

There are approximately 85 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Washington, Oregon and California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

The winter pear marketing order, administered by the Department, requires that the assessment rates for a particular fiscal year apply to all assessable pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Winter Pear Control Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the committee are pear handlers and producers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the committee are derived by dividing the anticipated expenses by expected shipments of pears (in standard boxes). Because those rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the committee's expected expenses.

The committee initially met on May 29, 1992, and recommended 1992-93 fiscal period expenditures of \$6,039,367 and an assessment rate of \$0.415 per standard box equivalent. In addition, the committee approved an additional assessment rate of \$0.03 per standard box equivalent on Anjou variety pears. This action was published as an interim final rule in the *Federal Register* (57 FR 39107, August 28, 1992). That rule also provided a 30-day comment period which ended September 28, 1992. No comments were received.

The committee met September 29, 1992, and unanimously recommended to increase 1992-93 fiscal period expenditures to \$6,716,983 and to increase the basic assessment rate to \$0.43 per standard box equivalent. In addition, the supplemental assessment rate for Anjou pears was unanimously recommended to be increased to \$0.09

per standard box equivalent which gives a total assessment rate of \$0.52 per standard box equivalent on Anjou pears for the 1992-93 fiscal period. This supplemental assessment will be used to fund Ethoxyquin research. The committee's 1991-92 fiscal period budgeted expenditures were \$5,130,616 and the assessment rate was \$0.38.

These expenditures are primarily for paid advertising and promotion, winter pear improvement, and program administration. Aside from the major budget increases which occurred for winter pear improvement, Ethoxyquin research, paid advertising, and contingency line items, most of the expenditure items are budgeted at about last year's amounts. Small increases were made for salaries, professional services, district representative fees, and industry development.

Assessment income for the 1992-93 fiscal period is expected to total \$6,230,000 based on shipments of 12,500,000 packed boxes of pears at \$0.43 per standard box or equivalent plus an additional \$0.09 per standard box of Anjou pears. Other available funds include \$150,000 of voluntary payments on assessments of intrastate shipments, \$10,000 of prior year assessments, a reserve of \$301,983 carried into this fiscal period, and \$25,000 of miscellaneous income including interest bearing accounts. Total funds available equal \$6,716,983 the same as the recommended budget.

The committee also unanimously recommended that any unexpended funds or excess assessments from the 1991-92 fiscal period be placed in its reserve. The reserve is within the limits authorized under the marketing order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to

give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the committee began July 1, 1992, and the marketing order requires that the rates of assessment for the fiscal year apply to all assessable pears handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30 day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. Section 927.232 is revised to read as follows:

§ 927.232 Expenses and assessment rate.

Expenses of \$6,716,983 by the Winter Pear Control Committee are authorized and an assessment rate of \$0.43 per standard box, or equivalent, of assessable pears is established for the fiscal period ending June 30, 1993. In addition, a supplemental assessment rate of \$0.09 per standard box, or equivalent, of Anjou variety pears is established for the same fiscal period for research. Unexpended funds may be carried over as a reserve.

Dated: November 18, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 92-28264 Filed 11-20-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 997

[Docket No. FV-92-074FR]

Changes in the Provisions Regulating the Quality of Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification, as a final rule, the provisions of an interim final rule (IFR) which changed the outgoing quality regulations which regulate the quality of peanuts handled by persons who are not signatory to the Peanut Marketing Agreement. The IFR changed the outgoing regulations to allow commingling of peanut lots of different quality levels at the request of the buyer after the lots have passed quality and aflatoxin inspection and have been positive lot identified (PLI) and to provide handlers with the option of selling failed peanut lots to second handlers for blanching. These actions will continue to facilitate the movement of peanuts to market and, thus, should increase the volume of peanuts placed in marketing channels. These changes will bring the quality requirements into conformity with those specified in the Agreement.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2523-S, Washington, DC 20090-6456, telephone 202-720-3610.

SUPPLEMENTARY INFORMATION:

This rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and as further amended December 12, 1989, Public Law 101-220, section 4(1), (2), 103 Stat. 1878, hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule will not preempt any State or local laws,

regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 25 handlers of peanuts who have not signed the Agreement and thus, are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$3,500,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than \$500,000.

There are the three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1991 totalled 4.94 billion pounds, a 37 percent increase from 1990. The 1991 crop value is \$1.4 billion, up 12 percent from 1990.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 5 percent of the crop is marketed by handlers who are not signatory to the Agreement.

Requirements established pursuant to the Agreement provide that farmer's stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts, destined for edible channels, must be

officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee). The Committee, established under the Agreement, works with the Department in administering the marketing agreement program. Inspection and chemical analysis programs are administered by the Department.

Public Law 101-220, enacted December 12, 1989, amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subjected to quality and inspection requirements to the same extent and manner as are required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement.

Regulations to implement P.L. 101-220 were issued and made effective on December 4, 1990 (55 FR 49980), amended on October 31, 1991 (56 FR 55988), and are published in 7 CFR part 997. Violation of those regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445c-2) for the crop year during which the violation occurs. The intent of P.L. 101-220 and the objective of the Agreement is to insure that only wholesome peanuts of good quality enter edible market channels.

An interim final rule was published in the *Federal Register* on August 28, 1992, (57 FR 39112) authorizing these changes. Comments were invited until September 28, 1992. No comments were received.

The first change amends § 997.30(d) to allow commingling of peanut lots of different grade categories at the request of a buyer, after the lots have passed quality and aflatoxin inspection and have been PLI. Some buyers do not have commingling equipment at their facilities. This rule allows handlers to satisfy the occasional request received from buyers that multiple lots be mixed prior to shipment to the buyer. Because each commingled lot will lose its original identity, the commingled load will no longer be considered PLI and the peanuts comprising the load will no longer be eligible for an appeal inspection. A transfer certificate will be issued on the entire, commingled load certifying that, prior to commingling, the individual lots were PLI and had met all program requirements. Loss of the

handler's right to an appeal inspection should not represent a significant concern to handlers as lots that pass quality and aflatoxin inspection normally do not need an appeal inspection.

The change is beneficial to the industry because it facilitates movement of peanuts and helps handlers meet their customers' needs. The change is affected by adding the following at the end of § 997.30(d): " * * * except that lots which are commingled at the request of the buyer will require a transfer certificate to be issued designating that the lots were positive lot identified prior to commingling. All such commingled lots will no longer be considered positive lot identified, and, therefore, no longer eligible for appeal inspection."

The second change clarifies that handlers can sell peanut lots failing to meet outgoing quality and aflatoxin requirements to other handlers for blanching or further handling. Section 997.40(a)(1) provides the first handler with the option of selling a lot of failed peanuts to a second handler for remilling or further handling. This rule provides the same opportunity with regard to blanching; i.e., that a first handler may sell a failed lot of peanuts to a second handler for blanching or for further handling. Such peanuts shall be blanched pursuant to paragraph (a)(2) of § 997.40. Blanching is one of the most commonly used methods of making peanuts which fail quality and/or aflatoxin requirements suitable for human consumption. It was not the intention of the Department, when promulgating part 997, to exclude blanching from disposition options available to second handlers.

As noted in paragraph (a)(1) with regard to remilling, second handlers may be either handlers who are not signatory to the Agreement or are signatory handlers as defined in 7 CFR 998.8. The same definition of handler is applied under paragraph (a)(2) for blanching.

This action was implemented by inserting one sentence in paragraph (a)(2) of § 997.40 specifying that a handler may sell failed peanuts to another handler, or a handler as defined in the Agreement (7 CFR 998.8), for blanching or further handling. To be eligible for disposal into human consumption outlets, peanuts blanched by a second handler must meet the requirements listed in § 997.30(a) and be accompanied by a negative aflatoxin certificate. Movement of such peanut lots must conform to requirements of paragraphs (a)(3) and (a)(4) of § 997.40. That is, lots must be accompanied by a valid grade inspection certificate and be PLI; title to the lots for custom remilling

or blanching must be retained by the handler until certified for human consumption; peanuts which continue to fail quality requirements must be reported to the Department; and, residual peanuts continuing to fail quality and aflatoxin requirements must be disposal of by crushing or export, or be disposed of according to provisions in paragraph (b)(3) of § 997.40.

Similar changes have been made in the outgoing quality regulation of the Agreement (7 CFR 998.200), effective for the 1992-93 crop year.

Both of the actions in this rulemaking will continue to facilitate the movement of peanuts to market and, thus, may increase the volume of peanuts placed in the channels of commerce. The commingling change should help some smaller handlers meet load specifications for buyers who had previously only dealt with large handlers.

There are no changes applicable to the incoming quality requirements. Therefore, the incoming quality regulation applicable to 1991-92 crop peanuts continues to be effective for 1992-93 crop peanuts.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements that are contained in the sections of these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0163.

After consideration of all available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The interim final rule relaxed restrictions on peanut handlers not subject to the Agreement; (2) the interim final rule provided a 30-day comment period, and no comments were received; and (3) this action finalizes the interim final rule without change.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674; Sec. 4, 103 Stat. 1878, 7 U.S.C. 608b.

2. For reasons set forth in the preamble, the interim final rule amending 7 CFR part 997, which was published at 57 FR 39112 on August 28, 1992, is adopted as a final rule without change.

Dated: November 16, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 92-28285 Filed 11-20-92; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 160, 161, and 162

[Docket No. 91-027-3]

Accreditation of Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the regulations by which we accredit veterinarians and authorize them to perform, on behalf of the Animal and Plant Health Inspection Service, certain animal health activities. These changes establish accreditation on a national rather than a State basis, and also remove a test currently required for accredited veterinarians, require an orientation program for each newly accredited veterinarian, and specify standards for performance of certain services by accredited veterinarians. We are also revising procedures for suspending and revoking accredited veterinarian status, and adding language describing how civil and criminal penalties may be imposed on accredited veterinarians who violate regulatory requirements. These changes will help ensure that an adequate number of qualified accredited veterinarians are available in the United States to perform necessary animal health activities. These changes affect currently accredited veterinarians and future

applicants for accredited veterinarian status.

EFFECTIVE DATE: Final rule effective November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. J.A. Heamon, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 700, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 9 CFR parts 160, 161, and 162 (referred to below as the regulations), some veterinarians are accredited by the Federal government to cooperate with the Animal and Plant Health Inspection Service (APHIS) in controlling and preventing the spread of animal diseases throughout the country and internationally. Accredited veterinarians use their professional training in veterinary medicine to perform certain regulatory tasks.

APHIS is responsible for defining the scope of the accredited veterinarian program, providing information and education regarding the program to veterinary practitioners participating as accredited veterinarians, and providing information to cooperating State governments, international partners, and the public. In addition, APHIS is responsible for enforcement of the veterinary accreditation standards contained in the regulations.

Accredited veterinarians are involved in a cooperative relationship with APHIS for disease control and prevention. Licensed veterinarians are presumed to be medically competent; accreditation in addition to licensing indicates that the accredited veterinarian is able and authorized to perform various procedures of regulatory animal health.

State governments have a role in the accredited veterinarian program through licensing and disseminating information on the accredited veterinarian program to veterinary practitioners. States also have an advisory and consultative role in the adjudication process for accredited veterinarians who violate the standards of the regulations. However, the ultimate determination of the adjudicatory sanctions in such cases rests with the Federal Government.

On June 4, 1992, we published a proposed rule in the *Federal Register* (57 FR 23540-23548, Docket No. 91-027) to change the requirements for veterinarians becoming accredited, the standards for performance of duties by accredited veterinarians, the rules of practice governing revocation and

suspension of accredited veterinarians, and some definitions. Comment were solicited on the proposal for a period of 30 days, ending July 6, 1992. This comment period was later extended until July 24, 1992, by a subsequent *Federal Register* notice (57 FR 30432-30433, Docket No. 91-027-2). Comments we received on the proposed rule, and changes made in response to them, are discussed below.

Comments on the Proposed Rule

Comment: Proposed § 161.2(a)(1) calls for State Animal Health Officials (SAHO's) to review applications for accreditation that have been submitted to a Veterinarian-in-Charge. A footnote to this section indicates that by endorsing the application, the SAHO indicates that the applicant is licensed to practice veterinary medicine in that State. In many States, the SAHO is not the logical source of licensing information; instead, a State board of veterinary medical examiners or a similar body grants and revokes licenses and maintains records of licensed veterinarians. Confirmation of licensing should come from these organizations, not the SAHO. Alternatively, the applicant could be required to submit proof of licensing with the application form.

Response: We have reconsidered using endorsement of an application by the SAHO as certification that the applicant is licensed to practice veterinary medicine in the State. The footnote that is the subject of the comment has been dropped from the final rule. The Veterinarian-in-Charge who reviews the application will instead be responsible for confirming the licensing status of the applicant by contacting the State board of veterinary medical examiners or any other appropriate organization.

Comment: A SAHO is allowed only 14 days to review and endorse or object to an application for accreditation (§ 161.2(a)(1)). This period should be extended to at least 14 work days. The workload of many SAHO's and the amount of time they spend on duties away from the office necessitate increasing the review period.

Response: We think that most SAHO's will usually be able to complete their review of applications within 14 days. If a SAHO has occasional workload conflicts that prevent timely review, the SAHO can contact the Veterinarian-in-Charge to discuss extending the review period for particular applications. Therefore, we are not making any change in response to this comment.

Comment: The regulations should continue to require a written examination for applicants for accreditation. A written examination is the best way to ensure that applicants are able to perform the 16 tasks required of accredited veterinarians by § 161.2(d). The examination could be updated annually to ensure it is a current and accurate indicator of needed skills.

Response: Giving the examination, grading it, and maintaining records of its results imposes a large burden on schools of veterinary medicine and APHIS. Updating the examination annually would consume additional resources. These burdens associated with the examination are not balanced, in our opinion, by complementary benefits. We believe that the application review process will identify any deficiencies in applicant skills, which can then be remedied either through the orientation or by identifying other training the applicant needs to be able to perform the 16 tasks.

Comment: The proposed regulations delete all reference to duties performed by accredited veterinarians under the Horse Protection Act. While APHIS currently employs Federal Veterinary Medical Officers (VMO's) to conduct inspections at horse shows, limited resources may require APHIS to modify this practice in the future, so the regulations should continue to allow accredited veterinarians to perform Horse Protection Act duties.

Response: Currently there are no official duties for accredited veterinarians under the Horse Protection Act as there were at one time. Our regulations attempt to reflect current policies of APHIS, and are changed when those policies change. If at some time in the future accredited veterinarians again play a significant role in performing official Horse Protection Act duties, we will propose to amend the regulations to reflect the change.

Comment: USDA VMO's should be required to attain accredited status before performing enforcement duties. It is inappropriate for USDA to apply a different set of standards for its own VMO's than it requires of private veterinarians.

Response: Federally employed VMO's must comply with standards set by Federal civil service statutes and agency employee training, development, and job performance guidelines that match or exceed the standards set for accredited veterinarians by the regulations. Therefore, we are not making any change in response to this comment.

Comment: The proposed regulations do not clearly state whether there is a "grandfather clause" for currently accredited veterinarians, or whether currently accredited veterinarians will have to re-apply for accreditation under the proposed new standards.

Response: Veterinarians who became accredited before the effective date of this rule will continue in their accredited status without having to reapply for accreditation.

Comment: In §§ 161.2(a)(2)(ii) and 161.3, the requirement that an accredited veterinarian must be "licensed to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties" could cause problems in States that offer reciprocal licensing agreements with other States. The text should read "licensed or legally able to practice veterinary medicine."

Response: We agree, and are changing the language in the final rule accordingly.

Comment: Section 161.2(b)(2)(iii) deals with how the Administrator will determine whether a veterinarian whose accreditation has been revoked should be reaccredited. Since State Animal Health Officials could have information bearing on this decision, the list of decisionmaking criteria should also include "Recommendations of the State Animal Health Official."

Response: This section lists types of information the Administrator would consider in making reaccreditation decisions, not the source of such information. In writing this section, we assumed that the SAHO would often provide the Veterinarian-in-Charge or the Administrator with recommendations and information relevant to reaccreditation decisions. To make this explicit, we are changing the language in § 161.2(b)(2)(iii) that currently reads "In making this conclusion, the Administrator shall consider:" to read "In making this conclusion, the Administrator shall review all available information about the applicant, including recommendations of the State Animal Health Official, and shall consider:".

Comment: Veterinarians who are reaccredited in accordance with § 161.2(b) after having their accreditation revoked should be in a probationary status for the first year following their reaccreditation.

Response: We do not believe that a probationary status is necessary in the veterinary accreditation program, in view of the fact that other procedures allow accreditation to be suspended or revoked with a minimum of formal procedures and delay. Probationary periods are most useful in situations

where incumbents advance to a degree of tenure where it is extremely difficult to remove them; this does not occur in veterinary accreditation.

Comment: Proposed § 161.2(b)(2)(ii) requires that if a veterinarian whose accreditation is revoked is later reaccredited, that veterinarian must undergo a reaccreditation orientation program that addresses the deficiencies that led to revocation of accreditation. However, the proposal does not require a similar orientation for veterinarians whose accreditation is *suspended* temporarily. If a veterinarian violates the standard sufficiently to warrant suspension, it would serve everyone's best interest to require that prior to resuming accredited duties the veterinarian receive additional education as a preventative measure against reoccurrence of the violations.

Response: We agree that requiring reorientation training would be a good idea in many suspension cases, particularly those cases in which relatively severe violations resulted in suspension for 6 months or more. Therefore, we are adding a sentence to § 161.2(c) indicating that a veterinarian whose accreditation has been suspended for 6 months or more must complete a reaccreditation orientation program in accordance with § 161.2(b)(ii) before accreditation will be reinstated.

Comment: There is considerable overlap between § 161.2(d), which requires an applicant for accreditation to certify he or she is able to perform specified tasks, and § 161.2(a)(iii), which lists topics to be covered during the orientation of an accredited veterinarian, and § 161.2(a)(2)(i), which requires an applicant for accreditation to hold a Doctor of Veterinary Medicine or equivalent degree. Many of the tasks listed in § 161.2(d) and the orientation topics included in § 161.2(a)(iii) are included in colleges of veterinary medicine. APHIS should not be placed in a position of attempting to dictate or certify curricular content, and it is important to distinguish the role of veterinary schools in providing professional education to veterinary students from the role of APHIS in ensuring that veterinary school graduates obtain the necessary additional skills in regulatory and Federal-State program operations required to perform accredited duties. APHIS should be responsible for determining which areas the applicants for accreditation have been adequately prepared for by their veterinary medical education, and the orientation program should be designed to provide instruction in additional topics and

technical details of APHIS programs and requirements.

Response: We believe that APHIS and these commenters are in essential agreement about the preferred roles of APHIS, the schools of veterinary medicine, and the applicants in ensuring that applicants have the required skills to perform accredited duties. Our position is that APHIS should not dictate or approve curricular contents, but that upon request APHIS will cooperate with schools to develop training modules that address the tasks of accredited veterinarians. Through this process APHIS will know what training in particular tasks is or is not typically provided to students in schools of veterinary medicine. APHIS will then be able to develop orientation programs, and perhaps additional training, for skills not addressed by the school curriculum. APHIS will determine directly from the applicant whether the applicant needs additional training to perform any of the 16 tasks listed in § 161.2(d) and on the application form, and if necessary will work with the applicant to obtain training in missing skills.

Comment: In § 161.2(d), paragraph 1 states that the applicant for accredited status must be able to "Perform physical examinations of individual animals, herds, or flocks to determine whether they are free from communicable diseases." This implied warranty of good health is beyond the scope of what can be determined by a physical examination, which cannot conclusively determine that animals are free from all communicable diseases. The text should read that the physical examination is to determine "whether the animals are free from any visible signs suggestive of communicable disease."

Response: We agree, and are changing the text of § 161.2(d)(1) to read as follows: "(1) Perform physical examinations of individual animals, and visually examine herds or flocks, to determine whether the animals are free from any clinical signs suggestive of communicable disease;"

Comment: In the list of tasks applicants for accredited status should be able to perform (§ 161.2(d)), task 6 should be revised. It reads: "Certify the disease status of a poultry flock with regard to disease caused by *Salmonella enteritidis*, psittacosis or ornithosis, and velogenic viscerotropic Newcastle disease." This phrasing does not take into account that the disease status of poultry flocks is not usually determined by an isolated visit or examination by a veterinarian, but rather through continuing testing in the context of the

National Poultry Improvement Program or equivalent State programs. The certification by the accredited veterinarian should be based on records of the flock's participation in such programs and on results of tests conducted under such programs.

Response: We agree. We intended that accredited veterinarians would certify poultry disease status using data from Federal and State poultry health programs, but did not make that point clearly in the text. We are changing § 161.2(d)(6) to read "Certify the disease status of a poultry flock with regard to disease caused by *Salmonella enteritidis*, psittacosis or ornithosis, and velogenic viscerotropic Newcastle disease, by evaluating records of the flock's participation in and testing by Federal and State poultry health programs."

Comment: In § 161.2(d), paragraph 16 states that the applicant for accredited status must be able to "Explain basic principles for control of diseases for which APHIS programs exist * * *". Many of the programs APHIS is involved in are cooperative programs mainly implemented by States, and this task should recognize the responsibility of accredited veterinarians to explain them.

Response: We agree, and are changing that language to read "APHIS or APHIS-State cooperative programs."

Comment: The provision in § 161.3 to allow an authorized assistant to perform some accredited duties is inadvisable because it will hamper enforcement of program standards and will create liability on the part of the accredited veterinarian for activities performed by another person, who may not perform them properly.

Also, the authorized assistant proposal suggests that authorized assistants could be used to perform veterinary duties that many State laws require be performed only by licensed veterinarians.

Also, it is possible that some States may not honor certificates signed by an authorized assistant, and some foreign countries may not honor export certificates signed by an authorized assistant.

Also, if authorized assistants are allowed, their identity and the duties they are authorized to perform should be made known to the State Animal Health Official.

Response: We believe commenters have valid concerns about the use of authorized assistants, the possibility that some States or foreign governments may not accept signatures of authorized assistants, and the liability of accredited veterinarians for actions by their

authorized assistants. We are deleting all language in the regulations that would have allowed use of authorized assistants.

Comment: The requirement in § 161.3(a) that an accredited veterinarian must personally observe an animal within 24 hours prior to signing health documents concerning the animal is unworkable. Due to irregular schedules for moving animals and the fact that obtaining laboratory test results often takes 2 to 5 days, it is often impossible for accredited veterinarians to sign documents within 24 hours of observing the animal.

Response: We agree that requiring the veterinarian to observe an animal within 24 hours prior to signing a health document may impose an unworkably short time requirement. However, we also think it is important to keep the intervening period reasonably short, to assure the timeliness of the health certification. We are changing the time period from 24 hours to 7 days, a time period requested by several commenters.

Comment: In § 161.3(e) the phrase "an accredited veterinarian shall identify or supervise the identification of reactor animals" could allow persons acting under instructions from an accredited veterinarian to tag or brand animals without the presence of the accredited veterinarian. The accredited veterinarian should be physically present to supervise identification of reactor animals.

Response: We agree, and are making the requested change to the language of § 161.3(e).

Comment: The requirement in § 161.3(i) that "An accredited veterinarian shall not use or dispense in any manner, any pharmaceutical, chemical, vaccine or serum, or other biological product authorized for use under any Federal regulation or cooperative disease eradication program, in contravention of any Federal or State statute or regulation * * *" places veterinarians in an unrealistic position. The present wording conflicts with permissive extra-label use of pharmaceuticals under the Food and Drug Administration's compliance policy guide, which addresses use of products to treat conditions for which labeled products are ineffective or unreliable. That accepted, permissive use is technically in violation of present legislation and would, therefore, be in violation of this provision of the accreditation regulations. The policy conflict should be resolved between Federal agencies with overlapping authority regarding pharmaceutical products, but in the

meantime accredited veterinarians should not be encouraged by one agency to use products in appropriate conditions not covered by the label, and disciplined by another agency for doing so.

Response: The issue of dispensing products in accordance with label and other legal requirements is complex and involves overlapping agency responsibilities, as the commenters noted. We hope that coordination among agencies will reduce confusion in this area and provide clear guidance without conflicts in the future. Some cases concerning whether use of a product is legal and appropriate will doubtless have to be settled on a case-by-case basis by the appropriate authorities. To ensure that accredited veterinarians are able to use products in a way consistent with the full context of applicable requirements, we are changing the language in § 161.3(i) to read that accredited veterinarians shall not use or dispense such products "in contravention of applicable Federal or State statutes, regulations, and policies."

Comment: Section 161.3(k) permits any Veterinary Services veterinarian to allow an accredited veterinarian to issue an export certificate without including laboratory test results, if the Veterinary Services veterinarian agrees to add the results at a later date. Since a particular Veterinary Services veterinarian may not be accessible to add the results when they are available or needed, this section should hold the Veterinarian-in-Charge responsible for authorizing cases where an accredited veterinarian may issue such incomplete export certificates, and for seeing that the test results are added to the certificate when they are available.

Also, this provision would work better if the fact that lab results were delayed is recorded on an attachment to the export certificate, rather than on the certificate itself. Such an attachment could be removed when the results are added, reducing the possibility for confusion about test results when the certificate is examined in the destination country.

Response: We agree that the Veterinarian-in-Charge is the appropriate person to hold responsible for allowing export certificates to be issued with laboratory test results to be added at a later date. We also agree that a delay in obtaining lab results should be recorded on a removable attachment to the export certificate. We are making the requested changes to § 161.3(k).

Comment: Section 161.4(b) states "Accreditation shall be automatically terminated when an accredited

veterinarian is not licensed to practice veterinary medicine in at least one State." This should be modified to make it explicit that accreditation will be terminated if the veterinarian's license to practice is revoked by the State in which the veterinarian performs accredited duties.

Response: Depending on the circumstances of the case, revocation of a veterinarian's license in one State may or may not result in action under part 162 to revoke the veterinarian's accreditation on a national basis. If the basis for revoking the license involved violation of the "Standards for Accredited Veterinarian Duties" contained in § 161.3, such action would ensue. However, the regulations also state in § 161.2(a)(2)(ii) that a veterinarian must be licensed in the State in which he or she performs accredited duties. To emphasize this point, we are adding a new paragraph (c) to § 161.1, "Statement of purpose; performance of accredited duties in different States." This new paragraph reads as follows: "An accredited veterinarian may not perform accredited duties in a State in which the accredited veterinarian is not licensed or legally able to practice veterinary medicine."

Comment: Section 162.12(d) states that "Issuance of three or more letters of dismissal citing incidents of minor violations by an accredited veterinarian may be cause for more severe action under this section and § 161.4." There should be some time concerning the three violations to preclude action against, for example, a veterinarian who accumulates two letters of dismissal in his or her first year of practice and a third 20 years later, with 19 years of exemplary service between.

Response: We have reconsidered the proposal that issuance of three or more letters of dismissal could cause more severe action to be instituted against an accredited veterinarian. The regulations are designed to institute disciplinary actions based on individual violations of the standards, not on any particular pattern of past minor violations that were resolved under the regulations. Under part 162, if the Administrator has reason to believe an accredited veterinarian has not complied with the standards, the particulars of the alleged violation are investigated. If the accredited veterinarian alleged to have violated the standards has received a letter of dismissal in the past citing violations relevant to the alleged violation currently under investigation, that fact would be considered in determining the appropriate sanction for the current violation. However, we have

concluded that there is no rational basis for a strict mechanical formula stating that a fixed number of such letters of dismissal, over either a fixed or indefinite time period, should lead to any particular disciplinary action under part 162. Therefore, we are removing the sentence in § 162.12(d) that reads "Issuance of three or more letters of dismissal within a five year period citing incidents of minor violations by an accredited veterinarian may be cause for more severe action under this section and § 161.4."

Comment: The proposal seems to greatly reduce State authority over and involvement in the accreditation program. The accreditation program should be a cooperative Federal-State program that meets the needs of both participants. The proposal limits the State to "advisory" participation in a number of areas where State participation should be fully equal to Federal participation. In particular, veterinarians should be accredited only after they are recommended by the State, and States should be involved in suspension or revocation actions; the State should participate in all orientations and share control of their content with APHIS; the State should be authorized to provide instructions directly to accredited veterinarians on how to follow procedures and complete forms involved in State or State-Federal cooperative programs, and accredited veterinarians should report cases of communicable animal disease to the State as well as the APHIS.

Response: It is not our intention to reduce State involvement in ensuring that the veterinary accreditation program successfully meets its established goals of assisting Federal and Federal-State cooperative animal health programs. We rely on the professionalism and expertise of State personnel, and their more detailed knowledge of local veterinary practitioners and animal industry conditions. We expect the State advice and participation will prove invaluable with regard to determining whether to accredit individual veterinarians, designing orientation programs, developing additional guidance and procedures for accredited veterinarians, and investigating violations of the "Standards for Accredited Veterinarian Duties" contained in § 161.3.

We are modifying several sections of the regulations to clarify how we expect to rely on State participation. The sections dealing with orientations have been changed to state that State officials will be invited to participate in developing orientation materials and

conducting orientations. Section 161.3(e) has been changed to state that tagging or identification of animals will be performed in accordance with instructions issued by the Veterinarian-in-Charge for Federal animal health programs, and instructions issued by the Veterinarian-in-Charge or the State Animal Health Official for cooperative Federal-State programs. Section 161.3(f) has been changed to state that communicable disease cases must be reported to the Veterinarian-in-Charge and the State Animal Health Official. The section on informal conferences already states that the State Animal Health Official will be invited to attend each informal conference called by the Veterinarian-in-Charge. As noted above, § 161.2(b), dealing with reaccreditation, has been changed to make it explicit that the Veterinarian-in-Charge, when evaluating a request for reaccreditation, shall consider the recommendations of the State Animal Health Official in making a decision.

We are not giving States exclusive or veto authority in any area of the regulations, such as whether an applicant will be accredited. Although we will carefully weigh any advice States present regarding these types of program decisions, the fact remains that veterinary accreditation is a program implemented by Federal regulation, and a Federal agency is the proper ultimate decisionmaking authority for the program.

Comment: One State agriculture agency asked that implications of Executive Order 12612, "Federalism," be explained with regard to the proposed rule, and contended that the proposal was not consistent with the Executive Order's charges to grant States the maximum possible administrative discretion and to avoid encroaching upon authority reserved to States.

Response: Executive Order 12612 instructs Federal agencies not to take actions that exceed the powers enumerated for the Federal government in the Constitution, and not to unnecessarily preempt State law or preclude States from developing policies and taking actions at their discretion. The proposed changes to the veterinary accreditation program do not raise Federalism implications in terms of the Executive Order. The regulations address how a Federal agency will conduct operations of a Federal program, and do not preclude States from developing policies or exercising their authority to involve veterinarians in any programs developed by a State. States are free to pass laws or implement regulations for the

participation of veterinarians in State animal health programs. However, our regulations do not require accredited veterinarians to participate in purely State programs. State law, not Federal regulation, is the proper venue for implementing and enforcing State programs. Our regulations do not allow States to rely on Federal regulations to implement or enforce State programs that do not have a cooperative Federal component, and we believe this is an appropriate division of responsibility.

Comment: There should be an expiration date on accreditation. It should be renewable at intervals, for example every 5 or 10 years. This would provide a mechanism for removing retired and deceased veterinarians from the national list as well as a mechanism for updating information about them.

Response: We examined this option while developing the regulations, and concluded that it would place an unacceptable paperwork burden on accredited veterinarians to require them to reapply regularly. This system would also place an unmanageable burden on APHIS recordkeeping and procedures, which would have to be redesigned to track the exact time that thousands of veterinarians have been accredited. We would have to contact accredited veterinarians individually if they fail to reapply on time, and develop new standards and procedures for what action to take when they fail to reapply, or reapply late.

We believe the most practical way to keep the national list current is for APHIS to conduct a mass mailing to accredited veterinarians from time to time. This mailing will include an enclosure that each accredited veterinarian must return to APHIS if the individual wishes to remain in accredited status. Before APHIS conducts such a mailing, any information collection or recordkeeping requirements associated with it will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Comment: Informal conferences should not be held by telephone. Violations are serious matters, and requiring the alleged violator to travel to an office for a face-to-face conference with Federal and State officials reinforces the seriousness of violations and will help reduce their number.

Response: We agree. After re-examining the investigation and adjudication process, we conclude that if telephone discussions with those involved in an alleged violation have a place in the process, that place would be before the informal conference stage,

while the Veterinarian-in-Charge is still determining whether there is reason to believe that the accredited veterinarian has not complied with the "Standards for Accredited Veterinarian Duties" contained in § 161.3. Therefore, we have removed from § 162.12 the sentence that reads "At the discretion of the Veterinarian-in-Charge, informal conferences may be held by telephone."

In addition to the changes discussed above, we have also made minor, nonsubstantive changes for clarity.

Effective Date

Pursuant to the provisions of 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This is a substantive rule which relieves a restriction that limits accreditation to veterinarians who have passed the written examination required by the former regulations. Immediate implementation of this rule will prevent a great deal of unnecessary work by schools of veterinary medicine, which would otherwise have to prepare to conduct this year's written examination for veterinary students.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for making this rule effective upon publication.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have 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 regions; 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.

This amendment establishes accreditation on a national rather than a State basis. It also removes a test currently required for accredited veterinarians, requires an orientation program for each accredited veterinarian, and specifies standards for performance of certain services by accredited veterinarians.

There are currently approximately 45,000 accredited veterinarians practicing in the United States.

Approximately 2,000 new accredited veterinarians, mostly recent graduates, are added to the system each year. The degree to which their income depends on performing accredited work varies greatly within this population, and we have little reliable information in this area. It appears that accredited veterinarians may be divided into three groups in terms of the income they derive from performing accredited work. A small minority of accredited veterinarians derive most of their income from accredited work. A large minority of accredited veterinarians derive only a small portion of their income from accredited work. The largest group in the accredited veterinarian population derives a significant but not major portion of their income from accredited work. (Another minor group, irrelevant to economic considerations under the proposed rule, is accredited but receives no income from performing accredited work.)

The changes made by this final rule should not significantly affect the number of accredited veterinarians, the expenses they accrue to become accredited, or the income they derive from performing accredited work. The changes essentially affect application procedures without imposing any significant new application costs.

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

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Following adoption of this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings are required before the suspension or revocation of a veterinarian's accreditation can be challenged in court.

Executive Order 12372

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in

this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0032.

List of Subjects

9 CFR Parts 160

Veterinarians.

9 CFR Part 161

Reporting and recordkeeping requirements.

9 CFR Part 162

Administrative practice and procedures, Veterinarians.

Accordingly, subchapter J of 9 CFR chapter I is revised to read as follows:

SUBCHAPTER J—ACCREDITATION OF VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

Parts

- 160 Definition of terms.
- 161 Requirements and standards for accredited veterinarians and suspension or revocation of such accreditation.
- 162 Rules of practice governing revocation or suspension of veterinarians' accreditation.

PART 160—DEFINITION OF TERMS

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111-114, 114a, 114a-1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

§ 160.1 Definitions.

For the purposes of this subchapter the following words, phrases, names and terms shall be construed, respectively, to mean:

Accredited Veterinarian.¹ A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this subchapter to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

Animal, animals. All animals except humans, including but not limited to cattle, sheep, goats, other ruminants, swine, horses, asses, mules, zebras, birds, and poultry.

Animal and Plant Health Inspection Service. The Animal and Plant Health

Inspection Service, United States Department of Agriculture.

APHIS. The Animal and Plant Health Inspection Service.

Examine, examination. Physical study of an individual animal that enables an accredited veterinarian to determine if any abnormality in physical condition or bodily function is suggestive of clinical signs of communicable disease.

Inspect, inspection. Visual study of the physical appearance, physical condition, and behavior of animals (singly or in groups) that enables an accredited veterinarian to determine whether any abnormality in physical condition or bodily function is evident.

Official certificate, form, record, report, tag, band, or other identification. Means any certificate, form, record, report, tag, band, or other identification, prescribed by statute or by regulations issued by the Administrator, for use by an accredited veterinarian performing official functions under this subchapter.

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

State Animal Health Official. The State animal health official who is responsible for the livestock and poultry disease control and eradication programs of a State.

Veterinarian-in-Charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official work of APHIS in a State or group of States.

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

Sec.

- § 161.1 Statement of purpose; performance of accredited duties in different States.
- § 161.2 Requirements and application procedures for accreditation.
- § 161.3 Standards for accredited veterinarian duties.
- § 161.4 Suspension or revocation of veterinary accreditation; criminal and civil penalties.

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111-114, 114a, 114a-1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

§ 161.1 Statement of purpose; performance of accredited duties in different States.

(a) This subchapter concerns a program administered by APHIS to accredit veterinarians and thereby authorize them to perform, on behalf of APHIS, certain activities specified in

this chapter. This program is intended to ensure that an adequate number of qualified veterinarians are available in the United States to perform such activities.

(b) If an accredited veterinarian wishes to perform accredited duties in a State other than the State for which the veterinarian has completed an orientation in accordance with § 161.2(a)(4), the accredited veterinarian shall so inform the Veterinarian-in-Charge of the new State. The Veterinarian-in-Charge of the new State may require the accredited veterinarian to complete, prior to performing any accredited duties in the new State, an orientation in animal health procedures and issues relevant to the new State. The Veterinarian-in-Charge shall review the content of each such orientation and shall approve its use after determining that it includes adequate information about animal health agencies, regulatory requirements, administrative procedures, and animal disease problems in the new State, to prepare an accredited veterinarian from another State to perform accredited duties in the new State. The Veterinarian-in-Charge shall also give the State Animal Health Official of the new State an opportunity to review the contents of the orientation, and invite him or her to participate in developing orientation materials and conducting the orientation.

(c) An accredited veterinarian may not perform accredited duties in a State in which the accredited veterinarian is not licensed or legally able to practice veterinary medicine.

§ 161.2 Requirements and application procedures for accreditation.

(a) **Initial accreditation.** A veterinarian may apply for accreditation by completing an application for accreditation on Form 1-36A, "Application for Veterinary Accreditation," including certification that the applicant is able to perform the tasks listed in paragraph (d) of this section, and submitting it to the Veterinarian-in-Charge in the State where he or she wishes to perform accredited duties.

(1) Completed Forms 1-36A received by a Veterinarian-in-Charge shall be reviewed by the State Animal Health Official for the State in which the veterinarian wishes to perform accredited duties. Within 14 days after receiving an application, a State Animal Health Official shall either endorse the application or send a written statement to the Administrator explaining why it was not endorsed; but if the State Animal Health Official fails to take one

¹ The provisions of subchapters B, C, and D of this chapter authorize Federal and State veterinarians and accredited veterinarians to perform specified functions. Full-time Federal (including military) and State employed veterinarians are authorized to perform such functions, pursuant to delegation of authority by the Administrator or cooperative agreements without specific accreditation under the provisions of this subchapter.

of these actions within 14 days, the Veterinarian-in-Charge shall proceed to review the application. The Administrator will review the application and the written statement, if any, and determine whether the applicant meets the requirements for accreditation contained in this part.

(2) The Administrator is hereby authorized to accredit a veterinarian when he or she determines that:

(i) The veterinarian is a graduate with a Doctorate of Veterinary Medicine or an equivalent degree (any degree that qualifies the holder to be licensed by a State to practice veterinary medicine) from a college of veterinary medicine;

(ii) The veterinarian is licensed or legally able to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties. APHIS will confirm licensing status of the applicant by contacting the State board of veterinary medical examiners or any similar State organization that maintains records of veterinarians licensed in a State; and,

(iii) The veterinarian has completed an orientation program approved by the Veterinarian-in-Charge for the State in which the veterinarian wishes to practice, and upon completion of the orientation, has signed a written statement listing the date and place of orientation, the subjects covered in the orientation, and any written materials provided to the veterinarian at the orientation. The Veterinarian-in-Charge shall also give the State Animal Health Official an opportunity to review the contents of the orientation, and invite him or her to participate in developing orientation materials and conducting the orientation. The orientation program shall include the following topics:

(A) Federal animal health laws, regulations, and rules;

(B) Interstate movement requirements for animals;

(C) Import and export requirements for animals;

(D) USDA animal disease eradication and control programs;

(E) Laboratory support in confirming disease diagnoses;

(F) Ethical/Professional responsibilities of an accredited veterinarian; and,

(G) Animal health procedures, issues, and information resources relevant to the State in which the veterinarian wishes to perform accredited duties.

(b) *Reaccreditation.* A veterinarian whose accreditation has been revoked may apply for reaccreditation when the revocation has been in effect for not less than two years by completing an application for reaccreditation on Form 1-36A, "Application for Veterinary

Accreditation", and submitting it to the Veterinarian-in-Charge of the State or area where he or she wishes to perform accredited work.

(1) Completed Forms 1-36A received by a Veterinarian-in-Charge shall be reviewed by the State Animal Health Official for the State in which the veterinarian wishes to perform accredited duties. Within 14 days after receiving an application, a State Animal Health Official shall either endorse the application or send a written statement to the Administrator explaining why it was not endorsed; but if the State Animal Health Official fails to take one of these actions within 14 days, the Veterinarian-in-Charge shall proceed to review the application. The Administrator will review the application and the written statement, if any, and determine whether the applicant meets the requirements for reaccreditation contained in this part.

(2) The Administrator is hereby authorized to reaccredit a veterinarian when he or she determines that:

(i) The veterinarian is licensed or legally able to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties;

(ii) The veterinarian has completed a reaccreditation orientation program approved by the Veterinarian-in-Charge for the State in which the veterinarian wishes to practice, and upon completion of the orientation, has signed a written statement listing the date and place of orientation, the subjects covered in the orientation, and any written materials provided to the veterinarian at the orientation. The Veterinarian-in-Charge shall also give the State Animal Health Official an opportunity to review the contents of the reaccreditation orientation, and invite him or her to participate in developing orientation materials and conducting the orientation. The orientation program shall include topics addressing the subject areas which led to loss of accreditation for the applicant, and subject areas which have changed since the applicant lost accreditation; and,

(iii) The professional integrity and reputation of the applicant support a conclusion that the applicant will faithfully fulfill the duties of an accredited veterinarian in the future. In making this conclusion, the Administrator shall review all available information about the applicant, including recommendations of the State Animal Health Official, and shall consider:

(A) Criminal conviction records adversely reflecting on the honesty or integrity of the applicant with regard to

the performance or nonperformance of veterinary medical duties;

(B) Official records of the applicant's actions participating in Federal, State, or local veterinary programs;

(C) Judicial determinations in civil litigation adversely reflecting on the integrity of the applicant; and

(D) Any other evidence reflecting on the professional integrity and reputation of the applicant.

(c) *Reinstatement after suspension.* A veterinarian whose accreditation has been suspended for less than 6 months (other than a summary suspension that is changed to a revocation as a result of an adjudicatory proceeding) will be automatically reinstated as an accredited veterinarian upon completion of the suspension. A veterinarian whose accreditation has been suspended for 6 months or more must complete a reaccreditation orientation program in accordance with paragraph (b)(2)(ii) of this section before accreditation will be reinstated.

(d) *Tasks which applicants for accredited status must be able to perform.* Applicants for accredited status must be able to:

(1) Perform physical examinations of individual animals, and visually inspect herds or flocks, to determine whether the animals are free from any clinical signs suggestive of communicable disease;

(2) Recognize the common breeds of livestock so as to be able to record breed information on official documents;

(3) Recognize brucellosis tattoos and calfhood vaccination tags, and determine the state of origin of eartags, to properly identify animals in interstate commerce;

(4) Estimate the age of livestock using a dental formula;

(5) Apply an eartag, tattoo, backtag, and legband;

(6) Certify the disease status of a poultry flock with regard to disease caused by *Salmonella enteritidis*, psittacosis or ornithosis, and velogenic viscerotropic Newcastle disease, by evaluating records of the flock's participation in and testing by Federal and State poultry health programs;

(7) Properly complete certificates for domestic and international movement of animals;

(8) Apply and remove official seals;

(9) Perform a necropsy on livestock;

(10) Recognize clinical signs and lesions of exotic animal diseases;

(11) Plan a disease control strategy for a livestock unit;

(12) Vaccinate for brucellosis and fill out the vaccination certificate;

(13) Draw and ship blood for testing;

(14) Perform a caudal fold test for tuberculosis;

(15) Develop appropriate cleaning and disinfection plans to control communicable livestock disease spread; and

(16) Explain basic principles for control of diseases for which APHIS or APHIS-State cooperative programs exist, such as brucellosis, pseudorabies, and tuberculosis.

(Approved by the Office of Management and Budget under control number 0579-0032.)

§ 161.3 Standards for accredited veterinarian duties.

An accredited veterinarian shall perform the functions of an accredited veterinarian only in a State in which the accredited veterinarian is licensed or legally able to practice veterinary medicine. An accredited veterinarian shall perform the functions of an accredited veterinarian and carry out all responsibilities under applicable Federal programs and cooperative programs subject to direction provided by the Veterinarian-in-Charge and in accordance with any regulations and instructions issued to the accredited veterinarian by the Veterinarian-in-Charge, and shall observe the following specific standards:

(a) An accredited veterinarian shall not issue or sign a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him or her, with respect to any animal, unless he or she, within 7 days prior to such signing, has personally observed each animal in a location that allows the accredited veterinarian sufficient space to observe the animal in such a manner as to detect abnormalities related to areas such as, but not limited to, locomotion, body excretion, respiration, and skin conditions. An accredited veterinarian shall examine each animal showing abnormalities, in order to determine whether or not there is clinical evidence compatible with the presence or absence of a communicable disease.

(b) An accredited veterinarian shall not issue or sign any certificate, form, record or report, or permit such a certificate, form, record, or report to be used until, and unless, it has been accurately and fully completed, clearly identifying the animals to which it applies, and showing the dates and results of any inspection, test, vaccination, or treatment the accredited veterinarian has conducted, except as provided in paragraph (c) of this section. The accredited veterinarian shall distribute copies of certificates, forms, records, and reports, according to

instructions issued to him or her by the Veterinarian-in-Charge.

(c) An accredited veterinarian shall not issue or sign any certificate, form, record, or report which reflects the results of any inspection, test, vaccination, or treatment performed by another accredited veterinarian, unless:

(1) The signing accredited veterinarian has exercised reasonable care, that is, a standard of care that a reasonably prudent person would use under the circumstances in the course of performing professional duties, to determine that the certificate, form, or report is accurate;

(2) The certificate, form, or report indicates that the inspection, test, vaccination, or treatment was performed by the other accredited veterinarian; identifies the other accredited veterinarian by name; and includes the date and the place where such inspection, test, or vaccination was performed; and,

(3) For a certificate, form, or report indicating results of a laboratory test, the signing accredited veterinarian shall keep a copy of the certificate, form, or report and shall attach to it either a copy of the test results issued by the laboratory, or a written record (including date and participants' names) of a conversation between the signing accredited veterinarian and the laboratory confirming the test results.

(d) An accredited veterinarian shall perform official tests, inspections, treatments, and vaccinations and shall submit specimens to designated laboratories in accordance with Federal and State regulations and instructions issued to the accredited veterinarian by the Veterinarian-in-Charge.

(e) An accredited veterinarian shall identify or be physically present to supervise the identification of reactor animals by tagging or such other method as may be prescribed in instructions issued to him or her by the Veterinarian-in-Charge or by a State Animal Health Official through the Veterinarian-in-Charge.

(f) An accredited veterinarian shall immediately report to the Veterinarian-in-Charge and the State Animal Health Official all diagnosed or suspected cases of a communicable animal disease for which a PHIS has a control or eradication program in 9 CFR chapter I, and all diagnosed or suspected cases of any animal disease not known to exist in the United States as provided by § 71.3(b) of this chapter.

(g) While performing accredited work, an accredited veterinarian shall take such measures of sanitation as are necessary to prevent the spread of

communicable diseases of animals by the accredited veterinarian.

(h) An accredited veterinarian shall keep himself or herself currently informed on Federal and State regulations that are provided to him or her by the Veterinarian-in-Charge, or by a State official through the Veterinarian-in-Charge, governing the movement of animals, and on procedures applicable to disease control and eradication programs, including emergency programs.

(i) An accredited veterinarian shall not use or dispense in any manner, any pharmaceutical, chemical, vaccine or serum, or other biological product authorized for use under any Federal regulation or cooperative disease eradication program, in contravention of applicable Federal or State statutes, regulations, and policies.

(j) An accredited veterinarian shall be responsible for the security and proper use of all official certificates, forms, records, reports, tags, bands, or other identification devices used in his or her work as an accredited veterinarian and shall take reasonable care to prevent misuse thereof. An accredited veterinarian shall immediately report to the Veterinarian-in-Charge, the loss, theft, or deliberate or accidental misuse of any such certificate, form, record, report, tag, band, or other identification device.

(k) An accredited veterinarian may issue or sign an origin health certificate for export use pursuant to part 91 of this chapter without including test results from a laboratory, if the Veterinarian-in-Charge has determined that such action is necessary to save time in order to meet an exportation schedule and agrees to add the test results to the certificate at a later time. In such cases, the accredited veterinarian shall state on a removable attachment to the certificate that such test results are to be added by the Veterinarian-in-Charge.

§ 161.4 Suspension or revocation of veterinary accreditation; criminal and civil penalties.

(a) The Administrator is authorized to suspend for a given period of time, or to revoke, the accreditation of a veterinarian when he or she determines that the accredited veterinarian has not complied with the "Standards for Accredited Veterinarian Duties" as set forth in § 161.3 of this part, or, in lieu thereof, to issue a written notice of warning to the accredited veterinarian when the Administrator determines a notice of warning will be adequate to attain compliance with the Standards.

(b) Accreditation shall be automatically terminated when an accredited veterinarian is not licensed or legally able to practice veterinary medicine in at least one State.

(c) Accreditation shall be automatically revoked when an accredited veterinarian is convicted of a crime in either State or Federal court, if such conviction is based on the performance or nonperformance of any act required of the veterinarian in his or her capacity as an accredited veterinarian.

(d) Any accredited veterinarian who knowingly issues or signs a false, incorrect, or mislabeled animal health or inspection certificate, blood sample, official brucellosis-vaccination certificate, or official tuberculin test certificate in accordance with this chapter, shall be subject to such civil penalties and such criminal liabilities as are provided by 18 U.S.C. 1001, 21 U.S.C. 117, 122, 127, and 134e, or other applicable Federal statutes. Such action may be in addition to, or in lieu of, suspension or revocation of accredited veterinarian status in accordance with this section.

PART 162—RULES OF PRACTICE GOVERNING REVOCATION OR SUSPENSION OF VETERINARIANS' ACCREDITATION

Subpart A—General

Sec.

162.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

162.10 Summary suspension of accreditation of veterinarians.

162.11 Notification.

162.12 Informal conference.

162.13 Formal complaint.

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—General

§ 162.1 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in Subpart H of part 1, Subtitle A, Title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings for the revocation or suspension of accreditation of veterinarians (9 CFR parts 160 and 161). In addition, the Supplemental Rules of Practice set forth in subpart B of this part shall be applicable to such proceedings.

Subpart B—Supplemental Rules of Practice

§ 162.10 Summary suspension of accreditation of veterinarians.

In any situation where the Administrator has reason to believe that any veterinarian accredited under the provisions of 9 CFR parts 160 and 161 of this subchapter has not complied with the "Standards for Accredited Veterinarian Duties" set forth in § 161.3 of this subchapter, and deems such action necessary in order to prevent the introduction into the United States or the spread from one State to another of a contagious, infectious, or communicable disease of animals, or to insure that animals intended or offered for export to foreign countries are free from disease, the Administrator may suspend the accreditation of such veterinarian pending final determination in the proceeding, effective upon oral or written notification, whichever is earlier. In the event of oral notification, a written confirmation thereof shall be given to such veterinarian pursuant to § 1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)) as promptly as circumstances permit. Such suspension shall have no relevance with respect to the final determination in the proceeding.

§ 162.11 Notification.

The Veterinarian-in-Charge shall notify an accredited veterinarian when there is reason to believe that the accredited veterinarian has not complied with the "Standards for Accredited Veterinarian Duties" as contained in § 161.3 of this subchapter. The notification shall be in writing, with a copy to the State Animal Health Official, and shall include a statement of the basis for the belief that the accredited veterinarian has failed to comply with the Standards and shall notify the accredited veterinarian if the Veterinarian-in-Charge has arranged to hold an informal conference to discuss the matter.

§ 162.12 Informal conference.

(a) The Veterinarian-in-Charge, in consultation with the State Animal Health Official and the accredited veterinarian, shall designate the time and place for the holding of an informal conference to review the matter, unless the Veterinarian-in-Charge determines that an informal conference is inappropriate. An informal conference is inappropriate only if the Veterinarian-in-Charge decides to dismiss the case based on available facts, or if civil or criminal charges based on the actions or inactions believed to be in violation of

the "Standards for Accredited Veterinarian Duties" contained in § 161.3 of this subchapter are pending against the accredited veterinarian. An informal conference shall include the Veterinarian-in-Charge or his or her representative, the accredited veterinarian, and any other persons the Veterinarian-in-Charge requests to attend due to their involvement in or knowledge of the possible violation. The State Animal Health Official will be invited to attend each informal conference held regarding activities in his or her State.

(b) Prior to, during, or at the conclusion of the informal conference, the Veterinarian-in-Charge may issue a written warning to the accredited veterinarian without further procedure after determining that a warning with appropriate instructions will be adequate to attain compliance with the Standards.

(c) If prior to, during, or at the conclusion of the informal conference, the accredited veterinarian consents, in writing, to the issuance of an order revoking or suspending his or her accreditation for a specified period of time, in lieu of further procedure, the Veterinarian-in-Charge may issue such a consent order without further procedure.

(d) If prior to, during, or after the informal conference, but prior to the issuance of a formal complaint, the accredited veterinarian is found not to have violated the regulations, the Veterinarian-in-Charge will issue a letter dismissing the case, and provide a copy of the letter to the accredited veterinarian and to the State Animal Health Official. Prior to, during, or after the informal conference, the Veterinarian-in-Charge may issue a letter identifying actions of the accredited veterinarian that were minor violations of the Standards, instructing the accredited veterinarian in proper procedures, and admonishing the accredited veterinarian to use greater care in performing these procedures in the future. Issuance of three or more letters of dismissal within a 5-year period citing incidents of minor violations by an accredited veterinarian may be cause for more severe action under this section and § 161.4.

§ 162.13 Formal complaint.

If a consent order has not been issued, or if, after an informal conference, the Veterinarian-in-Charge has not issued a letter of dismissal or letter of warning to the accredited veterinarian, a formal complaint may be issued by the Administrator in accordance with

§ 1.135 of the Uniform Rules of Practice (7 CFR 1.135).

Done in Washington, DC, this 17th day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-28318 Filed 11-20-92; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANM-3]

Alteration of Jet Routes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: An error was discovered in the description of the final rule for Jet Route J-143 that was published in the *Federal Register* on October 14, 1992 (57 FR 46976). Airspace Docket No. 92-ANM-3. In the description for J-143 the state location identified for the Klickitat VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) was in error; the actual location of the Klickitat VORTAC is in the State of Washington and not in the State of Oregon. This action corrects that error.

EFFECTIVE DATE: 0901 U.T.C., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 92-24906, Airspace Docket No. 92-ANM-3, published on Wednesday, October 14, 1992 (57 FR 46976), changed the name and identification of three VORTAC's listed in the legal descriptions of five jet routes in the State of Oregon. An error was discovered in the actual location of the Klickitat VORTAC in the description of J-143. The Klickitat VORTAC is actually located in the State of Washington and not in the State of Oregon. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the *Federal Register* on October 14, 1992 (57 FR 46976; Federal Register Document 92-24906), and the description in FAA Order 7400.7, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

Section 71.1 [Corrected]

J-143 [Corrected]

1. On page 46977, in the first column, the description for J-143 is corrected by removing "Klickitat, OR" and inserting in its place "Klickitat, WA."

Issued in Washington, DC, on November 10, 1992.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-28343 Filed 11-20-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANM-2]

Alteration of VOR Federal Airways; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: Several errors were discovered in the descriptions of the final rule for VOR Federal Airways V-25, V-112, V-182, V-287, V-497, V-520, and the domestic low altitude reporting points that was published in the *Federal Register* on October 14, 1992 (57 FR 46977). Airspace Docket No. 92-ANM-2. In the descriptions for V-25, V-112, V-497, V-520, and the domestic low altitude reporting points, the actual location of the Klickitat VORTAC is in the State of Washington and not in the State of Oregon. In the description for V-287 the radial between INT Olympia and Paine, WA, should be 256° and not for 254°. This action corrects those errors.

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 92-24907, Airspace Docket No. 92-ANM-2, published on Wednesday, October 14, 1992 (57 FR 46977), changed the name and identification of four VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) listed in the legal descriptions of Domestic VOR Federal airways, Domestic low altitude reporting points, and Domestic high altitude reporting points in the States of Oregon and Idaho. An error was discovered in the radial between INT Olympia and Paine, WA, in the description for V-287. The radial between INT Olympia and Paine, WA, should have been 256° and not 254°; also an error was discovered in the actual location of the Klickitat VORTAC in the descriptions of V-25, V-112, V-182, V-497, V-520, and the domestic low altitude reporting points. The Klickitat VORTAC is actually located in the State of Washington and not in the State of Oregon. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the *Federal Register* on October 14, 1992 (57 FR 46977; Federal Register Document 92-24907), and the corresponding descriptions in FAA Order 7400.7, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

Section 71.1 [Corrected]

V-25 (corrected)

1. On page 46978, in the first column, the description for V-25 is corrected by removing "Klickitat, OR" and inserting in its place "Klickitat, WA."

V-112 [Corrected]

2. On page 46978, in the first column, the description for V-112 is corrected by removing "Klickitat, OR" and inserting in its place "Klickitat, WA."

V-182 [Corrected]

3. On page 46978, in the second column, the description for V-182 is corrected by removing "Klickitat, OR" and inserting in its place "Klickitat, WA."

V-287 [Corrected]

4. On page 46978, in the third column, the description for V-287 is corrected by removing "and Paine, WA, 254° radials" and inserting in its place "and Paine, WA, 256° radials."