§ 25.11 Work elements in financial assistance agreements.

(a) This section is applicable to activities under § 25.2(a)(5) except as otherwise provided in Parts 30 or 35.

(b) Each applicant for EPA financial assistance shall set forth in the application a public participation work plan or work element which reflects how public participation will be provided for, encouraged, and assisted in accordance with this part. This work plan or element shall cover the project period. At a minimum, the work plan or element shall include:

(1) Staff contacts and budget resources to be devoted to public participation by category;

(2) A proposed schedule for public participation activities to impact major decisions, including consultation points where responsiveness summaries will be prepared;

(3) An identification of consultation and information mechanisms to be used;

(4) The segments of the public targeted for involvement.

(c) All reasonable costs of public participation incurred by assisted agencies which are identified in an approved public participation work plan or element, or which are otherwise approved by EPA, shall be eligible for financial assistance.

(d) The work plan or element may be revised as necessary throughout the project period with approval of the Regional Administrator.

§ 25.12 Assuring compliance with public participation requirements.

(a) *Financial assistance programs.* (1) *Applications.* EPA shall review the public participation work plan (or, if no work plan is required by this chapter for the particular financial assistance agreement, the public participation element) included in the application to determine consistency with all policies and requirements of this part. No financial assistance shall be awarded unless EPA is satisfied that the public participation policies and requirements of this part and, any applicable public participation requirements found elsewhere in this chapter, will be met.

(2) *Compliance.* (i) *Evaluation.* EPA shall evaluate compliance with public participation requirements using the work plan, responsiveness summary, and other available information. EPA will judge the adequacy of the public participation effort in relation to the objectives and requirements of § 25.3 and § 25.4 and other applicable requirements. In conducting this evaluation, EPA may request additional information from the assisted agency, including records of hearings and meetings, and may invite public comment on the agency's performance. The evaluation will be undertaken as part of any mid-project review required in various programs under this chapter; where no such review is required the review shall be conducted at an approximate mid-point in continuing EPA oversight activity. EPA may, however, undertake such evaluation at any point in the project period, and will do so whenever it believes that an assisted agency may have failed to meet public participation requirements.

(ii) *Remedial actions.* Whenever EPA determines that an assisted agency has not fully met public participation requirements, EPA shall take actions which it deems appropriate to mitigate the adverse effects of the failure and assure that the failure is not repeated. For ongoing projects, that action shall include, at a minimum, imposing more stringent requirements on the assisted agency for the next budget period or other period of the project (including such actions as more specific output requirements and milestone schedules for output achievement; interim EPA review of public participation activities and materials prepared by the agency, and phased release of funds based on compliance with milestone schedules.) EPA may terminate or suspend part or all financial assistance for non-compliance with public participation requirements, and may take any further actions that it determines to be appropriate in accordance with Parts 30 and 35 of this chapter (see, in particular, §§ 30.340, Noncompliance and 30.615-3, Withholding of Payments, and Subpart H of Part 30, Modification, Suspension, and Termination).

(b) *State programs approved in lieu of Federal programs.* State compliance with applicable public participation requirements in programs specified in sections 25.2(a) (6) and (7) and administered by approved States shall be monitored by EPA during the annual review of the State's program, and during any financial or program audit or review of these programs. EPA may withdraw an approved program from a State for failure to comply with applicable public participation requirements.

(c) *Other covered programs.* Assuring compliance with these public participation requirements for programs not covered by paragraphs (a) and (b) of this section is the responsibility of the Administrator of EPA. Citizens with information concerning alleged failures to comply with the public participation requirements should notify the Administrator. The Administrator will assure that instances of alleged noncompliance are promptly investigated and that corrective action is taken where necessary.

§ 25.13 Coordination and non-duplication.

The public participation activities and materials that are required under this part should be coordinated or combined with those of closely related programs or activities wherever this will enhance the economy, the effectiveness, or the timeliness of the effort; enhance the clarity of the issue; and not be detrimental to participation by the widest possible public. Hearings and meetings on the same matter may be held jointly by more than one agency where this does not conflict with the policy of this paragraph. Special efforts shall be made to coordinate public participation procedures under this part and applicable regulations elsewhere in this chapter with environmental assessment and analysis procedures under 40 CFR Part 6. EPA encourages interstate agencies in particular to develop combined proceedings for the States concerned.

§ 25.14 Termination of reporting requirements.

All reporting requirements specifically established by this part will terminate on (5 years from date of publication) unless EPA acts to extend the requirements beyond that date.

PART 105 [REVOKED]

PART 249 [REVOKED]

2. 40 CFR is amended by deleting Parts 105 and 249.

[FR Doc. 79-5017 Filed 2-15-79; 8:45 am]

FRIDAY, FEBRUARY 16, 1979

PART VI

ENVIRONMENTAL PROTECTION AGENCY

■

STATE AND LOCAL ASSISTANCE

Grants for Construction of Treatment Works

Federal Register

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1041-1A]

PART 35—STATE AND LOCAL ASSISTANCE

Subpart E—Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency

ACTION: Rule

SUMMARY: These regulations are intended to encourage, provide for, and assist public participation in the Municipal Wastewater Treatment Works Construction Grants Program carried out under the Clean Water Act. The regulations specify that public participation in that program applies to development of the State priority system and annual list of projects designated for Federal funding, to development of plans for wastewater treatment facilities, to development of user charge and industrial cost recovery systems, and to the delegation of administrative responsibilities for the Construction Grants Program to the States. The regulations establish a two-tier program of participation in the facility planning process. This allows EPA, States, and grantees to focus their resources and energies, and those of participating citizens, on the minority of projects which have the greatest financial environmental impacts and which will benefit most from active community involvement. The regulations contain fewer public participation requirements for the large majority of projects expected to be less-costly or to have less significant impacts. The regulations permit the exemption of projects which involve only minor upgrading of treatment works or minor sewer rehabilitation from many of the public participation requirements of these regulations.

DATES: These regulations are effective on February 16, 1979.

ADDRESSES: Comments submitted on these regulations may be inspected at the Public Information Reference Unit, EPA Headquarters, Room 2922, Waterside Mall, 401 "M" Street, S.W., Washington, D.C. between 8:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Michael B. Cook, Acting Director, Facility Requirements Division (WH 595), Environmental Protection Agency, 401 "M" Street, S.W., Room 1137ET, Washington, D.C. 20460, telephone 202/426-9404.

SUPPLEMENTARY INFORMATION

The regulations for public participation in the Construction Grants Program were proposed in the FEDERAL REGISTER on August 7, 1978, along with overall public participation regulations which would cover programs under the Resource Conservation and Recovery Act and the Safe Drinking Water Act, as well as the Clean Water Act (40 CFR Part 25). The Part 25 regulations are being published in final form in the same issue of the FEDERAL REGISTER as the regulations specific to the Construction Grants Program.

The preamble to the overall Part 25 regulations includes a complete discussion of public participation activities conducted by EPA in the development of the overall regulations and the Construction Grants Program public participation regulations.

RESPONSE TO PUBLIC COMMENT

A large volume of comment was received on the overall Part 25 regulations and on the regulations specific to the grants program. Many general comments were relevant to the grants program regulations as well as to other programs under the three covered Acts. A full discussion of these general issues is included in the preamble to 40 CFR Part 25. They include consistency of public participation requirements, discretion and flexibility in the requirements, role of elected officials, composition and use of advisory groups, advance notice of public hearings and meetings, and others. The sections which follows describe EPA's response to those more specific issues and comments which pertain to the Construction Grants Program:

1. *Delay of Wastewater Treatment Projects.* Many commenters, especially some State and local governments, expressed sincere concern that the new requirements would delay the construction of much needed treatment facilities. They cited the requirements for additional meetings and public consultation, the need for earlier public notice, the additional reporting requirements, the additional demands on their staffs, and additional oversight and review functions as potential sources of delay during the Step 1, facilities planning stage.

Some citizens and public interest groups who commented on this issue, however, noted that the most serious delays came not during the planning, but during the design and construction stages. Often it was not until these later stages that individual citizens and local groups realized significant fiscal and growth impacts of expensive, oversized treatment facilities.

It is the Agency's position that this is an environmental, not a public works, program where the fiscal integrity and sound environmental management of the program are paramount. Delays, if any, in facilities planning due to increased public participation are anticipated to be more than compensated for by the selection of more appropriate treatment systems and more rapid progress in the design and construction stages.

2. *Resources.* Federal, State and substate agencies responsible for the Construction Grants Program were seriously concerned about the resource implications of these requirements. They were especially concerned about increased demand for monies and staff time.

The Agency acknowledges the need for some additional resources to adequately implement public participation in the program. All efforts have been made to minimize these demands while maintaining the integrity of the program. The distribution of the public participation work plan and the responsiveness summaries will reduce the need for EPA monitoring by fostering cooperation between grantees and citizens to ensure high quality program outputs. Also, the Agency has conducted a detailed resource analysis that indicated that the most resource intensive activity for the States and EPA is attendance by staff at public meetings and hearings; the regulations do not require such attendance, making this activity strictly discretionary. Since the Full-Scale Public Participation Program is more resource intensive than the Basic Public Participation Program, EPA expects that the Full-Scale Public Participation Program will be required of approximately 30 percent of projects.

The Agency is also making new resources available. State management assistance funds, under section 205(g) of the Act, and construction grants funds, under section 201, can be used by the States and grantees, respectively, to cover public participation costs. Furthermore, EPA is designating staff in its regional offices to assist in carrying out these requirements.

3. *Criteria for Full-Scale Public Participation Program.* The Agency received a number of comments on the criteria proposed for use by the Regional Administrator in determining which projects should have the Full-Scale Public Participation Program. Some commenters urged that the criteria be made less flexible by the addition of specific population size and project cost criteria. The Agency has decided to continue to allow the Regional Administrators a high level of discretion in determining which projects are likely to need additional public involvement based upon their assessment of cost, complexity and potential impacts. In the proposed regulations the Full-Scale Program was

mandatory only when it was determined early in the facilities planning process stage that an Environmental Impact Statement would be required, under 40 CFR Part 6. Recognizing the public and Congressional concern over the cost of advanced wastewater treatment (AWT) facilities that require very stringent wastewater treatment, the Agency has included AWT as a mandatory criterion for the Full-Scale Program. This will enable communities to give more careful consideration to less-costly systems and alternative treatment processes, such as land treatment.

Other than the EIS and AWT mandatory criteria, the Regional Administrator will require the Full-Scale Program only after a project meets two tests. The Regional Administrator must determine (1) that the project has the potential for community impact, as suggested by criteria listed in § 35.917-5(c)(1)(iii), and (2) that the existing local decisionmaking process would benefit from increased opportunities for public involvement. The Regional Administrator will exercise this discretion in light of the Agency expectation that approximately 30 percent of the Step 1 projects will be required to conduct a Full-Scale Program.

4. *Content of Full-Scale Public Participation Program.* Generally, citizens and public interest groups, as well as some government agencies, gave strong support to the content of the Full-Scale Program. They particularly supported the opportunities for public involvement and consultation early in facilities planning, the public participation coordinator, and the advisory group. Some commenters requested more discretion in using the advisory groups. They urged that they be encouraged, but not required.

The Agency has decided to retain the Full-Scale Program as initially proposed. Since it will only apply to those projects of high complexity or controversy, the presence of a core group of informed citizens—the advisory group—is considered particularly essential. It must be pointed out that the Basic Program, which will cover the large majority of projects, does not require the advisory group; however, grantees are at libertry to establish one at their discretion. The Part 25 regulations have been revised to provide grantees with significant additional flexibility in composing the membership of advisory groups.

5. *Small Community Impacts.* A number of commenters expressed concern over the impact of the regulation on small communities. They suggested automatic exemptions for small communities form the Full-Scale Program, and even the Basic Program.

The regulations allow the Regional Administrator extensive discretion in determining which projects should have a Full-Scale Program. First, the Regional Administrator must determine that one of the criteria suggesting community impact is likely to be present and second, having made that determination, the Regional Administrator must determine that more active public participation in the form of the Full-Scale Program would be of benefit in the particular community. In making this second case-by-case determination, the Regional Administrator is free to take into consideration the size and nature of the community where facility planning will occur.

In many cases documented by EPA, the cost and other impacts of wastewater treatment facilities are most severe in small, rural communities. The evaluation of less-costly, more acceptable alternatives may therefore require more, not less, active public participation. In many instances this will be best accomplished by the attention of a core group of interested citizens, with staff support, which is the cardinal feature of the Full-Scale Program. This decision will be made on a case-by-case basis by the Regional Administrator.

6. *Early Public Involvement.* Many citizens and public interest groups urged the Agency to require additional early public involvement, especially before the Step 1 grant is awarded and in the selection of the consulting engineer. Since pre-Step 1 activities are not grant eligible, the Agency has decided not to impose additional requirements beyond the performance standard for public information and consultation in the development of the plan of study.

Many private citizens and public interest groups urged EPA to require public participation in the selection of the consulting engineer. These commenters argued that this would encourage the selection of a consultant able to communicate effectively with the public and would lead to greater public confidence and support for the planning process. EPA agrees in part with this concept, but does not believe it is feasible to make consultation in engineer selection a requirement. Accordingly, the regulations encourage, but do not require, public consultation in the selection of the consulting engineer.

To help stimulate early public interest, the final regulations require the grantee to provide the public with an estimate of the additional per household cost of the proposed facilities. This cost can be calculated from the cost and population estimates in the biennial Needs Survey if more precise data are not available.

7. *Coordination With Other Programs.* Many commenters stressed the importance of coordinating the public participation activities in the Construction Grants Program with public participation in other programs, especially the Water Quality Management Program under 40 CFR Part 35, Subpart G.

The Agency concurs and has modified the requirement by encouraging coordination of facility planning public participation activities with those associated with other related environmental programs in the project area.

8. *Public Participation in Step 2 and 3.* Some local agencies and many public interest groups expressed approval of the language in the regulations which indicated that public participation activities in Step 2 (design) and Step 3 (construction) were grant eligible. Some commenters called for mandatory public participation requirements in Steps 2 and 3. With the exception of requirements to inform and consult with the public in the development and adoption of the user charge and industrial cost recovery systems, EPA will not impose public participation requirements in Steps 2 and 3. However, public participation activities at these stages are grant eligible provided they are included in a public participation work plan submitted by the grantee and approved by EPA.

9. *Training.* Many citizens and public interest groups supported the requirement that EPA train advisory groups established under the Full-Scale Program. Some States and local governments pointed out that they should have a role in training advisory groups because of their familiarity with local issues. EPA agrees. The final regulations require EPA to develop training materials but indicate that training would be done in cooperation with the State or grantee.

10. *EPA Technical Assistance to Implement the Regulations.* Many commenters, representing a variety of interests, urged the Agency to provide technical assistance to implement the public participation regulations.

The Agency concurs and has taken the following actions to aid States and grantees to implement their regulations:

—Made public participation activities grant eligible for construction grant funds (section 201) and State management assistance funds (section 205(g)).

—Begun development of a modular technical training program on wastewater treatment facilities planning for grantees and their advisory groups.

—Begun development of training courses on how to conduct and

evaluate public participation activities for staff from EPA, State and substate agencies.
—Initiated the development of additional guidance on the public participation regulations, including a citizen handbook.
—Assigned staff persons in each EPA regional office with the responsibility for overseeing public participation activities.
—Funded five wastewater treatment facilities planning institutes, one in each of Regions I, II, III, V, and VI, to train local citizen decisionmakers.
—Included an expanded presentation on the public participation regulations in the Facilities Planning Training Course available to State and grantee, staff, consulting engineers and the public.
—Produced and made available a wide variety of technical publications on all aspects of wastewater treatment.
—Entered into an interagency agreement with the Department of Labor to provide technical assistance to small, rural communities.

NOTE: The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis Statement under Executive Orders 11821, 11949, and 12044 and OMB Circular A-107

Dated: February 8, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. 40 CFR Part 35 Subpart E is amended by revising § 35.903(o) to read as follows:

§ 35.903 Summary of Construction Grants Program.

* * * * *

(o) The Act requires EPA and the States to provide for, encourage and assist public participation in the Construction Grants Program. This requirement for public participation applies to the development of the State water pollution control strategy, the State project priority system, and the State project priority list, under § 35.915; to the development of user charge and industrial cost recovery systems, under §§ 35.925.11, 35.928, and 35.929; and to the delegation of administrative responsibilities for the Construction Grants Program under Subpart F of this Chapter.

2. 40 CFR Part 35 Subpart E is amended by revising § 35.917-1(g) to read as follows:

§ 35.917-1 Content of facilities plans.

* * * * *

(g) A final responsiveness summary, consistent with 40 CFR 25.8 and § 35.917-5.

3. 40 CFR Part 35 Subpart E is amended by revising § 35.917-5 to read as follows:

§ 35.917-5 Public participation.

(a) *General.* Consistent with section 101(e) of the Clean Water Act and 40 CFR Part 25, EPA, the States, and grantees shall provide for, encourage, and assist public participation in the facilities planning process and shall provide citizens with information about and opportunities to become involved in the following:

(1) The assessment of local water quality problems and needs;

(2) The identification and evaluation of locations for wastewater treatment facilities and of alternative treatment technologies and systems including those which recycle and reuse wastewater (including sludge), use land treatment, reduce wastewater volume, and encourage multiple use of facilities;

(3) The evaluation of social, economic, fiscal, and environmental impacts; and

(4) The resolution of other significant facilities planning issues and decisions.

(b) *Basic Public Participation Program.* Since wastewater treatment facilities vary in complexity and impact upon the community, these public participation requirements institute a two-tier public participation program for facilities planning consisting of a Basic Public Participation Program, suitable for less complex projects with only moderate community impacts, and a Full-Scale Public Participation Program, for more complex projects with potentially significant community impacts. All facilities planning projects, except those that qualify for the Full-Scale Public Participation Program under paragraph (c) of this section and those exempt under paragraph (d) of this section, require the Basic Public Participation Program. In conducting the Basic Public Participation Program, the grantee shall at a minimum:

(1) Institute, and maintain throughout the facilities planning process, a public information program (including the development and use of a mailing list of interested and affected members of the public), in accordance with 40 CFR 25.4 and § 35.917-5(a).

(2) Notify and consult with the public, during the preparation of the plan of study, about the nature and scope of the proposed facilities planning project. EPA encourages the grantee to consult with the public in the selection of the professional consulting engineer.

(3) Include in the plan of study, submitted with the Step 1 grant application, a brief outline of the public participation program, noting the projected staff and budget resources which will be devoted to public participation, a proposed schedule for public participation activities, the types of consultation and informational mechanisms that will be used, and the segments of the public that the grantee has targeted for involvement.

(4) Submit to EPA, within 45 days after the date of acceptance of the Step 1 grant award, a brief Public Participation Work Plan. In addition to meeting the requirements of 40 CFR 25.11, the Work Plan shall describe the method of coordination between the appropriate Water Quality Management public participation program under Subpart G of this part and the grantee's public participation program as required by 40 CFR 35.917-5(e). The grantee shall distribute the Work Plan, accompanied by a fact sheet on the project, to groups and individuals who may be interested in or affected by the project. The fact sheet shall describe the nature, scope and location of the project; identify the consulting engineer and grantee staff contact; and include a preliminary estimate of the total costs of the project, including debt service and operation and maintenance, and of the resulting charges to each affected household.

(5) Consult with the public, in accordance with 40 CFR 25.4, early in the facilities planning process when assessing the existing and future situations and identifying and screening alternatives, but before selecting alternatives for evaluation according to the Cost-Effectiveness Analysis Guidelines (see Appendix A, Cost-Effectiveness Analysis Guidelines, paragraph 5). After consultating with the public, the grantee shall prepare and distribute a responsiveness summary, in accordance with 40 CFR 25.8.

(6) Hold a meeting to consult with the public, in accordance with 40 CFR 25.6, when alternatives are largely developed but before an alternative or plan has been selected and then prepare and distribute a responsiveness summary, in accordance with 40 CFR 25.8.

(7) Hold a public hearing before final adoption of the facilities plan, in accordance with 40 CFR 25.5.

(8) Include in the final facilities plan a final responsiveness summary, in accordance with 40 CFR 25.8.

(c) *Full-Scale Public Participation Program.* (1) The Regional Administrator shall require a Full-Scale Public Participation Program for all Step 1 facilities planning projects that fulfill one or more of the following three conditions:

(i) Where EPA prepares or requires the preparation of an Environmental Impact Statement during facilities planning under 40 CFR 6; or

(ii) Where advanced wastewater treatment (AWT) levels, as defined in EPA guidance, may be required; or

(iii) Where the Regional Administrator determines that more active public participation in decision-making is needed because of the possibility of particularly significant effects on matters of citizen concern, as indicated by one or more of the following:

(A) Significant change in land use or impact on environmentally sensitive areas;

(B) Significant increase in the capacity of treatment facilities or interceptors, significant increase in sewered area, or construction of wholly new treatment and conveyance systems;

(C) Substantial total cost to the community or substantial increased cost to users (i.e., cost not reimbursed under the grant);

(D) Significant public controversy;

(E) Significant impact on local population growth or economic growth;

(F) Substantial opportunity for implementation of innovative or alternative wastewater treatment technologies or systems.

(2) The grantee shall initiate a Full-Scale Public Participation Program as soon as the determination in paragraph (c)(1) of this section is made. Generally, the determination should be made before or at the time of award of the Step 1 grant. However, if the Regional Administrator's determination under paragraph (c)(1) of this section to require a Full-Scale Public Participation Program occurs after initiation of facilities planning because of newly discovered circumstances, the grantee shall initiate and expanded public participation program at that point. The Regional Administrator shall assure that the expanded program is at least as inclusive as a normal Full-Scale Public Participation Program, except for constraints imposed by facilities planning activities that have already been completed. If the project is segmented, the Regional Administrator shall look at the project as a whole when considering whether to require a Full-Scale Public Participation Program.

(3) In conducting the Full-Scale Public Participation Program, the grantee shall at a minimum:

(i) Institute and maintain, throughout the facilities planning process, a public information program, in accordance with 40 CFR 25.4 and § 35.917-5(a);

(ii) Notify and consult with the public, during the development of the plan of study, about the nature and scope of the proposed facilities planning project. EPA encourages the grantee to consult with the public in the selection of the professional consulting engineer;

(iii) Include, in the plan of study submitted with the Step 1 grant application, brief outline of the public participation program, noting the projected staff and budget resources which will be devoted to public participation, a proposed schedule for public participation activities, types of information and consultation mechanisms that will be used, and the segments of the public that the grantee has targeted for involvement;

(iv) Designate or hire a public participation coordinator and establish an advisory group, in accordance with 40 CFR 25.7, immediately upon acceptance of the Step 1 grant award.

(v) Submit to EPA, within 45 days after the date of acceptance of the step 1 grant award and after consultation with the advisory group, a brief Public Participation Work Plan. In addition to meeting the requirements of 40 CFR 25.11, the Work Plan shall describe the method for coordination between the appropriate Water Quality Management agency public participation program under Subpart G of this part, and the grantee's public participation program as required by 40 CFR 35.917-5(e). The grantee shall distribute the Work Plan, accompanied by a fact sheet on the project, to groups and individuals who may be interested in or affected by the project. The fact sheet shall describe the nature, scope and location of the project; identify the consulting engineer and grantee staff contact; and include a preliminary estimate of the total costs of the project, including debt service and operation and maintenance, and of the resulting costs to each affected household;

(vi) Hold a public meeting to consult with the public, in accordance with 40 CFR 25.6, early in the facilities planning process when assessing the existing and future situations, and identifying and screening alternatives, but before selection of alternatives for evaluation according to the Cost-Effectiveness Analysis Guidelines (see Appendix A, Cost-Effectiveness Analysis Guidelines, paragraph 5). Following the public meeting, the grantee shall prepare and distribute a responsiveness summary, in accordance with 40 CFR 25.8;

(vii) Hold a public meeting to consult with the public, in accordance with 40 CFR 25.6, when alternatives are largely developed but before an alternative or plan has been selected, and then prepare and circulate a responsiveness summary, in accordance with 40 CFR 25.8;

(viii) Hold a public hearing prior to final adoption of the facilities plan, in accordance with 40 CFR 25.5. This public hearing may be held in conjunction with the public hearing on the draft Environmental Impact Statement under 40 CFR 6.

(ix) Include, in the final facilities plan, a final responsiveness summary, in accordance with 40 CFR 25.8.

(d) *Exemptions from public participation requirements.* (1) Upon written request of the grantee, the Regional Administrator may exempt projects in which only minor upgrading of treatment works or minor sewer rehabilitation is anticipated according to the State Project Priority List from the requirements of the Basic and Full-Scale Public Participation Programs under paragraphs (b) and (c) of this section, except for the public hearing and public disclosure of costs. Before granting any exemption, the Regional Administrator shall issue a public notice of intent to waive the above requirements containing the facts of the situation and shall allow 30 days for response. If responses indicate that serious local issues exist, then the Regional Administrator shall deny the exemption request.

(2) During the facilities planning process, if the Regional Administrator determines that the project no longer meets the exemption criteria stated above, the grantee, in consultation with the Regional Administrator, shall undertake public participation activities commensurate with the appropriate public participation program but adjusted for constraints imposed by facilities planning activities that have already been completed.

(3) If a project is segmented, the Regional Administrator shall look at the project as a whole when considering any petition for exemption.

(e) *Relationship between facilities planning and other environmental protection programs.* Where possible, the grantee shall further the integration of facilities planning and related environmental protection programs by coordinating the facilities planning public participation program with public participation activities carried out under other programs. At a minimum, the grantee shall provide for a formal liaison between the facilities planning advisory group (or the grantee, where there is no advisory group) and any areawide advisory group established under Subpart G of this part. The Regional Administrator may request review of the facilities plan by any appropriate State or areawide advisory group in association with the facilities plan review required by 40 CFR 35.1522.

(f) *Mid-project evaluation.* In accordance with 40 CFR 25.12(a)(2), EPA shall, in conjunction with other regular oversight responsibilities, conduct a mid-project review of compli-

ance with public participation requirements.

4. 40 CFR Part 35 Subpart E is amended by revising § 35.920-3(a)(1), and by adding a new subparagraph (10) to § 35.920-3(b), and by adding a new subparagraph (5) to § 35.920-3(c) to read as follows:

§ 35.920-3 Contents of application.

(a) * * *

(1) A plan of study presenting—

(i) The proposed planning area;

(ii) An identification of the entity or entities that will be conducting the planning;

(iii) The nature and scope of the proposed Step 1 project and public participation program, including a schedule for the completion of specific tasks;

(iv) An itemized description of the estimated costs for the project; and

(v) Any significant public comments received.

* * * * *

(b) * * *

(10) A public participation work plan, in accordance with § 35.917-5(g), if the grantee, after consultation with the public and its advisory group (if one exists), determines that additional public participation activities are necessary.

(c) * * *

(5) A public participation work plan, in accordance with § 35.917-5(g), if the grantee determines, after consultation with the public, that additional public participation activities are necessary.

5. 40 CFR Part 35 Subpart E is amended by revising § 35.928-1(1)(h) to read as follows:

§ 35.928-1 Approval of the industrial cost recovery system.

* * * * *

(h) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the industrial cost recovery system. If the project is a regional treatment works accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt industrial cost recovery systems in accordance with section 204(b)(1)(B) of the Act with §§ 35.928 through 35.928-4. These industrial cost recovery systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municpalities contributing wastes to the treatment works. The public shall be consulted prior to adoption of the industrial cost recovery system, in accordance with 40 CFR Part 25.

6. 40 CFR Part 35 Subpart E is amended by revising § 35.929(e) to read as follows:

§ 35.929-2 General requirements for all user charge systems.

* * * * *

(e) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project is a regional treatment system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user charge systems in accordance with section 204(b)(1)(A) of the Act and §§ 35.929 through 35.929-3. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works. The public shall be informed of the financial impact of the user charge system on them and shall be consulted prior to adoption of the system, in accordance with 40 CFR Part 25.

7. 40 CFR Part 35 Subpart E is amended by adding a new paragraph (t) to § 35.940-1 to read as follows:

§ 35.940-1 Allowable project costs.

* * * * *

(t) Reasonable costs of public participation incurred by grantees which are identified in a public participation work plan, or which are otherwise approved by EPA, shall be allowable.

[FR Doc. 79-5018 Filed 2-15-79; 8:45 am]

FRIDAY, FEBRUARY 16, 1979
PART VII

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

■

PSEUDORABIES REGULATIONS

federal register

[3410-34-M]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 85—PSEUDORABIES

Pseudorabies Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document promulgates regulations regarding the interstate movement of cattle, sheep, goats, swine, swine semen, and swine embryos based upon the pseudorabies status of such livestock or, in the case of swine semen and swine embryos, the pseudorabies status of the donor swine. This action was made necessary by the rapid spread of pseudorabies. The intent of the regulations is to control and stop the escalating spread of pseudorabies.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. J. A. Downard, USDA, APHIS, VS, Room 704, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8487.

SUPPLEMENTARY INFORMATION: This rulemaking is being finalized on the basis of comments received after the publication of two proposed rulemakings, one published in the FEDERAL REGISTER May 27, 1977, (42 FR 27250-27251), and the second published in the FEDERAL REGISTER May 23, 1978 (43 FR 22044-22053). A copy of the impact analysis statement is on file with the Program Services Staff, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8684.

The following alternatives were considered: a. Do nothing to control the interstate movement of pseudorabies infected and exposed livestock. This was rejected as not being consistent with the mandate given the Secretary of Agriculture by Congress to control the interstate movement of diseased livestock; b. Institute a national federally subsidized vaccination program. This was rejected as this would be very costly. Also the efficacy of the vaccines in controlling the spread of the disease is unknown. European experience indicates the virus will cycle in vaccinated herds; c. Institute an industry supported vaccination program with little Federal activity. This was rejected as it would also be very costly. Also, the efficacy of the vaccines in controlling the spread of the disease is unknown. European experience indicates the virus will cycle in vaccinated herds; d. Contracting with the States to carry out a pseudorabies program under Federal supervision. This would have had the advantage of being put into place faster and would have required fewer Federal positions. However, it was rejected as there would have been less uniformity from State to State and the States do not have the authority to regulate interstate shipments. Furthermore, Veterinary Services would not develop expertise in pseudorabies; e. Consider pseudorabies as an emergency disease and attempt its immediate eradication. This was rejected as this disease has been in the United States for over 150 years; however, relatively little research has been done with it. We need more information regarding the dynamics of pseudorabies in swine and other species before embarking on an eradication program; f. Propose and promulgate regulations controlling the interstate movement of livestock, swine semen and swine embryos with respect to their pseudorabies status. Alternative "f" was selected as being the most effective and least costly. This alternative is generally the same as many States are instituting to protect their livestock and, therefore, will not impact adversely with their regulations, but complement them.

Thirty-three written comments were received in response to the Notice of Proposed Rulemaking published in the FEDERAL REGISTER, May 23, 1978 (43 FR 22044-22053). Three letters opposed the proposal in its entirety, five fully supported the proposal as published and the remaining 25 letters suggested one or more changes.

One comment suggested vaccinating all swine and permitting shipment only to slaughter. Adoption of this suggestion would cause a complete disruption of the swine industry, since it ignores the necessity of an interchange of breeding stock and the function of the feeder pig industry. Therefore, this suggestion was not adopted.

One comment recommended that all swine over 6 months of age be vaccinated. This suggestion was rejected as being arbitrary, since vaccination is unnecessary in most areas of the United States where the disease does not exist or the incidence of the disease is very low. Also, the Department believes that producers should have the right to make their own decisions regarding vaccination.

Under the proposed regulations, slaughter swine would be required to move through no more than one market and then directly to a recognized slaughtering establishment. Eleven comments pointed out the necessity for permitting sows, boars and lightweight slaughter swine to move through more than one slaughter market to slaughter, since the numbers of such swine sold at many markets are not sufficient to permit their economical movement through only one market and then direct to establishments that slaughter such swine. APHIS believes this is true, and therefore, §§ 85.1 (u), (v), and (w); 85.5(a)(1); 85.6(a)(1); and 85.7(a) of the proposal were amended to permit swine to move through one or more slaughter markets and then to a recognized slaughtering establishment. It is the intent of this regulation that swine entered into the slaughter market system remain in the system until consigned to a recognized slaughtering establishment and that they not be diverted for feeding or breeding purposes.

Seven comments received pointed out that many markets have completely separate feeder/breeder facilities and slaughter swine facilities on the same premises; and that sales of these classes of swine held on the same day use separate facilities to keep the two classes of swine completely separated. Two comments suggested that these classes of swine be permitted to move through markets approved to handle any class of swine, keeping the classes separate and cleaning and disinfecting after use by slaughter swine as provided for in § 76.18 of the regulations (9 CFR 76.18). It was not the intent of the proposal to prohibit the sale of the two classes of swine on the same day when there are separate facilities for handling feeder/breeder swine separate and apart from slaughter swine. Therefore, the regulation has been clarified in § 85.1(t) to permit the sale of both feeder/breeder and slaughter swine on the same day. These facilities must be adequate to keep such classes of swine physically separated from each other while at the market and feeder and breeder swine must use no facility previously used by slaughter swine on the day both of these classes of swine are at the market.

Six comments suggested that a provision be added to the regulations for use of an owner/shipper statement in lieu of a permit to facilitate the movement of infected, exposed and pseudorabies vaccinated swine from a farm of origin to market for slaughter, or directly to a recognized slaughtering establishment. The use of such an owner/shipper statement would: (1) greatly reduce the workload of State and Federal regulatory agencies; (2) aid the owner in the orderly marketing of his swine; and (3) enable shipments to be traced to their farm of origin should that be necessary.

Therefore, a provision for the use of owner/shipper statements, as suggested, has been provided for in §§ 85.5(a)(2) and (3); and 85.6(a)(2) of the regulations. Also a definition of an owner/shipper statement has been added to the definitions as § 85.1(dd) to require the same information as required on a permit.

Six comments pointed out that identification is now required for feeder and breeder swine sold thorough markets and that identifying such swine going to livestock markets is unnecessary since they are already being tagged and identified back to the farm of origin at the markets. Therefore, since such identification is required, except for vaccinated swine as discussed below, the requirement that swine going to an approved livestock market be identified on the farm of origin was deleted from § 85.7(b)(3)(i) of the proposal.

Four comments suggested that pseudorabies vaccinated swine be uniformly identified so they will be readily recognized. Two comments suggested the use of pink eartags. This suggestion was accepted. Therefore, a provision that official pseudorabies vaccinated swine be identified by a numbered pink eartag approved by the State in which the swine are vaccinated has been added to § 85.1(z)(2) of the regulations.

Two livestock marketing companies suggested that under § 85.7 no discrimination be made between slaughter swine going directly to slaughter and those going to slaughter markets and then to slaughter. Since swine that enter slaughter market channels must stay in such channels until slaughtered at a recognized slaughtering establishment there appears to be no reason to distinguish between these two groups. Therefore, a clarifying statement has been added to paragraph (a) of § 85.7 which specifies the same treatment for both types of movement.

Three comments suggested that the requirement that qualified pseudorabies negative herds have 25 percent of the swine over 6 months of age tested every 90 days is too rigid and suggested that the test period be changed to read, "between 80 and 105 days." This suggestion was adopted and has been incorporated into § 85.1(ee) of the regulations to give herd owners a more reasonable time frame in which to comply with herd monitoring requirements. Allowing the herd owner this flexibility would not appear to increase the disease risk.

Two comments suggested that two negative tests not less than 30 days apart be required before swine may be added to qualified pseudorabies negative herds. This procedure would give added protection to such qualified pseudorabies negative herds when adding new stock. This suggestion was accepted, and a provision has been added to § 85.1(ee) of the regulations (§ 85.1(dd) of the proposal) whereby additions to qualified pseudorabies negative herds must have passed two negative official pseudorabies tests not less than 30 days nor more than 60 days apart before being added to the herd. The second test would be run between 30 and 60 days after the first test to allow any swine exposed to the disease at the time of the first test to incubate the disease long enough to become positive to the second test. This provision does not apply to swine entering a qualified pseudorabies negative herd from another qualified pseudorabies negative herd.

Under the proposed regulations, qualified pseudorabies negative herd status is attained by subjecting all swine over 6 months of age to an official pseudorabies test and finding all swine so tested negative. One comment suggested that progeny over 5 months of age equal to the number of breeding animals over 6 months of age be tested to qualify and requalify qualified pseudorabies negative herds. This suggestion has some merit in that the breeding swine would not be disturbed by being tested and the 5-month progeny would be smaller and somewhat easier to handle. However, in most swine operations, 5-month swine are kept separate and apart from the breeding herd and do not truly represent the health status of the breeding herd. Another factor is reports from the research community of instances of apparent long periods of latency of the virus where pigs exposed to the virus early in life sometimes remain apparently healthy and serologically negative until 4 to 6 months of age before becoming serologically positive. The breeding herd in most qualified pseudorabies negative herds is the part of the herd to which additions are made, and, since additions are the most likely source of infection, it was decided to retain the proposed method of qualifying the requalifying qualified pseudorabies negative herds.

One comment suggested that it be required that all pseudorabies exposed or vaccinated swine be sold only to slaughter. This suggestion was rejected, since to do so would cause undue hardship on owners of pseudorabies exposed or vaccinated swine who could safely market their swine under the regulations as proposed.

Two comments suggested that the time period for officially vaccinating negative exposed swine for pseudorabies be increased from 10 days after a negative test to 15 days following such test as a more reasonable time period in which to accomplish the vaccination. This suggestion was accepted and incorporated in § 85.5(b)(2) of the regulations as being a more reasonable time period in which to accomplish the vaccination after the negative test. This would give a herd owner 5 more days to obtain vaccine and the services of a veterinarian without substantially increasing the risk of pseudorabies infection after the negative test, but prior to the vaccination. This suggestion is also applicable to the time period for vaccinating the test negative swine in a herd qualifying as a pseudorabies controlled vaccinated herd; therefore, in § 85.1(ff) the time period to accomplish vaccination after the negative test was extended from 10 days to 15 days.

Three comments requested that the time period for testing 25 percent of the offspring in pseudorabies controlled vaccinated herds be changed from 3 to 4 months of age to 16 weeks of age or older in order to minimize titers due to colostral antibodies. We agreed with these comments and the period for such testing was increased from between 3 and 4 months of age to 16 to 20 weeks of age in § 85.1(ff) of the regulations. One comment suggested that such testing be done at 16 weeks of age or within 30 days of sale. The comment was rejected as the qualification "within 30 days of sale" is indefinite and would not be conducive to regular monitoring of the herd.

As originally written, § 85.1(cc)(2) would have required the certificate to contain a statement that the swine to be moved were not infected with or exposed to pseudorabies and are not pseudorabies vaccinates. Two comments suggest that the terms "known to be" be inserted between the words "not" and "infected". The original intent was that the certificates would be issued for swine not known to be infected with, exposed to or vaccinated for pseudorabies. We have inserted the term "known to be" in § 85.1(cc)(2) to conform with the suggestion and the Department's intent.

One comment suggested deletion of the word "vaccinated" from the definition of certificate in § 85.1(cc). At the present time, it is impossible to readily differentiate serologically pseudorabies infected and pseudorabies vaccinated swine; therefore, the movement of pseudorabies vaccinated swine must be controlled to epidemiologically trace pseudorabies infected swine. The word "vaccinated", in the definition of certificate, is needed to readily determine the vaccination status of the swine being moved. This suggestion was therefore rejected.

Four comments suggested that the requirements for moving vaccinated swine be modified to allow the movement of such swine as noninfected and nonexposed swine. This suggestion

was rejected as not compatible with disease control in that infected and exposed swine could be vaccinated and would then be free to move as noninfected and nonexposed swine. Also, there is no way at the present time to readily differentiate between vaccinal and infection titers; therefore, to allow uncontrolled movement of vaccinates would greatly interfere with tracing diseased swine and conducting serological surveys in any pseudorabies control or eradication program.

One comment stated that there was no way proposed to regain pseudorabies controlled vaccinated herd status once such a herd becomes positive. We have, therefore, provided a procedure in § 85.1(ff) whereby pseudorabies controlled vaccinated herd status can be regained. Such status can be regained by (1) testing of all swine over 6 months of age; (2) removal of all official pseudorabies test positive swine; (3) cleaning and disinfecting the herd premises in accordance with § 85.13; (4) retesting all swine over 6 months of age 30 days after removal of the official pseudorabies test positive swine and finding all swine so tested negative; (5) retesting all swine over 6 months of age 60 days after removal of the official pseudorabies test positive swine and finding all swine so tested negative; and (6) vaccinating all swine over 6 months of age for pseudorabies within 15 days of the second negative test. The Department believes that this procedure is the minimum necessary to reasonably assure that there are no swine affected with pseudorabies in the herd. This procedure will require that all official pseudorabies test positive swine be removed from the herd premises. This removal will assure that no known official pseudorabies test positive swine remain on the herd premises which might infect other swine on the herd premises. The herd premises would also be required to be cleaned and disinfected in accordance with § 85.13. This would minimize the risk that pseudorabies remains on the herd premises. Recertification also would require that all swine over 6 months of age be tested twice, 30 days and 60 days after removal of the official pseudorabies test positive swine. All swine so tested must be found negative to the pseudorabies test. The requirement that only swine over 6 months of age be tested negative for pseudorabies is based on the fact that most swine being fed for slaughter go to market by the time they are 6 months of age and any swine over that age are usually being held separately for breeding purposes. Further, testing of swine younger than 6 months of age would be of minimal value since younger swine can carry the disease and yet test negative for the disease. Two tests 30 days and 60 days after the removal of the official pseudorabies test positive swine are required to insure that the swine remaining on the herd premises did not contract the disease prior to the removal of the official pseudorabies test positive swine. The two tests spaced 30 and 60 days after the removal of official pseudorabies test positive swine will minimize the risk that the swine in the herd incubating the disease will be undetected. The procedure also requires that all swine over 6 months of age be vaccinated within 15 days after the second negative test. The timing of the vaccination requirement is to limit the risk that swine found negative during this procedure will contract pseudorabies prior to vaccination.

Two comments questioned the necessity of having a pseudorabies regulation without an eradication program. The pseudorabies regulation is aimed at stopping the interstate spread of pseudorabies and in itself will not eradicate the disease; however, it is a tool to slow down and stop the escalating spread of the disease until the necessary tools for an eradication program are available.

Two comments expressed the opinion that "lighweight hogs" in slaughter channels should be permitted to go back to farms for further feeding. Producers who place lightweight hogs in slaughter channels usually do so because there is something wrong with the hogs. Usually they are poor "doers" or are "tailenders" from lots of fattening swine. Furthermore, such hogs in slaughter channels may be exposed to diseased hogs outside of feeder and breeder channels where swine are more carefully screened before being admitted for feeding and breeding purposes. Therefore, this suggestion was rejected and no provision was added to the regulations to permit "lightweight swine" in slaughter market channels to return to farms or feedlots.

One comment suggested that pseudorabies exposed swine going to slaughter should not be required to be identified. Unless such swine are identified, control of their movement would be lost and there would be no way of determining their diversion from slaughter channels should that occur. Therefore, the identification requirement for such swine was retained as proposed.

One comment stated that the proposal does nothing to stop the large-scale movement of 40-50 lb. feeder pigs which are carriers. However, under the regulations exposed feeder pigs may move interstate only to a quarantined feedlot after testing negative to an official pseudorabies test and being officially vaccinated. The regulations, as proposed, permit the movement of feeder pigs without testing only from herds not known to be infected with or exposed to pseudorabies and then only if the interstate movement is approved in advance by the State animal health official of the State of destination.

One comment stated that the regulations do not recognize the role of wildlife in the spread of pseudorabies. Wildlife may, and probably does, play a limited role in the spread of pseudorabies in an endemic area, but has not been shown to be a factor in the spread of the disease elsewhere. The preponderance of available evidence indicates that swine are the primary reservoirs of pseudorabies and are its chief disseminator.

One comment stated that the regulations do not regulate the movement of inanimate material. It is suspected that in one instance pseudorabies may have been transmitted to cattle via contaminated hay; however, such transmission of the disease appears to be very infrequent and appears not to be a major factor in the transmission of the disease. Therefore, regulation of the movement of inanimate material does not appear to be warranted at this time.

One comment urged that vaccine use be unrestricted. This suggestion was rejected, since the unrestricted use of the vaccines would mask infected herds and complicate any pseudorabies control or eradication program which may be developed.

The definition of Minimum Standards in proposed § 85.1(ff), and all references to the Minimum Standards have been deleted from the regulations. Instead of incorporating the Minimum Standards by reference in the regulations and referring to them as appropriate, all referenced items have been actually included in the regulations.

In order to clarify certain phrases and to explain certain time limitations used in the regulations, the following explanation is added:

1. In § 85.1(x), swine are required to have been kept on a premises for at least 90 consecutive days before that premises would be considered as their farm of origin. This time period was chosen in order to give swine introduced onto a premises reasonable time to become exposed to the disease, incubate it and become positive to the disease should the disease exist on the premises, and to give the swine so introduced a reasonable time to become positive should they be latent carriers of the disease.

2. In § 85.1(ee) "a minimum of 90 percent of the herd must have been on the premises and a part of the herd for at least 90 days prior to a qualifying test," to constitute a "qualified pseudorabies negative herd", for the same reasons as expressed in Item 1

immediately above. The requirement that 90 percent of the herd be on the premises for a minimum of 90 days prior to a qualifying test was considered to be the minimum percentage and time acceptable to safely qualify a herd for the special qualified pseudorabies negative herd status.

3. In § 85.1(ee) and 85.1(ff), the requirement that all swine in the herd over 6 months of age be tested negative for pseudorabies is based on the fact that most swine being fed for slaughter go to market by the time they are 6 months of age and any swine over that age are usually being held for breeding purposes. To qualify for special herd status, all swine in the herd over 6 months of age must be tested negative to an official pseudorabies test.

4. In § 85.5(b), the same reasoning applies as is expressed in Item 3 immediately above. The requirement that the swine be vaccinated within 10 days after a negative test is extended to 15 days following a negative test in order to provide producers additional time in which to vaccinate. The requirement that exposed swine be moved interstate within 30 days after the negative test is to minimize the risk of these swine being infected with pseudorabies prior to movement and spreading the infection.

5. The term "clinical case of pseudorabies" denotes an animal exhibiting the symptoms and course of pseudorabies as distinguished from laboratory and post mortem findings.

6. The term "clinical evidence of pseudorabies" denotes the symptoms and course of pseudorabies as distinguished from laboratory and post mortem findings.

7. The term "common ground" is intended to mean the ground, areas, buildings or equipment communally shared by any specific group of livestock. A definition of "common ground" has been added to § 85.1(ii) of the regulations for the purpose of clarification.

8. Proposed §§ 85.1(u) and (v) referred to "quarantined feedlot" and "quarantined herd" as being "under the supervision and control of the State animal health official * * *" without defining the extent of such supervision and control. It is the intent of the regulation that such a quarantined herd and quarantined feedlot be under the supervision and control of the State animal health official in conformance with the laws, rules and regulations of the State in which such quarantined herd and quarantined feedlot is located.

9. Proposed § 85.1(w) defined "feedlot" as "a premises where swine are fed separate and apart from swine kept for breeding or other purposes * * *" The intent of this definition is that each class of swine be kept from physical contact with any other class of swine and not share pens, feeders, waterers or housing facilities.

10. Proposed § 85.8 authorized the Deputy Administrator, upon request in specific cases, to permit the interstate movement of livestock not otherwise provided for in the proposed regulation. Veterinary Services intends that such authority be used only in situations and under circumstances presenting problems that could not have been reasonably anticipated in advance and in unique situations. Veterinary Services does not intend that such authority be used repeatedly to cover the same problem, but that the regulation be amended to confrom with needed changes as they come to light. This clarification has been incorporated in § 85.8 of the regulations.

The term "official" was deleted from §§ 85.1(cc)(2) and 85.6(b)(2)(iii) of the regulations as it is the intent of the Department to regulate the movement of all vaccinated swine not just officially vaccinated swine. This intent has been stated previously.

In proposed § 85.1(dd) a "qualified pseudorabies negative herd" was defined as "a herd of swine, none of which has been vaccinated for pseudorabies * * *." The restriction "none of which has been vaccinated" has been deleted from the regulation in this section. No official pseudorabies vaccine on the market is known to cycle in swine herds; therefore, if vaccinated swine test negative they should be no more dangerous than swine testing negative from a previously infected herd.

11. With respect to § 85.1(ff), the requirement that swine must be vaccinated within 10 days following a negative herd test was amended to require their vaccination within 15 days in this regulation, in order to give producers additional time in which to vaccinate their swine. This would give a herd owner 5 more days to obtain vaccine and the services of a veterinarian without substantially increasing the risk of pseudorabies infection after the negative test, but prior to the vaccination. For the same reason, the requirement that herd additions be tested negative and vaccinated within 10 days after the negative test is amended to require vaccination within 15 days following a negative test. The requirement that herd additions be added to the herd within 30 days following the date of a negative test and subsequent vaccination is to minimize the risk of these additions being infected before they are added to the herd.

Other minor and editorial changes were made for the purpose of clarification and ease of reading.

After due consideration of the comments received on the proposed regulations and all relevant information available to the Department, Part 85, Title 9, Code of Federal Regulations, is being adopted as follows:

PART 85—PSEUDORABIES

Sec.

AUTHORITY: Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123-126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141)).

§ 85.1 Definitions.

For purposes of this part, the following terms mean:

(a) *Administrator.* The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other official of the Service to whom authority has been delegated or may be delegated to act in his stead.

(b) *Deputy Administrator.* The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official to whom authority has been delegated or may be delegated to act in his stead.

(c) *Veterinary Services.* Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture.

(d) *Veterinary Services representative.* A person employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the function involved.

(e) *State animal health official.* The State animal health official who is responsible for the livestock and poultry disease control and eradication programs in the official's State or his designated representative.

(f) *State representative.* A person regularly employed in animal health

work of a State and who is authorized by such State to perform the function involved under a Cooperative Agreement with the United States Department of Agriculture.

(g) *Accredited veterinarian.* A veterinarian approved by the Deputy Administrator in accordance with Part 161 of this Title to perform functions specified in Part 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.

(h) *State.* Any State or Territory of the United States, the District of Columbia, Puerto Rico, Guam or the Northern Mariana Islands.

(i) *Interstate.* From any State into or through any other State.

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

(k) *Herd.* Any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated, but which have an interchange or movement of animals without regard to whether the animals are infected with or exposed to pseudorabies.

(l) *Known infected herd.* Any herd in which any livestock has been determined to be infected with pseudorabies by an official pseudorabies test or diagnosed by a veterinarian as having pseudorabies. A herd of livestock, other than swine, shall no longer be considered to be a known infected herd after 21 days since the last clinical case of the disease in the herd. A herd of swine which has been released from pseudorabies quarantine in accordance with the following provisions shall no longer be classified as a known infected herd: (1) All swine positive to an official pseudorabies test have been removed from the premises; (2) all exposed swine which remain in the herd are subjected to an official pseudorabies serological test and found negative 30 days or more after removal of swine positive to an official pseudorabies test; and (3) no livestock on the premises have shown clinical signs of pseudorabies after removal of the positive swine; or, (4) all swine have been depopulated for 30 days and the herd premises have been cleaned and disinfected in accordance with the requirements in § 85.13.

(m) *Livestock.* Swine, cattle, sheep or goats.

(n) *Exposed livestock.* Any livestock that has been in contact with an animal infected with pseudorabies, including all livestock in a known infected herd; except that livestock, other than swine, that have not been exposed to a clinical case of the disease for a period of 21 consecutive days shall no longer be considered to be exposed livestock.

(o) *Exposed swine.* Any swine that has been in contact with an animal infected with pseudorabies, including all swine in a known infected herd.

(p) *Infected livestock.* Any livestock determined to be infected with pseudorabies by an official pseudorabies test, or diagnosed by a veterinarian as having pseudorabies.

(q) *Official pseudorabies test.* Any test for the diagnosis of pseudorabies approved by the Deputy Administrator conducted in a laboratory approved by the Deputy Administrator as listed in a Veterinary Services Notice listing such laboratories.[1] The following tests for the diagnosis of pseudorabies have been approved by the Deputy Administrator: 1. Microtitration Serum-Virus Neutralization Test; 2. Virus Isolation and Identification Test; 3. Fluorescent Antibody Tissue Section Test.[2] State, Federal, and University laboratories will be approved by the Deputy Administrator following the determination by him that the laboratory: (1) Has personnel trained at the Veterinary Services Diagnostic Laboratory, Ames, Iowa, assigned to supervise the test, (2) follows standard test protocol, (3) meets check test proficiency requirements, and (4) will report all test results to State and Federal animal health officials.[3]

(r) *Moved.* Shipped, transported, or otherwise moved, or delivered or received for movement by land, water, or air.

(s) *Recognized slaughtering establishment.* A slaughtering establishment operated under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or a State inspected slaughtering establishment.

(t) *Slaughter market.* A livestock market approved in accordance with § 76.18 (9 CFR 76.18), at which swine for sale and shipment for slaughter are handled only on days when no swine are handled for sale and shipment for feeding or breeding purposes unless facilities are provided to keep slaughter swine physically separated from feeder and breeder swine, and feeder and breeder swine use no facilities previously used by slaughter swine on the day these classes of swine are at the market. The facilities used by slaughter swine shall be cleaned and disinfected in accordance with the requirements of this part before being used for feeding or breeding swine.[4,5]

(u) *Quarantined feedlot.* A premises where pseudorabies infected or exposed swine are fed under the supervision and control of the State animal health official, and from which such swine are moved directly to a recognized slaughtering establishment or directly through one or more slaughter markets and then directly to a recognized slaughtering establishment in accordance with the provisions of this part.

(v) *Quarantined herd.* A herd in which pseudorabies infected or exposed swine are bred, reared, and fed under the supervision and control of the State animal health official, and from which such swine are moved interstate directly to a recognized slaughtering establishment or directly through one or more slaughter markets and then directly to a recognized slaughtering establishment, or from which exposed officially vaccinated swine which were negative to an official pseudorabies test may be moved only to a quarantined herd or quarantined feedlot.

(w) *Feedlot.* A premises where swine are fed physically separated from swine kept for breeding or other purposes and from which such swine are moved directly to a recognized slaughtering establishment or directly through one or more slaughter markets and then directly to a recognized slaughtering establishment, quarantined herd, or quarantined feedlot.

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[1] Notices containing lists of laboratories approved for the purposes of the regulations in this part are published in the FEDERAL REGISTER Notices Section. The lists are also available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[2] Copies of the test protocols (Recommended Minimum Standards for Diagnostic Tests Employed in the Diagnosis of Pseudorabies (Aujeszky's Disease)) published as a Veterinary Services Notice, May 17, 1978, are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[3] Before the Deputy Administrator withdraws the approval of any laboratory, the Director of such laboratory shall be given a notice by the Deputy Administrator of the proposed disapproval and the reasons therefore and such Director shall have an opportunity to present his views thereon. In those instances where there are conflicts as to the facts, a hearing shall be held to resolve such conflicts.

[4] Notices containing lists of slaughter markets approved for the purposes of the regulations in this part are published in the FEDERAL REGISTER. Information concerning slaughter markets can be obtained from the Veterinarian in Charge, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, for the State in question.

[5] Before the Deputy Administrator withdraws approval of any slaughter market, the owner of such slaughter market shall be given notice by the Deputy Administrator of the proposed withdrawal of approval and the reasons therefore and such owner shall have an opportunity to present his views thereon. In those instances where there are conflicts as to the facts, a hearing shall be held to resolve such conflicts.

(x) *Farm of origin.* A farm where the swine were born, or on which they have resided for at least 90 consecutive days immediately prior to the interstate shipment.

(y) *Official pseudorabies vaccine.* Any pseudorabies virus vaccine produced under license from the Secretary of Agriculture under the Virus, Serum and Toxin Act of March 4, 1913, and any legislation amendatory thereof (21 U.S.C. 151 *et seq.*).

(z) *Official vaccinate.* Any swine which have been: (1) vaccinated with an official pseudorabies vaccine by an accredited veterinarian or a State or Federal veterinarian in accordance with recommendations on the vaccine label and the laws and regulations of the State in which the swine are vaccinated; (2) identified by a numbered pink eartag approved by the State in which such swine are vaccinated; [6] and (3) reported as official vaccinates at the time of vaccination to the State animal health official.

(aa) *Pseudorabies vaccinate.* Any swine that have been vaccinated with any product containing antigens for pseudorabies.

(bb) *Permit.* An official document issued for and prior to the interstate movement of pseudorabies infected, exposed or vaccinated swine under this part by a Veterinary Services representative, State representative, or an accredited veterinarian which states: (1) the number of swine to be moved; (2) the purpose for which the swine are to be moved; (3) the points of origin and destination; (4) the consignor and the consignee; and (5) any additional information required by this part.

(cc) *Certificate.* An official document issued for and prior to the interstate movement of swine not known to be infected with, exposed to or vaccinated for pseudorabies under this part by Veterinary Services representative, a State representative, or an accredited veterinarian which states: (1) the number and description of the swine to be moved; (2) that the swine to be moved are not known to be infected with or exposed to pseudorabies and are not pseudorabies vaccinates; (3) the purpose for which the swine are to be moved; (4) the points of origin and destination; (5) the consignor and consignee; and (6) and additional information required by this part.

(dd) *Owner-shipper statement.* A statement signed by the owner or shipper of infected, exposed, or pseudorabies vaccinated swine for and prior to an interstate shipment from a farm of origin direct to a recognized slaughtering establishment or to a slaughter market which states: (1) the number of the swine to be moved; (2) that the swine are being moved for slaughter only; (3) the points of origin and destination; (4) the consignor and consignee; and (5) any additional information required by this part.

(ee) *Qualified pseudorabies negative herd.* Qualified pseudorabies negative herd status is attained by subjecting all swine over 6 months of age to an official pseudorabies test and finding all swine so tested negative. If any of the swine so tested are positive, qualified pseudorabies negative herd status is attained by: (1) removing all offical pseudorabies test positive swine and cleaning and disinfecting the herd premises in accordance with § 85.13, (2) retesting all swine over 6 months of age 30 days after removal of the official pseudorabies test positive swine and finding all swine so tested negative, and (3) retesting all swine over 6 months of age 60 days after removal of the official pseudorabies test positive swine and finding all swine so tested negative. The status of the herd is maintained by an official pseudorabies test of 25 percent of the swine over 6 months of age every 80–105 days and finding all swine so tested negative. All swine over 6 months of age in the herd shall be subjected to the official pseudorabies test each year. However, no swine over 6 months of age in the herd are to be tested twice in 1 year to comply with the 25 percent requirement. A minimum of 90 percent of the swine must have been on the premises and part of the herd for at least 90 days prior to the qualifying test or have entered directly from another qualified pseudorabies negative herd. All additions to the herd must test negative or two official pseudorabies tests not less than 30 days or more than 60 days apart before being added to the herd or be from another qualified pseudorabies negative herd.

(ff) *Pseudorabies controlled vaccinated herd.* A herd of swine in which all of the swine over 6 months of age are negative to an official pseudorabies test and are vaccinated for pseudorabies within 15 days after such test. The status of the herd is maintained by an official pseudorabies test of 25 percent of the offspring between 16 and 20 weeks of age and finding all swine so tested negative. All additions to the herd must test negative to an official pseudorabies test, be vaccinated for pseudorabies within 15 days after such test, and be added to the herd not more than 30 days after such test. Pseudorabies controlled vaccinated herds that become positive can be reclassified as a pseudorabies controlled vaccinated herd by (1) testing of all swine over 6 months of age; (2) removal of all swine which are positive to an official pseudorabies test; (3) cleaning and disinfecting the herd premises in accordance with § 85.13; (4) retesting all swine over 6 months of age 30 days after removal of the swine which are positive to an official pseudorabies test and finding all swine so tested negative; (5) retesting all swine over 6 months of age 60 days after removal of the swine which are positive to an official pseudorabies test and finding all swine so tested negative; and (6) vaccinating all swine over 6 months of age for pseudorabies within 15 days of the second negative test.

(gg) *Approved livestock market.* A stockyard, livestock market, buying station, concentration point or any other premises under State or Federal veterinary supervision where swine are assembled for sale or sale purposes, and which has been approved by the Deputy Administrator under § 76.18 (9 CFR 76.18).[7] [8]

(hh) *Swine not known to be infected with or exposed to pseudorabies.* Any swine from a herd of swine in which no animal has been classified as a reactor to an official pseudorabies test, or has been diagnosed as having pseudorabies or suspected of having pseudorabies by a veterinarian; or any swine from a herd of swine which has been released from quarantine or has met the requirements of release from quarantine in accordance with the provisions of § 85.1(1).

(ii) *Common ground.* The ground, areas, buildings or equipment communally shared by any specific group or groups of livestock.

§ 85.2 Notice relating to the existence of the contagion of pseudorabies.

Notice is hereby given that there is reason to believe that the contagion of pseudorabies may exist in each State and that to prevent the spread and dissemination of the contagion thereof, and to protect the livestock of the United States, the regulations in this part are promulgated.

§ 85.3 General restriction.

Livestock shall not be moved interstate except in compliance with the regulations in this part.

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[6] The numbered pink eartags are available commercially. Should any problem arise regarding the availability of such eartags, contact the appropriate State animal health official.

[7] Notices containing lists of such approved livestock markets are published in the FEDERAL REGISTER. Information concerning livestock markets can be obtained from the Veterinarian in Charge, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture for the State in question.

[8] Before the Deputy Administrator withdraws approval of any livestock market, the owner of such livestock market shall be given notice by the Deputy Administrator of the proposed withdrawal of approval and the reasons therefor and such owner shall have an opportunity to present his views thereon. In those instances where there are conflicts as to the facts, a hearing shall be held to resolve such conflicts.

§ 85.4 Interstate movement of livestock.

(a) Livestock showing clinical evidence of pseudorabies shall not be moved interstate.

(b) Livestock that have been exposed to an animal showing clinical evidence of pseudorabies shall not be moved interstate within 21 days of such exposure.

(c) Except as provided in paragraphs (a) and (b) of this section, livestock other than swine may be moved interstate without restriction under this part.

(d) Except as provided in paragraphs (a) and (b) of this section, swine, swine semen, and swine embryos shall be moved interstate only in compliance with the regulations in this part.

§ 85.5 Interstate movement of infected swine or exposed swine.

Infected swine or exposed swine, other than swine described in § 85.4 (a) or (b), shall only be moved interstate in accordance with the following provisions:

(a) *Movement of infected or exposed swine for slaughter.* Infected or exposed swine shall be moved interstate for slaughter only if:

(1) The swine are moved directly to a recognized slaughtering establishment or directly through one or more slaughter markets and then directly to a recognized slaughtering establishment;

(2) The swine are accompanied by a permit or owner-shipper statement and such permit or owner-shipper statement is delivered to the consignee;

(3) The permit, in addition to the information described in § 85.1(bb), or the owner-shipper statement, in addition to the information described in § 85.1(dd), lists the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved; and

(4) The swine are moved to destination in one continuous movement without unloading enroute.

(b) *Movement of exposed swine to a quarantined herd or a quarantined feedlot.* Exposed swine shall be moved interstate directly to a quarantined herd or quarantined feedlot only if:

(1) The swine are negative to an official pseudorabies test 21 days or more after last being exposed to any livestock showing clinical evidence of pseudorabies;

(2) The swine are officially vaccinated for pseudorabies within 15 days after the negative test;

(3) The swine are moved interstate within 30 days after the negative test;

(4) The swine are accompanied by a permit and such permit is delivered to the consignee; and

(5) The permit, in addition to the information described in § 85.1(bb), states: (i) The present pseudorabies quarantine status of the farm of origin; (ii) the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved; (iii) the date of the official pseudorabies test and the name of the laboratory where the test was conducted; (iv) the date of the official vaccination for pseudorabies; and (v) that approval for the interstate movement has been issued by the State animal health official of the State of destination prior to the interstate movement of the swine.

§ 85.6 Interstate movement of pseudorabies vaccinate swine not known to be infected with or exposed to pseudorabies.

Pseudorabies vaccinate swine not known to be infected with or exposed to pseudorabies shall only be moved interstate in accordance with the following provisions:

(a) *Movement of pseudorabies vaccinate swine for slaughter.* Pseudorabies vaccinate swine not known to be infected with or exposed to pseudorabies shall be moved interstate for slaughter only if:

(1) The swine are moved directly to a recognized slaughtering establishment or directly through one or more slaughter markets and then directly to a recognized slaughtering establishment;

(2) The swine are accompanied by a permit or owner-shipper statement and such permit or owner-shipper statement is delivered to the consignee; and

(3) The swine are moved to destination in one continuous movement without unloading enroute.

(b) *Movement of pseudorabies vaccinate swine to a quarantined herd or quarantined feedlot.* Pseudorabies vaccinate swine not known to be infected with or exposed to pseudorabies shall be moved interstate directly to a quarantined herd or quarantined feedlot only if:

(1) The swine are accompanied by a permit and such permit is delivered to the consignee; and

(2) The permit in addition to information described in § 85.1(bb) states: (i) The pseudorabies status of the herd; (ii) the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved; (iii) the date of the vaccination for pseudorabies; and (iv) that approval for the interstate movement has been issued by the State animal health official of the State of destination prior to the interstate movement of the swine.

§ 85.7 Interstate movement of swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies.

Swine not vaccinated for/pseudorabies and not known to be infected with or exposed to pseudorabies shall only be moved interstate in accordance with the following provisions:

(a) *Movement for slaughter.* Swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies may be moved interstate for slaughter without further restriction under this part directly to a recognized slaughtering establishment or directly through one or more slaughter markets and then directly to a recognized slaughtering establishment.

(b) *Movement to a feedlot, quarantined feedlot, quarantined herd, or approved livestock market.* Swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies shall be moved interstate directly to a feedlot, quarantined feedlot, or quarantined herd or to an approved livestock market for subsequent movement directly to a feedlot, quarantined feedlot or quarantined herd only if:

(1) The swine are from a qualified pseudorabies negative herd, in which instance such swine may be moved interstate without further restriction under this part; or

(2) The swine are accompanied by a certificate and such certificate is delivered to the consignee; and

(3) The certificate, in addition to the information described in § 85.1(cc), states: (i) The identification of the farm of origin of each animal being moved by an earnotch recognized by a breed association, identification tag, tattoo, or similar identification, except such swine going to an approved livestock market need not be identified until their arrival at the approved livestock market; and (ii) approval for the interstate movement has been issued by the State animal health official of the State of destination prior to the interstate movement of the swine; and

(4) The swine are moved from a State which requires the State animal health official of that State to be immediately notified of any suspected or confirmed case of pseudorabies in that State and which requires that exposed or infected livestock be quarantined, such quarantine to be released only after having met quarantine release standards no less restrictive than those outlined in § 85.1(1) of this part: *Except,* That this provision shall not be effective until July 1, 1980.

(c) *Other movements.* Swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies shall be moved interstate other than for slaughter and

other than directly to a feedlot, quarantined feedlot, quarantined herd or to an approved livestock market for subsequent movement directly to a feedlot, quarantined feedlot or quarantined herd only if:

(1) The swine are accompained by a certificate and such certificate is delivered to the consignee; and

(2) The certificate, in addition to the information described in § 85.1(cc), states: (i) The identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved; and (ii) that each animal to be moved: (a) was subjected to an official pseudorabies test within 30 days prior to the interstate movement and was found negative, the test date and the name of the laboratory conducting the test; or (b) is part of a currently recognized qualified pseudorabies negative herd and the date of the last qualifying test; or, (c) is part of a pseudorabies controlled vaccinated herd and is one of the offspring that was subjected to the official test to achieve or maintain the status of the herd as a pseudorabies controlled vaccinated herd, and the date of the last test to maintain said status.

§ 85.8 Other interstate movements.

The Deputy Administrator may, upon request in specific cases, permit the interstate movement of livestock not otherwise provided for in this part under such conditions as he may prescribe to prevent the spread of pseudorabies. Veterinary Services intends that such authority be used only in situations and under circumstances presenting problems that could not have been reasonably anticipated in advance and in unique situations. Veterinary Services does not intend that such authority be used repeatedly to cover the same problem, but that the regulation be amended to conform with needed changes as they come to light.

§ 85.9 Interstate movement of swine semen and swine embryos for insemination of or implantation into swine.

Swine semen and swine embryos moved interstate for insemination of swine or implantation into swine shall be accompanied by a document issued by an accredited veterinarian stating that the donor swine are not known to be infected with or exposed to pseudorabies, were negative to an official pseudorabies test within 30 days prior to the collection of the semen or embryos or were members of a qualified pseudorabies negative herd, and had not been exposed to pseudorabies within 30 days prior to the collection of the semen or embryos.

§ 85.10 Permits and certificates

(a) Each permit, certificate or owner-shipper statement required under this part to accompany swine interstate shall be delivered with the swine to the consignee by the person delivering the swine.

(b) A copy of each permit or certificate required under this part to accompany swine interstate shall be mailed or delivered to the State animal health official of the State of destination by the person issuing the document within 3 days of the interstate movement of the swine covered by said document.

§ 85.11 Maintenance of records.

(a) The consignor of swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies which are moved interstate directly to a feedlot, quarantined feedlot, quarantined herd, or to an approved livestock market for subsequent movement directly to a feedlot, quarantined feedlot or quarantined herd shall maintain records whereby individual swine can be traced to the farm of origin.[9]

(b) Such records shall be maintained for two (2) years after the swine are moved interstate by the consignor, and such records shall be made available to the State animal health official or Veterinary Services representative on request.

§ 85.12 Cleaning and disinfecting means of conveyance.

All means of conveyance used in connection with the interstate movement of pseudorabies infected or exposed livestock shall be cleaned and disinfected in accordance with § 76.30 of this chapter using one of the disinfectants registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135 *et seq.*) with herpes virucidal claims. These disinfectants shall be used in accordance with directions on their labels accepted in connection with their registration.

§ 85.13 Cleaning and disinfecting livestock markets and other facilities.

Livestock markets and other facilities used in connection with the interstate movement of pseudorabies infected or exposed livestock shall be cleaned and disinfected in compliance with § 76.31 of this chapter using one of the disinfectants registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135 *et seq.*) with herpes virucidal claims. These disinfectants shall be used in accordance with directions on their labels accepted in connection with their registration.

These regulations impose certain restrictions on the interstate movement of swine because of the existence of pseudorabies. It does not appear that further public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public participation with respect to the regulations are unnecessary and contrary to the public interest. These regulations shall become effective May 17, 1979.

Done at Washington, D.C., this 13th day of February 1979.

NOTE.—This final rulemaking has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations," and has been designated "significant." An approved Final Impact Analysis Statement has been prepared and is available from the Program Services Staff, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

M. T. GOFF,
Acting Deputy Administrator
Veterinary Services.

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[9] Such records shall list: (1) the names and addresses of the consignor and consignee; (2) the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal moved; and (3) the date of the shipment.

Federal Register

FRIDAY, FEBRUARY 16, 1979

PART VIII

WATER RESOURCES COUNCIL

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WATER PROJECTS REVIEW FUNCTION

Proposed Rule and Procedures of Implementation

[8410-01-M]

WATER RESOURCES COUNCIL

[18 CFR Part 704]

WATER PROJECTS REVIEW FUNCTION WITHIN THE WATER RESOURCES COUNCIL

Proposed Rules and Procedures of Implementation

AGENCY: U.S. Water Resources Council.

ACTION: Proposed rule.

SUMMARY: In accordance with Executive Order 12113, a technical review function is being established within the U.S. Water Resources Council (WRC) to evaluate preconstruction plans and reports for Federal water and related land resources projects. This notice sets out the proposed scope of the planning review to be accomplished and the procedures for transmitting agency reports to WRC for review. The proposed rules and procedures apply to water-related Federal and Federally-assisted programs, projects and activities as defined in the Standards Section I.B. 2 of the WRC Principles and Standards for Planning Water and Related Land Resources (P&S) (38 FR 24778, dated September 10, 1973).

The WRC review function will ensure that agencies have complied with the Council's new planning manual for calculating benefits and costs presently being prepared; the P&S, and with other Federal laws, regulations, and guidelines relevant to the planning process. The review will also ensure the goal of wide public participation in the development of project plans and consideration of public views.

DATE: Comments must be received on or before April 15, 1979.

ADDRESS: Coments should be addressed to the Director, Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Lewis D. Walker, Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037 (202-254-6453).

It is proposed that Part 704 of 18 CFR be amended by adding a new Subpart F to read as follows:

Subpart F—Water Projects Review

Sec.

AUTHORITY: E.O. 12113, 44 FR 1955.

Subpart F—Water Projects Review

§ 704.40 Purpose.

Executive Order 12113, dated January 4, 1979, directed the Water Resources Council (WRC) to ensure that an impartial technical review is performed on preauthorization reports or proposals and preconstruction plans for Federal and Federally-assisted water and related land resources projects and programs, as they are defined in the Council's Principles and Standards. This statement sets forth the proposed rules and procedures implementing a water projects review function within the WRC. The statement provides the scope of the planning review to be conducted by WRC staff; indicates the necessary information to be documented in agency reports to permit timely review presents the procedures for agencies to transmit reports for review and discusses the general content of the water projects review findings. These proposed rules and procedures will serve as interim regulations until final rules are adopted.

§ 704.41 Objectives of WRC water projects review.

(a) In his Water Resources Policy Reform Message of June 6, 1978, the President stated that improvements were needed in the planning and evaluation of Federal water projects in order to achieve greater economic efficiency and environmental quality in water resources management. To implement these reforms, the President directed that the WRC Principles and Standards for Planning Water and Related Land Resources (P&S) (38 FR 24778, dated September 10, 1973) and other applicable rules for protecting natural and cultural resources be adhered to in the planning, review, and implementation of Federal water resources projects. In addition, the President directed the WRC to develop a planning manual for use by each agency in calculating benefits and costs by using the best available techniques and in applying the P&S in a consistent manner. The President also set forth specific criteria that will be used as part of his decision process on water projects. Therefore, the objectives of the WRC review function, as stated in Executive Order 12113, are to evaluate each report, proposal, or plan for compliance with:

(1) The Council's Principles and Standards;

(2) The planning manual or, pending issuance of the manual, established agency procedures;

(3) Other Federal laws, regulations and guidelines relevant to the planning process; and

(4) The goal of wide public participation in the development of project plans, including adequate opportunity for public comment and adequate consideration of those views.

(b) It is also an objective of the WRC review function to provide a technical evaluation of planning aspects related to the President's decision criteria. However, conclusions regarding the authorization or funding of projects, as related to these criteria, will continue to be made by appropriate decisionmakers.

(c) The Office of Management and Budget (OMB) presently reviews certain technical aspects of projects as part of its budget and legislative review function. Executive Order 12113 states that OMB will continue to advise agencies of the relationship of project plans to the program of the President whenever such plans are involved in a legislative process. However, the Executive Order requires that agency submissions to OMB of the reports, proposals, or plans reviewed by the WRC staff shall be accompanied by a statement of the review findings. Therefore, the responsibility for water projects *technical* review will be transferred from OMB to WRC.

§ 704.42 Federal activities covered.

(a) These procedures apply to all active water-related Federal and Federally-assisted programs, projects, and activities as defined in the Standards, Section I.B.2 of the P&S. These procedures are applicable only to agency preauthorization reports which are to be submitted to Congress for project authorization, and to authorized projects (and separable project features) not yet under construction for which agencies currently prepare post-authorization planning documents and for which individual funding requests are submitted to OMB. Subsequent to project authorization, the WRC staff will only review a completed post-authorization planning document once, prior to agency recommendation for initiation of construction, and will not make annual reviews of continuing appropriation requests. The primary focus of the review function will be on the water resources programs of the U.S. Army Corps of Engineers, the Bureau of Reclamation, the Soil Conservation Service and the Tennessee Valley Authority. However, a secondary activity will be the review, in appropriate detail, of other water re-

sources proposals, such as those for wild, scenic, and recreational rivers.

(b) Some agency projects have been planned and authorized prior to implementation of the P&S. For those projects, WRC staff will review the report against contemporary planning standards and provide comparative planning information in its review findings. However, the decision regarding implementation of projects not planned under the P&S will be made by agency heads and other authorities. Failure of a project to meet all contemporary planning standards will not necessarily preclude its implementation.

(c) The WRC water projects review will not require preparation of a new or special report by agencies. The review will be based on those documents that are now prepared by agencies during various stages of their planning process and on the available technical supporting information which is necessary to secure report clearance within the agency submitting the report. This information is normally included either in bound appendices to the report or in supporting documents prepared for internal agency use. After considering the specific planning aspects which the WRC staff will review, as stated in these procedures, an agency may decide to modify its present report format or supporting information to expedite the review process.

§ 704.43 Scope of review.

(a) Certain planning aspects identified in the Executive Order will be reviewed by the WRC staff in order to monitor agency implementation of the P&S and the new planning manual. Other planning elements to be reviewed will provide information related to the President's decision criteria on water projects. By monitoring the same aspects for all reports, the review function will ensure consistent and uniform application of planning practices among agencies.

(b) The scope of the WRC project review has been carefully structured to minimize duplication of agency internal review to the extent practicable and still meet the overall goals and objectives of the President's Water Resources Policy Reform Message and Executive Order 12113. Therefore, agency reports should be well organized and necessary information documented, including the views of all interested parties, to facilitate review and analysis of the agency's planning effort.

(c) The following paragraphs summarize the specific planning aspects that will be reviewed by the WRC staff for preauthorization and post-authorization planning reports and the necessary information that should be included either in the basic document or in accompanying supporting material.

(1) *Preathorization reports.* (i) *Alternative plans.* Preauthorization reports will be reviewed to determine whether a reasonable array of alternative plans that address the planning objectives were examined in appropriate detail prior to selecting the proposed plan. The range of measures should not be limited to those traditionally used by the agency. Display of alternatives is particularly important when there are conflicts among study area needs or objectives in determining the effectiveness of different alternatives to accomplish project needs; and to demonstrate the relative merits of a primarily nonstructural alternative. The WRC staff will review the extent of consideration given to alternatives, including a primarily nonstructural solution, which emphasize national economic development and environmental quality.

(A) Since there are uncertainties associated with any projection of future conditions, as related to alternative plans, the consideration of alternative futures has become increasingly important to decisionmakers. The P&S requires that reasonably probable alternative futures be analyzed in project planning. Therefore, the WRC staff will review the reasonableness of the future alternative conditions and the most probable alternative future for "with" and "without" project actions.

(B) Certain agency plans or proposals, such as those to establish wild, scenic, and recreational rivers, may significantly affect the availability and quantity of water which could serve other uses. When such plans would preclude potential future development, the consideration given to tradeoffs between economic and environmental effects, as identified in the appropriate accounts, will be reviewed by the WRC staff.

(ii) *Beneficial effects on national economic development.* The review effort for uniformity and consistency in the measurement of beneficial effects on national economic development will concentrate on direct-user benefits. Special beneficial effects claimed from the use of unemployed and underemployed labor resources resulting from project construction will be reviewed separately.

(A) The WRC staff will examine the estimates of direct-user benefits for each individual project component or purpose, such as municipal and industrial water supply, flood control, irrigation, etc. The methodology and procedures used in the evaluation of each project purpose should be described in the planning document. Agency reports should set forth the major assumptions made concerning future conditions with and without the project, price level assumptions, interest rates, time periods, and other pertinent information.

(B) The review will also examine the estimated beneficial effects from utilization of unemployed and underemployed resources. Designation of the region as an area of persistent unemployment and underemployment should be documented. Reports should describe methodology, procedures, and assumptions used in the study.

(iii) *Project monetary cost estimates.* The estimate of monetary project costs will be reviewed to determine the reasonableness of the overall cost estimate for comparison with project benefits.

(A) *Initial Plan Implementation Costs.* Review of the first cost of project implementation will include the price levels used in the estimate to determine whether the data are current and to compare them with benefit price level assumptions. The review will examine the selected contingency factor to determine if the technical reliability of the cost estimate is reasonable considering unknown factors. Such factors as the cost per kilowatt of installed capacity, cost per mile of transmission line, and cost per acre-foot of storage will be reviewed.

(B) *Interest During Construction.* Interest during construction is important to large water resource projects constructed over a long period of time. Consideration of interest during construction will be based on the length of the construction period for the project or separable parts and on the sensitivity of interest during construction on project justification. The WRC staff will review the assumed construction period and the interest rate used in the calculations to determine the reasonableness of the estimated interest during construction.

(C) *Operation and Maintenance (O&M).* The cost for O&M, like the accrual of project benefits, is spread over the project life and is sensitive to variations that occur over time. The WRC staff will review the plan for operating and maintaining the proposed project and the procedures used to estimate annual O&M costs.

(D) *Replacement Cost.* Even with proper O&M, some major facilities of a project may have shorter useful physical lives than the assumed economic life of the total project. Such facilities must be periodically replaced. Consequently, the assumptions and evaluation of major replacement costs over time will be reviewed.

(E) *Annual Project Cost.* The derivation of the total average annual project costs will be examined to determine if the proper interest rate, amor-

tization, and discounting procedures were used in the project evaluation.

(iv) *Environmental considerations.* Agency reports and accompanying environmental impact statements will be monitored to determine whether agencies have effectively complied with relevant environmental statutes, regulations, executive orders, and policy guidelines. Documents will be reviewed to see if they include an explicit and detailed analysis of environmental effects and important environmental values. Reports should discuss major problems, conflicts, and disagreements among groups and agencies as pertains to environmental considerations and whether such conflicts were resolved. Unresolved conflicts should be summarized, along with the agency's proposal for resolving the disagreements prior to project implementation. An analysis of the effects of the selected plan and alternatives on environmental quality should be provided.

(v) *Public involvement and support.* The WRC staff will review the extent of involvement of Federal, State and local officials and the public in the plan formulation process and the indications of public support. The purpose of such review is only to ensure that there has been adequate opportunity for participation and comment by interested parties and that the agency has considered the expressed desires of the public regarding utilization of the water and related land resources of the study area. Agency reports should document the public involvement program conducted during the planning effort. The various interest groups should be identified and the expressed preferences and desires of those affected by the proposed action should be discussed. Important conflicts in the preferences for utilization of the water and related land resources should be identified. Reports should state the number of persons that attended public meetings and summarize the views expressed on the recommended plan and on other considered alternatives. Agreements, resolutions, commitments, or letters of support or non-support from interested groups should be included in agency reports.

(vi) *Relationship to approved regional water resources management plans.* Selected Federal agency water and related land resources programs and projects shall be consistent with approved regional water resources management plans, or satisfactory reasons for the inconsistency shall be given by the responsible Federal agency (WRC Policy Statement No. 4, 43 FR 28884, dated July 3, 1978). Therefore, information should be included in reports pertaining to any approved regional water resources management plans in the study area, whether the proposed project is consistent with such plans, or the reasons for the inconsistency.

(vii) *Water conservation measures.* Water conservation measures considered in agency reports will be reviewed for consistency with the conservation options described in the revised P&S. Reports should also discuss the various monetary and nonmonetary impacts and effects associated with the water conservation measures under each account.

(viii) *Identification of new policy directions.* Unusual or unique circumstances may justify an agency recommending an exception to existing Federal policy or a new policy direction. In such circumstances, reports should identify the proposed change to Federal policy and provide the agency's rationale for the suggested change. Agency recommendations for modification of Federal policy will be highlighted in the WRC statement of findings for consideration by appropriate national policy authorities.

(ix) *Distribution of beneficiaries.* The WRC statement of findings will note the distribution of the benefits attributed to proposed agency plans for consideration by decisionmakers. Agency reports should identify by project purposes those groups who directly benefit from the recommended plan. Such identification should include, whenever possible, the region, location and number of people benefited; and the location, number, and type of properties (e.g., residential, commercial, industrial, rural, etc.) affected. The information should also identify benefits to disadvantaged groups.

(x) *Safety.* It is the responsibility of the administering agency to ensure that water projects have no significant safety problems involving design, construction or operation. The WRC staff will not certify whether a proposed project will be safe, but will only monitor the extent of consideration given by the agencies to safety aspects of the project. Preauthorization reports should identify and discuss potential safety problems, including possible losses to human life and property should the project experience a major operational or structural failure or a catastrophic natural event. The measures proposed by the agency to minimize or eliminate the impact of significant hazards should be described.

(xi) *Cost sharing.* The WRC statement of findings will note the extent to which the cost sharing included in the report conforms to existing policy and legislation.

(A) Basic to cost sharing is the presentation of cost allocation studies by objectives and by components or purposes. Agency reports should identify the method and procedural steps used in the cost allocation analysis and explain its conformance with approved cost allocation procedures. The rationale for the use of other than approved cost allocation procedures should be provided. The results of the cost allocation will be compared with project goals and objectives.

(B) Agency reports should indicate conformance with cost sharing policies and procedures or state if special legislation is required. Available information confirming local interest's willingness to pay, such as a letter of intent, resolutions, and State facilitating legislation (ad valorem taxes, special water resource funds, etc.) should be included in the report.

(xii) *International or intergovernmental problems.* Water resource development preauthorization reports and supporting documentation should specifically identify significant international or intergovernmental problems associated with the proposal. The international or intergovernmental implications of constructing the project will be summarized in the WRC review findings.

(xiii) *Mitigation, compensation, and enhancement.* In formulating water resources projects, agencies should consider measures to protect and enhance fish, wildlife, historical, and other resources. Reports should include a discussion of the need for compensation and/or mitigation and provide relevant information supporting the agency's conclusions. Agency reports should present a schedule for implementing any mitigation plan in relationship to the project construction schedule. Unresolved mitigation issues should be documented.

(2) *Post-authorization Reports.* (i) The foregoing planning aspects will also be reviewed by the WRC staff during the post-authorization stage of a project prior to the time an agency requests funds for initiation of project construction. However, the intensity of the review undertaken will primarily depend on the elapsed time since project authorization, the extent of changed conditions in the study area subsequent to authorization, new policies implemented since authorization, and whether the WRC staff reviewed the report during the preauthorization planning stage. Generally, the review of planning documents in support of funding requests will be minimal when all of the following conditions are met: (A) the time lapse between project authorization and preparation of the post-authorization report is relatively short, (B) the WRC staff reviewed the preauthorization document and found no major concerns, and (C) no major changes in policy or conditions in the study area have occurred since authorization. However, when any of the three conditions are not met, the scope of the WRC water projects review and the supporting information

to be provided by agencies will be the same as that previously set forth for preauthorization reports.

(ii) Post-authorization planning studies should either reaffirm the basic planning decisions made in the preauthorization stage or indicate the modifications made to the plan in response to changed conditions and needs since authorization. Therefore, the following information in addition to that set forth for preauthorization reports should be provided in all post-authorization planning documents transmitted to WRC for review:

(A) Reports should document the analyses made by the agency to either reaffirm the authorized plan or to modify it. If the authorized plan has been modified, the report should address any consideration given to the need for project reauthorization.

(B) Tables should be included in the report which compare the pertinent physical and economic data for the plan, as authorized, with the plan presented in the post-authorization report.

(C) Where planning procedures and data used in the document supporting project authorization differ substantially from current practices, comparison tables should be provided which reflect the use of current procedures.

(D) Reports should provide a current analysis of major environmental effects, along with the updated costs and measures included in the plan to minimize adverse effects or for enhancement. The report should identify changes in measures related to fish and wildlife mitigation, compensation, or enhancement since authorization as well as remaining unresolved issues. Post-authorization reports should include a schedule of funding for such measures and the rationale for providing the funds either before, concurrent with, or after installation of major physical features.

(E) Project cost sharing should be updated and compared with that determined during preauthorization studies.

Agency post/authorization reports should document conformance with and departures from applicable policy and procedures. The status of cost-sharing agreements, contracts, etc., should be discussed.

§ 704.44 WRC review period.

(a) The Chairman of the Council or his/her designee shall transmit the results of the WRC staff technical review to the appropriate agency head with 60 days of the submission of a report, proposal, or plan by the agency. If the documents and information necessary for the review are not initially submitted, the Chairman or his/her designee may extend the review period by not more than 30 days so that information can be obtained from the agency and the review completed. The review period for all reports will begin on the date the planning document is received at WRC and will terminate on the date the Chairman or his/her designee signs the letter transmitting the review findings to the agency head. In no case shall the review period exceed 90 days.

(b) The WRC review unit and the WRC Director will be responsible for determining whether documents and information initially submitted by agencies are adequate for review. Every effort will be made to make this determination within 30 days of submission of the report. If the documents and information are found to be inadequate for review, the agency will be so notified and will be requested to submit additional information. The extent of additional information needed by the WRC staff to complete its review and the anticipated time required by the agency to submit the requested information will determine the extended length of the review period. A maximum of 30 days shall be allowed for an agency to submit the requested additional information to WRC. If such information has not been or cannot be provided within the allowable 30 days, the WRC staff will complete its review findings based on the information already submitted by the agency, or the agency may make arrangements for resubmittal of the report at a later date.

§ 704.45 Procedures for transmitting agency reports for review.

(a) Beginning April 1, 1979, all agencies shall submit to the WRC Director for review, prior to their approval by the head of the agency, preauthorization reports for Federal and federally assisted water and related land resources projects and programs which require congressional authorization for implementation. Preauthorization reports shall be submitted at least 90 days prior to the scheduled time for their transmittal to OMB for advice pertaining to the plan's relationship to the program of the President. Such reports and accompany environmental statements shall have been reviewed by the Governor of the affected State and appropriate Federal departments prior to transmittal to WRC. The comments of the Governor and those of Federal departments and agencies shall accompanying the preauthorization report to WRC.

(b) Beginning April 1, 1979, all agencies shall also transmit to the WRC Director for review, prior to their approval by the head of the agency, currently prepared post-authorization reports in support of funding requests for individual Federal and Federally assisted water and related land resources projects. Although post-authorization reports can be transmitted to WRC at any time during the year, it is unlikely that a report received after September 1 can be reviewed in time for the project to be included in the President's next budget. The first submission of such planning documents shall be for those activities for which initial construction funds will be requested in fiscal year 1981.

(c) When transmitting reports, agencies shall designate an individual for informal liaison and coordination during the review period. Six copies of the planning document and one copy of technical supporting information, if necessary, shall be transmitted.

§ 704.46 Scheduling of reports for review.

By April 10, 1979, agencies shall submit a schedule to the Director, WRC of all reports and plans expected to be transmitted for review during the remainder of calendar year 1979. Thereafter, by January 10 of each year, agencies shall submit a schedule of all reports expected to be transmitted for review during the succeeding 12 months. Each agency shall refer to WRC not more than one-third of its estimated total reports for a fiscal year during any quarter of that fiscal year without the concurrence of the Director, WRC. In addition, agencies shall inform the Director of any changes in their proposed schedule at the earliest practical date.

§ 704.47 WRC statement of findings.

(a) The Chairman of the Council or his/her designee shall report the results of the technical review to the appropriate agency head in the form of a statement of findings. The findings will: (1) Reference the applicable planning criteria under which the proposed project was formulated, (2) indicate whether the agency has complied with the Principles and Standards and the procedures contained in the WRC planning manual, and (3) provide factual information on the technical adequacy of the agency report for each of the selected planning aspects discussed herein. The statement of findings will identify specific variations from Council approved procedures and other Federal laws, regulations, and guidelines relevant to the planning process, along with the revisions necessary to bring the plan into compliance. It will be the responsibility of the agency head to determine what corrective action, if any, is warranted by the findings of the WRC staff review. Conclusions and recommendations pertaining to project implementation, based on the overall statement of findings, will continue to be the responsibility of the agency head.

(b) Agency submissions to OMB and to the Congress of the reports, proposals, or plans reviewed pursuant to these rules and procedures shall be accompanied by the statement of findings transmitted to the agency head, together with any agency comments on such findings. The WRC statement of findings will be available to the public upon request.

Dated: February 13, 1979.

LEO M. EISEL,
Director.

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