

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 91

[Docket No. APHIS–2012–0049]

RIN 0579–AE00

#### Exportation of Live Animals, Hatching Eggs, and Animal Germplasm From the United States

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

**ACTION:** Final rule.

**SUMMARY:** We are revising the regulations pertaining to the exportation of livestock from the United States. Among other things, we are removing most of the requirements for export health certifications, tests, and treatments from the regulations, and instead directing exporters to follow the requirements of the importing country regarding such processes and procedures. We are retaining only those export health certification, testing, and treatment requirements that we consider necessary to have assurances regarding the health and welfare of livestock exported from the United States. We also are allowing pre-export inspection of livestock to occur at facilities other than an export inspection facility associated with the port of embarkation, under certain circumstances, and replacing specific standards for export inspection facilities and ocean vessels with performance standards. These changes will provide exporters and the Animal and Plant Health Inspection Service (APHIS) with more flexibility in arranging for the export of livestock from the United States while continuing to ensure the health and welfare of the livestock. Additionally, if APHIS knows that an importing country requires an export health certificate endorsed by the

competent veterinary authority of the United States for any animal other than livestock, including pets, or for any hatching eggs or animal germplasm, we are requiring that the animal, hatching eggs, or animal germplasm have such a health certificate to be eligible for export from the United States. This change will help ensure that all animals, hatching eggs, and animal germplasm exported from the United States meet the health requirements of the countries to which they are destined. Finally, we are making editorial amendments to the regulations to make them easier to understand and comply with.

**DATES:** Effective February 19, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jack Taniewski, Director for Animal Export, National Import Export Services, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 851–3300.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the Animal Health Protection Act (AHPA, 7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture may prohibit or restrict the exportation of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of any pest or disease of livestock from or within the United States. The AHPA also authorizes the Secretary to prohibit: (1) The exportation of any livestock if the Secretary determines that the livestock is unfit to be moved; (2) the use of any means of conveyance or facility in connection with the exportation of any animal or article if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of any pest or disease of livestock from or within the United States; and (3) the use of any means of conveyance in connection with the exportation of livestock if the Secretary determines that the prohibition or restriction is necessary because the means of conveyance has not been maintained in a clean and sanitary condition or does not have accommodations for the safe and proper movement and humane treatment of livestock.

The Secretary has delegated this authority to the Animal and Plant Health Inspection Service (APHIS) of the United States Department of

Agriculture (USDA). Pursuant to this authority, APHIS has issued the regulations in 9 CFR part 91, “Inspection and Handling of Livestock for Exportation” (“the regulations”).

We had not substantively amended these regulations for many years and some revisions were needed. Some provisions, such as those that require pre-export inspection of livestock at an export inspection facility associated with the port of embarkation and those that set forth specific construction and maintenance standards for export inspection facilities and ocean vessels, sometimes interfered with exports. Other requirements, particularly those that required certain tests and certifications for all livestock intended for export from the United States, were not always required by importing countries or necessary for us to have assurances regarding the health and welfare of the livestock at the time of export.

For these reasons, on February 26, 2015, we published in the **Federal Register** (80 FR 10398–10417, Docket No. APHIS–2012–0049) a proposed rule<sup>1</sup> to remove requirements that we determined to be unnecessary or overly prescriptive from the regulations in order to provide exporters and APHIS with more options for inspecting and handling livestock intended for export.

Additionally, we proposed to amend the regulations so that, when an importing country is known to require an export health certificate for any animal other than livestock or for any animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes intended for export to that country, the animal or other commodity would have to have an export health certificate in order to be eligible for export from the United States.

Finally, we proposed to group certain provisions that were located in disparate sections of the regulations, and to make certain other editorial changes to make the regulations easier to read.

We solicited comments concerning our proposal for 60 days ending April 27, 2015. We received 48 comments by that date. They were from exporters, brokers, non-profit animal welfare

<sup>1</sup> To view the proposed rule, its supporting documents, or the comments that we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0049>.

organizations, and private citizens. We discuss the comments that we received below, grouped by topic in the following order:

- General comments on the proposed rule;
- Comments regarding specific sections of the proposed rule; and
- Comment regarding the Program Handbook.

#### *General Comments on the Proposed Rule*

One commenter stated that we had issued the proposed rule based on the erroneous assumption that the AHPA allows APHIS to regulate exports of livestock solely in order to protect and promote the welfare of the animals to be exported. The commenter stated that the AHPA does not delegate such authority to APHIS. In the commenter's opinion, the AHPA limits the scope of APHIS' regulation of livestock exports to those requirements that are necessary to ensure that livestock arrive in the importing country in acceptable condition and do not disseminate diseases or pests of livestock within or from the United States. Moreover, the commenter stated that, within these parameters, APHIS may only issue regulations with the intent of protecting and promoting international markets for U.S. livestock. The commenter stated that this is reflected in section 8301 of the AHPA, which provides that regulation of exports pursuant to the Act is necessary in order to "prevent and eliminate . . . burdens on foreign commerce" and to "protect the economic interests of the livestock and related industries of the United States." The commenter concluded that the rule should be withdrawn on the grounds that APHIS had exceeded its statutory authority in issuing it.

We agree with the commenter that the primary purpose of the AHPA is to ensure that livestock that are imported into, exported from, or moved interstate within the United States do not contribute to the dissemination of pests or diseases of livestock within or from the United States. However, we disagree with the commenter's interpretation of the AHPA with regard to livestock exports.

As we noted earlier in this document, the AHPA authorizes the Secretary to prohibit the exportation of any livestock if the Secretary determines that the livestock is unfit to be moved and to prohibit the use of any means of conveyance in connection with the exportation of livestock if the Secretary determines that the prohibition or restriction is necessary because the means of conveyance has not been

maintained in a clean and sanitary condition or does not have accommodations for the safe and proper movement and humane treatment of livestock. The section of the AHPA that contains these authorizations, 7 U.S.C. 8304, does not limit our authority in the manner suggested by the commenter.

Additionally, we disagree with the commenter that the Congressional findings in section 8301 of the AHPA necessarily imply such limitations. In addition to the findings cited by the commenter, Congress also finds in that section that "the health of animals is affected by the methods by which animals are transported in interstate commerce or foreign commerce." We note, in that regard, that the AHPA does not define the term "health," either explicitly or contextually.

The same commenter asserted that APHIS had overstated the rigidity of the previous regulations in part 91. The commenter pointed out that, at the time the proposed rule was issued, § 91.4 of the regulations provided that the Administrator may permit the exportation of livestock not otherwise permitted under the regulations, under such conditions as the Administrator may prescribe to prevent the spread of livestock diseases and to insure the humane treatment of the animals while in transit. The commenter also pointed out that paragraph (b) of § 91.14 had allowed for the use of temporarily designated ports of embarkation in conjunction with such exports. Because of these two provisions, the commenter asserted that the regulations allowed for any variances APHIS saw necessary to implement, that there was, accordingly, no need for the proposed rule, and that APHIS should therefore withdraw it.

The provisions of § 91.4 and paragraph (b) of § 91.14 were intended for specific unusual or unforeseen situations. They were not intended as a means to establish generally applicable exemptions from the regulations or alternate conditions for the exportation of livestock from the United States. Given that we considered numerous revisions to the regulations to be necessary, and given the scope of the revisions that we proposed, we consider it to have been appropriate and necessary to issue a proposed rule.

The same commenter stated that, while we had cited a recent and appreciable increase in the volume of livestock exports from the United States as part of the reason for the rule, we had provided no evidence that the previous regulations could not accommodate this increase.

The proposed rule pointed to several inefficiencies in the previous

regulations that were exacerbated by the recent increase in the volume of livestock exports from the United States. For example, we pointed out that the regulations required all animals offered for exportation to undergo pre-export inspections within 24 hours of embarkation at an export inspection facility associated with the port of embarkation and additionally required most animals to be afforded 5 hours of rest at this export inspection facility. We also stated that, in our experience, it can take more than 24 hours to unload a large lot of animals into an export inspection facility for inspection. We stated that this sometimes creates a tight timeframe for unloading the animals into the facility and subsequently loading the animals for export, increased the possibility of hastened loading and unloading, and increased the likelihood that the animals could become injured or distressed because of this haste. Finally, we pointed out that some export inspection facilities associated with ports of embarkation simply lack the ability to accommodate a large lot of livestock.

Several commenters stated that we should prohibit the export of livestock, prohibit the use of shipping containers to transport livestock, set an annual limit on the number of livestock exported from the United States, prohibit the export of livestock for slaughter, or prohibit any movement of animals to slaughter. Similarly, a number of commenters suggested that we prohibit the export of horses for slaughter purposes.

Such prohibitions are outside the scope of our statutory authority.

One commenter stated that we should make an inquiry regarding the use of the livestock to be exported. The commenter pointed out that, under section 8314 of the AHPA, APHIS may "gather and compile information" that APHIS "considers to be necessary for the administration and enforcement" of the AHPA, and that such an inquiry would be consistent with this statutory authority.

We disagree with the commenter that such an inquiry is within our statutory authority. With regard to livestock exports, the section of the AHPA that the commenter cited allows APHIS to gather and collect information in order to administer the section of the AHPA that pertains to live animal exports and the inspections related to such exports. Accordingly, we can collect and gather information in order to have assurances that: (1) Animals exported from the United States will not disseminate pests of diseases of livestock within or from the United States; (2) livestock exported

from the United States are fit to be moved; (3) the means of conveyance or facilities used in conjunction with the exportation of such livestock will not contribute to the dissemination of pests and diseases of livestock within or from the United States; and (4) the means of conveyance used in conjunction with the export of such livestock has been maintained in a clean and sanitary condition and has accommodations for the safe and proper movement and humane treatment of the livestock. Inquiring regarding the intended use of the livestock in the importing country does not further any of these goals and is, accordingly, outside the scope of our statutory authority.

That being said, many countries have different importation requirements for various classes of livestock. To facilitate the export of livestock to those countries, as part of our export health certification processes, we inquire regarding the intended use of the livestock in the importing country. It is important to note, however, that in such instances, this inquiry is a service that we provide at the behest of the importing country.

Several commenters asked us to modify the proposed rule to prohibit the export by sea of horses for slaughter. One commenter pointed out that, under 15 CFR 754.5, the Department of Commerce (DOC) prohibits the export by sea of horses for slaughter, and states that they will consult with USDA in order to enforce this prohibition.

While APHIS is committed to coordinating with DOC to enforce this prohibition, we do not consider it necessary to modify the proposal in such a manner. This is due to the manner in which DOC enforces 15 CFR 754.5. Under the section, exporters who wish to export horses for slaughter must obtain a short supply license from DOC. One of the conditions on the license itself prohibits the exportation by sea of horses for slaughter, and makes the licensee subject to possible revocation of his or her license, as well civil and criminal penalties, for noncompliance with this prohibition. Based on our interaction with DOC and knowledge of the slaughter horse industry, these conditions have proven to be successful, and slaughter horses are currently exported from the United States via aircraft or overland conveyance.

Several commenters asked us whether the rule pertains to animals temporarily exported from the United States for a particular event or exhibition. If it did not, they asked that provisions regarding temporary exportation of livestock and other animals be added to this final rule.

The regulations in part 91 do not pertain to the export of livestock or other animals for a temporary show or exhibition. However, requirements for the temporary export and subsequent reimportation of several species of animals are contained in 9 CFR part 93. For example, paragraph (b) of § 93.317 of the 9 CFR contains requirements for horses exported to Canada for subsequent reimportation into the United States within a period of 30 days, and paragraph (f) of § 93.101 of the 9 CFR contains requirements for U.S.-origin birds intended for reimportation into the United States following a particular theatrical performance or exhibition in Canada or Mexico.

One commenter suggested that the regulations in part 91 should state that APHIS may collaborate with other Federal agencies to implement and enforce the regulations.

Since section 8310 of the AHPA explicitly authorizes such collaboration, we do not consider it necessary to include this statement in part 91.

One commenter suggested modifying the proposed rule to require exporters to maintain contingency plans to respond to adverse events that may befall a shipment of livestock during movement from their premises of export to the port of embarkation.

We see merit in such a requirement, particularly when pre-export inspection of the livestock intended for export is conducted at a facility other than the export inspection facility associated with the port of embarkation. Accordingly, in this final rule, we require that, in order for us to authorize pre-export inspection at such facilities, among other requirements, the exporter must maintain contact information for a veterinarian licensed in the State of embarkation to perform emergency medical services, as needed, on the animals intended for export.

The same commenter also suggested modifying the proposed rule to specify that APHIS personnel must visually monitor aircraft and ocean vessels as they depart from the port of embarkation.

The commenter did not explain how such monitoring would promote or safeguard the health and safety of the livestock aboard the aircraft or ocean vessels, nor is the purpose of such monitoring readily apparent to us.

Finally, one commenter stated that APHIS had insufficient resources to implement the rule. The commenter's assertion, however, was based in large part on the stated assumption that APHIS would not abide by provisions of the rule that make certain of our services contingent on the availability of

APHIS personnel. We will, however, adhere to these provisions.

#### *Comments Regarding Specific Sections of the Proposed Rule*

##### Comments Regarding Proposed § 91.1 ("Definitions")

In proposed § 91.1, we proposed definitions of terms that would be used in the revised regulations. We received several comments on our proposed definitions.

We proposed to define *date of export* as "the date animals intended for export are loaded onto an ocean vessel or aircraft, or if moved by land to Canada or Mexico, the date the animals cross the border."

One commenter pointed out that several foreign countries define the term differently in their import requirements. In such instances, the commenter asked whether exporters should abide by the importing country's understanding of the term or APHIS'.

In such instances, exporters should abide by the importing country's understanding of the term. However, APHIS continues to collaborate with our trading partners to harmonize their definitions regarding U.S. livestock exports with our own.

We proposed to define *livestock* as "horses, cattle (including American bison), captive cervids, sheep, swine, and goats, regardless of intended use."

One commenter pointed out that the AHPA defines *livestock* as "all farm-raised animals," and that our proposed definition was significantly more restrictive than the AHPA's definition. The commenter asked whether our definition should be considered a statement of Agency policy regarding the animals APHIS considers to be livestock. If so, the commenter expressed concern that it could adversely impact ongoing domestic surveillance and disease control efforts in other species of animals that APHIS has traditionally considered to be livestock.

The definition of *livestock* that we proposed in § 91.1 pertains solely to the regulations in part 91, and is not intended as a statement of general APHIS policy. The restrictive definition of *livestock* reflects the classes of livestock that can feasibly be inspected at an export inspection facility associated with a port of embarkation. Moreover, these are the primary classes of livestock exported from the United States.

We proposed to replace *premises of origin*, used in the previous part 91, with *premises of export*. We stated that this was because *premises of origin* is

often used in common speech to mean the premises where animals were born and/or raised, whereas we meant the premises where the animals are assembled for pre-export isolation (if such isolation is required by the importing country) or, if the importing country does not require pre-export isolation, the premises where the animals are assembled for pre-export inspection and/or testing, or the germplasm is collected and stored, before being moved to a port of embarkation or land border port.

One commenter stated that exporters do not construe *premises of origin* to mean the premises where animals are born and/or raised. For this reason, the commenter stated that we should retain the term *premises of origin* within the regulations.

While it may be true that, in the commenter's experience, exporters do not construe the term *premises of origin* to mean the premises where animals are born and/or raised, this is a misconstrual that we do encounter as an Agency from time to time.

The same commenter stated that, if we retain the term *premises of origin*, we should also retain the term *origin health certificate*, which we proposed to replace with the term *export health certificate*. Since we have decided not to retain *premises of origin*, however, we are also not retaining the term *origin health certificate*.

#### Comments Regarding Proposed § 91.3 ("General Requirements")

In proposed § 91.3, we proposed general requirements for the export of livestock, animals other than livestock, and animal germplasm.

Paragraph (a) of proposed § 91.3 concerned the issuance of export health certificates. In proposed paragraph (a)(1) of § 91.3, we proposed that livestock would have to have an export health certificate in order to be eligible for export from the United States.

One commenter suggested that we should instead require export health certificates for livestock when either APHIS or the exporter is aware that the importing country requires such certificates. If APHIS is not aware of such a requirement, the commenter suggested that we should authorize the export of the animals based on a good-faith effort by the exporter to determine whether the importing country requires export health certificates for the animals.

We are making no revisions in response to this comment. As we stated in the proposed rule, regardless of whether a foreign country allows livestock to be imported into their

country without an export health certificate, pursuant to the AHPA, we need assurances that the livestock were fit to be moved for export from their premises of export at the time that movement occurred, and the export health certificate provides such assurances.

The commenter also asked whether this general requirement means that APHIS no longer intends to maintain IRegs, our Web site containing information regarding the animal and animal product import requirements of foreign countries.

We intend to maintain IRegs.

In proposed paragraph (a)(2) of § 91.3, we proposed that, if an importing country is known to require an export health certificate for any animal other than livestock or for any animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes intended for export to that country, the animal, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes would have to have an export health certificate in order to be eligible for export from the United States. We stated that this requirement was necessary because several countries have entered into export protocols with the United States for animals other than livestock or animal germplasm in which these countries require export health certificates, and we have operationally required such export health certificates out of deference to these export protocols for many years.

One commenter stated that it was not long-standing APHIS operational policy to require such certificates.

This policy has been in effect for 9 years.

Several commenters pointed out that "known to require" is passive voice, and asked whether APHIS or the exporter would be expected to know whether an importing country required an export health certificate for animals other than livestock, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes.

While it is the responsibility of the exporter to make a reasonable effort to determine the requirements of the importing country for particular animals and commodities, for purposes of the proposed requirement, we meant when APHIS knows the importing country to require export health certificates.

One commenter understood "known to require" in the sense that we intended it, but also understood the proposed rule to suggest that the only way by which APHIS learns of such requirements is through export protocols with foreign countries. The commenter pointed out that many

foreign countries have import requirements for animals other than livestock, germplasm, and hatching eggs that were not established through export protocols negotiated with APHIS. The commenter also pointed out that export protocols for animals other than livestock, animal germplasm, and hatching eggs sometimes do not require export health certification.

We acknowledge that many export protocols do not require export health certification for animals other than livestock, germplasm, and hatching eggs. The reference to export protocols was intended to illustrate one of the means by which APHIS becomes aware of such requirements. We also learn of them through routine dialogue with foreign countries, exporters, and brokers, among other means.

Several commenters pointed out that our authority under the AHPA with regard to exports of animals other than livestock, as well as animal germplasm and hatching eggs, is limited to determining that the animals, animal germplasm, or hatching eggs will not present a risk of disseminating diseases or pests of livestock within or from the United States. In instances when the importing country requires export health certificates but has not demonstrated such a risk, the commenters questioned our authority under the AHPA to impose a Federal requirement requiring export health certificates for such animals and commodities. The commenters acknowledged that, in the absence of such certificates, the animals and commodities could not be validly exported to the country, but stated that export health certificates are more aptly characterized in such instances as a discretionary service to facilitate trade. One of these commenters construed the proposed rule to suggest that we were issuing the provisions pursuant to the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), and pointed out that the SPS Agreement is not a statute and does not provide APHIS with authority to regulate exports.

In a similar vein, one commenter stated that we should require export health certificates for animals other than livestock, animal germplasm, and hatching eggs only when we consider the animals or commodities to be potential vectors of pests and diseases of livestock. The commenter also asked whether APHIS has any efforts underway or planned in the future to encourage trading partners to relieve restrictions on the importation of animals and articles that we do not

consider to be potential vectors of pests and diseases of livestock.

Several foreign countries consider any animal, germplasm, or hatching egg offered for importation to their country without an export health certificate issued by the competent veterinary authority of the exporting country to present a risk of disseminating pests or diseases of livestock within their country, and accordingly prohibit such importation.

Because of this, if we are aware that the importing country has such requirements, we consider it necessary to require export health certificates for the animals, germplasm, or hatching eggs in order to provide assurances to the importing country that, in our determination as the competent veterinary authority of the United States, we do not consider the animals, germplasm, or hatching eggs to present a risk of disseminating pests or diseases of livestock. In other words, the export health certificate functions as a requirement that we impose in order to communicate our determination that the animals or articles do not present a risk of disseminating pests or diseases of livestock from the United States. Accordingly, while we acknowledge that issuing such export health certificates is consistent with the SPS Agreement, insofar as it respects the measures that other countries impose on the importation of animals other than livestock, animal germplasm, or hatching eggs in order to protect animal health within their country, we also consider it consistent with our statutory authority under the AHPA.

We disagree that such certification should more accurately be considered a discretionary service offered by APHIS, rather than a Federal requirement. Such an approach could be construed to suggest that APHIS has evaluated all classes of animals or articles subject to such certification requirements by importing countries and determined that they present no risk of disseminating pests or diseases of livestock from the United States. We have not done so.

Finally, when we have concerns regarding the risk basis for a foreign country's import requirements, we dialogue with the country to encourage them to revise the requirements.

One commenter asked whether the proposed provisions mean that APHIS will provide export health certification for invertebrate animals, if required by an importing country. If so, the commenter asked which staff in APHIS he should contact regarding such certification.

We will do so to the extent possible. The commenter should contact the National Import Export Services staff in APHIS' Veterinary Services program.

A commenter pointed out that the paragraph would not regulate exports of animal products. The commenter stated that such products can disseminate pests and diseases of livestock, and that importing countries sometimes require export health certificates for such commodities.

The regulations in part 91 have historically pertained to live animals. The proposed rule sought to extend their scope to germplasm and hatching eggs. Such commodities are potentially viable. Animal products, however, are not viable. Thus, we are not adding provisions for the certification of such commodities to part 91.

Finally, in light of the comments received on proposed paragraph (a)(2) of § 91.3 discussed above, we are modifying its provisions from those in the proposed rule. In this final rule, it requires that, if APHIS knows that an import country requires an export health certificate endorsed by the competent veterinary authority of the United States for any animal other than livestock or for any animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes intended for export to that country, the animal or other commodity must have an endorsed export health certificate in order to be eligible for export from the United States.

Paragraph (b) of proposed § 91.3 concerned the content of export health certificates. In paragraph (b)(1) of proposed § 91.3, we proposed minimum requirements for export health certificates for livestock. In paragraph (b)(2) of proposed § 91.3, we proposed that, in addition to such minimum requirements, the export health certificate would have to meet any other information or issuance requirements specified by the importing country.

Some commenters construed these two paragraphs to mean that the requirements of the importing country would supersede our own requirements. Other commenters understood the information or issuance requirements specified by the importing country to be in addition to our minimum requirements.

The latter interpretation is correct.

Paragraph (d) of proposed § 91.3 concerned testing requirements for livestock intended for export from the United States. Among other provisions, we proposed that samples must be taken and tests made by an accredited veterinarian or APHIS representative within the timeframe allowed by the

importing country. If the importing country does not specify a timeframe, we proposed that the samples would have to be taken and tests made within 30 days prior to export, except that tuberculin tests could be conducted within 90 days prior to the date of export.

One commenter pointed out that APHIS representatives, as we proposed to define them, could include individuals without doctorates of veterinary medicine. The commenter stated that the AHPA requires animal health certificates to be issued by veterinarians, and that allowing non-veterinarians to do so is outside the scope of our statutory authority.

The AHPA does not set such limits on the issuance of certificates.

Additionally, as we mentioned in the proposed rule, for certain species of aquaculture, we consider employees of the United States Fish and Wildlife Service best qualified to provide such certification.

One commenter pointed out that an importing country could specify a timeframe for sampling and testing that allows the samples to be taken and tests made outside the period of time that APHIS considers the samples or tests to reliably indicate the animals' freedom from disease at the time of export. The commenter suggested that this could result in diseased animals being exported from the United States. For that reason, the commenter stated that we should instead require all samples to be taken and tests made 30 days prior to the date of export, except for tuberculin tests, which could be conducted 90 days prior to export.

We disagree with the commenter that allowing the tests to be taken outside of the period of time that we consider to reliably indicate the animals' freedom from disease at the time of export could result in diseased animals being exported from the United States. Testing is not the sole requirement for export. The livestock must also be visually inspected by an APHIS veterinarian prior to embarkation for fitness to travel. This includes inspecting the animal for signs and symptoms of infection with a disease of livestock. Any animals with signs or symptoms of such infection are subject to a full veterinary examination.

One commenter suggested that we should require follow-up tests for Program diseases, which we proposed to define as "diseases for which there are cooperative State-Federal programs and domestic regulations in subchapter C of the 9 CFR," at the port of embarkation in order to ensure that diseased livestock are not exported from the United States.

We do not consider such testing to be necessary in order to ensure that diseased livestock are not exported from the United States; as we mentioned above, this is one of the primary purposes of pre-export inspection. Additionally, we note that many tests for Program diseases must be administered at set intervals in order to produce statistically reliable results, and that certain tests, such as the tuberculin test, can lead to anergy, *i.e.*, erroneous results due to a lack of sensitivity to a test brought about by overtesting, if they are administered too frequently.

Finally, one commenter suggested that we should also require testing for chemical residues that would make the livestock unsuitable for human consumption.

APHIS does not have statutory authority to require such tests. We note, however, that most foreign countries have regulatory bodies that specify the maximum chemical residues that may be present in food for human consumption in that country.

#### Comments Regarding Proposed § 91.4 (“Prohibited Exports”)

In proposed § 91.4, we proposed to prohibit the export of any animal, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes under Federal, State, or local government quarantine or movement restrictions for animal health reasons unless the importing country issues an import permit or other written instruction allowing that animal or other commodity to enter its country and APHIS concurs with the export of the animal, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes.

One commenter asked us what the term “under quarantine” meant. The commenter pointed to various scenarios under which an exporter may voluntarily place movement restrictions on animals or commodities prior to export, such as to fulfill animal isolation requirements of the importing country.

For purposes of this section, a Federal, State, or local animal health authority must place the movement restrictions on the animal or commodity in order for it to be considered under quarantine.

The same commenter pointed out that the definition of the term “quarantine” can vary from State to State and locality to locality, and that a State or locality may impose a “quarantine” for purposes other than to prevent the dissemination of pests and diseases of livestock.

For the purposes of the section, we consider a quarantine to be the imposition of movement restrictions in

order to prevent the dissemination of pests and diseases of livestock that are under official control at the Federal, State, or local level.

#### Comments Regarding Proposed § 91.5 (“Identification of Livestock Intended for Export”)

In proposed § 91.5, we proposed identification requirements for livestock intended for export. With one exception, we proposed to require the livestock to be identified in accordance with 9 CFR part 86. That part contains national identification standards for livestock moving in interstate commerce. We considered this requirement to be necessary in order to align our export requirements with our domestic regulations, and to facilitate the interstate movement of animals intended for export from their premises of export to an export inspection facility, port of embarkation, or land border port.

The exception that we proposed to this general requirement was for horses. We proposed to allow horses to be identified by an individual animal tattoo alone, without an accompanying description of the horse, if allowed by the importing country. We stated that this was because the United States has several long-standing export protocols with other countries that allow horses to be identified solely by individual animal tattoos.

One commenter stated that movement for export differs from movement in interstate commerce, that the movement channels are understood by States and localities to be distinct, and that such identification would not substantially facilitate the movement of livestock from their premises of export. The commenter suggested that, for export purposes, livestock only need to be uniquely identified in a manner which allows the animals intended for export to be correlated to the animals listed on the export health certificate. The commenter stated that, while identification in accordance with part 86 would allow for such correlation, it was not the only means of ensuring it.

We agree with the commenter, and have revised the section accordingly. As a result of this revision, the exception for horses is no longer necessary, and has not been finalized.

#### Comments Regarding Proposed § 91.6 (“Cleaning and Disinfection of Means of Conveyance, Containers, and Facilities Used During Movement; Approved Disinfectants”)

In proposed § 91.6, we proposed cleaning and disinfection requirements for means of conveyance, containers,

and facilities used during movement of livestock to ports of embarkation. Among other requirements, we proposed that the means of conveyance, containers, and facilities would have to be cleaned and disinfected with a disinfectant approved by the Administrator for purposes of the section. Whereas the regulations had previously required disinfectants listed in § 71.10 of the 9 CFR to be used, we proposed to list all approved disinfectants in the Program Handbook that accompanied the proposed rule.

Several commenters expressed concern that, by moving the list of approved disinfectants to the Program Handbook, we could change the list arbitrarily and without notifying the public.

Section 91.6 sets forth the criteria we will use for amending the list of approved disinfectants. APHIS will approve a disinfectant if we determine that the disinfectant is effective against pathogens that can be spread by the animals intended for export and, if the disinfectant is a chemical disinfectant, if it is registered or exempted for the specified use by the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*, FIFRA). We will remove a disinfectant from the list if it no longer meets these conditions for approval. We will notify the public of any changes to the list of disinfectants approved for use.

Several commenters stated that the criteria for approval of a disinfectant in § 71.10 are significantly more stringent than those that we proposed in § 91.6, and that the former should be used to ensure the safety and efficacy of all disinfectants used to disinfect means of conveyances, containers, and facilities used in conjunction with the export of livestock from the United States.

Section 71.10 contains no criteria for approving or withdrawing approval of disinfectants. The absence of such criteria in § 71.10 was, in fact, our stated purpose for proposing criteria in § 91.6.

One commenter suggested that we should ensure that chemical disinfectants used for purposes of § 91.6 do not pose a risk to the health of livestock.

When such disinfectants are registered with EPA under FIFRA, or EPA grants an FIFRA exemption for a specified use, EPA takes the risks to the environment, including to livestock, associated with the use of that disinfectant into consideration.

Comments Regarding Proposed § 91.7  
("Pre-Export Inspection")

In proposed § 91.7, we proposed requirements regarding pre-export inspection of livestock intended for export from the United States.

The regulations had previously required livestock offered for exportation to any country other than Mexico or Canada to be inspected by an APHIS veterinarian within 24 hours of embarkation of the animals at an export inspection facility associated with the port of embarkation. In proposed paragraph (a) of § 91.7, we proposed that all livestock intended for export by air or sea would have to receive a visual health inspection from an APHIS veterinarian within 48 hours prior to embarkation. We proposed to extend the period of time within which livestock would have to receive pre-export inspection from 24 to 48 hours prior to embarkation based on the fact that we proposed to allow such inspection to take place at a facility other than the export inspection facility associated with the port of embarkation, under certain circumstances. We also did so out of recognition that, even when such inspection occurs at the export inspection facility associated with the port of embarkation, it can take more than 24 hours to load a large lot of animals safely into an ocean vessel.

One commenter pointed out that, unlike the previous regulations, the proposed regulations would not require pre-export inspection for livestock destined for overland export through Mexico.

The commenter is correct; we did not propose to retain this requirement. This is because the Secretariat of Agriculture, Livestock, Rural Development, Fisheries, and Food, the competent veterinary authority of Mexico, inspects both livestock destined for overland importation into Mexico and livestock destined for overland transit through Mexico at the U.S./Mexico border. The previous regulations were written in a manner which took into consideration the inspection afforded to livestock intended for overland importation into Mexico, but not that afforded to livestock intended for overland transit through Mexico. We additionally note that overland exports of livestock from the United States through Mexico are minimal.

Several commenters stated that extending the time period within which livestock must receive pre-export inspection from 24 to 48 hours prior to embarkation increased the likelihood that livestock unfit to travel would be exported from the United States.

The commenters provided no evidence in support of this assertion. In contrast, in our experience, animals are at an increased risk of stress or injury if they are offloaded or inspected hastily.

Several commenters stated that a visual health inspection was insufficient to detect signs or symptoms of diseases and pests of livestock, and suggested that we should require full veterinary examinations of all livestock destined for export from the United States in order to ensure that no diseased animals are exported from the United States. Similarly, one commenter asked us what a visual health inspection entails.

A visual health inspection entails careful examination of livestock for signs and symptoms that the livestock may not be fit to travel. Signs and symptoms include, but are not limited to, warts, growths, rashes, abscesses, abrasions, unhealed wounds, or unusual discharge of fluid.

APHIS veterinarians are trained to identify signs and symptoms of infection with a disease of livestock, and perform a full veterinary examination on any animal that exhibits such signs or symptoms during pre-export inspection.

We consider this protocol, coupled with the testing prescribed in § 91.3 of the regulations, to be sufficient to ensure that diseased livestock are not exported from the United States.

In proposed paragraph (a) of § 91.7, we also proposed a list of conditions that, if discovered during pre-export inspection, would make an animal unfit to travel. We proposed that the following classes of animals are unfit to travel:

- Livestock that are sick, injured, weak, disabled, or fatigued.
- Livestock that are unable to stand unaided or bear weight on each leg.
- Livestock that are blind in both eyes.
- Livestock that cannot be moved without causing additional suffering.
- Newborn livestock with an unhealed navel.
- Livestock that have given birth within the previous 48 hours and are traveling without their offspring.
- Pregnant livestock that would be in the final 10 percent of their gestation period at the planned time of unloading in the importing country.
- Livestock with unhealed wounds from recent surgical procedures, such as dehorning.

Several commenters stated that evidence of infection with a disease of livestock was not included among the proposed conditions, and suggested that the list be modified to include evidence

of infectious disease as a condition that renders an animal unfit to travel.

Sick livestock, which we proposed to be unfit to travel, include livestock with evidence of infection with a disease of livestock.

One commenter asked whether a navel with a dried remnant of an umbilicus would be considered unhealed.

In some instances, such a navel could be considered healed. It will be at the discretion of the APHIS veterinarian whether to consider a particular navel healed.

The commenter also asked when APHIS considers wounds from a medical procedure to be healed.

APHIS veterinarians determine on a case-by-case basis whether a wound is healed. This determination is based on the age and general health status of the animal, the nature of the medical procedure performed, the usual recovery period associated with the procedure, and the nature of the wound.

A commenter asked how APHIS determines that animals other than livestock, animal gerplasm, or hatching eggs are fit to travel for export from the United States.

If the animals or commodities meet the conditions for importation specified by the importing country, APHIS considers them to be fit to travel.

Finally, in paragraph (a) of § 91.7, we proposed that the owner of animals or the owner's agent would have to make arrangements for any livestock found unfit to travel.

Several commenters suggested that we specify what type of arrangements the owner must make for livestock found unfit to travel. One of the commenters suggested that humane euthanasia should be listed as a type of approved arrangement, while another suggested that we should require humane euthanasia of all livestock considered unfit to travel.

If an APHIS veterinarian determines that an animal is unfit to travel for export, the owner of the animal or owner's agent must make arrangements to remove the animal from the lot of animals intended for export. Unless we consider the animal unfit to travel because we consider it a risk of disseminating a pest or disease of livestock, we do not have authority to specify the manner of arrangements which must be made.

Accordingly, while we recommend euthanasia of certain animals that we consider unfit to travel, such as animals that cannot be moved without further suffering or animals that are unable to stand unaided, we cannot require such euthanasia.

Finally, we do not recommend that all classes of animals that we consider unfit to travel be euthanized. Certain conditions that render an animal unfit to travel, such as pregnancy, are not terminal, and should not be considered as such.

In proposed paragraph (b) of § 91.7, we proposed that the APHIS veterinarian conducting pre-export inspection would either have to do so at the export inspection facility associated with the port of embarkation of the livestock; at an export isolation facility approved by APHIS, when use of such a facility is authorized by the Administrator in accordance with proposed paragraph (c) of § 91.7; or at an export inspection facility other than the export inspection facility associated with the port of embarkation, when use of such a facility is authorized by the Administrator in accordance with proposed paragraph (d) of § 91.7. We also proposed that, if the facility used to conduct the inspection is a facility other than the export inspection facility associated with the port of embarkation, it would have to be located within 28 hours driving distance under normal driving conditions from the port of embarkation, and livestock would have to be afforded at least 48 hours rest, with sufficient feed and water during that time period, prior to movement from the facility. We proposed that the facility would have to be located within 28 hours driving distance because we could not foresee any instances which would suggest authorizing inspections at an export isolation facility located more than 28 hours driving distance from the port of embarkation, and because, pursuant to the 28 hour law (49 U.S.C. 80502), the maximum amount of time that most livestock may be transported in interstate commerce without rest, feed, and water is 28 hours.

Several commenters stated that a 28 hour driving distance under normal conditions would allow pre-export inspection to be done at a significant distance from the port of embarkation. The commenters expressed concern that such travel could be stressful to the livestock and increase the risk of injury or illness befalling the animals being exported, and asked us to set a significantly lower maximum driving distance between the location at which pre-export inspection takes place and the port of embarkation. One of these commenters suggested a maximum driving distance of 60 miles or 90 minutes, whichever is further.

We agree that, under certain conditions, such travel could be stressful to the livestock. The rigors of

up to 28 hours of continuous travel were, in fact, why we proposed that the livestock would need at least 48 hours of rest, with sufficient feed and water during that time period, prior to movement to the port of embarkation. It is also, in part, why we proposed conditions that would limit the use of facilities other than an export inspection facility associated with the port of embarkation to conduct pre-export inspections.

However, if livestock are properly rested, fed, and watered and if the means of conveyance transporting the livestock is equipped for such travel, with APHIS exercising monitoring and oversight, we do not consider a significant driving distance between the facility at which pre-export inspection takes place and the port of embarkation to present an intrinsic and irresolvable risk to livestock health. We have, on occasion, authorized pre-export inspection of livestock at a facility a considerable distance from the port of embarkation in order to facilitate the timely export of the animals, and have not encountered significant adverse impacts to the health or wellbeing of the livestock transported due to the distance traveled. Rather, in our experience, as well as the experience of several commenters, it is frequent loading and unloading, rather than travel itself, which puts animals at the greatest likelihood of sustaining injury or other significant adverse impacts to their health or wellbeing.

For these reasons, we do not consider it necessary to lessen the maximum allowable driving distance between the facility at which pre-export inspection is conducted and the port of embarkation from that in the proposed rule. In this regard, we note that a maximum driving distance of 60 miles or 90 minutes could impede the orderly export of certain lots of livestock and is not necessary to ensure the health and wellbeing of the livestock exported.

One commenter pointed out that the 28 hour law allows livestock to be transported more than 28 hours without rest, feed, and water, if the animals have food, water, space, and an opportunity for rest aboard the means of conveyance. The commenter stated that, if our intent was to have the regulations in § 91.7 align with the provisions of the 28 hour law, then we should provide an exemption from the maximum allowable driving distance for livestock provided such food, water, space, and opportunity for rest.

Our reference to the 28 hour law was to illustrate that a long-standing statute considers there to be potential adverse impacts to livestock health and

wellbeing if the animals are moved for more than 28 hours within the United States without rest, feed, and water. Accordingly, we used the statute as one of our reference points in determining what maximum allowable driving distance to propose between the facility at which pre-export inspection is conducted and the port of embarkation. Another reference point was importer requests to date for pre-export inspection of livestock at facilities other than an export inspection facility associated with the port of embarkation. A 28 hour maximum driving distance between the facility at which the pre-export inspection is conducted and the port of embarkation would accommodate all such requests to date.

One commenter suggested that, instead of a mandatory 48 hour rest period for livestock inspected at a facility other than an export inspection facility associated with the port of embarkation prior to movement from the facility, the rest period should be tiered to the class of livestock being moved and the distance between the facility and the port of embarkation. Alternatively, the commenter asked us to explain our rationale for the 48 hour rest period.

We intended to propose a 48 hour rest period prior to the pre-export inspection of the livestock. This rest period was intended to serve in lieu of a rest period at the export inspection facility associated with the port of embarkation, so that livestock inspected at a facility other than the export inspection facility associated with the port of embarkation could be loaded directly into aircraft or ocean vessels at the port of embarkation. Since there would not be visual health inspection of the animals at the export inspection facility associated with the port of embarkation, and since the animals could travel a significant distance from the facility at which the pre-export inspection is conducted to the port of embarkation, it would be commensurately important for us to be assured that the livestock are fit for travel before they leave the facility at which the pre-export inspection is conducted. Therefore, we considered a somewhat prolonged rest period warranted.

However, we did not clarify that livestock inspected at a facility other than the export inspection facility associated with the port of embarkation would be exempt from requirements for rest, feed, and water at the export inspection facility associated with the port of embarkation.

In this final rule, we have amended both paragraph (b) of § 91.7 and § 91.8, which contains our rest, feed, and water

requirements for livestock inspected at an export inspection facility associated with the port of embarkation, to clarify our intent.

As we mentioned earlier in this document, in proposed paragraphs (c) and (d) of § 91.7, we proposed conditions under which we may authorize pre-export inspection at an export isolation facility, or an export inspection facility not associated with the port of embarkation, respectively. In both paragraphs, we proposed that such authorization could occur if the exporter could show, to the satisfaction of the Administrator, that the livestock would suffer undue hardship if they had to be inspected at the export inspection facility associated with the port of embarkation.

One commenter stated that this condition was subjective.

While we agree that the condition relies on a subjective determination, the factors that we will consider in making this determination are objective. For example, we will consider the species to be inspected, the size of the lot, the likelihood of adverse climatic conditions that could affect loading the animals into and unloading the animals from the export inspection facility, and the resources that would be available at the facility the day that the livestock would be expected to arrive.

#### Comments Regarding § 91.8 (“Rest, Feed, and Water Prior to Export”)

In proposed § 91.8, we proposed that all livestock intended for export by air or sea would have to be allowed a period of at least 2 hours of rest prior to being loaded onto an ocean vessel or aircraft for export. We also proposed that an inspector could extend the required rest period up to 5 hours, at his or her discretion and based on a determination that more rest is needed in order for the inspector to have assurances that the animals are fit to travel prior to loading. Finally, we proposed that adequate food and water would have to be available to the livestock during this rest period.

In the previous regulations in part 91, we had required livestock intended for export from the United States by sea or air to be allowed a period of at least 5 hours for rest at the export inspection facility associated with the port of embarkation, with adequate feed and water available, before movement to an ocean vessel or aircraft for loading for export, unless the livestock had food and water in the carrier that transported them to the export inspection facility, and they will reach the destination country within 36 hours after they were last fed and watered in the United

States, or, if they are under 30 days of age, within 24 hours after they were last fed and watered in the United States.

A number of commenters stated that our proposed minimum rest period was too short. Several of these commenters suggested that we maintain a rest period of at least 5 hours. One of the commenters suggested a 3 hour minimum rest period. Another cited a peer-reviewed study that, in the commenter’s opinion, suggested the need for a minimum rest period of 8 hours for livestock destined for export.<sup>2</sup>

We are making no change in response to these comments. As several commenters pointed out, movement from the premises of export to the port of embarkation may be of relatively short duration. If, for example, livestock have traveled 90 minutes to the port of embarkation, a mandatory rest period that is two to four times as long as this travel time appears excessive. For livestock that have traveled a longer distance, as we stated in the proposed rule, it is not generally our experience that they appear taxed by movement from the premises of export to the port of embarkation, and usually need time merely to become limber for the rigors of sea or air travel.

We disagree with the commenter who cited *Knowles* that the article suggests an 8-hour rest period is necessary for all ruminants. The article states that it pertains only to sheep destined to slaughter, and notes that, for other livestock moved for breeding or production purposes, “welfare problems rarely arise” that would suggest the need for significant rest, feed, and water. It also is worth noting that the article is from 1998, and examines conditions governing the transport of sheep to slaughter as these existed in the European Union during the 1990s. We do not consider the article applicable to current livestock export practices in the United States.

One commenter asked us whether a rest period of less than 5 hours would violate the 28 hour law.

This rest period is distinct from any rest period that must be afforded to livestock under the 28 hour law.

Finally, as we mentioned in our discussion of the comments received on proposed § 91.7, we have modified § 91.8, including its title, to clarify that it pertains only to animals inspected at an export inspection facility associated with the port of embarkation.

As modified, it states that all livestock that are intended for export by air or sea

and that will be inspected for export at an export inspection facility associated with the port of embarkation must be allowed a period of at least 2 hours rest at an export inspection prior to being loaded onto an ocean vessel or aircraft for export. Adequate food and water must be available to the livestock during the rest period. An inspector may extend the required rest period up to 5 hours, at his or her discretion and based on a determination that more rest is needed in order to have assurances that the animals are fit to travel prior to loading. Pre-export inspection of the animals must take place at the conclusion of this rest period.

#### Comments Regarding Proposed § 91.11 (“Export Isolation Facilities”)

In proposed § 91.11, we proposed standards for APHIS approval of isolation facilities associated with the export of livestock from the United States. We stated that we considered such standards necessary because several importing countries require an “officially approved” or “APHIS-approved” period of isolation for livestock.

One commenter stated that such isolation is solely a requirement of an importing country, rather than an APHIS requirement, and that establishing standards for export isolation facilities could be construed to suggest that APHIS has identified a need for such requirements to prevent the dissemination of pests and diseases of livestock within the United States. The commenter also pointed out that the isolation required for livestock destined for export differs from importing country to importing country, and sometimes from species to species, is usually highly prescriptive, and is subject to change. For these reasons, the commenter questioned the need for standards for export isolation facilities and suggested that we not finalize the section.

We agree with the commenter that pre-export isolation is conducted solely to fulfill the requirements of an importing country, and is not required by APHIS for animal health purposes. We also agree with the commenter that the variety of export isolations required by foreign countries, as well as the prescriptive nature and mutability of those requirements, are significant impediments to establishing general standards for approval of export isolation facilities. Accordingly, we have decided not to finalize the section, as proposed.

However, we do consider it necessary to specify in the section that, if an importing country requires export

<sup>2</sup> See: Knowles, T.G. 1998. *A review of road transport of slaughter sheep*. *Veterinary Record* 143:212–219. We refer to this article later in this document as *Knowles*.

isolation for livestock, such isolation must occur before the animals may be moved to a port of embarkation, and both the manner in which this isolation occurs and the facility at which it occurs must meet the requirements specified by the importing country.

As a result of this revision, § 91.11 does not contain conditions for APHIS approval of export isolation facilities. Accordingly, we have removed a reference to such approval that was in proposed § 91.7.

We have, however, retained the guidance in the Program Handbook regarding construction and operational standards for export isolation facilities. While this guidance is no longer tiered to a requirement of the regulations, it may aid exporters in fulfilling the requirements of an importing country regarding such isolation.

#### Comments Regarding Proposed § 91.12 (“Ocean Vessels”)

In proposed § 91.12, we proposed requirements regarding the ocean vessels on which livestock are exported from the United States.

In proposed paragraph (a) of § 91.12, we proposed that such vessels would need to be inspected and certified prior to initial use to transport any livestock from the United States.

We proposed that this certification would be valid for up to 3 years; however, the ocean vessel would have to be recertified prior to transporting livestock any time significant changes are made to the vessel, including to livestock transport spaces or life support systems; any time a major life support system fails; any time species of livestock not covered by the existing certification are to be transported; and any time the owner or operator of the ocean vessel changes.

Several commenters suggested that we should also require a vessel to be recertified if there is a significant mortality rate of livestock transported aboard the vessel during a particular voyage.

The purpose of the inspection and certification is to determine whether an ocean vessel is suitable for the export of livestock. High livestock mortality rates during a particular voyage do not necessarily suggest that a vessel is unsuitable for the export of livestock. For example, they could be the result of significant and unforeseen adverse weather conditions.

However, we do note that, under paragraph (f) of § 91.12, the owner or operator of an ocean vessel is required to submit a written report to APHIS within 5 business days after completing a voyage. In the report, the owner or

operator must document the number of each species that died and provide an explanation for those mortalities. The owner or operator must also document whether a major life support system failed during the voyage.

If a significant number of the livestock aboard the vessel died during the voyage, and either the report indicates or APHIS has reason to believe that failure of a major life support system aboard the vessel directly contributed to the death of the livestock, the vessel will need to be recertified before it can be used again to export livestock from the United States.

In proposed paragraph (c) of § 91.12, we proposed feed and water requirements for livestock exported from the United States aboard ocean vessels. We proposed that sufficient feed and water would have to be provided to livestock aboard the ocean vessel, taking into consideration the livestock’s species, body weight, the expected duration of the voyage, and the likelihood of adverse climatic conditions during transport.

One commenter stated that we did not require that livestock must be fed during the voyage. Similarly, two commenters pointed out that the previous regulations in part 91 had required ocean vessels to provide livestock with feed and water immediately after the livestock are loaded onto the vessel unless an APHIS representative determines that all of the livestock are 30 days of age or older and the vessel will arrive in the country of destination within 36 hours after the livestock were last fed and watered within the United States, or, if any of the livestock in the shipment are younger than 30 days, that the vessel will arrive in the country of destination within 24 hours after the livestock were last fed and watered within the United States.

One of the commenters acknowledged our rationale for proposing to remove this requirement from the regulations—that we have discovered that livestock can sometimes go more than 36 hours without feed or water without suffering duress—but also pointed out that we proposed to require livestock to have adequate access to feed and water during the voyage, and suggested that it is difficult to discern what adequate access to feed and water constitutes if livestock can go an indefinite amount of time aboard an ocean vessel without being fed or watered.

The other commenter pointed out that the previous regulations ensured that livestock over 30 days old would be fed at least once within a 36 hour period, and that this previous requirement was itself significantly less stringent than the

28 hour law. The commenter suggested that, in this final rule, we should specify that livestock aboard an ocean vessel must be fed and watered within 36 hours of departure from the port of embarkation.

In light of the concerns raised, we have modified paragraph (c) of § 91.12 to specify that livestock aboard the vessel must be fed and watered within 28 hours of the time they were last fed and watered within the United States. This provision is generally consistent with the 28 hour law.

A commenter stated that proposed paragraph (c) of § 91.12 does not require ocean vessels to maintain a surplus of feed in the event that the voyage takes significantly longer than expected.

In the Program Handbook that accompanied the proposed rule, we stated that, in order for us to consider feed maintained aboard an ocean vessel to be sufficient for a voyage, it would have to include a 15 percent surplus for unforeseen circumstances.

In proposed paragraph (d) of § 91.12, we proposed general requirements for the accommodations for livestock exported from the United States by ocean vessel.

In proposed paragraph (d)(1) of § 91.12, we proposed requirements for pens for livestock.

One commenter expressed concern that these proposed requirements did not require the pens to house species that are compatible with each other. The commenter pointed out that the World Organisation for Animal Health’s (OIE’s) standards for the transport of animals by sea recommend that animals that are likely to be hostile to other animals that are housed in the same pen should not be commingled.

We have modified paragraph (d)(1) of § 91.12 to specify that animals that may be hostile to each other may not be housed in the same pen.

In proposed paragraph (d)(2) of § 91.12, we proposed that livestock would have to be positioned during transport so that an animal handler or other responsible person could observe each animal regularly and clearly to ensure the livestock’s safety and welfare.

A commenter suggested that we modify the paragraph to require the animals to be observed at least once every 12 hours.

In our experience, in order to provide routine care to livestock aboard ocean vessels, handlers observe the animals several times a day. Therefore, we do not consider it necessary to modify the paragraph to specify that the livestock must be observed at least once every 12 hours.

In proposed paragraph (d)(7) of § 91.12, we proposed that the vessel must have a system or arrangements, including a backup system in working order or alternate arrangements, for managing waste to prevent excessive buildup in livestock transport spaces during the voyage.

A commenter suggested modifying the paragraph to require the waste management system to have an alarm if the system malfunctions.

Malfunctions to waste management systems tend to be easily detectable because of the odor of the waste. Provided that the vessel maintains a backup system in working order or has alternate arrangements, we do not consider it necessary that it also maintain an alarm in the event of a system malfunction.

In proposed paragraph (d)(8) of § 91.12, we proposed that the vessel must have adequate illumination to allow clear observation of the livestock during loading, unloading, and transport.

A commenter suggested that we modify the paragraph to require the vessel to maintain a back-up lighting system.

Ocean vessels are constructed with back-up lighting systems. Therefore, we do not consider it necessary to require them.

In proposed paragraph (d)(12) of § 91.12, we proposed that the owner or operator of the ocean vessel must have on board during loading, transport, and unloading at least 3 persons (or at least 1 person if fewer than 800 head of livestock will be transported) with previous experience with ocean vessels that have handled the kind(s) of livestock to be carried, as well as a sufficient number of attendants with the appropriate experience to be able to ensure proper care of the livestock.

Several commenters suggested that we require at least one of these personnel to be a licensed veterinarian. One of these commenters asked us to delineate what we meant by “a sufficient number of attendants with the appropriate experience to be able to ensure proper care of the livestock,” and asked whether we intended one of these attendants to be a veterinarian.

We can foresee instances, such as a particularly short voyage to the importing country, when it may not be necessary for the vessel to have a veterinarian on board. However, we do agree that, for certain voyages, having a veterinarian on board may be necessary to ensure proper care of the livestock. Accordingly, in this final rule, we have modified paragraph (d)(12) of § 91.12 to specify that the APHIS representative

assigned to inspect the vessel prior to loading will determine whether the personnel aboard the vessel are sufficient and possess adequate experience, including, if necessary, veterinary experience, to ensure proper care of the livestock.

A number of commenters suggested additional general requirements for ocean vessels.

Several commenters suggested that we should require ocean vessels to maintain a means of humanely euthanizing sick or injured livestock aboard the vessel, and should require at least one of the personnel aboard the ship to be trained in humanely euthanizing livestock by using the means of euthanasia carried by the vessel.

We have added such a requirement.

Several commenters suggested that we should require ocean vessels to maintain an alarm system when major life support systems aboard the vessel malfunction.

Malfunctioning major life support systems are usually easy to detect. However, we have added a requirement that the vessel must have replacement parts for major life support systems and the means, including qualified personnel, to make the repairs or replacements.

Several commenters suggested that we require ocean vessels to have a system that monitors ammonia levels aboard the vessel and alerts personnel aboard the ship if the levels exceed certain thresholds.

Excessive ammonia is easily detectable; therefore we do not consider such a requirement to be necessary.

Several commenters suggested that we require ocean vessels to maintain a system to monitor temperature, humidity, and carbon monoxide levels aboard the vessel.

Ocean vessels are constructed with such monitoring systems. Therefore, we do not consider such requirements to be necessary.

A commenter suggested that we require ocean vessels to have fire extinguishers on each level that contains livestock.

In 46 CFR 95.05–10, the United States Coast Guard requires shipping vessels to have fire extinguishers installed in all cargo compartments, unless they carry exclusively coal or grain in bulk.

Finally, one commenter suggested that ocean vessels that export livestock maintain contingency plans for emergencies. The commenter pointed out that the OIE’s standards for the transport of animals by sea suggest that ocean vessels maintain such plans.

The OIE standards suggest that a “major adverse event” constitutes an emergency, but the standards do not define this term nor delineate the content of such plans. An ocean vessel may experience what we consider to be a major adverse event for any number of reasons, from adverse weather to system malfunctions to human error, and asking the vessel owner or operator to develop standard procedures for any major adverse event that could occur would place a significant paperwork burden on ocean vessel owners and operators.

Accordingly, we consider it appropriate, instead, to require ocean vessel owners or operators to document major adverse events that led to livestock deaths aboard a particular voyage. Additionally, when the major adverse event was a failure to a major life support system, the vessel will have to be inspected and recertified by APHIS before it may be used to export livestock from the United States again.

In proposed paragraph (e) of § 91.12, we proposed that an inspector could exempt an ocean vessel that uses shipping containers to transport livestock to an importing country from the requirements in proposed paragraph (d) of § 91.12, if the inspector determines that the containers themselves are designed, constructed, and managed in a manner to reasonably assure the livestock are protected from injury and remain healthy during loading, unloading, and transport to the importing country.

Several commenters understood that the intent of the rule was to acknowledge that certain of the requirements in paragraph (d) of § 91.12 are not applicable to ocean vessels that use shipping containers. However, they questioned the breadth of the exemption, and stated that certain of the requirements in paragraph (d) of § 91.12 are necessary to ensure that livestock exported from the United States remain healthy during the voyage to the importing country. Several of these commenters stated that, at a minimum, the requirements pertaining to feed and water, ventilation, and lighting, appear to be generally applicable to all ocean vessels used to export livestock.

In proposed paragraph (e) of § 91.12, we stated that guidance regarding the paragraph could be found in the Program Handbook that accompanied the proposed rule. In the Program Handbook, we provided guidance regarding the manner in which APHIS representatives would inspect ocean vessels that use shipping containers to transport livestock. We provided four areas that would be subject to particular

scrutiny: The size of the containers; the materials used to construct the containers; the waste management and ventilation systems in the containers; and the manner in which potable water would be provided to the livestock.

Accordingly, it was not our intent to suggest that an inspector could exempt an ocean vessel that uses shipping containers from any of the requirements of paragraph (d) of § 91.12 that he or she so chooses. The inspector could only exempt the vessel after determining that it had in place an alternate means of meeting the aim of the requirements in paragraph (d), which is to provide reasonable assurances that livestock are protected from injury and remain healthy during loading, unloading, and transport to the importing country.

However, we do agree with the commenters that the paragraph should mention the particular areas that an inspector will evaluate as part of his or her inspection of ocean vessels that use shipping containers to transport livestock. Accordingly, we have modified paragraph (e) of § 91.12 to specify that particular attention will be paid to the manner in which the containers are constructed, the space the containers afford to livestock transported within them, the manner in which the owner or operator of the vessel would provide feed and water to the animals in the containers, and the manner in which air and effluent are managed within the containers.

As we mentioned earlier in this document, in proposed paragraph (f) of § 91.12, we proposed that the owner or operator of any ocean vessel used to export livestock (including vessels that use shipping containers) from the United States would have to submit a written report to APHIS within 5 business days after completing a voyage. Among other information requirements, we proposed that the report would have to include the number of each species that died and an explanation for those mortalities.

A commenter suggested that the report should also include the number of livestock injured during the voyage, and the nature of these injuries.

Injuries could include minor wounds or abrasions from which the livestock recovered quickly during the voyage. Conversely, animals that suffered significant or debilitating injuries during the voyage are likely to have died or been humanely euthanized. Accordingly, we do not consider it necessary to maintain a report regarding all animals injured aboard the vessel.

However, the commenter does identify a third category of animals that we did not consider in our proposed

rule: Animals that sustained injuries or exhibited symptoms of illness that were significant enough to require medical attention from the personnel entrusted with care of the animals. Information regarding the number of such animals, as well as the nature of their injuries or illnesses, helps us interpret other aspects of the report accurately. Additionally, we have reason to believe that ocean vessels already maintain such information as part of their daily logs. We have modified paragraph (f) accordingly to specify that this information must be included in the report.

#### Comments Regarding Proposed § 91.13 (“Aircraft”)

In proposed § 91.13, we proposed requirements regarding aircraft used to export livestock from the United States.

A number of commenters pointed out that, unlike ocean vessels, we did not propose general requirements regarding accommodations for the humane transport of livestock aboard aircraft. The commenters suggested that we should add such requirements in this final rule.

Unlike ocean vessels, an international trade association stringently regulates aircraft. The International Air Transport Association (IATA) represents more than 250 commercial airlines worldwide, including those used to export livestock from the United States. IATA’s “Live Animals Regulations” set forth minimum space requirements, feed and water requirements, ambient temperature requirements, ventilation requirements, and handling requirements for aircraft that transport livestock. These requirements are at least as stringent as our requirements for ocean vessels.

Additionally, we note that, in 14 CFR part 25, the Federal Aviation Administration has its own Federal requirements for airworthiness of aircraft used to transport people, animals, or cargo.

Because of these existing regulations, we did not consider it necessary to propose our own regulations regarding accommodations for the humane transport of livestock aboard aircraft.

#### *Comment Regarding the Program Handbook*

As we mentioned earlier in this document, we made a draft Program Handbook available along with the proposed rule. The Program Handbook provided guidance and other information regarding the proposed regulations. In instances in which the proposed regulations specified a performance or construction standard,

the Program Handbook provided a means of meeting that performance or construction standard.

One commenter expressed concern that we would change the guidance in the Program Handbook arbitrarily, and without an opportunity for public participation.

It is Agency policy to take public comment on proposed substantive changes to Program standards and similar policy documents.

#### **Miscellaneous**

In paragraph (e) of § 91.3, we proposed that an original signed export health certificate would have to accompany livestock destined for export for the entire duration of movement from the premises of export to their port of embarkation or land border port, except when the export health certificate had been issued and endorsed electronically. Similarly, we also proposed that, except when an export health certificate had been issued and endorsed electronically, the original signed export health certificate would have to accompany animals other than livestock, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes destined for export to their port of embarkation or land border port.

The intent of these provisions was to clarify that the means of issuing and endorsing an electronic export health certificate differs from the means of issuing and endorsing a paper-based export health certificate. However, we realize that the provisions could also be construed to mean that, if an export health certificate is issued and endorsed electronically, no export health certificate needs to accompany the animals or commodities destined for export or otherwise be available for review when the animals or commodities arrive at their port of embarkation or land border port.

This is not necessarily the case. Some importing countries require a paper-based export health certificate to accompany the animals or commodities destined for export, even if the export health certificate was issued and endorsed electronically. Other countries recognize electronically issued and endorsed export health certificates, but require them to accompany the animals or commodities destined for export.

Additionally, some importing countries allow the export health certificate for certain commodities to be issued and endorsed at the port of embarkation or land border port, regardless of the means of issuance and endorsement.

Accordingly, we have modified paragraph (e) of § 91.3 in this final rule. The paragraph now provides that an export health certificate for livestock must be issued and endorsed before the livestock move from the premises of export, and an export health certificate for animals other than livestock or other commodities must be issued and, if required by the importing country, endorsed by an APHIS representative prior to departure of the animals from the port of embarkation or the crossing of the land border port.

In light of this modification, we have also modified paragraph (a)(1) of § 91.3 to specify that livestock must have an endorsed export health certificate in order to be eligible for export from the United States. In the proposed rule, we did not indicate that the export health certificate needs to be endorsed.

In proposed paragraph (b) of § 91.6, we proposed that livestock for export could be unloaded only into a facility which has been cleaned and disinfected in the presence of an APHIS representative or an accredited veterinarian. We also proposed that a statement certifying to such action would have to be attached to the export health certificate by the APHIS representative or accredited veterinarian.

While this proposed requirement was also in the previous regulations in part 91, operationally we have long allowed facilities to be cleaned and disinfected without the presence of an APHIS representative or accredited veterinarian, provided that an APHIS representative or accredited veterinarian inspects the cleaned and disinfected facility, certifies that he or she has conducted this inspection, and attaches a statement certifying to this action. Whether an APHIS representative or accredited veterinarian conducts this inspection depends on the requirements of the importing country. In this final rule, we have revised paragraph (b) of § 91.6 to reflect this long-standing operational practice.

In proposed paragraph (b) of § 91.7, we proposed that, if, as a result of pre-export inspection, the APHIS veterinarian inspecting the animals deems clinical examination to be necessary to determine the animal's health, any testing or treatment related to this clinical examination would have to be conducted by an APHIS veterinarian or an accredited veterinarian.

In reviewing the proposed rule, we realized that this requirement could be construed to suggest that APHIS provides treatment as part of our clinical examinations. We do not.

Rather, we coordinate with a licensed veterinarian; it is this veterinarian who provides the treatment. In this final rule, we have modified paragraph (b) of § 91.7 to make this clear.

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 final rule has been reviewed under Executive Order 12866. This 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.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This rule amends 9 CFR part 91, which contains requirements for the inspection and handling of livestock (cattle, horses, captive cervids, sheep, goats, and swine) to be exported from the United States. Among other things, the rule removes some prescriptive requirements applicable to livestock, either completely or by replacing them with performance standards, and makes other adjustments in inspection and handling requirements to assist exporters. These changes will provide APHIS and exporters more flexibility in arranging for the export of livestock from the United States while continuing to ensure the animals' health and welfare.

The rule also adds requirements for individual identification of livestock intended for export. The rule also specifies that, if APHIS knows that an importing country requires an export health certificate endorsed by the competent veterinary authority of the United States for any animal other than livestock, including pets, or for any hatching eggs or animal germplasm, the animal, hatching eggs, or animal germplasm must have such a health certificate to be eligible for export from the United States. These changes will help ensure that all live animals, hatching eggs, and animal germplasm exported from the United States meet the health requirements of the countries to which they are destined and that

APHIS has assurances regarding their health and welfare at the time of export.

Entities directly affected by this rule include exporters of live animals, hatching eggs, and animal germplasm. While we do not know the size distribution of these exporters, we expect that the majority are small by Small Business Administration standards, given the prevalence of small entities among livestock producers. Operators of export inspection facilities, export isolation facilities within 28 hours driving distance from a port of embarkation, and ocean vessels would also be directly affected. These industries are also largely composed of small businesses. The provisions of the rule would facilitate the export process for affected parties.

#### **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 2 CFR chapter IV.)

#### **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 inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

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 final rule, which were filed under 0579-0432, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

#### **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 final rule, please contact Ms. Kimberly Hardy, APHIS' Information

Collection Coordinator, at (301) 851-2727.

### List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are revising 9 CFR part 91 to read as follows:

## PART 91—EXPORTATION OF LIVE ANIMALS, HATCHING EGGS OR OTHER EMBRYONATED EGGS, ANIMAL SEMEN, ANIMAL EMBRYOS, AND GAMETES FROM THE UNITED STATES

### Subpart A—General Provisions

- Sec.
- 91.1 Definitions.
  - 91.2 Applicability.
  - 91.3 General requirements.
  - 91.4 Prohibited exports.

### Subpart B—Livestock

- 91.5 Identification of livestock intended for export.
- 91.6 Cleaning and disinfection of means of conveyance, containers, and facilities used during movement; approved disinfectants.
- 91.7 Pre-export inspection.
- 91.8 Rest, feed, and water at an export inspection facility associated with the port of embarkation prior to export.
- 91.9 Ports.
- 91.10 Export inspection facilities.
- 91.11 Export isolation.
- 91.12 Ocean vessels.
- 91.13 Aircraft.
- 91.14 Other movements and conditions.

**Authority:** 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

### Subpart A—General Provisions

#### § 91.1 Definitions.

As used in this part, the following terms will have the meanings set forth in this section:

**Accredited veterinarian.** A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Animal.** Any member of the animal kingdom (except a human).

**Animal and Plant Health Inspection Service (APHIS).** The Animal and Plant

Health Inspection Service of the United States Department of Agriculture.

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

**Date of export.** The date animals intended for export are loaded onto an ocean vessel or aircraft or, if moved by land to Canada or Mexico, the date the animals cross the border.

**Export health certificate.** An official document issued in the United States that certifies that animals or other commodities listed on the certificate meet the export requirements of this part and the importing country.

**Export inspection facility.** A facility that is affiliated with a port of embarkation and that has been approved by the Administrator as the location where APHIS will conduct health inspections of livestock before they are loaded onto ocean vessels or aircraft for export from the United States.

**Export isolation facility.** A facility where animals intended for export are isolated from other animals for a period of time immediately before being moved for export.

**Horses.** Horses, mules, and asses.

**Inspector.** An individual authorized by APHIS to inspect animals and/or animal products intended for export from the United States.

**Livestock.** Horses, cattle (including American bison), captive cervids, sheep, swine, and goats, regardless of intended use.

**Premises of export.** The premises where the animals intended for export are isolated as required by the importing country prior to export or, if the importing country does not require pre-export isolation, the farm or other premises where the animals are assembled for pre-export inspection and/or testing, or the germplasm is collected or stored, before being moved to a port of embarkation or land border port.

**Program diseases.** Diseases for which there are cooperative State-Federal programs and domestic regulations in subchapter C of this chapter.

**Program Handbook.** A document that contains guidance and other information related to the regulations in this part. The Program Handbook is available on APHIS' import-export Web site ([http://www.aphis.usda.gov/import\\_export/index.shtml](http://www.aphis.usda.gov/import_export/index.shtml)).

**State of origin.** The State in which the premises of export is located.

#### § 91.2 Applicability.

You may not export any animal or animal germplasm from the United States except in compliance with this part.

#### § 91.3 General requirements.

(a) **Issuance of export health certificates.** (1) Livestock must have an endorsed export health certificate in order to be eligible for export from the United States.

(2) If APHIS knows that an import country requires an export health certificate endorsed by the competent veterinary authority of the United States for any animal other than livestock or for any animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes intended for export to that country, the animal or other commodity must have an endorsed export health certificate in order to be eligible for export from the United States.

(b) **Content of export health certificates—(1) Livestock; minimum requirements.** Regardless of the requirements of the importing country, at a minimum, the following information must be contained on an export health certificate for livestock:

- (i) The species of each animal.
- (ii) The breed of each animal.
- (iii) The sex of each animal.
- (iv) The age of each animal.
- (v) The individual identification of the animals as required by § 91.5.
- (vi) The importing country.
- (vii) The consignor.
- (viii) The consignee.
- (ix) A certification that an accredited veterinarian inspected the livestock and found them to be fit for export.
- (x) A signature and date by an accredited veterinarian.
- (xi) An endorsement by the APHIS veterinarian responsible for the State of origin.

(2) **Livestock; additional requirements.** In addition to the minimum requirements in paragraph (b)(1) of this section, the export health certificate must meet any other information or issuance requirements specified by the importing country.

(3) **Animals other than livestock, animal semen, animal embryos, hatching eggs, other embryonated eggs, and gametes.** Export health certificates for animals other than livestock, animal semen, animal embryos, hatching eggs, other embryonated eggs, and gametes must meet any information requirements specified by the importing country.

(c) **Inspection requirements for livestock.** In order to be eligible for export, livestock must be inspected within the timeframe required by the importing country. If the importing country does not specify a timeframe, the livestock must be inspected within 30 days prior to the date of export.

(d) **Testing requirements for livestock.** All samples for tests of livestock that are

required by the importing country must be taken by an APHIS representative or accredited veterinarian. The samples must be taken and tests made within the timeframe allowed by the importing country and, if specified, at the location required by the importing country. If the importing country does not specify a timeframe, the samples must be taken and tests made within 30 days prior to the date of export, except that tuberculin tests may be conducted within 90 days prior to the date of export. All tests for program diseases must be made in laboratories and using methods approved by the Administrator for those diseases. The Program Handbook contains a link to an APHIS Web site that lists laboratories approved to conduct tests for specific diseases. Approved methods are those specified or otherwise incorporated within the domestic regulations in subchapter C of this chapter.

(e) *Movement of livestock, animals other than livestock, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes with an export health certificate*—(1) *Livestock*. An export health certificate for livestock must be issued and endorsed before the livestock move from the premises of export.

(2) *Animals other than livestock, animal semen, animal embryos, hatching eggs, other embryonated eggs, and gametes*. When an export health certificate is required by the importing country for any animal other than livestock or for animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes, it must be issued and, if required by the importing country, endorsed by an APHIS representative prior to departure of the animal or other commodity from the port of embarkation or the crossing of the land border port. When presented for endorsement, the health certificate must be accompanied by reports for all laboratory tests specifically identified on the certificate. The laboratory reports must either be the originals prepared by the laboratory that performed the tests or must be annotated by the laboratory that performed the test to indicate how the reports may be verified.

(f) *Validity of export health certificate*—(1) *Livestock*. Unless specified by the importing country, the export health certificate is valid for 30 days from the date of issuance, provided that the inspection and test results under paragraphs (c) and (d) of this section are still valid.

(2) *Animals other than livestock, animal semen, animal embryos, hatching eggs, other embryonated eggs, and gametes*. Unless specified by the

importing country, the export health certificate is valid for 30 days from the date of issuance.

(Approved by the Office of Management and Budget under control number 0579–0432)

#### § 91.4 Prohibited exports.

No animal, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes under Federal, State, or local government quarantine or movement restrictions for animal health reasons may be exported from the United States unless the importing country issues an import permit or other written instruction allowing entry of the animal, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes, and APHIS concurs with the export of the animal, animal semen, animal embryos, hatching eggs, other embryonated eggs, or gametes.

### Subpart B—Livestock

#### § 91.5 Identification of livestock intended for export.

Livestock that are intended for export must be identified in a manner that allows individual animals to be correlated to the animals listed in the export health certificate. If the importing country requires a specific or an additional form of identification, the livestock must also bear that form of identification.

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#### § 91.6 Cleaning and disinfection of means of conveyance, containers, and facilities used during movement; approved disinfectants.

(a) All export health certificates for livestock must be accompanied by a statement issued by an APHIS representative and/or accredited veterinarian that the means of conveyance or container in which the livestock will be transported from the premises of export has been cleaned and disinfected prior to loading the livestock with a disinfectant approved by the Administrator for purposes of this section or by a statement that the means of conveyance or container was not previously used to transport animals.

(b) Livestock moved for export may be unloaded only into a facility which has been cleaned and disinfected prior to such unloading with a disinfectant approved by the Administrator for purposes of this section, and has subsequently been inspected by an APHIS representative or accredited veterinarian. A statement certifying to

such action must be attached to the export health certificate by the APHIS representative or accredited veterinarian.

(c) *Approved disinfectants*. The Administrator will approve a disinfectant for purposes of this section upon determining that the disinfectant is effective against pathogens that may be spread by the animals intended for export and, if the disinfectant is a chemical disinfectant, that it is registered or exempted for the specified use by the U.S. Environmental Protection Agency. The Program Handbook provides access to a list of disinfectants approved by the Administrator for use as required by this section. Other disinfectants may also be approved by the Administrator in accordance with this paragraph. The Administrator will withdraw approval of a disinfectant, and remove it from the list of approved disinfectants, if the disinfectant no longer meets the conditions for approval in this section.

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#### § 91.7 Pre-export inspection.

(a) All livestock intended for export by air or sea must receive a visual health inspection from an APHIS veterinarian within 48 hours prior to embarkation, unless the importing country specifies otherwise. The purpose of the inspection is to determine whether the livestock are sound, healthy, and fit to travel. The APHIS veterinarian will reject for export any livestock that he or she finds unfit to travel. The owner of the animals or the owner's agent must make arrangements for any livestock found unfit to travel. Livestock that are unfit to travel include, but are not limited to:

- (1) Livestock that are sick, injured, weak, disabled, or fatigued;
  - (2) Livestock that are unable to stand unaided or bear weight on each leg;
  - (3) Livestock that are blind in both eyes;
  - (4) Livestock that cannot be moved without causing additional suffering;
  - (5) Newborn livestock with an unhealed navel;
  - (6) Livestock that have given birth within the previous 48 hours and are traveling without their offspring;
  - (7) Pregnant livestock that would be in the final 10 percent of their gestation period at the planned time of unloading in the importing country; and
  - (8) Livestock with unhealed wounds from recent surgical procedures, such as dehorning.
- (b) The APHIS veterinarian must conduct the inspection at the export

inspection facility associated with the port of embarkation of the livestock; at an export isolation facility, when authorized by the Administrator in accordance with paragraph (c) of this section; or at an export inspection facility other than the facility associated with the port of embarkation, when authorized by the Administrator in accordance with paragraph (d) of this section. Unless APHIS has authorized otherwise, any sorting, grouping, identification, or other handling of the livestock by the exporter must be done before this inspection. The APHIS veterinarian may also conduct clinical examination, including testing, of any livestock during or after this inspection if he or she deems it necessary in order to determine the animal's health. Any treatment related to this clinical examination performed on the animal must be performed by a licensed veterinarian. Finally, if the facility used to conduct the inspection is a facility other than the export inspection facility associated with the port of embarkation, it must be located within 28 hours driving distance under normal driving conditions from the port of embarkation; livestock must be afforded at least 48 hours rest, with sufficient feed and water during that time period, prior to the pre-export inspection; and the exporter must maintain contact information for a veterinarian licensed in the State of embarkation to perform emergency medical services, as needed, on the animals intended for export.

(c) *Conditions for approval of pre-export inspection at an export isolation facility.* (1) The Administrator may allow pre-export inspection of livestock to be conducted at an export isolation facility, rather than at an export inspection facility, when the exporter can show to the satisfaction of the Administrator that the livestock would suffer undue hardship if they had to be inspected at the export inspection facility, when the distance from the export isolation facility to the port of embarkation is significantly less than the distance from the export isolation facility to the export inspection facility associated with the port of embarkation, when inspection at the export isolation facility would be a more efficient use of APHIS resources, or for other reasons acceptable to the Administrator.

(2) The Administrator's approval is contingent upon APHIS having personnel available to provide services at that location. Approval is also contingent upon the Administrator determining that the facility has space, lighting, and humane means of handling livestock sufficient for the APHIS personnel to safely conduct required

inspections. The Program Handbook contains guidance on ways to meet these requirements. Owners and operators may submit alternative plans for meeting the requirements to APHIS for evaluation and approval. Alternatives must be at least as effective in meeting the requirements as those described in the Program Handbook in order to be approved. Alternate plans must be approved by APHIS before the facility may be used for purposes of this section.

(d) The Administrator may allow pre-export inspection of livestock to be conducted at an export inspection facility other than the export inspection facility associated with the port of embarkation when the exporter can show to the satisfaction of the Administrator that the livestock would suffer undue hardship if they had to be inspected at the export inspection facility associated with the port of embarkation, when inspection at this different export inspection facility would be a more efficient use of APHIS resources, or for other reasons acceptable to the Administrator.

(e) The APHIS veterinarian will maintain an inspection record that includes the date and place of the pre-export inspection, species and number of animals inspected, the number of animals rejected, a description of those animals, and the reasons for rejection.

(f) If requested by the importing country or an exporter, the APHIS veterinarian who inspects the livestock will issue a certificate of inspection for livestock he or she finds to be sound, healthy, and fit to travel.

#### **§ 91.8 Rest, feed, and water at an export inspection facility associated with the port of embarkation prior to export.**

All livestock that are intended for export by air or sea and that will be inspected for export at an export inspection facility associated with the port of embarkation must be allowed a period of at least 2 hours rest at an export inspection facility prior to being loaded onto an ocean vessel or aircraft for export. Adequate food and water must be available to the livestock during the rest period. An inspector may extend the required rest period up to 5 hours, at his or her discretion and based on a determination that more rest is needed in order to have assurances that the animals are fit to travel prior to loading. Pre-export inspection of the animals must take place at the conclusion of this rest period.

#### **§ 91.9 Ports.**

(a) Except as provided in paragraph (b) of this section, livestock exported by

air or sea may be exported only through ports designated as ports of embarkation by the Administrator. Any port that has an export inspection facility that meets the requirements of § 91.10 permanently associated with it is designated as a port of embarkation. The Program Handbook contains a list of designated ports of embarkation. A list may also be obtained from a Veterinary Services area office. Information on area offices is available on APHIS' import-export Web site ([http://www.aphis.usda.gov/import\\_export/index.shtml](http://www.aphis.usda.gov/import_export/index.shtml)).

(b) The Administrator may approve other ports for the exportation of livestock on a temporary basis with the concurrence of the port director. The Administrator will grant such temporary approvals only for a specific shipment of livestock, and only if pre-export inspection of that shipment has occurred at an export isolation facility or an export inspection facility not associated with the port of embarkation, as provided in § 91.7.

(c) Temporarily approved ports of embarkation will not be added to the list of designated ports of embarkation and are only approved for the time period and shipment conditions specified by APHIS at the time of approval.

(Approved by the Office of Management and Budget under control number 0579-0432)

#### **§ 91.10 Export inspection facilities.**

(a) Export inspection facilities must be approved by the Administrator before they may be used for any livestock intended for export. The Administrator will approve an export inspection facility upon determining that it meets the requirements in paragraph (b) of this section. This approval remains in effect unless it is revoked in accordance with paragraph (c) of this section, or unless any of the following occur, in which case reapproval must be sought:

(1) The owner of the facility changes.

(2) Significant damage to the facility occurs or significant structural changes are made to the facility.

(b)(1) Export inspection facilities must be constructed, equipped, and managed in a manner that prevents transmission of disease to and from livestock in the facilities, provides for the safe and humane handling and restraint of livestock, and provides sufficient offices, space, and lighting for APHIS veterinarians to safely conduct required health inspections of livestock and related business. The Program Handbook contains guidance on ways to meet these requirements. Owners and operators may submit alternative plans for meeting the requirements to APHIS

for evaluation and approval; the address to which to submit such alternatives is contained in the Program Handbook. Alternatives must be at least as effective in meeting the requirements as the methods described in the Program Handbook in order to be approved. Alternatives must be approved by APHIS before being used for purposes of this section.

(2) For the purposes of approval or a subsequent audit, APHIS representatives must have access to all areas of the facility during the facility's business hours to evaluate compliance with the requirements of this section.

(3) The application for approval of an export inspection facility must be accompanied by a certification from the authorities having jurisdiction over environmental affairs in the locality of the facility. The certification must state that the facility complies with any applicable requirements of the State and local governments, and the U.S. Environmental Protection Agency regarding disposal of animal wastes.

(c) The Administrator will deny or revoke approval of an export inspection facility for failure to meet the requirements in paragraph (b) of this section.

(1) APHIS will conduct site inspections of approved export inspection facilities at least once a year for continued compliance with the standards. If a facility fails to pass the inspection, the Administrator may revoke its approval. If the Administrator revokes approval for a facility that serves a designated port of embarkation, the Administrator may also remove that port from the list of designated ports of embarkation.

(2) APHIS will provide written notice of any proposed denial or revocation to the operator of the facility, who will be given an opportunity to present his or her views on the issues before a final decision is made. The notice will list any deficiencies in detail. APHIS will provide notice of pending revocations at least 60 days before the revocation is scheduled to take effect, but may suspend facility operations before that date and before any consideration of objections by the facility operator if the Administrator determines the suspension is necessary to protect animal health or public health, interest, or safety. The operator of any facility whose approval is denied or revoked may request another inspection after remedying the deficiencies.

#### **§ 91.11 Export isolation.**

If an importing country requires export isolation for livestock, such isolation must occur before the animals

may be moved to a port of embarkation, and both the manner in which this isolation occurs and the facility at which it occurs must meet the requirements specified by the importing country.

#### **§ 91.12 Ocean vessels.**

(a) *Inspection of the ocean vessel*—(1) *Certification to carry livestock.* Ocean vessels must be certified by APHIS prior to initial use to transport any livestock from the United States. The owner or the operator of the ocean vessel must make arrangements prior to the vessel's arrival at a designated port of embarkation in the United States for an APHIS representative to inspect the vessel while it is at that port of embarkation. Alternatively, at the discretion of the Administrator and upon request of the exporter, transporting company, or their agent, the inspection may be done at a foreign port. If APHIS determines that the ocean vessel meets the requirements of paragraph (d) of this section, APHIS will certify the vessel to transport livestock from the United States. APHIS may certify a vessel that does not meet all of the requirements in paragraph (d), provided that an exemption from the requirements the vessel does not meet has been granted to the vessel pursuant to paragraph (e) of this section. The certification will specify the species of livestock for which the vessel is approved. The certification will be valid for up to 3 years; however, the ocean vessel must be recertified prior to transporting livestock any time significant changes are made to the vessel, including to livestock transport spaces or life support systems; any time a major life support system fails; any time species of livestock not covered by the existing certification are to be transported; and any time the owner or operator of the ocean vessel changes. The owner or operator of the vessel must present the following documentation to APHIS prior to its initial inspection for certification and when requested by APHIS prior to subsequent inspections for recertification:

(i) General information about the vessel, including year built, length and breadth, vessel name history, port of registry, call sign, maximum and average speed, fresh water tank capacity and fresh water generation rate, and feed silo capacity (if the vessel has a silo);

(ii) A notarized statement from an engineer concerning the rate of air exchange in each compartment of the vessel;

(iii) The species of livestock that the vessel would transport;

(iv) Scale drawings that provide details of the design, materials, and methods of construction and arrangement of fittings for the containment and movement of livestock; provisions for the storage and distribution of feed and water; drainage arrangements; primary and secondary sources of power; and lighting;

(v) A photograph of the rails and gates of any pens;

(vi) A description of the flooring surface on the livestock decks; and

(vii) The following measurements: Width of the ramps; the clear height from the ramps to the lowest overhead structures; the incline between the ramps and the horizontal plane; the distance between footlocks on the ramps; the height of side fencing on the ramps; the height of the vessel's side doors through which livestock are loaded; the width of alleyways running fore and aft between livestock pens; and the distance from the floor of the livestock pens to the beams or lowest structures overhead.

(2) *Prior to each voyage.* Prior to loading any livestock intended for export from the United States, an APHIS representative must inspect the vessel to confirm that the ocean vessel has been adequately cleaned and disinfected as required by paragraph (b) of this section, has sufficient food and water for the voyage as required by paragraph (c) of this section, and continues to meet the requirements of paragraph (d) of this section. APHIS will schedule the inspection after the owner or operator of the ocean vessel provides the following information:

(i) The name of the ocean vessel;

(ii) The port, date, and time the ocean vessel will be available for inspection, and estimated time that loading will begin;

(iii) A description of the livestock to be transported, including the type, number, and estimated average weight of the livestock;

(iv) Stability data for the ocean vessel with livestock on board;

(v) The port of discharge; and

(vi) The route and expected length of the voyage.

(3) The information in paragraphs (a)(2)(i) through (a)(2)(vi) must be provided at least 72 hours before the vessel will be available for inspection.

(b) *Cleaning and disinfection.* (1) Any ocean vessel intended for use in exporting livestock, and all fittings, utensils, containers, and equipment (unless new) used for loading, stowing, or other handling of livestock aboard the vessel must be thoroughly cleaned and

disinfected to the satisfaction of an APHIS representative prior to any livestock being loaded. The disinfectant must be approved by the Administrator. Guidance on cleaning and disinfecting ocean vessels may be found in the Program Handbook.

(2) The Administrator will approve a disinfectant for the purposes of this paragraph upon determining that the disinfectant is effective against pathogens that may be spread by the animals and, if the disinfectant is a chemical disinfectant, that it is registered or exempted for the specified use by the U.S. Environmental Protection Agency. The Program Handbook provides access to a list of disinfectants approved by the Administrator. Other disinfectants may also be approved by the Administrator in accordance with this paragraph. The Administrator will withdraw approval of a disinfectant, and remove it from the list of approved disinfectants in the Program Handbook, if the disinfectant no longer meets the conditions for approval in this section.

(3) All ocean vessels, upon docking at a U.S. port to load livestock, must have disinfectant foot baths at entryways where persons board and exit the ocean vessel, and require such baths before allowing any person to disembark.

(c) *Feed and water.* Sufficient feed and water must be provided to livestock aboard the ocean vessel, taking into consideration the livestock's species, body weight, the expected duration of the voyage, and the likelihood of adverse climatic conditions during transport. Guidance on this requirement may be found in the Program Handbook. Livestock aboard the vessel must be provided feed and water within 28 hours of the time they were last fed and watered within the United States.

(d) *Accommodations for the humane transport of livestock; general requirements.* Ocean vessels used to transport livestock intended for export must be designed, constructed, and managed to reasonably assure the livestock are protected from injury and remain healthy during loading and transport to the importing country. Except as provided below in paragraph (e) of this section, no livestock may be loaded onto an ocean vessel unless, in the opinion of an APHIS representative, the ocean vessel meets the requirements of this section. The Program Handbook contains guidance on ways to meet the requirements. Owners and operators may submit alternative means and methods for meeting the requirements to APHIS for evaluation and approval. Alternatives must be at least as effective in meeting the requirements as those

described in the Program Handbook in order to be approved. Alternatives must be approved by APHIS before being used for purposes of this section.

(1) *Pens.* All pens, including gates and portable rails used to close access ways, must be designed and constructed of material of sufficient strength to securely contain the livestock. They must be properly formed, closely fitted, and rigidly secured in place. They must have smooth finished surfaces free from sharp protrusions. They must not have worn, decayed, unsound, or otherwise defective parts. Flooring must be strong enough to support the livestock to be transported and provide a satisfactory non-slip foothold. Pens on exposed upper decks must protect the livestock from the weather. Pens next to engine or boiler rooms or similar sources of heat must be fitted to protect the livestock from injury due to transfer of heat to the livestock or livestock transport spaces. Any fittings or protrusions from the vessel's sides that abut pens must be covered to protect the livestock from injury. Pens must be of appropriate size for the species, size, weight, and condition of the livestock being transported and take into consideration the vessel's route. Animals that may be hostile to each other may not be housed in the same pen.

(2) *Positioning.* Livestock must be positioned during transport so that an animal handler or other responsible person can observe each animal regularly and clearly to ensure the livestock's safety and welfare.

(3) *Resources for sick or injured animals.* The vessel must have an adequate number of appropriately sized and located pens set aside to segregate livestock that become sick or injured from other animals. It must also have adequate veterinary medical supplies, including medicines, for the species, condition, and number of livestock transported.

(4) *Ramps, doors, and passageways.* Ramps, doors, and passageways used for livestock must be of sufficient width and height for their use and allow the safe passage of the species transported. They must have secure, smooth fittings free from sharp protrusions and non-slip flooring, and must not have worn, decayed, unsound, or otherwise defective parts. Ramps must not have an incline that is excessive for the species of livestock transported and must be fitted with foot battens to prevent slippage at intervals suitable for the species. The sides of ramps must be of sufficient height and strength to prevent escape of the species of livestock transported.

(5) *Feed and water.* The feeding and watering system must be designed to permit all livestock in each pen adequate access to feed and water. The system must also be designed to minimize soiling of pens and to prevent animal waste from contaminating feed and water. Similarly, feed must be loaded and stored aboard the vessel in a manner that protects it from weather and sea water and, if kept under animal transport spaces, protects it from spillage from animal watering and feeding and from animal waste. If the normal means of tending, feeding, and watering of livestock on board the ocean vessel is wholly or partially by automatic means, the vessel must have alternative arrangements for the satisfactory tending, feeding, and watering of the animals in the event of a malfunction of the automatic means.

(6) *Ventilation.* Ventilation during loading, unloading, and transport must provide fresh air and remove excessive heat, humidity, and noxious fumes (such as ammonia and carbon dioxide). Ventilation must be adequate for variations in climate and weather and to meet the needs of the livestock being transported. Ventilation must be effective both when the vessel is stationary and when it is moving and must be turned on when the first animal is loaded. The vessel must have on board a back-up ventilation system (including emergency power supply) in good working order or replacement parts and the means, including qualified personnel, to make the repairs or replacements.

(7) *Waste management.* The vessel must have a system or arrangements, including a backup system in working order or alternate arrangements, for managing waste to prevent excessive buildup in livestock transport spaces during the voyage.

(8) *Lighting.* The vessel must have adequate illumination to allow clear observation of livestock during loading, unloading, and transport.

(9) *Bedding.* Bedding must be loaded and stored aboard the vessel in a manner that protects it from weather and sea water and, if kept under animal transport spaces, protects it from spillage from animal watering and feeding and from animal waste.

(10) *Cleaning.* The vessel must be designed and constructed to allow thorough cleaning and disinfection and to prevent feces and urine from livestock on upper levels from soiling livestock or their feed or water on lower levels.

(11) *Halters and ropes.* Halters, ropes, or other equipment provided for the handling and tying of horses or other

livestock must be satisfactory to ensure the humane treatment of the livestock.

(12) *Personnel.* The owner or operator of the ocean vessel must have on board during loading, transport, and unloading at least 3 persons (or at least 1 person if fewer than 800 head of livestock will be transported) with previous experience with ocean vessels that have handled the kind(s) of livestock to be carried, as well as a sufficient number of personnel with the appropriate experience to be able to ensure proper care of the livestock. The APHIS representative assigned to inspect the ocean vessel prior to loading will determine whether the personnel aboard the vessel are sufficient and possess adequate experience, including, if necessary, veterinary experience, to ensure proper care of the livestock.

(13) *Vessel stability.* The vessel must have adequate stability, taking into consideration the weight and distribution of livestock and fodder, as well as effects of high winds and seas. If requested by APHIS, the owner or operator of the vessel must present stability calculations for the voyage that have been independently verified for accuracy.

(14) *Means of humane euthanasia.* Ocean vessels must maintain a means of humanely euthanizing sick or injured livestock aboard the vessel. One of the personnel aboard the vessel must be trained in humanely euthanizing livestock by using the means of euthanasia carried by the vessel.

(15) *Life support systems.* The ocean vessel must maintain replacement parts for major life support systems aboard the vessel, and the means, including qualified personnel, to make the repairs or replacements.

(16) *Additional conditions.* The vessel must meet any other condition the Administrator determines is necessary for approval, as dictated by specific circumstances and communicated to the owner and operator of the vessel, to protect the livestock and keep them healthy during loading, unloading, and transport to the importing country.

(e) *Accommodations for the humane transport of livestock; vessels using shipping containers.* An inspector may exempt an ocean vessel that uses shipping containers to transport livestock to an importing country from requirements in paragraph (d) of this section that he or she specifies, if the inspector determines that the containers themselves are designed, constructed, and managed in a manner to reasonably assure the livestock are protected from injury and remain healthy during loading, unloading, and transport to the importing country. During such

inspections, particular attention will be paid to the manner in which containers are constructed, the space the containers afford to livestock transported within them, the manner in which the vessel would provide feed and water to the animals in the containers, and the manner in which air and effluent are managed within the containers. The Program Handbook contains exemption guidance.

(f) *Operator's report.* (1) The owner or operator of any ocean vessel used to export livestock (including vessels that use shipping containers) from the United States must submit a written report to APHIS within 5 business days after completing a voyage. The report must include the name of the ocean vessel; the name and address of all exporters of livestock transported on the vessel; the port of embarkation; dates of the voyage; the port where the livestock were discharged; the number of each species of livestock loaded; the number of each species that died and an explanation for those mortalities; and the number of animals that sustained injuries or sustained illnesses that were significant enough to require medical attention from the personnel entrusted with the care of the animals, as well as the nature of these injuries or illnesses. The report must also document any failure of any major life support system for the livestock, including, but not limited to, systems for providing feed and water, ventilation systems, and livestock waste management systems. Any such failure must be documented, regardless of the duration or whether the failure resulted in any harm to the livestock. The report must include the name, telephone number, and email address of the person who prepared the report and the date of the report. The report must be submitted to APHIS by facsimile or email. Contact numbers and addresses, as well as an optional template for the report, are provided in the Program Handbook.

(2) If an ocean vessel used to export livestock experiences any failure of a major life support system for livestock during the voyage, the owner or operator of the ocean vessel must notify APHIS immediately by telephone, facsimile, or other electronic means. Contact numbers and addresses are provided in the Program Handbook.

(3) Failure to provide timely reports as required by this section may result in APHIS disapproving future livestock shipments by the responsible owner or operator or revoking the vessel's certification under paragraph (a) of this section to carry livestock.

(Approved by the Office of Management and Budget under control number 0579-0432)

#### § 91.13 Aircraft.

(a) Prior to loading livestock aboard aircraft, the stowage area of the aircraft and any loading ramps, fittings, and equipment to be used in loading the animals must be cleaned and then disinfected with a disinfectant approved by the Administrator, to the satisfaction of an APHIS representative, unless the representative determines that the aircraft has already been cleaned and disinfected to his or her satisfaction.

(1) The Administrator will approve a disinfectant for purposes of this section upon determining that the disinfectant is effective against pathogens that may be spread by the animals and, if the disinfectant is a chemical disinfectant, that it is registered or exempted for the specified use by the U.S. Environmental Protection Agency.

(2) The Program Handbook provides access to a list of disinfectants approved by the Administrator for use as required by this section. Other disinfectants may also be approved by the Administrator in accordance with paragraph (a)(1) of this section.

(3) The Administrator will withdraw approval of a disinfectant, and remove it from the list of approved disinfectants in the Program Handbook, if the disinfectant no longer meets the conditions for approval in this section.

(b) The time at which the cleaning and disinfection are to be performed must be approved by the APHIS representative, who will give approval only if he or she determines that the cleaning and disinfection will be effective up to the projected time the livestock will be loaded. If the livestock are not loaded by the projected time, the APHIS representative will determine whether further cleaning and disinfection are necessary.

(c) The cleaning must remove all garbage, soil, manure, plant materials, insects, paper, and other debris from the stowage area. The disinfectant solution must be applied with a device that creates an aerosol or mist that covers 100 percent of the surfaces in the stowage area, except for any loaded cargo and deck surface under it that, in the opinion of the APHIS representative, do not contain material, such as garbage, soil, manure, plant materials, insects, waste paper, or debris, that may harbor animal disease pathogens.

(d) After cleaning and disinfection is performed, the APHIS representative will sign and deliver to the captain of the aircraft or other responsible official of the airline involved a document

stating that the aircraft has been properly cleaned and disinfected, and stating further the date, the carrier, the flight number, and the name of the airport and the city and state in which it is located. If an aircraft is cleaned and disinfected at one airport, then flies to a subsequent airport, with or without stops en route, to load animals for export, an APHIS representative at the subsequent airport will determine, based on examination of the cleaning and disinfection documents, whether the previous cleaning and disinfection is adequate or whether to order a new cleaning and disinfection. If the aircraft has loaded any cargo in addition to animals, the APHIS representative at the subsequent airport will determine whether to order a new cleaning and disinfection, based on both examination of the cleaning and disinfection documents and on the inspection of the stowage area for materials, such as garbage, soil, manure, plant materials, insects, waste paper, or debris, that may harbor animal disease pathogens.

(e) Cargo containers used to ship livestock must be designed and constructed of a material of sufficient strength to securely contain the animals and must provide sufficient space for the species being transported given the duration of the trip, as determined by APHIS.

#### **§ 91.14 Other movements and conditions.**

The Administrator may, upon request in specific cases, permit the exportation of livestock not otherwise provided for in this part under such conditions as he or she may prescribe in each specific case to prevent the spread of livestock diseases and to ensure the humane treatment of the animals during transport to the importing country.

Done in Washington, DC, this 13th day of January 2016.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2016-00962 Filed 1-19-16; 8:45 am]

BILLING CODE 3410-34-P

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

[Docket No. FAA-2015-1834; Airspace Docket No. 15-AGL-8]

#### **Revocation and Establishment of Class E Airspace; Bowman, ND**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace extending upward from 700 feet above the surface at Bowman Regional Airport, Bowman, ND, to accommodate new standard instrument approach procedures for the safety and management of Instrument Flight Rules (IFR) operations at the airport. Class E airspace extending upward from 700 feet above the surface would be removed at Bowman Municipal Airport, Bowman, ND, due to closure of the air traffic control tower. The FAA found it necessary to establish airspace at Bowman Regional Airport to accommodate standard instrument approach procedures (SIAPs) at the airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the Bowman Regional Airport.

**DATES:** Effective 0901 UTC, March 31, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at [http://www.faa.gov/air\\_traffic/publications](http://www.faa.gov/air_traffic/publications). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202-267-8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

#### **FOR FURTHER INFORMATION CONTACT:**

Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817-222-5857.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Bowman Regional Airport, Bowman, ND and removes Class E airspace at Bowman Municipal Airport, Bowman, ND.

#### **History**

On September 15, 2015, The FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Bowman Regional Airport, Bowman, ND (80 FR 55275) and remove Class E airspace extending upward from 700 feet above the surface at Bowman Municipal Airport, Bowman, ND (80 FR 55275, September 15, 2015). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### **Availability and Summary of Documents for Incorporation by Reference**

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this final document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### **The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 6-mile radius, at Bowman Regional Airport, Bowman, ND. New standard instrument approach procedures were developed for the safety of IFR operations at the airport. Additionally, this action removes Class E airspace extending upward from 700 feet above the surface at Bowman