

Food components ¹	Age 1 and 2	Age 3 through 5	Age 6 through 12 ²	Adult participants
* * *	*	*	*	*
Meat and Meat Alternates:				
Lean meat or poultry or fish ⁶ or	1/2 ounce	1/2 ounce	1 ounce	1 ounce
Alternate protein products ⁷ or	1/2 ounce	1/2 ounce	1 ounce	1 ounce
Cheese or	1/2 ounce	1/2 ounce	1 ounce	1 ounce
* * *	*	*	*	*

¹ For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

² Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

⁶ Edible portions must be served.

⁷ Must meet the requirements in Appendix A of this part.

Dated: December 7, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01-31161 Filed 12-19-01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 85

[Docket No. 98-023-2]

RIN 0579-AB28

Interstate Movement of Swine Within a Production System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to establish an alternative to the current requirements for moving swine interstate. Under this alternative, persons may move swine interstate without meeting individual swine identification and certain other requirements if they move the swine within a single swine production system, and if each swine production system signs an agreement with the Animal and Plant Health Inspection Service and involved State governments to monitor the health of animals moving within the swine production system and to facilitate traceback of these animals if necessary. This action will facilitate the interstate movement of swine while continuing to provide protection against the interstate spread of swine diseases. This action will affect persons engaged in swine production who regularly move swine interstate in their business operations.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian,

National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-4916.

SUPPLEMENTARY INFORMATION:

Background

The regulations in subchapter C of chapter I, title 9, Code of Federal Regulations, govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States. Parts 71 and 85 (referred to below as the regulations) are included in subchapter C. Part 71 relates to the interstate movement of animals, poultry, and animal products, and includes animal identification requirements for swine moving interstate. Part 85 imposes requirements to control the spread of pseudorabies and includes certificate and other requirements for the interstate movement of swine.

On September 21, 2000, we published in the **Federal Register** (65 FR 57106-57113, Docket No. 98-023-1) a proposal to amend the regulations by establishing an alternative to the current requirements for moving swine interstate.

With some exceptions, parts 71 and 85 require swine moving interstate to be individually identified. As we explained in our September 2000 proposed rule, these regulations were written when swine (other than valued breeding stock) were generally moved interstate only when a change in ownership occurred, usually when they were shipped to slaughter. However, today swine move interstate while they are raised for slaughter or breeding under a swine production system, and while they remain under the control of a single owner or group of contractually related owners.

In order to better accommodate this new model of swine production, we proposed alternative requirements. As proposed, producers could move swine

interstate under our alternative procedures if they meet the following requirements:

- The producers have a written swine production health plan (SPHP) signed by the producer(s), the accredited veterinarian(s) for the premises, the Animal and Plant Health Inspection Service (APHIS), and the States in which the producers in the swine production system have premises.

- One or more accredited veterinarians identified in the SPHP will regularly visit each premises in the swine production system to inspect and test swine and will continually monitor the health of the swine in the swine production system. Swine may only be moved interstate if they have been found free from signs of any communicable disease during the most recent inspection of the premises by the swine production system accredited veterinarian(s).

- The SPHP describes a records system maintained by the producers to document the health status of the swine.

- Prior to each interstate movement of swine between premises within a swine production system, an interstate swine movement report must be sent to APHIS, the accredited veterinarian for the premises, and the sending and receiving States. That report must document the number, type, and health status of the swine being moved. Each of these requirements was discussed in detail in our proposal.

We solicited comments concerning our proposal for 60 days ending November 20, 2000. We received nine comments by that date. They were from representatives of State governments, veterinarians, and pork producers and pork producer organizations. They are discussed below by topic.

Contractual Versus Ownership Relationships in Swine Production Systems

One commenter addressed proposed § 71.19(h)(1), which states that “swine may be moved interstate only to another premises owned and operated by the same swine production system.” This commenter stated that this language should be broad enough to allow movements where one producer does not necessarily own and operate both sites, but there is a contractual relationship between two producers, which could include a change in ownership of the animals.

We agree, and have changed the language in § 71.19(h)(1) to read “swine may be moved interstate only to another premises identified in a valid swine production health plan for the swine production system.” This language is also more consistent with the definition of *swine production system*, which reads “A swine production enterprise that consists of multiple sites of production, e.g., sow herds, nursery herds, and growing or finishing herds, that are connected by ownership or contractual relationships, between which swine move while remaining under the control of a single owner or a group of contractually connected owners.”

Certificates

One commenter noted that the preamble of the proposed rule referred to a “health certificate,” and stated that “a more accurate term is ‘certificate of veterinary inspection’ because the Federal or accredited veterinarian is not certifying the health status of the animals, but instead is certifying that animals were inspected and found to comply with the statements contained in the certificate.”

We are not making any change to the regulatory text of the rule in response to this comment, although we have changed the preamble of this final rule so that it no longer refers to “health certificates.” We agree that the preamble of the proposed rule incorrectly referred to certificates as “health certificates,” a term that is not used anywhere in the regulations we are amending. Part 85 defines the term “certificate,” and we believe this definition is consistent with the concerns of the commenter. We are not changing the defined term from “certificate” to “certificate of veterinary inspection” because that could cause even more confusion. Statements in certificates are not limited to facts that could be disclosed directly by veterinary inspection, but also include such items as the identities of the

consignor and consignee, the purpose of the movement, and the points of origin and destination.

APHIS Participation

Several commenters stated that APHIS need not sign SPHP’s or be notified if an SPHP is cancelled, and should not be empowered to cancel an SPHP. We are not making any changes based on these comments.

APHIS is ultimately responsible for ensuring that swine diseases are not spread interstate. We need to ensure that individual SPHP’s meet our requirements. We also need to be aware of possible and actual interstate movements. With this information, we can monitor the effectiveness of the program and be prepared to take action if it appears there is a disease risk. Requiring that we sign each SPHP and be notified if an SPHP is cancelled is minimally burdensome and effectively and unobtrusively keeps us informed.

We also believe it is necessary that we have the authority to cancel an SPHP to respond to changing circumstances. For example, as explained in our proposal, we would cancel an SPHP if participants persistently violated the terms of the agreement or our regulations.

Who Must Sign an SPHP and Be Inspected?

Some commenters stated that not all participants in a swine production system are involved in sending or receiving swine interstate, yet the proposed rule would require all participants to sign the SPHP. In addition, the proposed rule would require all participating premises and swine to be inspected by an accredited veterinarian. They suggested that only participants who are actually involved in moving swine interstate be required to sign the SPHP, and that only premises and swine that participate in interstate movement should be subject to veterinary inspection under the SPHP. We agree and have made those changes in this final rule. Specifically, the definition of *swine production health plan* in § 71.1 would now state that the SPHP must be signed by “an official of each swine production system identified in the plan,” and that the plan must provide for inspection of “all premises that are part of the swine production system and that receive or send swine in interstate commerce.” Note that while these changes narrow the coverage of the SPHP, they do not reduce our overall authority to inspect any swine moving in interstate commerce at any time, or to take enforcement action against any person

who moves swine interstate in violation of our regulations, whether or not that person is a signatory to an SPHP.

Regular and Routine Shipments

Some commenters suggested that we change the proposed definition of *swine production system* to add a requirement that this term include only businesses that regularly and routinely move swine between their premises. We are not making any changes based on this comment for several reasons. First, the commenters did not indicate what they meant by “regularly and routinely.” Second, although we understand that producers might not want to take advantage of our proposed alternative identification system if they participate in few or infrequent interstate swine shipments, we believe that is a decision best made by producers. The number and regularity of shipments is irrelevant to the purpose of our proposed program, which is to offer producers an alternative identification system that is less burdensome.

Recordkeeping and Access to Records

Several commenters addressed our proposed recordkeeping requirements or requirements concerning access to records.

Some commenters objected to our proposed requirement in the definition of *swine production health plan* in § 71.1 that the SPHP “describe the recordkeeping system of the swine production system.” We are not making any changes based on this comment. We believe this is a reasonable requirement. If a description is included in the SPHP, we can tell at the time we review the SPHP whether the recordkeeping system is adequate to allow us to trace the movements of animals.

Commenters also objected to our proposed requirement in § 71.19(h)(6) that participants maintain records adequate to “trace any animal on the premises back to its earlier premises and its herd of origin.” We agree that such extensive records are unnecessary and are removing the phrase “and its herd of origin” from § 71.19(h)(6). Records that identify the earlier premises are adequate, because if we need to trace an animal farther back, we can use records maintained by previous owners.

Commenters also stated that APHIS and State representatives should have access to records only “for cause.” “For cause” implies that there has been a violation of the regulations.

However, in most cases, we need to examine records simply to ensure that the program is working properly. Under § 71.19(h)(7), participants must allow access to records “upon request.” In

most cases this means participants will receive advance notice. We believe this is fair to participants, while giving APHIS and State officials adequate access.

Preemption

In accordance with Executive Order 12988, we included a statement in our proposed rule giving notice that any State and local laws and regulations in conflict with the proposed provisions would be preempted if the proposal is adopted. A number of commenters stated that including such a statement in the rulemaking was harmful to State-Federal cooperative efforts. Other commenters expressed concern that the statement meant that a State could not require any conditions for movement of animals into the State over and above the Federal requirements. Two comments from States specifically questioned whether Federal preemption would preclude States from requiring that persons moving swine into their States must first obtain an "import permit" from the State, authorizing movement of the animals and documenting that Federal and State movement requirements are met prior to movement of the animals.

Under Executive Order 12988, a Federal agency that proposes a regulation is required, among other things, to specify in clear language the preemptive effect it believes will be given to its regulations. The presence or absence of the statement does not change the legal effect of the regulation, and, therefore, should not be harmful to State-Federal cooperation. The actual effect of the regulation on the specific questions presented would have to be determined in an appropriate legal proceeding.

In the case of State-issued "import permits," commenters stated that they are needed for several reasons:

- To assign a permit number that is associated with each movement of animals and that can be tracked in State records systems;
- To document that movements comply with State as well as Federal requirements;
- To give States a means to respond quickly to new or reemerging animal health concerns by denying a permit to stop movement of problematic animals; and
- To ensure that receiving States have timely notice of animals moving into their State.

We believe that the procedures in this rule, especially use of the swine production health plan, allow States to retain all these capabilities without issuing separate permits for each

movement of animals. It is already common State practice to issue long-term permits for swine movements within a State, and to allow multiple groups of animals to move at different times under the same permit. In this regard, the SPHP serves the same function for interstate movements as such a State permit.

States currently can respond to animal health concerns by denying or canceling a permit to stop intrastate movements of animals. Under this rule, States may achieve the same effect by withdrawing from a SPHP. However, animals already in transit are a special problem even under systems where States issue individual permits.

With regard to ensuring that States have timely notice of animal movements, we do not believe that the individual permit system accomplishes this any better than the interstate swine movement report employed by this rule.

Interstate Swine Movement Report (ISMR)

Commenters raised two issues concerning the proposed ISMR. One was whether the form and transmissions could be electronic; the other was whether the forms could be transmitted less frequently than proposed. In § 71.19(h)(4), our proposal stated that both we and State authorities must be notified prior to each interstate movement of swine.

We have no objections to SPHP participants using electronic forms and transmitting them electronically. In fact, we encourage this. If SPHP participants want to communicate electronically, they should provide for that in their agreement. This will ensure that all participants are prepared to send and receive ISMR's electronically. We have amended the definition of *interstate swine movement report* in § 71.1 in this final rule to clarify that electronic forms and transmission are acceptable for notification prior to each interstate movement of swine.

As noted above, our proposal stated that APHIS must receive an ISMR prior to each interstate movement of swine. Commenters are correct that this could result in many notices on a daily basis for large production systems. We agree that this many notices is unnecessary, especially as many States routinely forward this information to us. Therefore, in this final rule we have removed the requirement for an ISMR prior to each interstate movement from § 71.19(h)(4). However, it is necessary for us to be generally informed of the number and locations of animals moving interstate. We need this information so we can monitor the

success of the program and compliance with our regulations. Therefore, we have added to § 71.19(h)(8) of this final rule a requirement that swine production systems send us a written, monthly summary of interstate swine movements under the SPHP.

Pseudorabies Status of Swine

Commenters suggested that it is unnecessary that each ISMR specifically include the pseudorabies status of swine moving interstate under an SPHP because pseudorabies will be eradicated from the U.S. swine population in the next few months. Commenters suggested that the ISMR instead include the health status of the swine for diseases of regulatory importance. These diseases, which would include pseudorabies until that disease is eradicated, would have to be specified in the SPHP. We agree with this suggestion and have made this change in the definition of *interstate swine movement report* in § 71.1 of this final rule.

Inspections

The definition of *swine production health plan* in § 71.1 of our proposal provided that swine premises be inspected by an accredited veterinarian at least once every 30 days. Some commenters requested that we reduce the frequency. We are not making any change based on these comments. Reducing the frequency would put accredited veterinarians in violation of our accreditation standards in 9 CFR 161.3(a). Under these standards, accredited veterinarians must complete certificates of inspection based on veterinary inspection. An accredited veterinarian may not issue any certificate or other document "which reflects the results of any inspection, test, [etc.]" unless he or she has personally inspected the animal not more than 10 days prior to issuing the certificate or other document. Following the initial and subsequent inspections of a herd or flock that is in a regular health maintenance program, an accredited veterinarian may issue any certificate or other document if not more than 30 days have passed since he or she personally inspected the animal.

Commingle Swine

Commenters objected to the proposed requirement in § 71.19 that "receiving premises must not commingle swine received from different premises in a manner that prevents identification of the premises that sent the swine or groups of swine." The commenters interpreted this to mean that we proposed to prohibit all commingling.

This is incorrect. We are only prohibiting commingling if it is done in a way that makes it impossible for us to identify the source of individual swine. We believe the proposed regulations are clear, and we are not making any changes based on this comment.

Size of Participating Swine Production Systems

One commenter noted that while the proposal provided that swine producers of any size could use the proposed alternative procedures, the bulk of the proposal's discussion emphasized benefits for the largest producers. This commenter stated that it is important to point out that the usefulness of the proposed system for identification and movement is not related to the size of the operation, rather it is related to the producer's production scheme. We agree, and have revised the economic analysis in this proposed rule to point out that the new procedures can benefit any producer who uses a multi-State approach to swine production.

Complexity of the Proposed System

One commenter stated that the proposed system has grown too complex, and involves more persons in swine movement than is necessary.

We have made no change based on this comment. The changes are all based on the need to ensure that the system operates effectively and contains sufficient safeguards to prevent the spread of communicable diseases. We believe that the detailed requirements for agreements and recordkeeping will enhance enforcement and monitoring of the system.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This 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 economic analysis prepared for this rule is set out below. It includes both a cost-benefit analysis as required by Executive Order 12866 and an analysis of the economic effects on small entities as required by the Regulatory Flexibility Act.

This rule will offer an alternative to the current requirements for moving

certain swine interstate.¹ Under the rule, producers within a single production system (e.g., owners of sow farms, nurseries, and growing or finishing operations) could move swine interstate without meeting the current identification and certification requirements if an official of the swine production system signs a swine health production plan with APHIS and the sending and receiving States, and if each premises: (1) Has an accredited veterinarian visit the individual premises at least once every 30 days to assess and document the general health of the animals; (2) maintains a recordkeeping system adequate to enable APHIS or State inspectors to trace an animal back to its earlier premises; and (3) notifies the accredited veterinarian and State regulatory officials in the States of origin and destination when swine are ready to be moved interstate. The rule will not mandate a specific type of recordkeeping system; those in the production system will be free to choose their own system of records, as long as APHIS determines that the system meets the requirements of § 71.19(h)(6) and effectively documents animal health and allows for animal traceback. The formal written agreement will have to be approved and signed by the producers moving swine interstate under the system, APHIS, and the relevant States.

The primary economic benefits to producers will be that they avoid the costs of individually identifying animals and obtaining a certificate for each shipment. Recordkeeping costs under the current requirements and under this alternative should be comparable, although some different records (copies of SPHP's and ISMR's) would be maintained under this final rule.

The rule will benefit U.S. swine producers who move their animals interstate within a single production system. Currently, such systems are used by most of the largest producers, although many medium and small producers also employ multi-State production. Producers who already move their animals interstate during production will be able to realize the benefits of this rule with little or no additional cost, since many have most of the major elements of the new recordkeeping system (i.e., records indicating the source and disposition of swine and identifying which swine are grouped together) already in place.

¹ The rule will not apply to swine moving in slaughter channels; those animals will have to continue to meet the current requirements for individual identification and certification, as applicable.

As an example of the potential cost savings for producers from not having to individually identify animals, we estimate that the material cost for each identification eartag is about 5 cents and that it takes 1 person 1 hour to attach about 250 eartags. For a large producer who moves 1 million swine interstate each year with an eartag, the annual savings if the producer no longer uses eartags would be about \$50,000 in materials and about \$40,000 in labor (assuming a labor rate of \$10/hr.). Certificates are typically issued on a per-shipment basis, with one certificate issued for all swine in a truckload. For a producer who moves 1 million swine interstate each year, the annual cost of obtaining certificates is about \$140,000 (assuming 250 swine per shipment and a veterinarian fee of \$35 per shipment).² Under the rule, individual identification and certificates will be replaced by the records kept in accordance with the regulations and the ISMR's issued for interstate movements attesting that the swine were found healthy by an accredited veterinarian within the 30 days preceding the interstate movement.

The requirement in the regulations that an accredited veterinarian must visit the premises at least once every 30 days to assess the general health of the animals should not constitute an additional burden for producers, since most are already visited by a veterinarian on that basis as part of a regular health maintenance program.

As indicated above, this rule will eliminate the need for producers to obtain certificates from accredited veterinarians on an individual shipment basis. This is not expected to have a negative impact on the accredited veterinarian's income because most accredited veterinarians generate little or no income from issuing certificates, charging either a nominal fee or no fee at all, especially when they are dealing with producers for whom they provide services on a regular, routine basis. This change should allow them to make more productive use of their time by allowing them to schedule regular health maintenance visits to a facility, rather than visiting when called, possibly at inconvenient times, to issue certificates just prior to movement. This change should also give producers more

² Producers, especially the larger ones, typically obtain certificates from accredited veterinarians who are unaffiliated with APHIS or the State agricultural agencies. The veterinarian fee of \$35 is an estimate based on telephone consultation with several accredited veterinarians; such fees can vary depending on individual circumstances. In some cases, veterinarians charge no fee for issuing a certificate, especially when they are dealing with producers for whom they provide services on a regular, routine basis.

flexibility in scheduling movements of swine.

Effects on Small Entities

The rule will primarily benefit U.S. swine producers who move their animals interstate within a single production system. Currently, such systems are used primarily by the producers who do not appear to be small in size by U.S. Small Business Administration (SBA) criteria. The SBA considers a hog farm or feedlot small if its annual receipts are \$0.5 million or less. We estimate that, of the 114,380 hog and pig operations in the United States, no more than about 4 percent (or 4,575) currently participate in multi-State production systems and, of those that do participate, most rank among the industry's largest producers.³ Census data from the National Agricultural Statistics Service (NASS) indicate that, in 1997, the per-farm average value of pigs and hogs sold for the top 4 percent of U.S. farms was in excess of \$0.5 million.⁴ NASS' data suggest, therefore, that many of the producers that currently participate in interstate production systems are not small by SBA standards.

The rule may encourage more small producer participation in the future, since it will provide them with an economic incentive to network together into one production system. For some small producers, especially those operating on thin profit margins, this opportunity to reduce costs via production networks could make the difference between economic viability and insolvency. At this time, however, there is no basis to conclude that the number of small producers who might form networks in the future will be substantial.

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.)

³ Source: *Agricultural Statistics*, 1999. The hog and pig operation count is as of December 1, 1998.

⁴ See *1997 Census of Agriculture*, vol. 1, Part 51, United States. As used here, the word "top" refers to those farms with the highest number of animals sold.

Executive Order 12988

This final 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.

Executive Order 13132

Executive Order 13132, "Federalism," requires that Agencies assess the federalism implications of their policies that have federalism implications, i.e., agency statements and actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have substantial direct effects in these areas, and therefore does not require assessment of federalism implications under Executive Order 13132.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0161.

In this final rule we have reduced the information collection and recordkeeping requirements contained in the proposed rule. We have added provisions to allow participants to maintain and submit Interstate Swine Movement Reports electronically, rather than by paper copy. We have also removed the requirement that producers submit an ISMR prior to each interstate movement, and have substituted a less burdensome requirement that swine production systems send us a written, monthly summary of interstate swine movements under the SPHP.

List of Subjects

9 CFR Part 71

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

9 CFR Part 85

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

Accordingly, we are amending 9 CFR parts 71 and 85 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 continues 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 371.4.

2. In § 71.1, definitions of *interstate swine movement report*, *swine production health plan*, *swine production system* *accredited veterinarian* are added in alphabetical order to read as follows:

§ 71.1 Definitions.

* * * * *

Interstate swine movement report. A paper or electronic document signed by a producer moving swine giving notice that a group of animals is being moved across State lines in a swine production system. This document must contain the name of the swine production system; the name, location, and premises identification number of the premises from which the swine are to be moved; the name, location, and premises identification number of the premises to which the swine are to be moved; the date of movement; and the number, age, and type of swine to be moved. This document must also contain a description of any individual or group identification associated with the swine, the name of the swine production system accredited veterinarian(s), the health status of the herd from which the swine are to be moved, including any disease of regulatory concern to APHIS or to the States involved, and an accurate statement that swine on the premises from which the swine are to be moved have been inspected by the swine production system accredited veterinarian(s) within 30 days prior to the interstate movement and consistent with the dates specified by the premises' swine production health plan and found free from signs of communicable disease.

* * * * *

Swine production health plan. A written agreement developed for a swine production system designed to maintain the health of the swine and detect signs of communicable disease.

The plan must identify all premises that are part of the swine production system and that receive or send swine in interstate commerce and must provide for regular inspections of all identified premises and swine on the premises, at intervals no greater than 30 days, by the swine production system accredited veterinarian(s). The plan must also describe the recordkeeping system of the swine production system.

The plan will not be valid unless it is signed by an official of each swine production system identified in the plan, the swine production system accredited veterinarian(s), an APHIS representative, and the State animal health official from each State in which the swine production system has premises. In the plan, the swine production system must acknowledge that it has been informed of and has notified the managers of all its premises listed in the plan that any failure of the participants in the swine production system to abide by the provisions of the plan and the applicable provisions of this part and part 85 of this chapter constitutes a basis for the cancellation of the swine production health plan, as well as other administrative or criminal sanctions, as appropriate.

Swine production system. A swine production enterprise that consists of multiple sites of production; i.e., sow herds, nursery herds, and growing or finishing herds, but not including slaughter plants or livestock markets, that are connected by ownership or contractual relationships, between which swine move while remaining under the control of a single owner or a group of contractually connected owners.

Swine production system accredited veterinarian. An accredited veterinarian who is named in a swine production health plan for a premises within a swine production system and who performs inspection of such premises and animals and other duties related to the movement of swine in a swine production system.

* * * * *

3. Section 71.19 is amended as follows:

a. In paragraph (a)(1), introductory text, by removing the words "paragraph (c)" and adding in their place the words "paragraphs (c) and (h)".

b. By adding new paragraphs (h) and (i).

§ 71.19 Identification of swine in interstate commerce.

* * * * *

(h) *Swine moving interstate within a swine production system.* Swine moving within a swine production system to other than slaughter or a livestock market are not required to be individually identified when moved in interstate commerce under the following conditions:

(1) The swine may be moved interstate only to another premises identified in a valid swine production health plan for that swine production system.

(2) The swine production system must operate under a valid swine production health plan, in which both the sending and receiving States have agreed to allow the movement.

(3) The swine must have been found free from signs of any communicable disease during the most recent inspection of the premises by the swine production system accredited veterinarian(s) within 30 days prior to movement.

(4) Prior to the movement of any swine, the producer(s) moving swine must deliver the required interstate swine movement report to the following individuals identified in the swine production health plan:

(i) The swine production system accredited veterinarian for the premises from which the swine are to be moved, and

(ii) The State animal health officials for the sending and receiving States, and any other State employees designated by the State animal health officials.

(5) The receiving premises must not commingle swine received from different premises in a manner that prevents identification of the premises that sent the swine or groups of swine. This may be achieved by use of permanent premises or individual identification marks on animals, by keeping groups of animals received from one premises physically separate from animals received from other premises, or by any other effective means.

(6) Each premises must maintain, for 3 years after their date of creation, records that will allow an APHIS representative or State animal health official to trace any animal on the premises back to its previous premises, and must maintain copies of each swine production health plan signed by the producer, all interstate swine movement reports issued by the producer, and all reports the swine production system accredited veterinarian(s) issue documenting the health status of the swine on the premises.

(7) Each premises must allow APHIS representatives and State animal health officials access to the premises upon request to inspect animals and review records.

(8) Once a month, each swine production system must send APHIS a written summary based on the interstate swine movement report data that shows how many animals were moved in the past month, the premises from which they were moved, and the premises to which they were moved.

(i) *Cancellation of and withdrawal from a swine production health plan.* The following procedures apply to

cancellation of, or withdrawal from, a swine production health plan:

(1) A State animal health official may cancel his or her State's participation in a swine production health plan by giving written notice to all swine producers, APHIS representatives, accredited veterinarians, and other State animal health officials listed in the plan. Withdrawal shall be effective upon the date specified by the State animal health official in the notice, but for shipments in transit, withdrawal shall become effective 7 days after the date of such notice. Upon withdrawal of a State, the swine production health plan may continue to operate among the other States and parties signatory to the plan.

(2) A swine production system may withdraw one or more of its premises from participation in the plan upon giving written notice to the Administrator, the accredited veterinarian(s), all swine producers listed in the plan, and State animal health officials listed in the plan. Withdrawal shall be effective upon the date specified by the swine production system in the written notice, but for shipments in transit, withdrawal shall become effective 7 days after the date of such notice.

(3) The Administrator may cancel a swine production health plan by giving written notice to all swine producers, accredited veterinarians, and State animal health officials listed in the plan. The Administrator shall cancel a swine production health plan after determining that swine movements within the swine production system have occurred that were not in compliance with the swine production health plan or with other requirements of this chapter. Before a swine health production plan is canceled, an APHIS representative will inform a representative of the swine production system of the reasons for the proposed cancellation. The swine production system may appeal the proposed cancellation in writing to the Administrator within 10 days after being informed of the reasons for the proposed cancellation. The appeal must include all of the facts and reasons upon which the swine production system relies to show that the reasons for the proposed cancellation are incorrect or do not support the cancellation. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, cancellation of the disputed

swine production health plan shall become effective pending final determination in the proceeding if the Administrator determines that such action is necessary to protect the public's health, interest, or safety. Such cancellation shall become effective upon oral or written notification, whichever is earlier, to the swine production system representative. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This cancellation shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

PART 85—PSEUDORABIES

4. The authority citation for part 85 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

§ 85.7 [Amended]

5. Section 85.7 is amended as follows:

a. In paragraph (b)(3)(i), by removing the phrase “The swine” and adding in its place the phrase “Unless the swine are moving interstate in a swine production system in compliance with § 71.19(h) of this chapter, the swine”.

b. In paragraph (b)(3)(ii), by removing the phrase “The swine are accompanied by a certificate” and adding in its place the phrase “Unless the swine are moving interstate in a swine production system in compliance with § 71.19(h) of this chapter, the swine are accompanied by a certificate”.

c. In paragraph (c)(1), by removing the phrase “The swine are accompanied by a certificate” and adding in its place the phrase “Unless the swine are moving interstate in a swine production system in compliance with § 71.19(h) of this chapter, the swine are accompanied by a certificate”.

6. Section 85.8 is amended by removing the period at the end of paragraph (a)(3) and adding in its place “; or”; and by adding a new paragraph (a)(4) to read as follows:

§ 85.8 Interstate movement of swine from a qualified negative gene-altered vaccinated herd.

(a) * * *

(4) The swine are moved interstate in a swine production system in compliance with § 71.19(h) of this chapter.

* * * * *

Done in Washington, DC, this 14th day of December 2001.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 01–31355 Filed 12–19–01; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1090]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to the provisions of Regulation Z (Truth in Lending) that implement the Home Ownership and Equity Protection Act (HOEPA). HOEPA was enacted in 1994, in response to evidence of abusive lending practices in the home-equity lending market. HOEPA imposes additional disclosure requirements and substantive limitations (for example, restricting short-term balloon notes) on home-equity loans bearing rates or fees above a certain percentage or amount. The Board's amendments to Regulation Z broaden the scope of mortgage loans subject to HOEPA by adjusting the price triggers used to determine coverage under the act. The rate-based trigger is lowered by two percentage points for first-lien mortgage loans, with no change for subordinate-lien loans. The fee-based trigger is revised to include the cost of optional credit insurance and similar debt protection products paid at closing. The amendments restrict certain acts and practices in connection with home-secured loans. For example, creditors may not engage in repeated refinancings of their HOEPA loans over a short time period when the transactions are not in the borrower's interest. The amendments also strengthen HOEPA's prohibition against extending credit without regard to consumers' repayment ability, and enhance disclosures received by consumers before closing for HOEPA-covered loans.

DATES: The rule is effective December 20, 2001; compliance is mandatory as of October 1, 2002.

FOR FURTHER INFORMATION CONTACT:

Minh-Duc T. Le, Attorney, Daniel G. Lonergan, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412; for users of

Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Since the mid-1990s, the subprime mortgage market has grown substantially, providing access to credit to borrowers with less-than-perfect credit histories and to other borrowers who are not served by prime lenders. With this increase in subprime lending there has also been an increase in reports of “predatory lending.” The term “predatory lending” encompasses a variety of practices. In general, the term is used to refer to abusive lending practices involving fraud, deception, or unfairness. Some abusive practices are clearly unlawful, but others involve loan terms that are legitimate in many instances and abusive in others, and thus are difficult to regulate. Loan terms that may benefit some borrowers, such as balloon payments, may harm other borrowers, particularly if they are not fully aware of the consequences. The reports of predatory lending have generally included one or more of the following: (1) Making unaffordable loans based on the borrower's home equity without regard to the borrower's ability to repay the obligation; (2) inducing a borrower to refinance a loan repeatedly, even though the refinancing may not be in the borrower's interest, and charging high points and fees each time the loan is refinanced, which decreases the consumer's equity in the home; and (3) engaging in fraud or deception to conceal the true nature of the loan obligation from an unsuspecting or unsophisticated borrower—for example, “packing” loans with credit insurance without a consumer's consent.

A. The Home Ownership and Equity Protection Act

In response to anecdotal evidence about abusive practices involving home-secured loans with high rates or high fees, in 1994 the Congress enacted the Home Ownership and Equity Protection Act (HOEPA), Pub. L. 103–325, 108 Stat. 2160, as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* TILA is intended to promote the informed use of consumer credit by requiring disclosures about its terms and cost. TILA requires creditors to disclose the cost of credit as a dollar amount (the “finance charge”) and as an annual percentage rate (the “APR”). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits