

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. APHIS–2007–0039]

RIN 0579–AC61

Recordkeeping for Approved Livestock Facilities and Slaughtering and Rendering Establishments

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 to require approved livestock facilities and listed slaughtering and rendering establishments to maintain certain records for 5 years. Currently, approved livestock facilities are required to retain certain records for 2 years, and there are no record retention provisions that apply to listed slaughtering and rendering establishments. Requiring the retention of certain records for 5 years would allow us to trace the prior movements of diseased livestock further into the past than is currently possible, thus providing the opportunity to locate potentially infected or exposed livestock that might otherwise remain unidentified. We are also proposing to require the operators of slaughtering and rendering establishments to sign listing agreements to document their agreement to comply with the requirements of the regulations for listed slaughtering and rendering establishments. Such agreements are currently required for approved livestock facilities, but not for slaughtering and rendering facilities. The proposed change would eliminate that inconsistency.

DATES: We will consider all comments that we receive on or before September 5, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0039> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0039, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0039.

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

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Debra C. Cox, Senior Staff Veterinarian, Surveillance and Identification Program, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; 301–734–4397.

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.

The regulations in § 71.20 contain provisions under which livestock facilities may acquire and retain status as an approved facility. To obtain approval, facilities must enter into an agreement with the Animal and Plant Health Inspection Service (APHIS) in

which they agree to follow certain procedures when handling livestock entering the facility. Part of this agreement states that 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. Such records would be critical in the event that APHIS or State animal health officials needed to conduct a disease traceback investigation.

We are proposing to amend § 71.20 to extend the records retention period from 2 to 5 years. Due to increased globalization, the threat of an animal disease introduction has increased during the past few years. In the case of chronic livestock diseases like bovine tuberculosis, signs and symptoms of the disease may not appear for years and apparently healthy animals may be found to be infected only at slaughter. In these cases, being able to trace the animals' movements as far in the past as possible is important to identify any other potentially exposed or infected animals. Requiring the retention of certain records for 5 years would allow APHIS to trace the prior movements of diseased livestock further into the past than is currently possible, thus providing the opportunity to locate potentially infected or exposed livestock that might otherwise remain unidentified. We are not proposing to make any changes to the records which must be kept, only extending the time for which they must be kept.

We recognize that our current regulations require that livestock facilities keep records for no more than two years and that listed slaughtering and rendering establishments are not required to retain records for APHIS purposes. Therefore, we would not expect these establishments to start retaining records for a longer period prior to the adoption of a final rule establishing a longer retention period, only that they would extend their records retention to 5 years after such a final rule became effective.

The regulations § 71.21 are designed to enhance the level of animal disease surveillance in the United States. Specifically, these regulations state that livestock or poultry moving interstate for slaughter or rendering can only be moved to a slaughtering or rendering

establishment that has been listed by the Administrator. In order for an establishment to be listed, the operator of the establishment must agree to a number of provisions, such as allowing access to the facility by APHIS and Food Safety and Inspection Service (FSIS) personnel, or APHIS contractors, for the purpose of taking blood and tissue samples from animals at the facility. These establishments must allow those personnel access to the processing line to collect the samples, and they must provide office and sample collection space, including sufficient lighting and adequate ventilation. They must also allow APHIS, FSIS, or APHIS contractors to record the identification of individual animals and retain any external or internal identification devices.

We are proposing to amend § 71.21 to require that the owner or operator of a slaughtering or rendering establishment sign a listing agreement in which he or she agrees, in writing, to meet the requirements of § 71.21 in order for the slaughtering or rendering establishment to be listed. Failure to sign a listing agreement would result in the establishment not being listed, or being de-listed if it is currently listed. APHIS already has a listing agreement that we make available to such establishments, but the regulations do not refer to this agreement nor do they require that the owner or operator of the establishment sign the agreement. Such listing agreements are currently required for approved livestock facilities but not for listed slaughtering and rendering facilities. The proposed change would eliminate that inconsistency.

The regulations in § 71.21 currently contain no provisions concerning the retention of records (such as sales slips) by listed slaughtering and rendering establishments. For the same reasons as discussed earlier in this document with respect to the records retention provisions of § 71.20, we believe it is necessary to amend the regulations regarding listed slaughtering and rendering establishments to require that these establishments retain certain records for 5 years. This would allow us to verify the disposition of herd mates or other animals exposed to the infected animal.

Specifically, we would add a new paragraph (a)(5) to § 71.21 that would require that the management of the slaughtering or rendering establishment agree to maintain, for 5 years, 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 establishment. We

would also require that APHIS, APHIS contractors, and State animal health representatives be permitted to review and copy or scan these documents during normal business hours.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The proposed rule would extend the time period for which livestock facilities must retain records from 2 to 5 years. The proposed rule would also require that slaughtering facilities and rendering facilities retain records for 5 years. This would allow APHIS to trace the prior movements of diseased livestock for up to 5 years, thus enabling the Agency to locate livestock that have potentially been exposed to disease. The proposed rule would also require that operators of slaughtering and rendering establishments agree in writing to the listing requirements in 9 CFR 71.21.

For this proposed rule, we have prepared an economic analysis. The analysis, which is set out below, provides a cost-benefit analysis, as required by Executive Order 12866, as well as an initial regulatory flexibility analysis that considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act.

The proposed rule has the potential to benefit APHIS, other animal health authorities, and the operators of slaughtering and rendering facilities in the event that a traceback is required to locate the origin of a diseased animal. The livestock, slaughtering, and rendering industries may also benefit because the added information could decrease the traceback time, thus reducing the time a particular area may need to be quarantined pending the outcome of an investigation. The proposed changes could also result in benefits from a trade perspective when our ability to more rapidly conclude a disease traceback investigation allows us to provide timely reporting to our trading partners regarding the disposition of the animals associated with a particular disease outbreak and thus facilitates our efforts to retain market access.

Records Retention

As described previously, record 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, an approved facility are required to be maintained by the livestock facility for a period of 2 years. Retention of such records is not currently required for slaughtering and rendering establishments. Under the proposed rule, approved livestock facilities and listed slaughtering and rendering establishments would be required to retain these records for 5 years.

The proposed provisions regarding the retention of records should not have a significant economic impact on affected entities. Any costs of retaining these records by approved livestock facilities for an additional 3 years are expected to be negligible. Although rendering and slaughtering facilities are not currently required to retain these records, most reportedly do so. APHIS therefore does not expect costs of records retention for these businesses to differ significantly from costs being borne at present. Records may be maintained in paper or electronic form.

For the reasons discussed above, costs of complying with the proposed requirements for records retention should be minimal in most cases, and may depend on the method of record retention (paper copy or electronic) and the size of the facility. Clearly, a large-scale operation that maintains paper records would be faced with higher potential recordkeeping costs than would be a smaller-scale operation that maintains records electronically. We welcome the submission of information from potentially affected entities or any other sources that would help us to better estimate any additional costs that may result from the proposed records retention provisions.

The proposed records retention provisions have the potential to benefit APHIS, other animal health authorities, and the operators of livestock, slaughtering, and rendering facilities in the event that a traceback is required to locate the origin of a diseased animal. Increasing the records retention time would extend the ability of State and Federal animal health authorities to trace the prior movements of diseased livestock for up to 5 years, thus enabling the Agency to locate other livestock that may have been exposed to diseases. This could prove particularly helpful during tracebacks connected to diseases with longer incubation periods such as some transmissible spongiform encephalopathies. The livestock, slaughter, and rendering industries would also benefit because the added information has the potential to reduce the amount of time needed to conduct a traceback investigation, thus reducing

the time a particular area may need to be quarantined pending the outcome of an investigation. As noted previously, we expect these proposed provisions could also produce benefits in terms of helping our efforts to retain access to international markets in the aftermath of a disease outbreak by giving us the ability to more rapidly conclude a disease traceback investigation and subsequently provide timely reporting to our trading partners regarding the disposition of the animals associated with that disease outbreak.

Listing Agreement

APHIS has a listing agreement for slaughtering and rendering facilities; however, it is not currently required that operators agree in writing to meet the requirements in § 71.21 of the regulations for becoming a listed establishment. Under the proposal, they would have to agree in writing to meet the requirements in § 71.21 of the regulations to become a listed establishment.

The proposed requirement for signed listing agreements should not have a significant economic impact on slaughtering or rendering facilities. To the extent that these operations already follow listing requirements, there should not be any cost associated with signing a listing agreement. Requiring operators to agree in writing to meet the requirement for an approved slaughtering or rendering facility will increase accountability.

Potentially Affected Entities

The proposed rule would affect approved livestock facilities and listed rendering and slaughtering establishments. This is because, at the present time, none of those entities are required to retain records for the proposed 5-year time period. The operators of listed slaughtering and rendering establishments are not currently required to sign a listing agreement to be listed by APHIS.

Livestock facilities include posted stockyards and bonded packers. In 2003, the U.S. Department of Agriculture's Grain Inspection, Packers, and Stockyards Administration (GIPSA) recorded a total of 2,658 posted stockyards and a total of 502 bonded packers.¹ While the employment numbers are not listed for these industries, APHIS employees who work closely with stockyards and packers estimate the majority of these industries employ 500 or fewer employees, and

thus under the criteria established by the Small Business Association (SBA) would qualify as small entities.

The animal (except poultry) slaughtering industry (North American Industry Classification System [NAICS] 311611) is composed of 1,869 establishments, of which 96 percent can be classified as small entities. According to the SBA, establishments in NAICS 311611 that employ 500 or fewer employees are classified as small.

The rendering and meat byproduct processing industry (NAICS 311613) is composed of 231 establishments of which 100 percent can be classified as small entities. According to the SBA, establishments in NAICS 311613 that employ 500 or fewer employees are classified as small entities.

This proposed rule would require approved livestock facilities and listed slaughtering and rendering establishments to maintain certain records for 5 years, and would require the operators of slaughtering and rendering establishments to sign listing agreements to document their agreement to comply with the requirements of the regulations for listed slaughtering and rendering establishments. As noted previously, APHIS already has a listing agreement that we make available to such establishments, but the regulations do not refer to this agreement nor do they require that the owner or operator of the establishment sign the agreement. Such listing agreements are currently required for approved livestock facilities but not for listed slaughtering and rendering facilities. However, because having a listing agreement in place can facilitate the prompt resolution of APHIS disease investigations, thus allowing the resumption of normal business activities, many of these establishments have signed listing agreements.

Alternatives

Alternatives to the proposed rule would be to either leave the regulations unchanged, or require a different set of criteria than currently proposed. Leaving requirements for the retention of records unchanged would be unsatisfactory because it would not provide APHIS with information to expedite an animal disease traceback. It is also necessary that the operators of slaughtering and rendering facilities formally acknowledge accountability by agreeing in writing to meet the requirements for a listed facility.

APHIS considers the proposed set of criteria to be the minimum necessary to accomplish the proposed rule's objectives. Due to the threat of animal disease introductions and the

realization that for certain diseases, such as tuberculosis, an infected animal may not show signs of illness for a number of years, it is essential that livestock records be retained for a longer period of time than is currently required.

For reasons discussed above, we expect that operating costs to comply with the proposed requirements for the signing of listing agreements should be negligible. However, we welcome public comment on this proposed rule, particularly any comments from potentially affected entities that would allow us to better estimate the costs associated with its implementation and suggestions for how the proposed rule could be modified to reduce expected costs for these small entities consistent with its objectives.

Estimates of the expected reporting and recordkeeping burden associated with the proposed changes are discussed below under the heading "Paperwork Reduction Act."

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

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2007-0039. Please send a copy of your comments to: (1) Docket No. APHIS-2007-0039, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street

¹ USDA, GIPSA, *Packers and Stockyards Statistical Report, 2002 Reporting Year*. (Table 43, page 67, "Bonded packers and Posted stockyards.")

and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Disease surveillance plays an important role in APHIS' mission of protecting the health of livestock populations in the United States, and testing animals for disease is an important surveillance tool. To enhance APHIS' surveillance capabilities, we are proposing to amend the regulations regarding the movement of livestock to require approved livestock facilities and listed slaughtering and rendering establishments to maintain certain records for 5 years. Currently, approved livestock facilities are required to retain certain records for 2 years, and there are no record retention provisions that apply to listed slaughtering and rendering establishments.

Requiring the retention of certain records for 5 years would allow APHIS to trace the prior movements of diseased livestock further into the past than is currently possible, thereby providing the opportunity to locate potentially infected or exposed livestock that might otherwise remain unidentified. We are also proposing to require the operators of slaughtering and rendering establishments to sign listing agreements to document their agreement to comply with the requirements of the regulations for listed slaughtering and rendering establishments. Such listing agreements are currently required for approved livestock facilities, but not for slaughtering or rendering facilities. The proposed change would eliminate that inconsistency.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed 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 proposed information collection, including the validity of the methodology and assumptions used;

(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 0.0830985 hours per response.

Respondents: Livestock auction market, slaughtering, and rendering plant personnel.

Estimated annual number of respondents: 710.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 710.

Estimated total annual burden on respondents: 59 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 9 CFR Part 71

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

Accordingly, we propose to amend 9 CFR part 71 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

§ 71.20 [Amended]

2. In § 71.20, paragraph (a)(7), the number "2" is removed and the number "5" is added in its place.

§ 71.21 [Amended]

3. In § 71.21, paragraph (a) is amended as follows:

a. Paragraphs (a)(1), (a)(2), and (a)(3) are redesignated as paragraphs (a)(2), (a)(3), and (a)(4), respectively, and a new paragraph (a)(1) is added to read as set forth below.

b. A new paragraph (a)(5) is added to read as set forth below.

§ 71.21 Tissue and blood testing at slaughter.

(a) * * *

(1) The owner or operator of the establishment must agree, in writing, to meet the requirements for a listed facility under this section by signing a listing agreement.

* * * * *

(5) The management of the slaughtering or rendering establishment agrees that weight tickets, sales slips, and records of origin, identification, and destination that relate to livestock that are in, or have been in, the establishment will be maintained by the establishment for 5 years. APHIS, APHIS contractors, and State animal health representatives will be permitted to review and copy or scan these documents during normal business hours.

* * * * *

Done in Washington, DC, this 30th day of June 2008.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E8-15289 Filed 7-3-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0729; Directorate Identifier 2008-NM-052-AD]

RIN 2120-AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This Airworthiness Directive (AD) is issued following the discovery of a potential chafing between the rheostat of the 3rd crew member control panel reading light and the air gasper flexible hose, or with the electrical