

APHIS or State representative. Cleaning and disinfecting must be completed within 15 days from the date the animals were removed from the premises, except that the Veterinarian in Charge may extend the time limit for disinfection to 30 days when he or she receives a request prior the expiration date of the original 15 days, and when the Veterinarian in Charge determines that an extension will not adversely affect the Brucellosis Eradication Program. The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder disinfection of the premises, conveyances, and materials within 30 days, such as, but not limited to floods, storms, or other Acts of God, which are beyond the control of the owner. A premises may be exempted from such cleaning and disinfecting requirements if the APHIS or State representative recommends it in writing and the Veterinarian in Charge approves.

(Approved by the Office of Management and Budget under control number 0579-0185)

#### § 51.32 Claims not allowed.

Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis will not be allowed if any of the following circumstances exist:

- (a) The claimant has failed to comply with any of the requirements of this part;
- (b) The claim is based on a brucellosis test, and the person who administered the test was not properly trained, authorized, or certified at the time of the test;
- (c) Testing of goats, sheep, and horses in the herd or flock for brucellosis was not done under APHIS or State supervision, or by an accredited veterinarian;
- (d) There is substantial evidence that the claim is an unlawful or improper attempt to obtain indemnity; or
- (e) If, at the time of test or condemnation, the animals belonged to or were upon the premises of any person to whom they had been sold for slaughter, shipped for slaughter, or delivered for slaughter.

#### § 51.33 Multiple indemnity payments.

APHIS has indemnity programs for several other livestock diseases. However, if a claim is paid for indemnity for animals destroyed because of brucellosis, no other claims for indemnity will be paid for the same animals.

### PART 52—SWINE DESTROYED BECAUSE OF PSEUDORABIES

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- 52.6 Claims not allowed.
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AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 64 FR 2549, Jan. 15, 1999, unless otherwise noted.

#### § 52.1 Definitions.

*Accredited veterinarian.* A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*APHIS employee.* Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

*Approved differential pseudorabies test.* Any test for the diagnosis of pseudorabies that can distinguish vaccinated swine from infected swine; is produced under license from the Secretary of Agriculture under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 *et seq.*) with indications for use in the Cooperative State-Federal

Pseudorabies Eradication Program; and is conducted in a laboratory approved by the Administrator.<sup>1</sup>

*Department.* The United States Department of Agriculture.

*Herd.* Any group of swine maintained on common ground for any purpose, or two or more groups of swine under common ownership or supervision that are geographically separated but that are determined by an official pseudorabies epidemiologist to have an interchange or movement of animals that could cause the transmission of pseudorabies from one group to another.

*Inspector in charge.* An APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of disease.

*Known infected breeding sow.* Any breeding sow that has been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or as diagnosed by an official pseudorabies epidemiologist as having pseudorabies.

*Known infected herd.* Any herd in which swine have been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test,

or based on a diagnosis by an official pseudorabies epidemiologist.

*Materials.* Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures.

*Mortgage.* Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

*Net salvage.* The amount received for swine destroyed because of pseudorabies, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

*Official pseudorabies epidemiologist.* A State or Federally employed veterinarian designated by the State animal health official and the veterinarian in charge to investigate and diagnose pseudorabies in livestock.

*Official pseudorabies test.* Any test for the diagnosis of pseudorabies approved by the Administrator and conducted in a laboratory approved by the Administrator. The following tests for the diagnosis of pseudorabies have been approved by the Administrator: Microtitration Serum-Virus Neutralization Test; Virus Isolation and Identification Test; Fluorescent Antibody Tissue Section Test; Enzyme-Linked Immunosorbent Assay (ELISA) Test, except for approved differential pseudorabies tests other than the glycoprotein I (gPI) ELISA test; Latex Agglutination Test (LAT); and Particle Concentration Fluorescence Immunoassay (PCFIA) Test.<sup>2</sup> State, Federal, and university laboratories will be approved by the Administrator following his determination that the laboratory: has personnel trained at the Veterinary Services Diagnostic Laboratory at Ames, Iowa, assigned to supervise the test; follows standard test protocol; meets check test proficiency requirements; and will report

<sup>1</sup>The names and addresses of laboratories approved by the Administrator to conduct approved differential pseudorabies tests are published in the Notices Section of the FEDERAL REGISTER. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737–1231. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: employs personnel trained at the National Veterinary Services Laboratories assigned to supervise the testing; follows standard test protocols; meets check test proficiency requirements; and will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory, and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

<sup>2</sup>Copies of the test protocols (Recommended Minimum Standards for Diagnostic Tests Employed in the Diagnosis of Pseudorabies (Aujeszky's Disease) are available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, Operational Support, 4700 River Road Unit 33, Riverdale, MD 20737–1231.

all test results to State and Federal animal health officials.<sup>3</sup>

*Official seal.* A serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

*Permit.* An official document for movement of swine under this part that is issued by an APHIS employee, State representative, or accredited veterinarian and that lists the disease status and individual identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification by a recognized slaughtering establishment.

*Person.* Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

*Pseudorabies.* The contagious, infectious, and communicable disease of livestock and other animals, also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

*Recognized slaughtering establishment.* A slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act.<sup>4</sup>

*Secretary.* The Secretary of Agriculture of the United States, or any officer or employee of the Department delegated to act in the Secretary's stead.

*State.* Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

<sup>3</sup>Before the Administrator withdraws the approval of any laboratory, the Director of the laboratory will be given a notice by the Administrator of the proposed disapproval and the reasons for it, and the Director will have the opportunity to respond. In those instances where there are conflicts as to the facts, a hearing will be held to resolve such conflicts.

<sup>4</sup>A list of recognized slaughtering establishments is available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737-1231.

*State representative.* A person regularly employed in the animal health work of a State and who is authorized by that State to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

*Veterinarian in charge.* The veterinary official of Veterinary Services, APHIS, who is assigned by the Administrator to supervise and perform official animal health work for APHIS in the State concerned.

[64 FR 2549, Jan. 15, 1999, as amended at 65 FR 20711, Apr. 18, 2000; 68 FR 6342, Feb. 7, 2003]

## § 52.2 Payment of indemnity.

(a) Except as provided in paragraph (b) of this section, the Administrator is authorized to agree on the part of the Department to pay indemnity to the owner of herds of swine destroyed because the herds are known to be infected with pseudorabies, or individual breeding sows destroyed because they are known to be infected with pseudorabies. The amount of indemnity paid, together with the amount for net salvage the owner receives when the animals are slaughtered, shall not exceed the fair market value of the swine. Such swine must be sent directly to slaughter under permit in a conveyance closed with an official seal applied and removed by either an APHIS employee, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS employee. The swine must be sent to a recognized slaughtering establishment.

(b) If swine from herds that are destroyed because the herds are known to be infected with pseudorabies are not accepted at a recognized slaughtering establishment, or the owner and an APHIS employee or State representative agree they will not be accepted by a recognized slaughtering establishment, the Administrator is authorized to pay 100 percent of the expenses of the purchase, destruction, and disposition of such swine.

(Approved by the Office of Management and Budget under control number 0579-0151)

[65 FR 20711, Apr. 18, 2000]

### **§ 52.3**

#### **§ 52.3 Appraisal of swine.**

(a) Herds of swine and individual breeding sows to be destroyed because they are known to be infected with pseudorabies will be appraised by an APHIS employee and a representative of the State jointly, a representative of the State alone, or, if the State authorities approve, by an APHIS employee alone.

(b) The appraisal of swine will be based on the fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

(c) Appraisals of swine must be reported on forms furnished by APHIS and signed by the owner of the swine. Reports of appraisals must show the number of swine and the value per head or the weight and value by pound.

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[64 FR 2549, Jan. 15, 1999, as amended at 65 FR 20711, Apr. 18, 2000]

#### **§ 52.4 Presentation of claims.**

(a) When swine have been destroyed under § 52.2(a), any claim for indemnity must be presented, along with the report of net salvage proceeds required under § 52.5, to the veterinarian in charge on a form furnished by APHIS.

(b) When swine have been destroyed under § 52.2(b), any claim for indemnity must be presented, through the inspector in charge, to APHIS on a form furnished by APHIS.

(c) For all claims for indemnity, the owner of the swine must certify on the claim form that the swine covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the swine must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579-0137)

[65 FR 20711, Apr. 18, 2000]

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#### **§ 52.5 Report of net salvage proceeds.**

A report of the amount for net salvage derived from the sale of each animal for which a claim for indemnity is made under § 52.2(a) must be made on a salvage form that shows the gross receipts, expenses if any, and net proceeds. The original or a copy of the salvage form must be furnished by the owner to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579-0151)

[65 FR 20712, Apr. 18, 2000]

#### **§ 52.6 Claims not allowed.**

(a) The Department will not allow claims arising out of the destruction of swine unless the swine have been appraised as prescribed in this part and the owners have signed a written agreement to the appraisals.

(b) The Department will not allow claims arising out of the destruction of swine that have been moved or handled by the owner or a representative of the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

(Approved by the Office of Management and Budget under control number 0579-0137)

[64 FR 2549, Jan. 15, 1999. Redesignated at 65 FR 20711, Apr. 18, 2000]

#### **§ 52.7 Disinfection of premises, conveyances, and materials.**

All premises, including barns, stockyards and pens, and all cars and other conveyances, and the materials on any premises or conveyances used to house or transport swine for which indemnity is paid under this part must be cleaned and disinfected under the supervision of an APHIS employee after removal of the swine from the known infected herd. Premises may be restocked with swine 30 days following an approved cleaning and disinfection, unless an official pseudorabies epidemiologist determines that a shorter or longer period of time is adequate or necessary to protect new animals against infection. The owner to whom the indemnity is paid will be responsible for expenses incurred in connection with the cleaning

and disinfection, except for cleaning and disinfection of the conveyances used to transport the swine to the location of disposal.

[64 FR 13065, Mar. 17, 1999. Redesignated at 65 FR 20711, Apr. 18, 2000]

## **PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY**

### **Sec.**

- 53.1 Definitions.
- 53.2 Determination of existence of disease; agreements with States.
- 53.3 Appraisal of animals, eggs, or materials.
- 53.4 Destruction of animals or eggs.
- 53.5 Disinfection or destruction of materials.
- 53.6 Disinfection of animals.
- 53.7 Disinfection of premises, conveyances, and materials.
- 53.8 Presentation of claims.
- 53.9 Mortgage against animals, eggs, or materials.
- 53.10 Claims not allowed.
- 53.11 Highly pathogenic avian influenza; conditions for payment.

**AUTHORITY:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

**CROSS REFERENCE:** For non-applicability of part 53 with respect to certain claims for indemnity, see § 51.10 of this chapter.

### **§ 53.1 Definitions.**

**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 of this chapter 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 and Plant Health Inspection Service.** The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

**Animals.** Livestock, poultry, and all other members of the animal kingdom, including birds whether domesticated or wild, but not including man.

**APHIS employee.** Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

**Bird.** Any member of the class *aves* other than poultry.

**Buffer zone.** The zone within a control area that immediately surrounds an infected zone.

**Control area.** The area around a premises infected with highly pathogenic avian influenza and consisting of an infected zone and a buffer zone, the bounds of which are determined and communicated to producers by Federal or State officials.

**Department.** The United States Department of Agriculture.

**Disease.** Foot-and-mouth disease, contagious pleuropneumonia, Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia, spring viremia of carp, or any other communicable disease of livestock or poultry that in the opinion of the Secretary constitutes an emergency and threatens the livestock or poultry of the United States.

**Infected zone.** The zone within a control area that immediately surrounds a premises infected with highly pathogenic avian influenza, up to the beginning of the buffer zone.

**Highly pathogenic avian influenza.** (1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 ml of a 1:10 dilution of a bacteria-free, infectious allantoic fluid;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the hemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five chickens and grows in cell culture in the absence of trypsin.

**Inspector in charge.** An APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of disease.

**ISA Program veterinarian.** The APHIS veterinarian assigned to manage the