

between the cognizant agency and the governmental unit. This agreement will be subject to re-opening, only at the option of the cognizant agency, and then only if: (i) It is subsequently found to violate a statute; (ii) the information provided by the governmental unit upon which the cognizant agency relied during the proposal review and negotiation process is later found to be materially incomplete or inaccurate; or (iii) the cognizant agency was not made aware of major changes in accounting practices that occurred during the effective period of the agreement. The agreed upon rates will be made available to all Federal agencies for their use.

F. Other Policies

1. *Fringe Benefit Rates.* If overall fringe benefit rates are not approved for the governmental unit as part of the central service costs allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost

negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the grantee agency should so advise the cognizant agency.

2. *Billed Services Provided by the Grantee Agency.* In some cases, grantee agencies provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the grantee agency should be guided by the requirements in Attachment C relating to the development of billing rates and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by case basis as warranted by the circumstances involved.

3. *Indirect Cost Allocations Not Using Rates.* In certain situations, a grantee

agency, because of the nature of its programs, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases a narrative cost allocation methodology should be developed, documented, maintained for audit or submitted, as appropriate, to the cognizant agency for review, negotiation and approval.

4. *Appeals.* If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. *OMB Assistance.* To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance as required to resolve such problems in a timely manner.

[FR Doc. 88-23643 Filed 10-13-88; 8:45 am]

BILLING CODE 3110-01-M

The American Medical Association is a non-profit corporation organized for the purpose of promoting the science and art of medicine and the health of the people. It was organized in 1847 and has since that time been the leading organization of the medical profession in this country. Its membership is composed of physicians, surgeons, dentists, and other medical practitioners who are interested in the advancement of their profession and the welfare of the community. The Association's activities are directed towards the improvement of medical education, the advancement of medical research, and the promotion of public health. It accomplishes these ends through the publication of the Journal of the American Medical Association, the holding of annual meetings, and the maintenance of a permanent office in Chicago. The Journal is one of the most important and influential medical publications in the world, and its circulation is the largest of any medical journal. It contains the latest news and information in the field of medicine, and is a valuable resource for all medical practitioners. The Association's annual meetings are held in different cities each year, and are attended by thousands of medical professionals from all over the world. These meetings provide an opportunity for medical practitioners to exchange ideas and information, and to discuss the latest developments in their field. The Association's permanent office in Chicago is the center of its administrative and editorial activities, and is staffed by a large number of professional and administrative personnel. The Association's financial resources are derived from the contributions of its members, and from the sale of the Journal and other publications. It is a self-sustaining organization, and does not receive any government or other external support. The American Medical Association is a unique and important organization, and its activities are of great benefit to the medical profession and the community as a whole. It is a source of pride and honor for all medical practitioners, and its success is a reflection of the dedication and hard work of its members.

Registered Federal Trade

Friday
October 14, 1988

Part VI

Office of Management and Budget

Final Issuance of Transmittal
Memorandum No. 7 Amending OMB
Circular No. A-76; Performance of
Commercial Activities: Notice

OFFICE OF MANAGEMENT AND BUDGET**Performance of Commercial Activities (OMB Circular A-76); Final Issuance of Transmittal Memorandum No. 7**

AGENCY: Office of Management and Budget.

ACTION: Final issuance of Transmittal Memorandum No. 7 amending OMB Circular No. A-76, "Performance of Commercial Activities."

SUMMARY: This Notice contains Transmittal Memorandum No. 7, dated September 28, 1988, to Circular No. A-76, "Performance of Commercial Activities."

This transmittal Memorandum updates the retirement cost factors, the miscellaneous fringe benefit cost factor for Federal employees, the tax rates used for commercial firms, and the Federal pay raise assumptions for 1989 through 1993. It deletes material mark-up rates applied for General Services Administration (GSA) items, and revises material mark-up rates applied to Defense Logistics Agency (DLA) items.

This Memorandum rescinds Transmittal Memorandum No. 4, dated October 29, 1986, which implemented the requirements of the Federal Employees Retirement System Act of 1986 (FERS) to exclude the employers' costs of social security (OASDI) and thrift plans from A-76 cost comparisons. Public Law 100-366, signed on July 13, 1988, requires all retirement costs to be included in A-76 cost comparisons. This Memorandum also deletes the requirement for agencies to publish their schedules for conducting cost comparison studies in the *Commerce Business Daily* and the *Federal Register*. Executive Order 12615 requires OMB to publish the schedules. Summary reports on the implementation of OMB Circular

No. A-76 to be submitted by all agencies to the Office of Federal Procurement Policy, OMB, are deleted; future information will be contained in the A-76 Management Information System.

The updated standard retirement cost factor represents the Government's share of the full dynamic normal costs of the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). This is a composite factor based on the percentage of payroll costs participants in each system represented. The Government's contributions to Social Security (OASDI) and thrift savings plan costs are also included.

The revised fringe benefit cost factor represents the amount the Government contributes to other fringe benefits for employees (workmen's compensation, bonuses and awards and unemployment programs). This revised cost figure was provided by the Office of Personnel Management. Originally, prices paid by the agencies for GSA material did not include all the costs of the acquisition and storage functions performed by GSA, and these costs were added through the use of a standard factor. Public Law 100-202, section 619 now requires inclusion of these costs in the GSA prices, therefore, it is no longer necessary to apply a mark-up rate to GSA prices.

The revised mark-up rates to be applied to DLA prices to show full acquisition and supply costs were provided by DLA.

The Tax Rate Table provides by types of industry the appropriate tax rates in relation to business receipts. The tax rates have been revised by the Internal Revenue Service to reflect the latest rates as of 1984.

The deletion of the requirement for agencies to publish their schedules once per year in the *Commerce Business*

Daily and the *Federal Register* is a result of Executive Order 12615, Performance of Commercial Activities, dated November 19, 1987, which required OMB to publish the schedules.

The annual reporting requirements in Chapter 4 of the Supplement to OMB Circular No. A-76, are deleted. The data will be obtained from the A-76 Management Information System on a quarterly basis.

The pay raise assumptions for Federal employees for 1989 through 1993 have been changed to reflect the President's agreement with Congress on the raise to be effective in January 1989.

The revision does not require any agency to (1) create or maintain a duplicative control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with the Federal Acquisition Regulations (FAR).

SUPPLEMENTARY INFORMATION: On August 23, 1988 OMB published a draft transmittal memorandum for a ten day public comment period. Only one comment was received; that OMB specify that it would publish the annual study schedules in the *Federal Register* and *Commerce Business Daily*. The recommendation has been included. The final Memorandum also contains two other changes. The decision on the Federal Pay Raise for 1989 was made so the new figure (4.1 percent) was included and a mistake in the rate for medicare was discovered and that rate was lowered from 2.17 percent to the appropriate rate of 1.45 percent.

FOR FURTHER INFORMATION CONTACT: Linda Mesaros, Office of Federal Procurement Policy, Office of Management and Budget, (202) 395-3300.

Darrell A. Johnson,
Assistant Director for Administration.

BILLING CODE 3110-01-M

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 28, 1988

Circular No. A-76

Revised

Transmittal Memorandum No. 7

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:

James C. Miller III
Director

SUBJECT:

Performance of Commercial Activities

This Transmittal Memorandum revises the treatment of retirement costs for both government and contractors and updates certain other cost factors. Public Law 100-366 amends the "Federal Employees' Retirement System Act of 1986" to require that all employer paid retirement costs for the Federal Employees Retirement System and the contractor be included in the A-76 cost comparison process. Transmittal Memorandum No. 4 is rescinded by this memorandum. Therefore, all renumbered lines and added lines on the cost comparison forms at Illustrations 1-1 and 5-1, and added paragraphs in the Supplement introduced by Transmittal Memorandum No. 4 are hereby deleted. In addition, this Memorandum updates the federal pay raise assumptions for 1989 through 1993, updates the cost factor for miscellaneous fringe benefits, deletes the mark-up rates applied to General Services Administration (GSA) materials, revises the mark-up rates applied to Defense Logistics Agency (DLA) materials, and revises contractor tax rates. This Memorandum also changes the instructions for publication of inventories and study schedules, and deletes all of Chapter 4, "Annual Reporting Requirement" in Part I of the Supplement.

Paragraph C.i.b, Chapter 1, Part I, of the Supplement

The requirement in this paragraph for agencies to publish their schedules for conducting cost comparison studies in the Commerce Business Daily and the Federal Register is deleted. Executive Order 12615 requires the Office of Management and Budget (OMB) to publish the schedules for public review. OMB will publish the schedules not later than 30 days before the start of each fiscal year in both publications cited above.

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL

James C. Miller III
CERTIFYING OFFICER

Chapter 4, Part I, of the Supplement

This chapter is deleted. Quarterly reporting is required by Executive Order 12615. It will be accomplished through the A-76 Management Information System.

Illustration, 1-1, Chapter 1, Part IV, of the Supplement

Lines 13 through 17 of the cost comparison form for in-house vs. contract performance should be changed back to the original nomenclature and format specified in the Supplement, dated August, 1983. Delete the Line - Social Security (OASDI) and Savings Plan Costs (Deduct), which was added by Transmittal Memorandum No. 4. Lines 13 through 17 should be as follows:

TOTAL CONTRACT COSTS -----Line 13

CONVERSION DIFFERENTIAL -----Line 14

TOTAL (Line 13 & 14) -----Line 15

COST COMPARISON (Line 15 minus Line 6) -----Line 16

COST COMPARISON DECISION -----Line 17

Paragraph C, Chapter 2, Part IV of the Supplement

The pay raise assumptions for Federal employees contained in the President's FY 1989 budget have been changed through discussions with Congress. Both military and civilian pay raises effective in January 1989 will be 4.1 percent. For military pay raises for 1990 and beyond the agencies will use their internal planning numbers. The following rates for civilian employees should be applied per paragraph C of the Supplement on page IV-6 and 7:

Federal Pay Raise Assumptions Inflation Factors

Effective Date	Civilian
January 1989	4.1
January 1990	3.0
January 1991	3.0
January 1992	3.0
January 1993	3.0
January 1994	3.0

Paragraph D.3.g(1)(a), Chapter 2, Part IV, of the Supplement

The revised standard retirement cost factor to be used is 21.7 percent for all agencies except the Department of Medicine and Surgery (DM&S) within the Veterans Administration (VA). The factor for DM&S is 11.4 percent. The standard factor represents the Government's share of the full dynamic normal costs of the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). This factor also includes the Government's contributions to the Old Age, Survivors and Disability Insurance (OASDI) portion of Social Security and thrift savings plan costs.

The revised retirement cost factors for special class employees are 26 percent for air traffic controllers and 25.5 percent for law enforcement and fire protection employees, except for fire fighters within DM&S. The factor for DM&S is 15.6 percent.

Paragraphs D.3.g(1)(b), Chapter 2, Part IV, of the Supplement.

Revised standard fringe benefit cost factors to be applied under paragraph D.3.g. in the Supplement to the Circular are as follows:

<u>Fringe Benefit Factor</u>	<u>Revised Cost</u>
Federal employee miscellaneous fringe benefits (workmen's compensation, bonuses and awards and unemployment programs)	1.70

The factor for Federal employee insurance remains at 4.7 percent. The factor for FICA (Medicare) remains at 1.45 percent.

Paragraph D.3.g(2), Chapter 2, Part IV, of the Supplement

Add the following paragraph at the end of D.3.g(2) to Chapter 2, Part IV of the Supplement: (The original paragraph was deleted by Transmittal Memorandum No. 4)

"The Federal Insurance Contributions Act (FICA) cost factor listed below, will be applied to civilian employees not covered by either of the two

civilian retirement systems (normally intermittent and temporary employees). Be careful to apply the FICA rate only to wages and salaries subject to the tax; there is an annual salary limitation for FICA tax. (See Transmittal Memorandum No. 6). Costs for employees covered by FICA are as follows:

FY 1989	7.51
FY 1990	7.62
FY 1991	7.65
FY 1992	7.65
FY 1993	7.65

Paragraphs E.3.a(1), (2), and (3), Chapter 2, Part IV of the Supplement

The material mark-up rates which are applied for GSA material and supply services under paragraph E.3.a.(1), (2), and (3) are deleted. Public Law 100-202, Section 619 provides for the inclusion of acquisition and storage costs in the price charged by GSA.

Paragraphs E.3.b.(1) and (2), Chapter 2, Part IV, of the Supplement

The material mark-up rates which are applied for DIA material and supply services are revised as follows:

<u>Material</u>	<u>Percent</u>
Wholesale Stock Fund	13.6
Direct Delivery	6.2

Paragraphs H and I, Chapter 3, Part IV, of the Supplement

Delete these paragraphs which were added by Transmittal Memorandum No. 4. Add the following paragraph H as originally contained in Chapter 3, Part IV of the Supplement dated August, 1983; this paragraph had been deleted by Transmittal Memorandum No. 4:

"H. TOTAL--Line 13

Add lines 7, 8, 9 and 10. If there is a number in parenthesis; i.e., a deduction, in line 11, add to line 12 and subtract this total from the total of lines 7 through 10 and enter the difference on line 13. If the number in line 11 is not in parenthesis, it should be added to the total of lines 7 through 10, and then subtract line 12 from

Attachment

the total of lines 7 through 11 and enter the difference on line 13."

Chapter 4, Part IV, of the Supplement

Delete the renumbering of line numbers referenced by Transmittal Memorandum No. 4. Proper numbering is the original numbering contained in Chapter 4, Part IV of the Supplement dated August, 1983.

Illustration 5-1, Chapter 5, Part IV, of the Supplement

Lines 15 through 19 of the "Cost Comparison Form for Expansions, New Requirements and Conversion to In-House Performance" should be changed back to the original nomenclature and format specified in the Supplement, dated August, 1983. Delete the Line-Social Security (OASDI) and Savings Plan Costs (Deduct), which was added by Transmittal Memorandum No. 4. Lines 15 through 19 should be as follows:

TOTAL CONTRACT COSTS -----Line 15
CONVERSION DIFFERENTIAL (For -----Line 16
Expansions, note net difference,
Chapter V, E.)

TOTAL (Line 8 & 16) -----Line 17
COST COMPARISON (Line 17 minus line 15) ---Line 18

COST COMPARISON DECISION -----Line 19
Appendix D, Part IV, of the Supplement

A revised Tax Rate Table, Appendix D, with new tax rates is attached. This tax table will be substituted for the Appendix D found in Part IV of the Supplement to the Circular.

This revision is effective as follows: all changes affecting retirement costing procedures shall be effective as of July 13, 1988 and shall apply to all cost comparisons in process where the Government's in-house cost estimate had not been opened before July 13, 1988. All other changes in the Transmittal Memorandum are effective upon the date of this signed memorandum and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been opened before this date.

Attachment

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PART IV-----COST COMPARISON HANDBOOK

APPENDIX D

TAX RATE TABLE *

CODE NO.	INDUSTRY	TAX RATE(%)
<u>Extractive Industries</u>		
10-01-0400	Agriculture Production	0.9
10-01-0600	Agricultural Services	0.6
20-02-1010	Mining Iron Ores	2.7
20-02-1070	Mining Copper, Lead, Zinc, Gold and Silver Ores	0.6
20-02-1098	Mining Other Metals	0.7
20-03-1150	Coal Mining	0.9
20-05-1430	Sand, Gravel, Dimension, Crushed and Broken Stone	1.8
<u>Construction</u>		
30-06-1510	General building (construction)	0.5
30-06-1531	Operative builders (construction)	1.2
30-07-1600	Heavy construction	0.7
30-08-1711	Plumbing, heating, air conditioning	0.5
30-08-1731	Electrical work	0.5
30-08-1798	Other special trades	0.6
<u>Manufacturing</u>		
40-09-2010	Meat products	0.7
40-09-2020	Dairy products	1.2
40-09-2030	Preserved fruits and vegetables	1.8
40-09-2040	Grain mill products	1.3
40-09-2050	Bakery products	2.0
40-09-2060	Sugar and confectionary products	2.3
40-09-2089	Bottled soft drinks and flavorings	1.9
40-09-2096	Other food and kindred products	1.2
40-12-2315	Men's and boy's clothing	1.5
40-12-2345	Women's and children's clothing	1.2
40-12-2388	Other apparel and accessories	1.3
40-12-2390	Other fabricated textile products	1.2
40-13-2415	Logging, sawmills and planing mills	1.1

* Tax Rates are in relation to business receipts.

** Does not reflect revisions contained in the 1987 Standard Classification Manual.

CODE NO.	INDUSTRY	TAX RATE (%)	CODE NO.	INDUSTRY	TAX RATE (%)
<u>Manufacturing</u>					
40-13-2430	Millwork, plywood, related products	1.4	40-23-3480	Ordinance and accessories, except vehicles and guided missiles	3.0
40-13-2498	Other wood products	1.0	40-23-3490	Miscellaneous fabricated metal products	1.9
40-14-2500	Furniture and fixtures	2.4	40-24-3520	Farm machinery	0.6
40-15-2625	Pulp, paper and board mills	1.6	40-24-3530	Construction and related machinery	0.8
40-15-2699	Other paper products	3.0	40-24-3540	Metal working machinery	1.4
40-16-2710	Newspapers (printing and publishing)	4.5	40-24-3550	Special industry machinery	1.5
40-16-2720	Periodicals (printing and publishing)	1.9	40-24-3570	Office and computing machines	7.0
40-16-2735	Books, greeting cards and	4.1	40-24-3598	Other machinery, except electrical	2.0
40-16-2799	Miscellaneous publishing	1.4	40-25-3665	Radio, television, communication equipment	1.3
40-17-2815	Commercial and other printing and printing trade services	2.4	40-25-3670	Electronic components and accessories	2.2
40-17-2815	Industrial chemicals, plastics materials and synthetics	0.7	40-25-3698	Other electrical equipment	2.7
40-17-2830	Drugs	2.0	40-26-3710	Motor vehicles and equipment	2.4
40-17-2840	Soap, cleaners and toilet goods	1.8	40-27-3725	Aircraft, guided missiles and parts	1.2
40-17-2850	Paints and allied products	2.7	40-27-3730	Ship and boat building and repairing	1.3
40-17-2898	Agricultural and other chemical products	0.8	40-27-3798	Other transportation equipment, except motor vehicles	2.5
40-18-2998	Petroleum and coal products, not elsewhere classified	2.0	40-28-3815	Scientific instruments and measuring devices; watches and clocks	3.3
40-19-3050	Rubber products; plastics, footwear, hose and belting	1.5	40-28-3845	Optical, medical and ophthalmic goods	3.1
40-19-3070	Miscellaneous plastics products	1.8	40-28-3860	Photographic equipment and supplies	3.3
40-20-3140	Leather footwear	0.7	40-29-3998	Miscellaneous manufacturing and manufacturing not allocable	1.9
40-20-3198	Leather and leather products not elsewhere classified	1.6	<u>Transportation And Utilities</u>		
40-21-3225	Glass products	0.8	50-30-4000	Railroad transportation	1.3
40-21-3240	Cement, hydraulic	2.4	50-30-4100	Local and interurban passenger transit	1.7
40-21-3270	Concrete, gypsum and plaster products	2.5	50-30-4200	Trucking and warehousing	1.1
40-21-3298	Other nonmetallic mineral products	0.6	50-30-4400	Water transportation	0.9
40-22-3370	Ferrous metal industries; miscellaneous primary metal products	0.7	50-30-4500	Transportation by air	1.4
40-22-3380	Nonferrous metal industries	3.4	50-30-4600	Pipe lines, except natural gas	1.5
40-23-3410	Metal cans and shipping containers	3.2	50-30-4700	Transportation services not elsewhere classified	0.5
40-23-3428	Cutlery, hand tools and hardware; screw machine products, bolts and similar products	1.9	50-31-4825	Telephone, telegraph and other communication services	3.1
40-23-3430	Plumbing and heating, except electric and warm air	1.4	50-31-4830	Radio and Television broadcasting	3.8
40-23-3440	Fabricated structural metal products	1.4	50-32-4910	Electric services	3.7
40-23-3460	Metal forgings and stampings	1.5	50-32-4920	Gas production and distribution	1.5
40-23-3470	Castings, engraving and allied services	3.2	50-32-4930	Combination utility services	3.8
			50-32-4990	Water supply and other sanitary services	3.6

CODE NO	INDUSTRY	TAX RATE(%)	CODE NO.	INDUSTRY	TAX RATE(%)
	<u>Wholesale Trade</u>			<u>Services</u>	
61-33-5004	Groceries and related products	0.4	80-56-7812	Motion picture production, distribution and services	0.9
61-34-5008	Machinery, equipment and supplies	0.8	80-56-7830	Motion picture theatres	2.0
61-35-5010	Motor vehicles and automotive equipment	1.9	80-56-7900	Amusement and recreation services, except motion pictures	1.0
61-35-5030	Lumber and construction materials	0.6	80-57-8015	Physicians' services	0.5
61-35-5050	Metals and minerals, except petroleum and scrap	0.4	80-57-8021	Dentists' services	0.3
61-35-5060	Electrical goods	0.9	80-57-8050	Nursing and personal care facilities	0.7
61-35-5070	Hardware, plumbing and heating	0.8	80-57-8071	Medical laboratories	1.4
61-35-5098	Other durable goods	0.7	80-57-8099	Other medical services	1.7
61-35-5110	Paper and paper products	0.5	80-57-8111	Legal services	0.5
61-35-5129	Drugs, chemicals and allied products	0.6	80-57-8200	Educational services	1.2
61-35-5130	Apparel, piece goods and notions	0.1	80-57-8599	Miscellaneous services, not elsewhere classified	0.8
61-35-5150	Farm-product raw materials	0.3			
61-35-5170	Petroleum and petroleum products	0.7			
61-35-5180	Alcoholic beverages	0.6			
61-35-5190	Miscellaneous nondurable goods; wholesale trade not allocable				
	<u>Retail Trade</u>				
62-36-5220	Building materials dealers	0.9			
62-36-5251	Hardware stores	0.7			
62-36-5265	Garden supplies and mobile home dealers	0.5			
62-37-5300	General merchandise stores	1.2			
62-38-5400	Food stores	0.5			
62-39-5541	Gasoline service stations	0.2			
62-39-5598	Other automotive dealers	0.6			
62-40-5600	Apparel and accessory stores	1.3			
62-41-5700	Furniture and home furnishings stores	1.1			
62-42-5800	Eating and drinking places	1.0			
62-43-5912	Drug stores and proprietary stores	1.1			
62-43-5921	Liquor stores	0.3			
62-43-5995	Other retail stores	0.7			
63-44-5997	Wholesale and retail trade not allocable	0.6			
	<u>Services</u>				
80-52-7000	Hotels and other lodging places	1.1			
80-53-7200	Personal services	1.3			
80-54-7310	Advertising services	1.1			
80-54-7389	Business services, except advertising	1.2			
80-55-7500	Auto repair and services	0.8			
80-55-7600	Miscellaneous repair services	0.7			

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[FR Doc. 88-23765 Filed 10-13-88; 8:45 am]

BILLING CODE 3110-01-C

Federal Register

Friday
October 14, 1988

Part VII

Department of Agriculture

Animal and Plant Health Inspection Service
Food Safety and Inspection Service

9 CFR Part 71 et al.
Swine Identification; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Food Safety and Inspection Service

9 CFR Parts 71, 78, 85, 309, 310, and 320

[Docket No. 88-055]

Swine Identification

AGENCIES: Animal and Plant Health Inspection Service, USDA, and Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (the Department) is adding to its existing identification and recordkeeping requirements for swine new provisions to mandate that all swine in interstate commerce be identified and that records concerning the swine identification be maintained. Expanding requirements, so that all swine in interstate commerce are identified and records of their identification maintained, will allow the Animal and Plant Health Inspection Service (APHIS) of the Department to trace a swine disease to its source much more efficiently than was possible before these requirements became effective. APHIS needs to be able to locate sources of infection in order to eradicate certain diseases and stop them from spreading. Expanding identification and recordkeeping requirements for swine in interstate commerce will also allow the Food Safety and Inspection Service (FSIS) of the Department to determine more easily the source of meat that is adulterated with drug and other chemical residues at levels higher than the allowed tolerance. FSIS needs to be able to locate these sources of contamination in order to better keep the United States meat supply free of meat that could harm the health of the American public.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT:

Dr. W.E. Ketter, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5863; or Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, FSIS, USDA, Room 4444, P.O. Box 96464, Washington, DC 20090-6464, 202-447-3219.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1988, the United States Department of Agriculture (USDA) published a proposal (53 FR 3146-3156, Docket number 87-103) to amend its regulations to require all swine in interstate commerce to be identified and to require records concerning the swine identification to be maintained. That document explained, in detail, how and why the proposed regulations were developed. For the reader's convenience, we would like to summarize some of that material.

The Food Safety and Inspection Service (FSIS) of the USDA, under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), has responsibility for ensuring that meat and meat food products in interstate commerce are wholesome and not adulterated or misbranded. One program the agency conducts is the National Residue Program, designed to help prevent products that are adulterated with residues of drugs and other chemicals, such as pesticides and industrial contaminants, from being distributed in commerce.

There are not enough FSIS personnel to test every animal or carcass for possible adulteration with chemical residues, and even if there were, it is not practical to retain every carcass until test results are known. This fact was an important consideration in establishing the National Residue Program. Also, the cost of testing all animals or carcasses and holding them for test results would be prohibitive. Therefore, a system whereby FSIS can predict which animals or carcasses are most likely to be adulterated has been needed to help the agency more accurately choose animals and carcasses for blood and tissue sample testing, use its personnel more efficiently, more effectively enforce its regulations, and more effectively keep adulterated meat out of the nation's food supply.

To do this, FSIS needs a system in which all swine in interstate commerce arriving at slaughter are identified and in which a record of the previous ownership and location of each swine is available. Then, when FSIS locates an adulterated carcass, the animal from which the carcass is derived can be traced back through marketing channels. Tracing animals allows officials to locate other animals that are likely to yield adulterated meat. However, prior to the effective date of these regulations/amendments, the identification requirements for swine did not provide a means for all swine in interstate commerce to be traced through marketing channels.

Another agency within the Department, the Animal and Plant Health Inspection Service (APHIS), is responsible, in part, for protecting the health of United States livestock and poultry. In order to fulfill this responsibility, APHIS has promulgated regulations requiring animals moving in interstate commerce to be tested for disease and inspected for pests, requiring certain animals moving in interstate commerce to be identified, and otherwise governing the interstate movement or commerce of livestock and poultry in the United States.

Millions of livestock are slaughtered every year in the United States. Many of these animals are moved interstate to slaughter. If any of them are found to be infected with certain diseases, APHIS attempts to trace the route the animals took through marketing channels to arrive at slaughter. In that way, APHIS can find out where diseased animals were located, when they were there, and what other animals came in contact with them. Each animal that a diseased animal came in contact with is exposed and may itself become infected, and may in turn have the capability of infecting other animals. Therefore, if APHIS is to successfully control and eradicate certain livestock diseases in this country, it must be able to trace individual animals.

Prior to the effective date of these amendments, APHIS had some regulations requiring identification of swine moved in interstate commerce. However, not all swine were covered, and the system did not provide a means for all swine in interstate commerce to be traced through marketing channels.

Therefore, as the first step towards ensuring that information is available to allow tracing of swine, the Department published a proposal to amend the regulations in Title 9, Code of Federal Regulations, to expand the identification and recordkeeping requirements relating to swine. The proposal affected only regulations promulgated and enforced by APHIS or by FSIS. The proposal was published in the *Federal Register* on February 3, 1988, at 53 FR 3146-3156. At that time, the Department requested written comments on the proposal.

The comment period closed April 4, 1988; we received 184 comments. They were from state and federal government agencies, trade organizations, corporations, and individuals. Six stated, without elaborating, that they were in favor of the proposed regulations. One stated, without elaborating, that they were against the proposed regulations. Another 3 comments were received which did not

respond to the proposed regulations. The remaining 174 letters made comments and suggestions.

The comments were received indicate general support for some system to identify swine in the United States, both for disease control purposes and to help ensure an unadulterated meat supply for consumers. However, most of the comments expressed concern about one or more aspects of our proposed regulations. We will individually discuss these issues below, by subject.

Comments

Residues

Numerous comments referred to the problem of residues in pork and pork products. Many suggested that rather than setting up a regulatory system to allow USDA representatives to locate the source of adulteration, problem drugs such as sulfa drugs should simply be banned by the Department. These drugs are regulated by the Food and Drug Administration (FDA). That Agency, not the USDA, is responsible for approving or disapproving the use of animal drugs such as sulfa drugs and enforcing their proper use. Therefore, USDA does not have the direct authority to take the regulatory action suggested by these comments.

Definition of "Interstate Commerce"

The proposed regulations require all swine "in interstate commerce" to be identified. Many commenters stated that the proposed definition of "interstate commerce" is vague. A careful reading of their comments suggests that they in fact did understand the definition, but were confused because the definition is different from the meaning of "interstate commerce" we have used in previous regulations. Therefore, though we are not changing the proposed definition in response to these comments, we would like to explain further, and give examples, of what "interstate commerce" means.

We proposed to define "interstate commerce" as:

Trade, traffic, transportation, or other commerce between a place in a state and any place outside of that state, or between points within a state but through any place outside of that state. (See § 71.1, definition of "Interstate commerce")

We explained in the background information to the proposed regulations (see 53 FR 3151) that the proposed definition of "Interstate commerce" is intended to cover as many swine as possible under the animal quarantine laws and the Federal Meat Inspection Act, including those swine in foreign commerce that are imported into the

United States." We also stated (see 53 FR 3152) that:

[u]nder the proposed swine identification requirements, individual swine may need to be identified even if they are not immediately being moved interstate. This is because the proposed regulations are based on the broadest possible definition of "interstate commerce" under the animal quarantine laws and the federal Meat Inspection Act. Transactions and movements occurring prior to, during, and after an interstate transaction or movement would be included as long as the commerce in the swine continued. For example, if a swine is sold and the buyer and seller are in different states, that swine would be required under the proposed regulations to be identified, whether or not it moves interstate. That is because the transaction itself would be in "interstate commerce," as the Department proposes to define that term. Prior and subsequent movements and transactions would also be in interstate commerce, as long as the swine remain in commerce.

Here are other examples:

(1) If the seller and buyer are both in state X, but the buyer is acting for a corporation in state Y, the swine purchased would be in interstate commerce whether or not it ever moved outside of state X. *Reason:* The financial transaction involved a seller in one state and or buyer in another state.

(2) If seller and buyer are both in state X, but send swine to state Y for slaughter, the swine would be in interstate commerce. *Reason:* The swine have moved interstate.

(3) If the seller and buyer are both in state X, but the swine is in state Y, the swine would be in interstate commerce even if it never moved outside of state Y. *Reason:* The financial transaction is one state involved swine in another state.

If there is a series of transactions involving the same swine, the individual transactions may or may not be "in interstate commerce," depending upon whether the character of the swine (feeder, breeder, or slaughter animal) changes over the course of the transactions, the length of time between transactions and the intent of the buyer in each transaction. This means that if one transaction in a series is clearly in "interstate commerce," other transactions occurring before or after it in the same, unbroken series, may also be considered to be "in interstate commerce." Every situation must be considered individually. However, to help clarify how we will apply these concepts, here are some examples:

(1) Seller, buyer, and feeder pig are all in state X. Immediately after the feeder pig is purchased by the buyer, the buyer sells it to a broker, also in state X. The broker immediately sells the feeder pig

to a buyer in state Y. All three transactions would be in interstate commerce. *Reason:* The final transaction involved a buyer and seller in two different states. This transaction was therefore in interstate commerce. However, it was merely the last transaction in an unbroken series of transactions. During the course of the transactions, the swine was not held by any buyer for more than a minimal period of time, the swine did not change character during the course of the transactions (i.e. it remained a feeder pig; it did not grow enough to become a breeding or slaughter animal), and the intent of the buyers all appears to have been to sell the animal quickly for an immediate profit. Therefore, the pig would be considered to have entered interstate commerce at the time of the first transaction.

(2) Seller, buyer, and feeder pig are all in state X. The buyer holds the feeder pig in state X for a substantial period of time until it is large enough to slaughter. The buyer sells it, as a slaughter animal, to a broker in state X, who immediately sells it to a packing plant in state Y. In this situation, only the second and third transactions are in interstate commerce; the first transaction is not. *Reason:* The buyer in the first transaction kept the feeder pig a substantial period of time, in this case until it changed character and became a slaughter animal. Holding the swine for this length of time breaks the series of transactions involving the interstate commerce concerning that swine. Whether an animal is held for a sufficient period of time to change its character and break its interstate commerce is a factual question which must be addressed on a case-by-case basis. However, the second transaction is in interstate commerce because the buyer, a broker in the same state, does not intend to hold the animal, but sells it immediately across the state line to a packing plant.

We received one comment asking us to consider the potential effect of the regulations on the "delivery procedures" for swine purchased under futures contracts. The commenter pointed out that very few swine are actually delivered, that is, moved from buyer to seller, under futures contracts. We have carefully considered this issue. Our regulations will apply to all swine in interstate commerce. If swine purchased under futures contracts are in interstate commerce, they will be subject to the regulations in the same manner as all other swine in interstate commerce. However, the regulations can be applied only to specific swine. If a futures contract specifies a certain number of

swine, but not their source, owner, location, or other information which indicates which specific swine are involved, the identification and recordkeeping requirements cannot be applied. At the time specific swine are selected, these requirements can be applied; if the swine are in interstate commerce, they will have to be identified and records made and maintained as required by the regulations. Whether the swine are in interstate commerce or not would be determined as explained above. Delivery of the swine would be one of the factors considered.

Identification Exemption for Farrow-to-Finish Swine

Our proposal included provisions requiring all swine in interstate commerce, except farrow-to-finish swine, to be individually identified. Under the proposal, farrow-to-finish swine would be required instead to be identified by lot. (See § 71.19(c)(1)-(5).) Many comments stated that all swine, without exception, should be required to be individually identified. Various reasons were given: exemptions would be unfair to small producers because they could not take advantage of them, and would therefore incur higher marketing costs than large producers; exemptions would be unfair to auction markets and stockyards, which could lose business because producers would be encouraged to bypass them and sell their swine directly to packers; and exemptions would be unfair simply because all swine should be subject to the same rules regardless of the situation.

We have carefully considered all the comments on this issue. We have decided not to make any changes in the proposed identification exemption for farrow-to-finish swine. Our goal in implementing these regulations is to ensure that swine can be traced through marketing channels when necessary, whether to locate the source of adulterated meat or diseased swine or to locate swine which could carry disease. We proposed to exempt farrow-to-finish swine from the individual identification requirements only if they were handled, from farrowing to slaughter, in a manner ensuring that they could be traced to their source. Our proposed handling requirements included requirements that they be maintained as a group, be moved directly from producer to slaughter, and never be commingled with other swine. We believe these requirements alone will allow us to trace these animals through marketing channels. We do not intend, and cannot justify, imposing

unproductive and unnecessary requirements. Requiring farrow-to-finish swine to be individually identified would add nothing to our ability to trace swine through marketing channels. Therefore, we are making no changes in the regulations on the basis of these comments.

One comment asked how low-weight swine in a farrow-to-finish lot of animals would be handled, because packers reject swine below a certain minimum weight. Another commenter remarked that some animals in a farrow-to-finish lot might become separated from the others. Under our regulations, none of these swine would qualify for the farrow-to-finish exemption because they would not meet all the requirements of that exemption. Therefore, they would have to comply with the other requirements of the regulations and be individually identified. This would be true of any swine that does not meet the requirements for the farrow-to-finish exemption, for whatever reason.

Exemption of Other Swine

We received many comments suggesting various types (feeders, breeders, market animals, slaughter hogs, sows, boars, etc.) of swine that we should or should not require to be identified. We are not making any changes based on these comments. As we have explained, we need to be able to trace all swine back through marketing channels, and we therefore are requiring all swine in interstate commerce to be identified. We have attempted though, in designing these regulations, to minimize their impact by requiring individual identification only when we believe it is necessary. If we determine in the future that additional swine can be exempted from the individual identification requirements without defeating the purpose of the regulations, we will consider amending the regulations.

We also received 1 comment suggesting we allow trucks to carry unidentified swine from more than one owner at the same time, if the swine from each owner are kept separate on the truck. We have carefully considered this and have decided not to make any changes in the regulations. We doubt that it would be practical to keep groups of swine completely separate on a truck. Even if it were practical, without additional requirements, such as requiring the swine to be individually identified immediately on arrival at their destination, the chances of the swine being commingled with other swine, intentionally or accidentally, would be very great. If this happened, the purpose

of the regulations, to allow tracing of swine back through marketing channels, would be defeated.

Handling Farrow-to-Finish Swine at Slaughter

The proposed rule stated that farrow-to-finish swine would not need to be individually identified if certain conditions were met. One of the conditions was that the swine be "slaughtered one after another, as a group, and not mixed with other swine at slaughter." (See § 71.1(c)(5).) Some comments were received stating that this was not practical at most slaughtering establishments unless the "slaughtering line" was slowed down, and slowing the line would increase costs. We have considered these comments and decided to amend the proposed regulations to provide, as an alternative, that farrow-to-finish swine may be individually identified at slaughter. Applying individual identification at the slaughterhouse would not slow the slaughter line, but would allow us to trace the swine. Therefore, we are amending § 71.19(c)(5) to add this option.

Who Applies Identification

Many commenters stated that the proposed regulations were unclear as to who would be responsible for identifying swine. Others stated that we should specify who must apply identification. Some commenters stated that truck drivers who haul swine should not be responsible for ensuring that the swine are identified.

As we stated in our proposal, it is vital that swine are identified and a record kept of the identification and other information. Without both identification and recordkeeping, tracing swine back through marketing channels is impossible. (See 53 FR 3150.) However, it is not important who applies the identification, only that it be on the swine. For this reason we did not propose to require any specific person to apply it. However, because it is so important that the swine be identified and a complete record kept, we did propose to make every person who handles swine in interstate commerce responsible for the identification. Our requirement reads:

Each person who buys or sells, for his or her own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, is responsible for the identification of the swine * * * (§ 71.19(a)(2))

This includes truck drivers and every other person who handles swine in interstate commerce. This requirement does not mean that all persons "responsible for the identification of the swine" are required to apply identification to the swine. If identification is already on the swine, the person is only required to make and keep a record of that, and other, information (see § 71.19(e)(1)). If no identification is on the swine, the person can either apply it themselves or refuse to handle the swine unless someone else applies the identification.

Several comments were received suggesting we simplify our proposed regulations to require all producers to individually identify all their swine, whether or not the animals were or ever would be in interstate commerce. Some commenters suggested that each producer in the United States be assigned a confidential identification number to use on all their swine. We are making no changes in the regulations based on these comments. Though the suggested change—to require producers to apply identification—would simplify the requirements, the Department does not have the statutory authority to impose such a rule. FSIS's authorizing statutes give that agency no authority over live animals prior to their arrival at slaughter. APHIS's statutory authority extends only to interstate, not intrastate, commerce. (See, for example, 21 U.S.C. 111, giving APHIS authority "to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals and/or live poultry from a foreign country into the United States or from one State or Territory of the United States or the District of Columbia to another.") Under this limited authority, if livestock are not in interstate commerce, we cannot regulate them. There are some livestock in the United States that never enter interstate commerce. If we required producers to identify all their stock, as suggested by the commenters, regardless of whether the animals are in interstate commerce, we would be exceeding our authority because we would be requiring animals in intrastate commerce, not in interstate commerce, to be identified.

Several commenters suggested that our proposed regulations would not "allow" producers to identify their own hogs. We believe these commenters misread our proposal. The proposal places no restrictions on who may place identification on swine. It is true that certain identification devices are issued only to certain persons. For example, certain metal eartags are issued only to

accredited veterinarians and state and federal representatives. However, a swine owner can, if he or she wishes, arrange at any time to have an accredited veterinarian or state or federal representative place metal eartags on his or her swine. A swine owner can also, if he or she wishes, personally place any other type of approved identification on his or her swine whenever they wish.

When Identification is Applied

Some commenters suggested that instead of requiring swine to be identified "in interstate commerce," we require them to be identified at the "first point of concentration" in marketing channels, at sale, at the "point of origin," or at some other specific, uniform time or place. We are not making any changes in the regulations based on these comments. As explained above, APHIS only has authority to regulate in interstate commerce. Swine can be moved to the "first point of concentration" or sold without ever entering interstate commerce. We therefore cannot regulate swine on this basis alone. Also, we intend these regulations to have the broadest possible coverage. The requirement that swine "in interstate commerce" be identified effectively requires the largest possible number of swine to be identified, within our statutory authority. It also effectively requires swine to be identified as early as possible in marketing channels. Any other requirement as to time or place of identification would narrow the coverage of the regulations and defeat their purpose.

Identification Devices and Markings

Numerous comments were received which dealt with our proposed list of approved swine identification. Some commenters believe some of the identification devices listed will not be satisfactory in actual use. Other commenters suggested devices to add to the proposed list.

We are not making any changes in the proposed list of approved means of identification based on these comments. We agree with the commenters who stated that all the listed means of identification have flaws. We agree that tattoos are not always legible; we agree that backtags and eartags sometimes come off. These failings are in fact the reason why we proposed to limit the use of certain devices to the situations where we believe they will be satisfactory. For example, we would not allow backtags to be used except on swine moving to slaughter. Reason: Backtags generally stay on long enough

for swine to move from stockyard to slaughter, but not longer. We believe the proposed list of swine identification includes all devices now available to be used in the situations where they are the most practical. We also believe the regulations provide enough different types of swine identification to allow all swine in interstate commerce to be identified, regardless of their situation. For these reasons, we are not making any changes in the proposed list of approved swine identification.

We anticipate that new and better identification devices will be developed in the future. In fact, several commenters suggested that machine-readable bar code tags could be used. We are not aware of existing tags of this sort that are practical for use on swine. However, we want to be sure that our regulations always allow the best available identification to be used. For this reason, we included in our proposed regulations basic requirements for submitting new identification devices and methods to the Department for approval and inclusion in the regulations. These requirements appear at § 71.19(g). After the effective date of these regulations, these commenters and other persons can apply to the Department to have identification methods and devices added to the list of approved swine identification.

One commenter stated that the regulations should prohibit tampering with identification on swine. Such a prohibition was proposed and is in the final regulations at § 71.19(f).

Tattoos

Tattoos were the specific identification devices most often mentioned by commenters. They are also the device most likely to be used to identify swine. Many commenters suggested that a four-character tattoo be allowed. The proposed rule allowed only a six-character tattoo approved by Veterinary Services. (See § 71.1, definition of "Veterinary Services approved tattoo" and § 71.19(b)(3).)

We have carefully considered these comments and decided to amend the regulations to allow, in addition to the proposed six-character tattoo, the use of four-character tattoos. (See new § 71.19(b)(3).) Four-character tattoos are currently the industry standard, and they are successfully and widely used. We see no reason not to allow their continued use. It appears that we can trace swine through marketing channels if they are marked with either a four-character tattoo or a six-character tattoo.

Fee for Applying Identification

Another issue raised by commenters was the cost of applying individual identification to swine. Commenters pointed out that it costs money to identify swine—there is the cost of the identification device itself and the cost of paying someone to apply it. Many commenters suggested that anyone applying identification to swine should be authorized to charge a fee for performing the service. Twenty-five cents was suggested by most as being reasonable. Many commenters stated that there should be a uniform fee.

We agree that applying identification to swine costs money. However, neither FSIS nor APHIS has the authority to set a fee or to authorize anyone to charge a fee for applying identification.

What Records Need to be Kept

Many commenters objected to our proposal to require everyone handling swine in interstate commerce, or applying official eartags or backtags to swine, to keep a record of all serial numbers and other approved means of identification appearing on the swine. (See proposed §§ 71.19(d)(1)(iii), 71.19(e)(1)(i), 78.33(d)(1)(iii), and 78.33(e)(1)(i).) The commenters stated that such extensive record keeping was not necessary, that some of the identification might not be legible and it would take too much time to read and record all the identification on the swine.

We agree that identification on swine is not always legible. We also agree that it would take time to read and record all identification on a swine. We intended, by proposing this requirement, to ensure that there would always be adequate information available to allow us to trace swine back through marketing channels to their source. Although having a record of all identification appearing on a swine would be best, it is not absolutely necessary. What is absolutely necessary is that each individual swine can be linked to its previous step in the marketing chain. Then, even if a swine is repeatedly bought and sold or moved from location to location, it can be traced back through the entire chain. This can be accomplished if each person who handles the swine keeps a record of swine identification which links the animal to the person from whom they purchased or otherwise obtained it, i.e., the previous step in the chain. Based on these facts, we have decided to amend our proposal to require that each person handling swine in interstate commerce keep a record of the serial numbers and other approved means of identification

appearing on the swine that is adequate to identify each swine to the person from whom it was purchased or otherwise obtained. (See amended §§ 71.19(e)(1)(i) and 78.33(e)(1)(i).) These sections will now require a record of "[a]ll serial numbers and other approved means of identification appearing on the swine that are needed to identify the swine to the person from whom it was purchased or otherwise obtained." We are also amending §§ 71.19(d)(1) and 78.33(d)(1) to require persons applying USDA swine backtags and official eartags to record the "serial numbers or other approved means of identification appearing on the swine that are necessary to identify the swine to its owner and location." We are also amending these sections to clarify that they require persons applying USDA swine backtags and official eartags to record the numbers of the tags they are applying. These changes will ensure that all persons handling swine in interstate commerce and all persons applying USDA swine backtags and official eartags maintain similar records which will allow the swine to be traced through marketing channels.

We are also amending proposed § 320.1(b)(1)(ix), which requires certain persons "engaged, for commerce, in the business of slaughtering any swine for use as human or animal food" to maintain records of "all the serial numbers and other approved means of identification appearing on the swine." We are amending this section to require that these persons maintain records of "all serial numbers and other approved means of identification appearing on all test swine selected at ante-mortem inspection by FSIS representatives for residue testing." Under this amended regulation, packers and others will be required to keep a record of the individual identification appearing only on a few swine, rather than on all swine, as we originally proposed. This will reduce the recordkeeping required. However, it will ensure that all the information we need to trace swine back through marketing channels is available when needed. We may need to trace an animal back through marketing channels for two reasons: Either the meat from the animal is adulterated or the animal is diseased. Obtaining test results for residues takes time, and the carcass of the animal tested will have left the packer before the test results are available. However, lesions and other altered tissue suggestive of disease can be detected while the carcass is still at the packer. The amended regulations will ensure that the identification information on all animals is available

when needed. For animals tested for residues, identification information will remain available for two years and test samples can be identified to the swine from which they came during that time period. For animals found to show signs of disease, identification information will remain available, on the carcass, throughout post-mortem examination (see current § 310.2(a) and new § 310.23(a)) and the carcass can be immediately identified to the swine from which it came. For all swine, the packer or other recordkeeper must maintain records identifying the swine back to the seller and source. (See new § 320.1(b)(1)(ix).)

Recordkeeping Form

Several commenters suggested that a specific form be developed for keeping swine identification records. We are making no changes in our proposed regulations based on these comments. We have intentionally not adopted a new form for this purpose because we do not believe it is necessary or desirable. There are already numerous forms which persons handling swine in interstate commerce must maintain. Any of them can be used to keep a record of identification information. An additional form would simply increase the amount of paperwork. Also, we need only the information; it is irrelevant for our purposes where it is recorded or the format used. Therefore we are leaving the choice of format and document to the recordkeeper. If it becomes apparent after the regulations are effective that a specific form is needed, we will design one.

Length of Time to Keep Records

Our proposed regulations required that records be kept of swine identification. The proposed regulations also stated that the records would have to be kept for 2 years. (See § 71.19(e)(2).) Many commenters stated that 2 years was too long a period of time.

We have considered these comments and have decided to make no changes in the regulations. As we stated in our proposal, we chose a 2-year period because that period of time "conforms with standard business practices in the industry, under which records of sale, delivery receipt, transfer of ownership, and other matters are commonly retained for at least 2 years." (53 FR 3151) We still believe requiring records to be kept for some other period of time would be unnecessarily confusing.

Cost of Compliance, General

Many commenters stated that it would be costly, both in dollars and in

time, to comply with the proposed regulations by applying identification and keeping records. We agree that complying with the regulations will involve some costs. However, we believe some expense is justified to help ensure that consumers are protected from adulterated meat and meat food products and to help protect livestock from disease. We believe the regulations we have designed are the least expensive means of achieving these goals.

Liability for Losses

Many commenters raised the question of liability for losses if an animal is found at slaughter to be diseased or its meat adulterated. This issue is not within the jurisdiction of APHIS or FSIS.

Miscellaneous Comments

We received many comments containing only general statements that the proposed regulations were "unfair" or "impractical" or need more study, that they constituted unwarranted government interference with free enterprise or did not go far enough to regulate the marketing of swine, that they would not guarantee food safety, that they would aggravate existing problems, or that we need other regulations to solve the problems we uncover through these regulations. We are not making any changes based on these comments. We have attempted to design effective regulations that will have minimal impact on the swine industry. If in practice we determine ways in which the regulations can be improved, we will propose to amend them at that time.

Several commenters addressed the issue of inspections. Several stated that before we conduct an inspection we should give the person whose records we intend to inspect advance notice of the inspection. Several other commenters stated that we should only conduct inspections during the normal business hours of the business involved, rather than between 8 a.m. to 5:30 p.m., Monday through Friday, as we proposed. We have carefully considered these comments, and determined that no changes in the proposed regulations are necessary at this time. We do not believe that advance notice of inspections is necessary or desirable. If a business is operating, the records should be available as a matter of routine. Also, we believe giving advance notice would, to some extent, defeat the purpose of the regulations. With regard to the times for inspection, we are aware that not all persons required to keep records under these regulations are open for business or available at all

times during the hours provided in the regulations. We will attempt, as much as possible, to conduct inspections during the hours these persons are normally available. Our inspectors are aware of the normal business hours of the businesses in their area. We do not anticipate that these provisions will cause any difficulties in practice. If, however, we find that this is not true, we will consider amending the provisions.

Several commenters stated that records of swine ownership and movement should be kept confidential. We are not making any changes in the regulations based on these comments. Under these regulations, we do not have control or possession of any of the documents on which these records are kept. Therefore we cannot control access to them. Also, as pointed out in our proposal (53 FR 3153), many swine in the United States were already subject to identification and documentation requirements prior to the effective date of these regulations. We are not aware of any problems concerning the confidentiality of that information. Therefore we do not anticipate any problems concerning the confidentiality of information required under these regulations.

One comment stated that there is a conflict between the meaning of the term "Veterinary Services approved tattoo," included in these regulations concerning swine identification, and the "official AV (adult vaccination) tattoo" referred to in § 78.1 of the APHIS regulations concerning brucellosis in cattle (9 CFR Part 78). We do not believe there is any conflict. The tattoo for swine must conform to the official National Tattoo System. This is an established system, designed and operated by APHIS, for identifying swine. These tattoos consist of 3 letters and 3 digits. The tattoo referred to in Title 9, Part 78, which is used only on cattle, consists of a digit, then the U.S. Registered Shield and "V", then another digit.

A comment was received which suggested we list ear notches used by breeding stock companies as approved identification for swine. The regulations as proposed included as approved identification only ear notches recorded in the book of record of a purebred registry association. We are making no changes in the regulations based on this comment. Ear notches recorded in the book of record of purebred registry associations are recognized industry-wide as standard, traceable identification. APHIS allows them to be used as identification under other

portions of its regulations. (See 9 CFR Parts 78 and 85) However, ear notches used by breeding stock companies are not recognized industry-wide, there is no uniform system for designating the notches to be used, no central clearing house for keeping a record of them, and they are not easily traced. However, as explained above, the regulations we are proposing include provisions for adding new means of identification to the list of approved identification for swine. Ear notches used by breeding stock companies could be considered under these provisions. (See § 71.19(g).)

We received 2 comments asking if swine imported into the United States would be covered under the regulations. Yes, swine entering the United States will be covered under these regulations. These swine are in interstate commerce under our definition of that term.

We received numerous comments asking how we intend to enforce these regulations. FSIS and APHIS will enforce these regulations as they enforce their other regulations. Inspectors and other personnel routinely visit farms, auction markets, and stockyards, and inspection on a daily basis slaughtering facilities in order to enforce these agencies' regulations. Inspections will continue. When violations of these swine identification and recordkeeping regulations are found, these agencies will handle them as they do violations of their other regulations.

Miscellaneous Changes

We are making several minor nonsubstantive changes for the purposes of clarity.

We are also correcting one section of our proposed regulations. Section 78.33(d), as proposed, incorrectly implied that accredited veterinarians are not assigned serial numbers of United States Department of Agriculture swine backtags or of Veterinary Services approved tattoos. This is not true. It is also inconsistent with proposed § 71.19(d), which correctly stated that United States Department of Agriculture swine backtags and Veterinary Services approved tattoos are issued to anyone, including accredited veterinarians, who applies for them. Therefore, we are correcting § 78.33(d) to clarify that accredited veterinarians are issued serial numbers of United States Department of Agriculture swine backtags and Veterinary Services approved tattoos.

Executive Order 12291 and Regulatory Flexibility Act

The Department is issuing this rule in conformance with Executive Order 12291, and has determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic region; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A copy of the Department's cost analysis of this rule is available for public inspection in Room 1143, USDA—South Building, 14th Street and Independence Avenue, SW, Washington, DC between 8 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

We are required, by the Regulatory Flexibility Act, to determine whether these regulations will have a significant economic effect on a substantial number of small entities. The entities we must consider are organizations, businesses, and government entities. "Small" entity is defined by Small Business Administration (SBA) regulations (see 13 CFR 121.2.)

Organizations and government entities, with extremely rare exceptions, will not be affected by these regulations. Only certain businesses that handle swine in interstate commerce must comply with these regulations. They will be producers, auctions, dealers, and other marketing entities, transporters, and meat packers. However, many of these businesses will not be affected by these regulations. As explained in our cost analysis of the regulations (hereinafter referred to as the cost analysis), these types of businesses must already comply with other regulations. In many cases, by complying with existing regulations, these businesses are effectively complying with these regulations. For them, no new activities will be required. In addition, many swine producers, marketers, transporters, and packers will not need to comply with these regulations because they are not handling any swine in interstate commerce.

The businesses which will be affected by the regulations vary in size. Some of

them are "small entities," as defined by SBA regulations.¹

These regulations will impact on businesses in two primary ways: (1) By requiring swine to be identified; and (2) by requiring businesses to keep records. Unfortunately, the only statistics relevant to the effect these regulations will have on businesses concern swine, not businesses handling swine. However, after studying the statistics available to us, we have concluded that these regulations will not have a significant effect on a substantial number of small entities.

As explained in our cost analysis, approximately 72.8% of swine slaughtered in the United States are classified as "farrow-to-finish" swine. Producers, marketers, truckers, and slaughterers of farrow-to-finish swine may be small businesses. Under our regulations, "farrow-to-finish" swine that meet certain criteria are exempt from the identification requirements. We believe virtually all "farrow-to-finish" swine will meet these criteria, and therefore will be exempt from the identification requirements of these regulations. In addition, businesses handling "farrow-to-finish" swine will not have to meet any new recordkeeping requirements under these regulations. Therefore, the effect on these entities, whatever their size, will be zero.

Also as explained in our cost analysis, approximately 21.1% of swine slaughtered in the United States are classified as "feeder pig/finishing". Under our regulations, the estimated maximum cost added by these regulations per swine for feeder pig/finishing is \$0.00 for farms, \$0.21 for truckers, \$0.08 for marketers, and \$0.04 for packers. We believe these costs are insignificant.

Together, these two categories of swine comprise 93.9% of all swine slaughtered in the United States. The remaining 6.1% of slaughter swine is made up of sows, stags, and boars. Of

these swine, sows and boars are not affected by these regulations. This is because they must already meet the requirements of other regulations (see 9 CFR Parts 78 and 85), and in meeting those requirements they are complying with the requirements of these regulations. Stags sold for slaughter comprise an extremely small portion of all swine sold for slaughter, and some of them are not in interstate commerce and therefore not affected by these regulations.

Not all swine are marketed or moved as slaughter swine; many are marketed as feeder pigs. Feeder pigs are immature swine ready for fattening to slaughter weight. After sale for feeding, these swine typically remain at one location until they are of slaughter weight. Because these swine are kept in one place long enough to change their character from feeder pigs to slaughter swine, they may not be considered to be "in interstate commerce," as that term is defined in these regulations. Feeder swine not in interstate commerce are not affected by these regulations. Therefore, the businesses producing them, marketing them, and transporting them are not affected by these regulations. This is true whether or not they are "small entities."

In summary, we know that both large and small entities produce, market, transport, or slaughter swine. It appears that a substantial portion of these entities are large entities and therefore not covered by the Regulatory Flexibility Act. We also know that, of the small entities which produce, market, transport, or slaughter swine, some portion will not be affected by these regulations because they are either already in compliance or because they will not be required to comply. We also know that the effect on those small entities which are affected by the regulations is minimal. For these reasons, we have concluded that these regulations will not have a significant economic effect on a substantial number of small entities.

Executive Order 12372

These programs/activities under 9 CFR Parts 71, 78, and 85, are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44

¹ SBA regulations define small "meat packing plants" and small businesses processing "sausages and other prepared meat products" as those with fewer than 500 employees (see 13 CFR 121.2, Final rule Size Standards by SIC Industry, SIC numbers 2011 and 2013.) SBA regulations define small "wholesale livestock" businesses as those with fewer than 500 employees (see 13 CFR 121.2, Final Rule Size Standards by SIC Industry, SIC # 5154). SBA regulations define small "local trucking without storage" and "trucking, except local" businesses as those with less than \$12.5 million annual revenue (see 13 CFR 121.2, Final Rule Size Standards by SIC Industry, SIC numbers 4212 and 4213.) SBA regulations define a small "agricultural production-livestock (except beef cattle feedlots (custom) and chicken eggs)" business as a business with annual revenue of less than \$100,000 (see 13 CFR 121.2, Final Rule Size Standards by SIC Industry, SIC # 0212-0291.)

U.S.C. 3501, *et. seq.*) the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and given OMB control number 0579-0047.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation.

9 CFR Part 85

Animal diseases, Livestock and livestock products, Quarantine, Transportation.

9 CFR Part 309

Ante-mortem inspection.

9 CFR Part 310

Post-mortem inspection.

9 CFR Part 320

Records, Registration, Reports. Accordingly, Parts 71, 78, 85, 309, 310, and 320 are amended as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for Part 71 continues to read as follows:

Authority: 21 U.S.C. 111-113, 114a, 114a-1, 115-117, 120-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 71.1 is amended by adding the following definitions in alphabetical order:

§ 71.1 Definitions.

Accredited Veterinarian. A veterinarian who is approved by the Administrator, in accordance with Part 161 of this Chapter, to perform official animal health work of the Animal and Plant Health Inspection Service specified in Subchapters, A, B, C, and D of this Chapter; and to perform work required by cooperative state-federal disease control and eradication programs.

Area Veterinarian in Charge. The veterinary official of Veterinary Services, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the state concerned.

Interstate commerce. Trade, traffic, transportation, or other commerce between a place in a state and any place outside of that state, or between points

within a state but through any place outside of that state.

Official eartag. An identification eartag approved by Veterinary Services as being tamper-resistant and as conforming to the nine-character alpha-numeric National Uniform Eartagging System, which provides unique identification for each animal.

Premises of origin. The farm or other premises where the animals are farrowed and remain until moved in interstate commerce.

Purebred registry association. A swine breed association formed and perpetuated for the maintenance of records of purebreeding of swine species for a specific breed whose characteristics are set forth in constitutions, by-laws, and other rules of the association.

State animal health official. The state official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a state or a political subdivision thereof and authorized by such state or political subdivision to perform the function involved.

United States Department of Agriculture swine backtag. A backtag issued by Veterinary Services for use on swine, which conforms to the eight-character alpha-numeric National Backtagging System and uniquely identifies each individual swine.

Veterinary Services approved tattoo. A tattoo, conforming to the six character alpha-numeric National Tattoo System, which provides unique identification for each herd or lot of swine.

§ 71.1 [Amended]

3. In § 71.1, the definition of "State" is revised to read as follows:

State. Any of the 50 states, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

4. In Part 71, a new § 71.19 is added to read as follows:

§ 71.19 Identification of swine in interstate commerce.

(a)(1) Except as provided in paragraph (c) of this section, no swine may be sold, transported, received for transportation, or offered for sale or transportation, in

interstate commerce, unless they are individually identified by means of identification approved by the Administrator and listed in paragraph (b) of this section. All swine shall remain so identified while they are in interstate commerce.

(2) Each person who buys or sells, for his or her own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, is responsible for the identification of the swine as provided by this section.

(b) Means of swine identification approved by the Administrator are:

(1) Official eartags, when used on any swine;

(2) United States Department of Agriculture swine backtags, when used on swine moving to slaughter;

(3) Veterinary Services-approved tattoos, and 4-character tattoos, when used on swine moving to slaughter, except sows and boars as provided in § 78.33 of this title;

(4) Ear notching when used on any swine, if the ear notching has been recorded in the book of record of a purebred registry association; and

(5) Ear tattoos when used on any swine, if the ear tattoos have been recorded in the book of record of a purebred registry association.

(c) Swine that are kept as a group are not required to be individually identified when in interstate commerce if:

(1) They were born on the same premises;

(2) They were raised on the same premises where they were born;

(3) They are moved in a group directly to a slaughtering establishment from the place where they were raised;

(4) They are not mixed with swine from any other premises, between the time they are born and the time they arrive at the slaughtering establishment; and

(5) They are slaughtered one after another, as a group, and not mixed with other swine at slaughter; or approved identification is applied to the swine after entry into the slaughtering establishment.

(d) Serial numbers of United States Department of Agriculture swine backtags and Veterinary Services-approved tattoos will be assigned to each person who applies to the state animal health official or the Area Veterinarian in Charge for the state in which that person maintains his/her or its place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or state or federal representative who requests

official eartags from the state animal health official or the Area Veterinarian in Charge, whoever is responsible for issuing official eartags in that state. Persons assigned serial numbers of United States Department of Agriculture swine backtags, Veterinary Services-approved tattoos, and official eartags must:

(1) Record the following information on a document:

(i) All serial numbers applied to the swine;

(ii) Any other serial numbers and approved identification appearing on the swine that are needed to identify the swine to its previous owner and location;

(iii) The street address, including the city and state, or the township, county, and state, of the premises where the approved means of identification were applied; and

(iv) The telephone number, if available, of the person who owns or possesses the swine.

(2) Maintain these records at the person's place of business for 2 years; and

(3) Make these records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) upon request by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

(e)(1) Each person who buys or sells, for his or her own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, must keep records relating to the transfer of ownership, shipment, or handling of the swine, such as yarding receipts, sale tickets, invoices, and waybills upon which is recorded:

(i) all serial numbers and other approved means of identification appearing on the swine that are necessary to identify it to the person from whom it was purchased or otherwise obtained; and

(ii) the street address, including city and state, or the township, county, and state, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained.

(2) Each person required to keep records under this paragraph must maintain the records at his/her or its place of business for at least 2 years after the person has sold or otherwise disposed of the swine to another person, and for such further period as the Administrator may require by written

notice to the person, for purposes of any investigation or action involving the swine identified in the records. The person shall make the records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

(f) No person may remove or tamper with any approved means of identification required to be on swine pursuant to this section while it is in interstate commerce, except at the time of slaughter as provided in 9 CFR 309.16(e).

(g) Written requests for approval of swine identification devices and markings not listed in paragraph (b) of this section should be sent to the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, Hyattsville, Maryland 20782. If the Administrator determines that the devices and markings will provide a means of tracing swine in interstate commerce, a proposal will be published in the *Federal Register* to add the devices and markings to the list of approved means of swine identification.

PART 78—BRUCELLOSIS

5. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.1 [Amended]

6. In § 78.1, the definition of "United States Department of Agriculture backtag" is revised to read as follows:

* * * * *

United States Department of Agriculture swine backtag. A backtag issued by Veterinary Services for use on swine, which conforms to the eight-character alpha-numeric National Backtagging System and uniquely identifies each individual swine.

* * * * *

7. In § 78.33, paragraphs (c), (d), and (e) are revised to read as follows:

§ 78.33 Sows and boars.

* * * * *

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart, if they are identified as required by § 71.19 of this chapter.

(d) Serial numbers of United States Department of Agriculture swine

backtags and Veterinary Services-approved tattoos will be assigned to each person who applies to the state animal health official or the Area Veterinarian in Charge for the state in which that person maintains his or her place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or state or federal representative who requests official eartags from the state animal health official or the Area Veterinarian in Charge, whoever is responsible for issuing official eartags in that state. Persons assigned serial numbers of United States Department of Agriculture swine backtags, Veterinary Services-approved tattoos, and official eartags must:

(1) Record the following information on a document:

(i) All serial numbers applied to the swine;

(ii) Any other serial numbers and approved identification appearing on the swine that are needed to identify the swine to its owner and location;

(iii) The street address, including the city and state, or the township, county, and state of the premises where the approved means of identification were applied; and

(iv) The telephone number, if available, of the person who owns or possesses the swine.

(2) Maintain these records at the place of business for 2 years; and

(3) Make these records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) upon request by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

(e)(1) Each person who buys or sells, for his or her own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, must keep records relating to the transfer of ownership, shipment, or handling of the swine, such as yarding receipts, sale tickets, invoices, and waybills, upon which are recorded:

(i) All serial numbers and other approved means of identification appearing on the swine that are necessary to identify it to the person from whom it was purchased or otherwise obtained; and

(ii) The street address, including the city and state, or the township, county, and state, and the telephone number, if available, of the person from whom the

swine were purchased or otherwise obtained.

(2) Each person required to keep records under this paragraph must maintain these documents at his/her or its place of business for at least 2 years after the person has sold or otherwise disposed of the swine to another person and for such further period as the Administrator may require by written notice to the person, for purposes of any investigation or action involving the swine identified in the records. The person shall make the records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

PART 85—PSEUDORABIES

8. The authority citation for Part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f, CFR 2.17, 2.51, and 371.2(d).

§ 85.5 [Amended]

9. In § 85.5, paragraphs (a)(3), the phrase "identification tag, tattoo, ear notch recognized by a breed association, or similar identification of each swine being moved" is revised to read "identification of the swine as required by § 71.19 of this chapter", and the phrase "individual identification required by this paragraph" is revised to read "identification required by § 71.19 of this chapter".

10. In § 85.5, paragraph (b)(5), the phrase "identification tag, tattoo, ear notch recognized by a breed association, or similar identification of each animal being moved" is revised to read "identification of the swine as required by § 71.19 of this chapter".

§ 85.6 [Amended]

11. In § 85.6, paragraph (b)(2), the phrase "identification tag, tattoo, ear notch recognized by a breed association, or similar identification of each animal being moved" is revised to read "identification of the swine as required by § 71.19 of this chapter".

12. In § 85.7, paragraph (b)(3)(i)(B) is revised to read as follows:

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

(b) * * *

(3) * * *

(i) * * *

(B) The swine are identified at the approved livestock market to the farm of origin by the identification required by § 71.19 of this chapter.

13. In § 85.7, paragraph (b)(3)(ii), the phrase "an ear notch recognized by a breed associated [sic], identification tag, tattoo, or similar identification," is revised to read "a means of identification required by § 71.19 of this chapter".

14. In § 85.7, paragraph (c)(2), the phrase "identification tag, tattoo, ear notch recognized by a breed association, or similar identification of each animal being moved" is revised to read "identification required by § 71.19 of this chapter".

§ 85.11 [Removed]

15. Section 85.11 is removed.

PART 309—ANTE-MORTEM INSPECTION

16. The authority citation for Part 309 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

17. Section 309.16 is amended by adding a new paragraph (e) to read as follows:

§ 309.16 Livestock suspected of having biological residues.

(e) The name of each and all person(s) who sold or consigned each swine to the establishment shall be made available by the establishment to any Program employee or other authorized employee of the United States Department of Agriculture upon that employee's request and presentation of his or her official credentials. Swine identification, by means approved by the Animal and Plant Health Inspection Service, USDA, under Part 71 of this title, must be maintained throughout post-mortem inspection, in accordance with § 310.23(a) of this subchapter.

PART 310—POST-MORTEM INSPECTION

18. The authority citation for Part 310 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

19. The table of contents is amended to add, in numerical order, "310.23

Identification of carcasses and parts of swine."

20. A new § 310.23 is added to read as follows:

§ 310.23 Identification of carcasses and parts of swine.

(a) The identification of the carcasses and parts of swine identified in accordance with Part 71 of this title shall be made available to the inspector upon the inspector's request throughout post-mortem inspection.

(b) If the establishment fails to provide required swine identification, the inspector shall order the retention of swine carcasses at the establishment until the completion of tests to confirm that the carcasses are not adulterated.

PART 320—RECORDS, REGISTRATION, AND REPORTS

21. The authority citation for Part 320 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

22. Section 320.1(b)(1) is amended by adding a new paragraph (ix) to read as follows:

§ 320.1 Records required to be kept.

(b) * * *

(1) * * *

(i) * * *

(ix) In the case of a person belonging to the class specified in paragraph (a)(1), and engaged, for commerce, in the business of slaughtering any swine for use as human or animal food, the name and address (including the city and state, or the township, county, and state) of each person from whom the person belonging to the class so specified purchased or otherwise obtained each swine, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained, and all serial numbers and other approved means of identification appearing on all test swine selected at antemortem inspection by FSIS representatives for residue testing.

Done at Washington, D.C., this 11th day of October, 1988.

Robert Melland,

Acting Assistant Secretary, Marketing and Inspection Services.

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