

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 71

[Docket No. 96-088-1]

#### Interstate Movement of Animals Exposed to Disease

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to change the regulations governing the interstate movement of animals in order to clarify the regulations. In particular, we want to make it clear that our interstate movement restrictions pertain not only to animals that are actually infected with communicable diseases of livestock or poultry but also to animals that have been exposed to those diseases. As currently worded, the regulations could be interpreted as pertaining only to infected animals. However, to prevent disease spread, we must also restrict the interstate movement of animals that have been exposed to certain diseases.

**DATES:** Consideration will be given only to comments received on or before October 7, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-088-1, 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. 96-088-1. 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. Roberta Duhaime, Staff Officer,

Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737-1231, (301) 734-8069; or E-mail: rduhaime@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in subchapter C of chapter I, title 9, of the Code of Federal Regulations contain provisions designed to prevent the dissemination of livestock or poultry diseases in the United States and to facilitate the control and eradication of such diseases. The regulations in 9 CFR part 71 (referred to below as the regulations) include general prohibitions on the interstate movement of animals that could spread livestock or poultry diseases.

To prevent the spread of certain livestock or poultry diseases, the Animal and Plant Health Inspection Service must prevent the interstate movement of any animals capable of spreading the causative agents of the diseases. Communicable livestock or poultry diseases can be spread through many means, including physical contact between animals, contact with bodily secretions, and respiration. The causative agents can be spread both by animals that are infected with the disease as well as by exposed animals showing no clinical signs of disease. These exposed animals may either be incubating disease or may be carriers of disease (the animal carries in its system the causative agent of a disease to which the animal is immune).

We are concerned that, as currently worded, the interstate movement restrictions in the regulations could be interpreted as pertaining only to infected animals. Because communicable diseases may be spread also by exposed animals, we are proposing to make several changes to the regulations, as described below, for clarification. We believe these proposed changes would enhance our ability to prevent the spread of certain diseases of livestock and poultry.

In many places in the regulations, references are made to prohibitions on the interstate movement of animals "affected with" certain diseases. We are concerned that the term "affected with" could be interpreted to mean only "infected with" instead of "infected with or exposed to," as is our intended meaning. We have always considered

that "affected with" means "infected with or exposed to" and that the interstate movement restrictions pertain both to animals that have been exposed to communicable livestock or poultry diseases as well as infected animals. To eliminate confusion about what is meant by the term "affected with," we are proposing to add a definition of "affected with" to the list of definitions in § 71.1. We would define "affected with" as meaning "infected with or exposed to."

In four places in the regulations, reference is made to "diseased" animals. These references occur in the headings for §§ 71.2 and 71.3, in § 71.3(d), and in § 71.14. As with the term "affected with," we are concerned that use of the term "diseased" in the regulations implies that we are concerned only with infected animals. Because, for the reasons stated above, we are concerned about the interstate movement of animals that have been exposed to disease as well as the interstate movement of infected animals, we are proposing to change the references to "diseased" animals to animals "affected with disease." With the proposed addition of a definition for "affected with" to § 71.1, this wording change would make it clear that we are referring to both infected and exposed animals in these four references.

In § 71.13, there is a reference to poultry or other animals "infected with any contagious, infectious, or communicable disease or to have been exposed to such infection" and another reference to poultry or other animals "infected with or which have been exposed to the infection of such disease". These two references clearly indicate that the requirements of § 71.13 apply to both infected and exposed animals. However, for the purpose of ensuring consistent terminology throughout the regulations, we are proposing to change these two references, respectively, to "affected with any contagious, infectious, or communicable disease" and "affected with such disease".

We are proposing to make further changes to the regulations to remove redundancies. For example, § 71.3(d)(3) begins with the words "Sheep affected with or exposed to . . . ." Because, as described previously, the proposed definition of "affected with" would include the words "exposed to," the

words "exposed to" in § 71.3(d)(3) would become redundant. In addition, §§ 71.4(b) and 71.6(a) include the words "affected with, or carrying the infection of," and the latter part of that phrase would become unnecessary with the addition to § 71.1 of the proposed definition for "affected with."

Finally, § 71.3(f) states that, "Before offering cattle or other livestock or poultry for interstate transportation, transporting them interstate, or introducing them into any stockyards or upon routes of traffic for interstate transportation, all persons, companies, or corporations are required to exercise reasonable diligence to ascertain whether such animals or poultry are affected with any contagious, infectious, or communicable disease, or have been exposed to the contagion or infection of any such disease by contact with other animals or poultry so diseased or by location in pens, cars, or other vehicles, or upon premises that have contained animals or poultry so diseased." We are proposing several changes to this sentence. We are proposing to remove the words "or have been exposed to the contagion or infection of any such disease" and make other minor changes consistent with our proposed definition for "affected with" as described above.

In addition, we are proposing to amend this sentence for clarification. We believe that this sentence, as currently written, could be misinterpreted as meaning that all that is required of a person who plans to ship livestock interstate is for the person to assess the animals' health status prior to making the movement. However, in actuality, if an individual finds after making such an assessment that an animal is infected with or has been exposed to any of the diseases regulated by 9 CFR, chapter I, subchapter C, the individual is then required to comply with the movement requirements or restrictions specified for that particular disease. For example, if a cattle owner determines that a cow to be moved interstate is infected with bovine piroplasmiasis, then, in accordance with § 71.3(a), the owner would be prohibited from moving the cow interstate. As another example, if a cow reacts to a test recognized by the Secretary of Agriculture for brucellosis, the cow could be moved interstate only in accordance with 9 CFR part 78.

To clarify that § 71.3(f) is meant to be an adjunct to other interstate transportation requirements, we are proposing to add to the paragraph the following sentence: "Any animals found to be affected with any disease listed in subchapter C of this chapter may be moved interstate only in accordance

with all applicable regulations specified in subchapter C of this chapter for animals affected with that disease."

Throughout the regulations, we are also proposing to delete references to "poultry" after the term "animal" because "animal" includes "poultry."

#### **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.

The purpose of this proposed rule is merely to clarify current regulations pertaining to the interstate movement of animals. We do not anticipate that these changes would have any economic impact on any regulated entities.

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 information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 9 CFR Part 71**

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

Accordingly, 9 CFR part 71 would be amended as follows:

#### **PART 71—GENERAL PROVISIONS**

1. 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).

2. In § 71.1, the definition of *affected with* would be added, in alphabetical order, to read as follows:

#### **§ 71.1 Definitions.**

\* \* \* \* \*

*Affected with.* Infected with or exposed to.

\* \* \* \* \*

#### **§ 71.2 [Amended]**

3. In § 71.2, the section heading would be revised to read "*Secretary to issue rule governing quarantine and interstate movement of animals affected with disease.*"

4. Section 71.3 would be amended as follows:

a. By revising the section heading to read as set forth below.

b. In paragraph (a), by removing the words "or poultry".

c. In paragraph (b), by removing the words "or poultry".

d. In paragraph (d), introductory text, by removing the word "diseased" and adding the words "affected with disease" in its place.

e. In paragraph (d)(3), by removing the words "or exposed to".

f. By revising paragraph (f) to read as set forth below.

#### **§ 71.3 Interstate movement of animals affected with diseases of livestock or poultry generally prohibited.**

\* \* \* \* \*

(f) Before offering animals for interstate transportation, transporting them interstate, or introducing them into any stockyards or upon routes of traffic for interstate transportation, all persons are required to exercise reasonable diligence to ascertain whether such animals are affected with any contagious, infectious, or communicable disease of livestock or poultry by contact with other animals or by location in pens, cars, or other vehicles, or upon premises that have contained animals affected with the disease. Any animals found to be affected with any disease listed in subchapter C of this chapter may be moved interstate only in accordance with all applicable regulations specified in subchapter C of this chapter for animals affected with that disease.

#### **§ 71.4 [Amended]**

5. In § 71.4, paragraph (b) would be amended by removing the words " , or carrying the infection of,".

**§ 71.6 [Amended]**

6. In § 71.6, paragraph (a) would be amended by removing the words “, or carrying the infection of,”.

7. In § 71.13, the undesignated regulatory text would be revised to read as follows:

**§ 71.13 Inspection of shipments in transit by APHIS inspector.**

All persons having control of the interstate transportation of animals shall, when directed by an APHIS inspector, stop the same in transit for inspection, and if any of such animals are found upon such inspection to be affected with any contagious, infectious, or communicable disease of livestock or poultry, the person having control of the transportation of such animals shall, upon receipt of an order from an APHIS inspector, cease the transportation of such animals unless such transportation can be accomplished in accordance with the regulations in this subchapter governing the interstate movement of animals affected with such disease, and in all cases after the discovery of such infection or exposure thereto such animals shall be handled in accordance with such regulations.

8. In § 71.14, the section heading and the undesignated regulatory text would be revised to read as follows:

**§ 71.14 Slaughter of animals to prevent spread of disease; ascertainment of value and compensation.**

When, in order to prevent the spread of any contagious, infectious, or communicable disease of livestock or poultry, it becomes necessary to slaughter any animals affected with the disease and the purchase of such animals by the United States is authorized by law and an appropriation is available therefor, the value of the animals shall be ascertained and compensation made therefor in accordance with the orders or regulations of the Secretary of Agriculture.

Done in Washington, DC, this 4th day of August, 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97-20995 Filed 8-7-97; 8:45 am]

BILLING CODE 3410-34-P

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 92**

[Docket No. 96-052-2]

**Horses From Mexico; Quarantine Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding the importation of horses from Mexico to remove the requirement that such horses be quarantined for not less than 7 days in vector-proof quarantine facilities before being imported into the United States. We believe that this action is warranted because Mexico has reported no cases of Venezuelan equine encephalomyelitis (VEE) in the past year, and it appears that horses imported into the United States from Mexico without a 7-day quarantine would not pose a risk of transmitting VEE to horses in the United States.

**DATES:** Consideration will be given only to comments received on or before October 7, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-052-2, 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. 96-052-2. 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. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231, (301) 734-3276.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in 9 CFR part 92 (referred to below as “the regulations”) govern the importation into the United States of specified animals and animal products, including horses from Mexico, to prevent the introduction into the United States of various animal diseases.

On July 31, 1996, we published an interim rule in the **Federal Register** (61 FR 39852-39853, Docket No. 96-052-1) in which we required that horses imported into the United States from Mexico be quarantined for not less than 7 days in a vector-free facility. Prior to our interim rule, horses from Mexico were not required to be held in quarantine for any specified number of days, but were required, instead, to be quarantined only long enough to complete the testing required by the regulations.

A 7-day quarantine became necessary when the government of Mexico reported that Venezuelan equine encephalomyelitis (VEE) had been detected in horses in that country. VEE is an equine viral disease, transmitted primarily by mosquitoes and other hematophagous (blood-feeding) insects, particularly flying insects, and results in a high mortality rate in animals infected with the disease. Although tests exist for the presence of VEE in horses, the tests currently available may yield positive results for horses that have been vaccinated for VEE but are not otherwise infected with the disease. The most efficient method for initial identification of horses that may be infected with VEE is observation of the horses for clinical signs of the disease. The clinical signs most commonly exhibited by horses infected by VEE are marked fever, depression, and incoordination, followed by death. A horse will usually exhibit signs of VEE within 2-5 days after contracting the disease. Seven days is considered the length of time necessary to ensure that any clinical signs of VEE manifest themselves.

In this document, we are proposing to remove the requirement that horses from Mexico be quarantined for not less than 7 days. We believe that the removal of this requirement is warranted because Mexico appears to be free of VEE. Horses imported from Mexico would still be required to be held in quarantine until it has been determined that the animals are free of exotic pests and diseases.

The last case of VEE in Mexico was reported in July 1996. Following the initial outbreak of VEE in the Mexican State of Oaxaca in June 1996, the Government of Mexico instituted emergency measures to locate, contain, and eradicate the disease. These emergency measures included the following: activation of the country's animal health emergency group; organization of groups such as regional livestock associations and State authorities; establishment of quarantines in areas in which the