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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 94-061-2]

Equine Infectious Anemia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the interstate movement of horses that test positive for equine infectious anemia to allow the horses to be moved interstate directly to slaughter under a permit and in a sealed conveyance, as an alternative to the horses being officially identified prior to the interstate movement with a hot iron or chemical brand, freezemarking, or a lip tattoo. This change in the regulations will provide owners of equine infectious anemia reactors with an alternative means of handling their animals while preventing the spread of this communicable disease.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Tim Cordes, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Sheep, Goat, Equine and Poultry Staff, 4700 River Road Unit 43, Riverdale, MD 20737-1228, (301) 734-3279.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 75 (referred to below as the regulations) contain provisions for the interstate movement of horses, asses, ponies, mules, and zebras that test positive for communicable diseases, including equine infectious anemia (EIA). The purpose of those provisions is to prevent the spread of communicable

diseases, including EIA. EIA, also known as swamp fever, is a viral disease of equines that may be characterized by sudden fever, swelling of the legs and lower parts of the body, severe weight loss, and anemia.

Section 75.4(a) of the regulations defines an EIA reactor as any horse, ass, mule, pony, or zebra that is subjected to an official test and found positive. Under § 75.4(b) of the regulations, no EIA reactor may be moved interstate unless the reactor is officially identified and meets certain other requirements. Section 75.4(a) of the regulations defines "officially identified" as the permanent identification of a reactor with markings permanently applied by an Animal and Plant Health Inspection Service (APHIS) representative, a State representative, or an accredited veterinarian using a hot iron or chemical brand, freezemarking, or a lip tattoo.

On October 6, 1994, we published in the **Federal Register** (59 FR 50860-50861, Docket No. 94-061-1) a proposal to amend the requirements for interstate movement in § 75.4(b) by adding a provision stating that "Official identification is not necessary if the animal is moved directly to slaughter, traveling under a permit and in a sealed conveyance." We also proposed to add definitions of "official seal" and "permit" to § 75.4(a).

We solicited comments concerning our proposal for 60 days ending December 5, 1994. We received six comments by that date. They were from State agriculture agencies, animal rights organizations, and a horse industry association. Three of the commenters supported the proposed rule, although two of those commenters suggested additional provisions be included in the regulations. The remaining three commenters opposed the proposed rule. We carefully considered all of the comments we received. They are discussed below.

Comment: Horse owners may be unwilling to part with their animals for sentimental or economic reasons. If EIA reactors are not permanently identified, some horse owners may attempt to substitute a different horse for an EIA reactor prior to the reactor's movement to slaughter in a sealed conveyance.

Response: We do not believe that the substitution scenario envisioned by the commenter will present a problem.

First, we believe that it is unlikely that a horse owner would attempt to substitute a healthy horse for a horse infected with a debilitating disease such as EIA. Second, when a horse is identified as an EIA reactor, that horse is tested for EIA at least two more times, once by State animal health authorities and once by APHIS. The APHIS and State representatives who deal with the retests will likely be the same APHIS and State representatives who are present at the time the reactor is sealed aboard the conveyance on which it will be transported to slaughter, and they would be able to recognize a horse that they had recently handled.

Additionally, the horse would be identified, in writing, for the purposes of the tests and again when the required forms for its interstate movement were completed. Given those factors, it is unlikely that a horse owner could effect a substitution even if he or she desired to do so. Finally, a reactor does not necessarily have to be moved interstate to slaughter; a horse owner would have other options. The regulations in § 75.4(b) allow, under certain conditions, a reactor to be moved interstate to its farm of origin or to a diagnostic or research facility, where the reactor would remain quarantined under State authority until natural death, slaughter, or until disposed of by euthanasia.

Comment: APHIS should consider regulations to prohibit needlessly cruel identification procedures such as hot-iron and chemical branding for those EIA reactors that are not moved directly to slaughter in a sealed conveyance. In that vein, APHIS should research and encourage the use of microchip technology and its global standardization.

Response: Under the current regulations, the owner of a reactor is not required to use either of the identification methods that the commenter views as being needlessly cruel. Freezemarking and lip tattoos are approved for use in addition to hot-iron and chemical branding, and this final rule makes available a method by which the owner of a reactor could move the animal interstate without permanently identifying the animal.

With regard to microchips, we acknowledge that useful information can be readily stored on and retrieved from microchips but, as alluded to by

the commenter, there is no universal chip reader that can access the information stored on chips produced by different manufacturers. That lack of standardization currently prevents our use of microchips in nationwide disease control programs. APHIS will, however, continue to research the potential uses of microchips in its disease control programs.

Comment: The proposed rule does not specify who is authorized to open a sealed conveyance. Because there are only nine equine processing plants in the United States, EIA reactors may have to travel several hundred miles to slaughter. How will the feeding, watering, and resting of EIA reactors being transported to slaughter over long distances be accomplished if the operator of the conveyance is not authorized to break the seal? Will an authorized person be available to open and reseal the conveyance and ensure that all EIA reactors are returned to the conveyance after a stop?

Response: As we stated in the proposed rule, moving EIA reactors interstate to slaughter under a permit and in a sealed conveyance would ensure that the animals are not diverted for other uses. Because the seal is intended to provide evidence that the reactors have not been removed from the conveyance during the course of the interstate movement to the destination slaughtering establishment, it is necessary that the seal remain unbroken until the conveyance arrives at the destination slaughtering establishment, where an APHIS or State representative would remove the seal. The provisions of this final rule are presented as an alternative to officially identifying reactors prior to an interstate movement; we understand that this alternative may not be viable in all situations. If the interstate movement to the destination slaughtering establishment cannot be completed without a stop for resting, feeding, and watering a reactor, the owner of the reactor would still be able to move the reactor interstate to slaughter. Specifically, the owner of the reactor could choose to have the animal officially identified and, under the regulations in § 75.4(b)(4), would be able to move the reactor interstate through no more than one approved stockyard for sale for immediate slaughter if the reactor is accompanied by a certificate during the interstate movement and is moved within 5 days of its arrival at the approved stockyard directly to slaughter.

Comment: Without permanent identification, how will the identity of EIA reactors be maintained in the event that the conveyance in which they are

being moved has a mechanical breakdown or is involved in an accident?

Response: The operator of the conveyance in which the reactors are being transported will have been furnished with the telephone numbers of APHIS representatives in the States of origin and destination prior to his or her departure from the State of origin. If, for any reason, the operator is unable to reach the slaughtering establishment in the State of destination as planned, the operator will be able to contact an APHIS representative, who will make the necessary arrangements for APHIS or State personnel to travel to the location of the conveyance and take whatever actions may be necessary to ensure that the reactors are maintained in isolation sufficient to prevent the transmission of EIA to other animals until such time as the movement to the slaughtering establishment can be completed.

Comment: When the nearest equine processing plant is several hundred miles away, it is not cost effective to transport a single EIA reactor to slaughter and it may take several weeks to gather enough animals to make the journey economically practical. If an EIA reactor is not officially identified as such, there is an increased chance that the animal could be diverted while waiting to be transported to slaughter.

Response: At the time an animal is confirmed as an EIA reactor, the APHIS representative handling the case will make arrangements for the animal to be officially identified or moved directly to slaughter under permit in a sealed conveyance, depending on the owner's preference. As envisioned by the commenter, the owner of a reactor may believe that it is not in his or her best economic interests to move the reactor interstate directly to slaughter under a permit and in a sealed conveyance. In such a case, the owner of the reactor would choose to have the animal officially identified and, under the regulations in § 75.4(b)(4), could then move the reactor interstate through no more than one approved stockyard for sale for immediate slaughter if the reactor is accompanied by a certificate during the interstate movement and is moved within 5 days of its arrival at the approved stockyard directly to slaughter.

Comment: Without official identification, some reactors may be diverted from slaughter. If APHIS' proposal to allow EIA reactors to be moved interstate to slaughter in a sealed conveyance without official identification is motivated by its concern that branding causes undue

distress to horses, then freezemarking, which does not cause evident distress in horses, should be required for reactors being moved interstate to slaughter in a sealed conveyance. Although a freeze brand would not be immediately visible, the mark would become visible within 2 to 3 weeks, thus allowing for the identification of any EIA reactors that may have been diverted from slaughter while being moved in a sealed conveyance.

Response: The provisions of this final rule are intended as an alternative to official identification. In practical terms, if we were to require freezemarking in addition to the permit and seal requirements, there would be no real alternative at all. Indeed, the seal requirement would become an additional condition not found in the other provisions of § 75.4(b) regarding interstate movement to slaughter. As stated above and in the proposed rule, we believe that moving EIA reactors interstate to slaughter under a permit and in a sealed conveyance will ensure that the animals are not diverted for other uses.

Comment: Because of the incidence and nature of EIA, it is better to expend the time and expense involved in permanently identifying an EIA reactor than to risk its being diverted during movement and exposing other horses to the disease.

Response: We took into account factors such as the incidence and nature of EIA, as well as other considerations, during the development of the proposed rule. After considering those issues, we concluded that EIA reactors could be moved interstate to slaughter without official identification if they were moved under a permit and in a sealed conveyance. We believed, and continue to believe, that the permit and seal requirements will ensure that the animals will not be diverted for other uses or pose a greater risk of spreading EIA than reactors moved under the other interstate movement provisions of § 75.4(b).

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

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

Because this rule provides an alternative, the economic impact to

horse owners will be minimal. The horse owners that will be affected by this rule change are those that have horses that test positive for EIA and voluntarily choose to transport their horses interstate to slaughter under an official seal. APHIS estimates that, annually, between 500 and 1,000 horse operations have horses that become infected with EIA. Although it is not known how many of these operations are "small" entities (less than \$0.5 million in annual sales, according to Small Business Administration size criteria), it is likely that most are in that category.

Current estimates put the number of horses in the United States between 6 and 10 million. In 1993, about 1 million horses were tested for EIA. Of these, 1,859 (about 0.18 percent) tested positive for EIA.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0051.

List of Subjects in 9 CFR Part 75

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

Accordingly, 9 CFR part 75 is amended as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, and 134-134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.4, paragraph (a) is amended by adding two new definitions, in alphabetical order, and in paragraph (b), the introductory text is amended by adding a statement immediately following the colon, to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

(a) * * *

Official seal. A serially numbered metal or plastic strip, or a serially numbered button, consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened. It is applied by an APHIS representative or State representative.

* * * * *

Permit. An official document (VS Form 1-27 or a State form which contains the same information, but not a "permit for entry") issued by an APHIS representative, State representative, or accredited veterinarian which lists the owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, and one of the following: The individual animal registered breed association registration tattoo, individual animal registered breed association registration number, or similar individual identification, including name, age, sex, breed, color, and markings.

* * * * *

(b) * * * *Provided that* official identification is not necessary if the reactor is moved directly to slaughter under a permit and in a conveyance sealed with an official seal:

* * * * *

Done in Washington, DC, this 14th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-6762 Filed 3-17-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-SW-22-AD; Amendment 39-9177; AD 95-06-07]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (RHC) Model R22 helicopters, that currently requires an initial dye penetrant inspection of the main rotor drive forward flexplate (flexplate), and repetitive visual inspections of certain installed flexplates. This amendment is prompted by three accidents reported by the airworthiness authority of Australia involving failure of the flexplate, located between the main rotor gearbox and clutch assembly. The actions specified by this AD are intended to prevent failure of the flexplate, failure of the main rotor drive system, and subsequent loss of control of the helicopter.

DATES: Effective April 4, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-SW-22-AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137-4298.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, Propulsion Branch, FAA, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627-5265, fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: On May 18, 1994, the FAA issued Priority Letter AD 94-11-01, applicable to RHC Model R22 helicopters, to require an initial dye penetrant inspection of the flexplate on all RHC Model R22 helicopters, and repetitive visual inspections of flexplates that have been in service for 2 or more years or 500 or more hours time-in-service (TIS). That action was prompted by three accidents reported by the airworthiness authority of Australia involving failure of the flexplate. In one accident, the flexplate fractured during