay 100 percent of the fair market value for swine that the owner and an authorized APHIS employee or State representative agree will not be accepted by a recognized slaughtering establishment.

#### Appraisal of Swine

Prior to this interim rule, § 52.3 of the regulations provided that swine to be destroyed under the accelerated eradication program were to be appraised by an APHIS employee and a representative of the State jointly, or, if the State authorities approved, by an APHIS employee alone. The regulations did not specifically provide for appraisal by a State representative alone because the States were willing to allow APHIS to assume a lead role in carrying out the depopulation and indemnity process. Recently, however, States have indicated to APHIS a willingness to assume an increased role in the appraisal of swine. Increasing State involvement would reduce the demands on APHIS resources and, in some cases, promote more rapid completion of the appraisal process. Therefore, we are amending § 52.3 to provide that swine to be destroyed under the accelerated eradication program may be appraised by a State representative alone.

#### Groups of Swine Eligible for Indemnity

Section 52.2 of the regulations provides that the Administrator is authorized to agree, on the part of the Department, to pay 100 percent of the expenses of purchase, destruction, and disposition of herds of swine that are destroyed because the herds are known to be infected with pseudorabies.

In § 52.1 of the regulations, a herd is defined as a group of swine maintained on common ground for any purpose, or two or more groups of swine under common ownership or supervision, that are geographically separated but have an interchange or movement of animals without regard to whether the animals are infected with or exposed to pseudorabies.

The definition of herd includes two or more groups of swine under common ownership because it is standard practice in the swine industry for a production facility to maintain groups of swine in different units in different buildings, pens, etc. The swine from the different units may or may not come into contact with each other. If there is an interchange or movement of animals between groups without regard to whether the animals are infected with or exposed to pseudorabies, then, for disease and indemnity purposes, the groups must be considered as one herd.

For the most part under the accelerated eradication program, it has been clear to APHIS and owners of swine whether different groups of swine should be considered as one herd for disease purposes. However, in certain cases, questions have arisen as to whether there was a risk of disease transmission between groups of swine under common ownership. To help address this situation, we are providing in the definition of *herd* that any risk of disease transmission between two groups of swine will be determined by the official pseudorabies epidemiologist. (*Official pseudorabies epidemiologist* is defined in the regulations as a State or Federally employed veterinarian designated by the veterinarian in charge and the State animal health official to investigate and diagnose pseudorabies in livestock.) The factors the official pseudorabies epidemiologist will use in making this determination include the physical layout of the premises and the management practices of the facility, including whether groups of swine are kept in separate areas with no interchange of potential contaminants. Additionally, the epidemiologist will examine the pseudorabies testing and vaccination history of the animals on the premises to assess where the occurrence of pseudorabies is focused and the likelihood of its transmission to separated groups of swine.

#### Breeding Sows

We are also including in this interim rule a provision to allow owners of breeding sows that are identified as being infected with pseudorabies to receive indemnity if those sows are sent directly to slaughter, even if the rest of the herd they are part of is not depopulated. Although depopulation of an entire herd is the quickest and surest method of ensuring that pseudorabies is eradicated, some swine owners with infected herds have chosen not to depopulate the entire herd due to the loss of production during the time necessary to replace the herd. In such cases, the alternative method of ridding a herd of pseudorabies is to remove from the herd individual sows that test positive for pseudorabies. Prior to the implementation of indemnity payments for herd depopulation under the accelerated pseudorabies eradication program, "test and removal" of individual sows was the primary method used to further the pseudorabies eradication program, although owners of individual swine disposed of because of pseudorabies were not eligible to receive indemnity from APHIS for those animals.

Because a number of swine owners have chosen not to depopulate their infected herds under the accelerated eradication program, we believe it is necessary for the continued progress of the pseudorabies eradication program to provide owners of infected herds with an incentive to rid their herds of those animals most likely to perpetuate pseudorabies within a herd. The swine that constitute the greatest risk are the breeding sows in a herd. As their name denotes, the primary purpose of breeding sows is to produce litters, whereas the purpose of other swine in the herd is generally to be moved to slaughter. Because breeding sows remain in a herd over a period of years, a sow that is infected with pseudorabies can come into contact with, and possibly infect, a number of swine in the herd over the course of its lifetime.

Therefore, to encourage the prompt removal of infected breeding sows from a herd, we are providing in § 52.2(a) of this interim rule that APHIS will pay indemnity to owners of breeding sows known to be infected with pseudorabies that are sent under permit directly to a recognized slaughtering establishment. The payment of indemnity will be carried out by the same method as that described above for whole herd depopulations—*i.e.*, APHIS will pay the owner of the swine the difference between the amount of the net salvage value the owner receives when the animal is slaughtered and the fair market value of the animal. The option of receiving indemnity for less than whole-herd depopulation will not apply to any swine other than breeding sows known to be infected with pseudorabies.

In order to make clear the criteria APHIS will use in determining whether an individual breeding sow is infected with pseudorabies, we are adding to § 52.1 a definition of *known infected breeding sow*. Under this definition, which is the same as the definition of *known infected herd*, except that it applies to individual breeding sows rather than to entire herds, breeding sows known to be infected are those that have been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or based on a diagnosis by an official pseudorabies epidemiologist.

#### Presentation of Claims

Prior to this interim rule, the provisions governing the presentation to APHIS of claims for indemnity for swine destroyed because of pseudorabies were set forth in §§ 52.5 and 52.6. Because herds of swine destroyed under the accelerated

pseudorabies program prior to this interim rule were purchased in their entirety by APHIS for shipment to rendering, there was no need for the owner to report any salvage value for the swine. Under this interim rule, however, owners may receive indemnity for swine that are not purchased by APHIS but that are sent directly to slaughter. Therefore, it is necessary that the owner of the swine submit to APHIS, along with a claim for indemnity, documentation of the amount of net salvage proceeds received for the swine at slaughter. This documentation, along with the certification of destruction that APHIS will receive from the recognized slaughtering establishment when the animals are destroyed, will provide APHIS with the information needed to process payment of indemnity. We are adding the requirement for submission of a net salvage proceeds report at § 52.5 of this interim rule (discussed below).

For those swine eligible for indemnity that are purchased by APHIS rather than sent to a slaughtering establishment, the procedures for indemnity claims will be the same as those in place prior to this interim rule. (Those procedures, which were contained in §§ 52.5 and 52.6 prior to this interim rule, are consolidated in § 52.4 of this interim rule.)

#### Report of Net Salvage Proceeds

In § 52.5 of this interim rule, we are setting forth procedures by which an owner must report to APHIS net salvage proceeds received when swine infected with pseudorabies are sent to slaughter under the accelerated eradication program. We are providing that a report of the amount received for net salvage must be made on a salvage form that shows the gross receipts, expenses, if any, and net proceeds. An original or copy of the salvage form must be furnished by the owner to the veterinarian in charge.

We are defining "net salvage" in § 52.1 to mean the amount received for swine destroyed because of pseudorabies, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

#### Nonsubstantive Changes

In this interim rule, we are also making some nonsubstantive changes to part 52 by redesignating § 52.4 as § 52.7, redesignating § 52.7 as § 52.6, and combining the provisions of §§ 52.5 and 52.6 into one section, new § 52.4. Additionally, we are amending the definition of *known infected herd* to remove some redundant language.

#### Benefits of This Interim Rule

By revising the method by which owners receive fair market value for swine disposed of under the accelerated eradication program, we will significantly extend the use of APHIS' accelerated pseudorabies eradication program funds. This will help ensure that pseudorabies is eradicated from the United States by the end of 2000.

#### Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. The nature of the emergency is the immediate need to extend the funds available to APHIS for the accelerated pseudorabies eradication program before these funds are exhausted. This action is necessary to effect the eradication of pseudorabies in the United States by the end of 2000.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 533 to make the rule effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

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

An analysis of the economic effects of this rule on small entities, as required by the Regulatory Flexibility Act, follows.

#### Potential Economic Effects

Pseudorabies is a herpes virus disease, primarily affecting swine, that is known to cause reproductive problems, including abortion, stillborn death, and death in neonatal pigs, and occasional death losses in breeding and finishing hogs. The disease is recognized to cause considerable economic losses.

A Federal eradication program for pseudorabies was implemented in the United States in 1989. The program is cooperative in nature and involves

Federal, State, and industry participation. The Federal Government coordinates the national program, the State Governments promulgate and enforce intrastate regulations, and producers have contributed by testing their herds and purchasing vaccines.

In January 1999, we published regulations to establish an accelerated pseudorabies eradication program that provided, among other things, for the payment of indemnity by the Department for the voluntary depopulation of herds of swine known to be infected with pseudorabies.

Under the regulations governing the accelerated eradication program, we have been paying owners fair market value for herds of swine depopulated because of pseudorabies. In addition to paying 100 percent of the fair market value of the animals, we have been paying for trucking to disposal, for euthanasia and disposal, and for cleaning and disinfection of conveyances used for transporting the swine to disposal. To date, the herds that have been depopulated under the accelerated eradication program have been disposed of by rendering.

In this interim rule, we are providing that, instead of the Department paying each owner 100 percent of the fair market value of all swine destroyed under the accelerated eradication program, the Department will also pay indemnity for the difference between whatever net salvage value is received for herds of swine disposed of through slaughter and the fair market value of those animals. Additionally, we are providing that indemnity may be paid for breeding sows that are disposed of because they are known to be infected with pseudorabies, even if the remainder of the herd the sow is part of is not depopulated. We will continue to pay full purchase price for those swine that are not accepted at recognized slaughtering establishments.

The total amount paid to each owner whose herd is depopulated because of pseudorabies will be the same under this interim rule as under the regulations prior to this interim rule. The difference will be in how much the Department pays of that amount and how much is paid by other sources. The provision we are adding to the regulations to allow for the payment of indemnity for individual breeding sows disposed of because they are known to be infected with pseudorabies is expected to provide indemnity to owners who would not otherwise have received indemnity under the accelerated eradication program.

As explained below, we expect the number of infected herds sold to

slaughter to be a very small portion of swine slaughter sales overall. In turn, the number of individual breeding sows sold to slaughter will comprise a small fraction of the number of pseudorabies-infected swine sent to slaughter.

For the purposes of our analysis, we used information from accelerated eradication program activities for the first 4 months of fiscal year (FY) 2000 (October 1, 1999 to January 28, 2000) because we expect the participation in the accelerated eradication program that occurred during that period to be representative of participation during the 4 months following publication of this interim rule. Longer term projections, as the accelerated eradication program approaches its eradication goal and the number of participating herds decreases, would be more problematic.

From October 1, 1999, through January 28, 2000, a total of 146,300 swine from 112 herds were depopulated through the accelerated eradication program. Although this results in a nationwide average herd size of 1,306 swine, average herd sizes varied widely by State, from 39 swine (the average for the three herds depopulated in Florida) to 2,688 swine (the average for the 10 herds depopulated in Indiana).

In comparison to the 146,300 swine destroyed under the accelerated eradication program during the first 4 months of FY 2000, the total number of swine slaughtered nationwide during the same period averaged approximately 8,910,700 swine per month (slaughter numbers for January were projected based on the average of the first 3 months), yielding a 4-month total of 35,642,800. Therefore, the number of swine slaughtered under the accelerated eradication program represented about 0.4 percent of the total number of swine slaughtered. Assuming similar national and accelerated eradication program totals during the coming 4 months, any effect on slaughter prices due to infected animals going to slaughter will be slight, as explained below.

We estimated the effect on slaughter prices by considering the price flexibility for slaughter swine. The flexibility coefficient for a commodity is the percentage change in price associated with a 1 percent change in quantity, other factors being held constant. Assuming a flexibility coefficient for swine of about  $-0.8$  to  $-0.9^1$ , a 0.4 percent increase in the

quantity of slaughter swine would result in a 0.32 to 0.36 percent decrease in price. Thus, entry of swine from the accelerated eradication program into the slaughter market could result in slaughter prices falling from, for example, 40 cents per pound to 39.86 or 39.87 cents per pound, assuming all other market determinants remained constant.

#### **Savings to the Accelerated Pseudorabies Eradication Program**

The major effect of this interim rule will be in reducing expenses to the accelerated pseudorabies eradication program. Program costs will be reduced by the amount that is paid at slaughter for swine destroyed under the program. Maximum potential savings can be estimated using accelerated eradication program data for the first 4 months of FY 2000. Indemnity payments, including producer cost offsets, during this period totaled \$11,097,796. The producer cost offsets comprised \$2,782,300 of that amount.

If accelerated eradication program participation during the coming 4 months is similar to what took place during the first 4 months of FY 2000, and assuming that the amount an owner receives at slaughter equals the fair market value of the animal minus the producer cost offset, the savings to the accelerated eradication program in indemnity payments would exceed \$8 million (\$11,097,796  $-$  \$2,782,300 = \$8,315,496). Even after taking into account indemnity program-related expenses during the first 4 months of FY 2000 (\$2,602,860) and enhanced surveillance expenses during that period (\$97,024), total expenses to the program under the scenario described would be reduced to about 40 percent of what they would be without the slaughter sale option. Although, realistically, not all infected swine to be destroyed will be sold for slaughter, and the prices received at slaughter will usually not match the fair market value of the animals, savings to the accelerated eradication program are expected to be considerable.

#### **Effects on Small Entities**

This interim rule is not expected to have an effect on the total amount of compensation swine owners will receive for pseudorabies-infected swine. Additionally, it is not expected to have a significant effect on the price per pound paid for swine at slaughter.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not

have a significant impact on a substantial number of small entities.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0151 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 98-123-6, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. Please state that your comments refer to Docket No. 98-123-6 and send your comments within 60 days of publication of this rule.

This interim rule provides that APHIS will pay an indemnity for swine destroyed because of pseudorabies that is equal to the difference between the net salvage received and the fair market value of the swine destroyed. Under these provisions, owners seeking indemnity for swine destroyed will be required to obtain a movement permit and submit to APHIS a report of net salvage proceeds. Additionally, the swine must be moved to slaughter in a means of conveyance sealed with an official seal. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

<sup>1</sup> Flexibility coefficients based on William F. Hahn, "An Annotated Bibliography of Recent Elasticity and Flexibility Estimates for Meat and Livestock," Economic Research Service, Commercial Agriculture Division, Staff Paper No. AGES-9611, July 1996.

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average .14257 hour per response.

*Estimated number of respondents:* 300.

*Estimated number of responses per respondent:* 23.33.

*Estimated total annual number of responses:* 7,000.

*Estimated total annual burden on respondents:* 998 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

**List of Subjects in 9 CFR Part 52**

Animal diseases, Pseudorabies, Swine, Indemnity payments, Transportation.

Accordingly, we are amending 9 CFR part 52 as follows:

**PART 52—SWINE DESTROYED BECAUSE OF PSEUDORABIES**

1. The authority citation for part 52 continues 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).

2. Section 52.1 is amended by revising the definitions of “herd” and “known infected herd” and by adding definitions of “accredited veterinarian”, “known infected breeding sow”, “net salvage”, “official seal”, “permit”, and “recognized slaughtering establishment”, in alphabetical order, to read as follows:

**§ 52.1 Definitions**

*Accredited veterinarian.* A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

*Herd.* Any group of swine maintained on common ground for any purpose, or two or more groups of swine under common ownership or supervision that are geographically separated but that are

determined by an official pseudorabies epidemiologist to have an interchange or movement of animals that could cause the transmission of pseudorabies from one group to another.

\* \* \* \* \*

*Known infected breeding sow.* Any breeding sow that has been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or as diagnosed by an official pseudorabies epidemiologist as having pseudorabies.

*Known infected herd.* Any herd in which swine have been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or based on a diagnosis by an official pseudorabies epidemiologist.

\* \* \* \* \*

*Net salvage.* The amount received for swine destroyed because of pseudorabies, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

\* \* \* \* \*

*Official seal.* A serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

*Permit.* An official document for movement of swine under this part that is issued by an APHIS employee, State representative, or accredited veterinarian and that lists the disease status and individual identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification by a recognized slaughtering establishment.

\* \* \* \* \*

*Recognized slaughtering establishment.* A slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601–695) or a State meat inspection act.<sup>4</sup>

\* \* \* \* \*

3. Section 52.2 is revised to read as follows:

**§ 52.2 Payment of indemnity.**

(a) Except as provided in paragraph (b) of this section, the Administrator is authorized to agree on the part of the Department to pay indemnity to the

owner of herds of swine destroyed because the herds are known to be infected with pseudorabies, or individual breeding sows destroyed because they are known to be infected with pseudorabies. The amount of indemnity paid, together with the amount for net salvage the owner receives when the animals are slaughtered, shall not exceed the fair market value of the swine. Such swine must be sent directly to slaughter under permit in a conveyance closed with an official seal applied and removed by either an APHIS employee, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS employee. The swine must be sent to a recognized slaughtering establishment.

(b) If swine from herds that are destroyed because the herds are known to be infected with pseudorabies are not accepted at a recognized slaughtering establishment, or the owner and an APHIS employee or State representative agree they will not be accepted by a recognized slaughtering establishment, the Administrator is authorized to pay 100 percent of the expenses of the purchase, destruction, and disposition of such swine.

(Approved by the Office of Management and Budget under control number 0579–0151)

4. In § 52.3, paragraph (a) is revised to read as follows:

**§ 52.3 Appraisal of swine.**

(a) Herds of swine and individual breeding sows to be destroyed because they are known to be infected with pseudorabies will be appraised by an APHIS employee and a representative of the State jointly, a representative of the State alone, or, if the State authorities approve, by an APHIS employee alone.

\* \* \* \* \*

5. Section 52.6 is removed, § 52.7 is redesignated as § 52.6, § 52.4 is redesignated as § 52.7, § 52.5 is redesignated as § 52.4 and revised, and a new § 52.5 is added, to read as follows:

**§ 52.4 Presentation of claims.**

(a) When swine have been destroyed under § 52.2(a), any claim for indemnity must be presented, along with the report of net salvage proceeds required under § 52.5, to the veterinarian in charge on a form furnished by APHIS.

(b) When swine have been destroyed under § 52.2(b), any claim for indemnity must be presented, through the inspector in charge, to APHIS on a form furnished by APHIS.

(c) For all claims for indemnity, the owner of the swine must certify on the

<sup>4</sup> A list of recognized slaughtering establishments is available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737–1231.

claim form that the swine covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the swine must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579-0137)

#### **§ 52.5 Report of net salvage proceeds.**

A report of the amount for net salvage derived from the sale of each animal for which a claim for indemnity is made under § 52.2(a) must be made on a salvage form that shows the gross receipts, expenses if any, and net proceeds. The original or a copy of the salvage form must be furnished by the owner to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579-0151)

Done in Washington, DC, this 12th day of April 2000.

**Bobby R. Acord,**

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

[FR Doc. 00-9668 Filed 4-17-00; 8:45 am]

BILLING CODE 3410-34-U

## **DEPARTMENT OF AGRICULTURE**

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

#### **9 CFR Part 94**

[Docket No. 00-031-1]

#### **Change in Disease Status of Japan Because of Rinderpest and Foot-and-Mouth Disease**

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Japan from the list of regions declared free of rinderpest and foot-and-mouth disease. We are taking this action because the existence of foot-and-mouth disease has been confirmed there. The effect of this action is to prohibit or restrict the importation into the United States from Japan of any ruminant or swine, or any fresh, chilled, or frozen meat of any ruminant or swine. We are taking this action as an emergency measure to protect the livestock of the United States from foot-and-mouth disease.

**DATES:** This interim rule was effective March 8, 2000. We invite you to

comment on this docket. We will consider all comments that we receive by June 19, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00-031-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 00-031-1.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import & Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-3276.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and foot-and-mouth disease (FMD). Rinderpest or FMD exists in all other regions of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with FMD-affected regions.

Prior to the effective date of this interim rule, Japan was listed among those countries considered free of rinderpest and FMD. However, on March 8, 2000, a suspected outbreak of

FMD was detected. And on March 27, 2000, Japan's Ministry of Agriculture notified us with confirmation of the FMD diagnosis. Therefore, to protect the livestock of the United States from FMD, we are amending the regulations in § 94.1 by removing Japan from the list of regions that have been declared free of rinderpest and FMD. We are also removing Japan from the list of countries in § 94.11 that are declared to be free of these diseases, but that are subject to certain restrictions because of their proximity to or trading relationships with FMD-affected regions. As a result of this action, the importation into the United States of any ruminant or swine or any fresh (chilled or frozen) meat of any ruminant or swine that left Japan on or after March 8, 2000, is prohibited or restricted.

#### **Emergency Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of FMD into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the regulations governing the importation of certain animals, meat, and other animal products by removing Japan from the list of regions declared free of rinderpest and FMD. We are taking this action because Japan's Ministry of Agriculture has reported an outbreak of FMD in that country. This action prohibits or restricts the importation into the United States of any ruminant or swine, or any fresh (chilled or frozen) meat of any ruminant or swine that left Japan on or