

## § 51.10

the results of an official test, as defined in § 78.1 of this chapter, and specific instructions for the administration of the official test had not previously been issued to the individual performing the test by APHIS and the State animal health official.

(c) If all cattle, bison, and swine eligible for testing in the claimant's herd have not been tested for brucellosis under APHIS or State supervision.

(d) If the animals are barrows or gilts maintained for feeding purposes, or are spayed heifers or steers unless the steers are work oxen.

(e) If the animals are classified as reactors and are unofficial vaccinates, unless there is either a record of a negative official test made not less than 30 days following the date of unofficial vaccination or unless other APHIS approved tests show the unofficial vaccinates are affected with virulent *Brucella*.

(f) If there is substantial evidence that the owner or his agent has in any way been responsible for any unlawful or improper attempt to obtain indemnity funds for such animal.

(g) If, at the time of test or condemnation, the animals belonged to or were upon the premises of any person to whom they had been sold for slaughter; shipped for slaughter, or delivered for slaughter.

(h) If any known brucellosis reactor animal remains in the herd, unless, in the opinion of the Veterinarian in Charge, a reasonable search has been made for the brucellosis reactor animal and the brucellosis reactor animal could not be found and removed.

(i) If the animals are brucellosis reactor animals which are slaughtered other than as part of a herd depopulation, and which are from a herd: (1) That was already classified as a "herd known to be affected" at the time the animals were identified as brucellosis reactor animals and (2) for which an approved action plan or approved individual herd plan (as defined in § 78.1 of

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this chapter) was not in effect at the time the claim was filed.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982, and amended at 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 50 FR 47036, Nov. 14, 1985; 51 FR 11300, Apr. 2, 1986; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991]

### **§ 51.10 Part 53 of this chapter not applicable.**

No claim for indemnity for animals destroyed because of brucellosis shall hereafter be paid under the regulations contained in part 53 of this chapter, but all such claims shall be presented and paid pursuant to and in compliance with regulations contained in this part.

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982; 50 FR 11993, Mar. 27, 1985]

## PART 52 [RESERVED]

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

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- 53.1 Definitions.
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- 53.10 Claims not allowed.

AUTHORITY: 21 U.S.C. 111, 114, 114a; 7 CFR 2.22, 2.80, and 371.2(d).

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

**§ 53.1 Definitions.**

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

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

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

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

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

*Department.* The United States Department of Agriculture.

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

*Exotic Newcastle Disease (END).* Any velogenic Newcastle disease. Exotic Newcastle disease is an acute, rapidly spreading, and usually fatal viral disease of birds and poultry.

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

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

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

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

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

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

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

*Pet bird.* Any bird that is kept for personal pleasure and is not for sale.

*Poultry.* Chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl.

*Secretary.* The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has been or may be delegated to act in the Secretary's stead.

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

[61 FR 56882, Nov. 5, 1996]

**§ 53.2 Determination of existence of disease; agreements with States.**

(a) The Director of Division is hereby authorized to invite the proper State authorities to cooperate with the Department in the control and eradication of any disease within the meaning of § 53.1(f).

(b) Upon agreement of the authorities of the State to enforce quarantine restrictions and orders and directives properly issued in the control and eradication of such a disease, the Director of Division is hereby authorized to agree, on the part of the Department, to cooperate with the State in the control and eradication of the disease, and to pay 50 percent (and in the case of exotic Newcastle disease or highly pathogenic avian influenza, up to 100 percent) of the expenses of purchase, destruction and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease:

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*Provided, however,* That if the animals were exposed to such disease prior to or during interstate movement and are not eligible to receive indemnity from any State, the Department may pay up to 100 percent of the purchase, destruction, and disposition of animals and materials required to be destroyed: *Provided, further,* That the cooperative program for the purchase, destruction, and disposition of birds shall be limited to birds which are identified in documentation pursuant to Cooperative Agreements,<sup>1</sup> as constituting a threat to the poultry industry of the United States: *And provided further,* That the Secretary may authorize other arrangements for the payment of such expenses upon finding that an extraordinary emergency exists.

[37 FR 5689, Mar. 18, 1972, as amended at 49 FR 3448, Jan. 27, 1984; 49 FR 26712, June 29, 1984; 61 FR 56883, Nov. 5, 1996]

#### **§ 53.3 Appraisal of animals or materials.**

(a) Animals affected by or exposed to disease, and materials required to be destroyed because of being contaminated by or exposed to disease shall be appraised by an APHIS employee and a representative of the State jointly, or, if the State authorities approve, by an APHIS employee alone.

(b) The appraisal of animals shall be based on the fair market value and shall be determined by the meat, egg production, dairy or breeding value of such animals. Animals may be appraised in groups providing they are the same species and type and providing that where appraisal is by the head each animal in the group is the same value per head or where appraisal is by the pound each animal in the group is the same value per pound.

(c) Appraisals of animals shall be reported on forms furnished by APHIS. Reports of appraisals shall show the number of animals of each species and the value per head or the weight and value by pound.

(d) Appraisals of materials shall be reported on forms furnished by APHIS.

<sup>1</sup>Agreements between the Departments and the particular State involved relating to cooperative animal (including poultry) disease prevention, control, and eradication.

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Reports of appraisals of materials shall, when practicable, show the number, size or quantity, unit price, and total value of each kind of material appraised.

(21 U.S.C. 112, 113, 115, 117, 120, 121, 134b)

[28 FR 5935, June 13, 1963, as amended at 35 FR 13981, Sept. 3, 1970; 36 FR 25217, Dec. 30, 1971; 56 FR 51974, Oct. 17, 1991]

#### **§ 53.4 Destruction of animals.**

(a) Animals affected by or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator in extraordinary circumstances.

(b) The killing of animals and the burial, burning, or other disposal of carcasses of animals pursuant to the regulations in this part shall be supervised by an APHIS employee who shall prepare and transmit to the Administrator a report identifying the animals and showing the disposition thereof.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

#### **§ 53.5 Disinfection or destruction of materials.**

(a) In order to prevent the spread of disease, materials contaminated by or exposed to disease shall be disinfected: *Provided, however,* That in all cases in which the cost of disinfection would exceed the value of the materials or disinfection would be impracticable for any reason, the materials shall be destroyed, after appraisal as provided in § 53.3.

(b) The disinfection or destruction of materials under this section shall be under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a certificate identifying all materials which are destroyed, showing the disposition thereof.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

#### **§ 53.6 Disinfection of animals.**

Animals of species not susceptible to the disease for which a quarantine has been established, but which have been

exposed to the disease, shall be disinfected when necessary by such methods as the Administrator shall prescribe from time to time.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

**§ 53.7 Disinfection of premises, conveyances, and materials.**

All premises, including barns, corrals, stockyards and pens, and all cars, vessels, aircraft, and other conveyances, and the materials thereon, shall be cleaned and disinfected under supervision of an APHIS employee whenever necessary for the control and eradication of disease. Expenses incurred in connection with such cleaning and disinfection shall be shared according to the agreement reached under § 53.2 with the State in which the work is done.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

**§ 53.8 Presentation of claims.**

Claims for (a) compensation for the value of animals, (b) cost of burial, burning or other disposition of animals, (c) the value of material destroyed, and (d) the expenses of destruction, shall each be presented, through the inspector in charge, to APHIS on separate vouchers in form approved by the Administrator.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

**§ 53.9 Mortgage against animals or materials.**

When animals or materials have been destroyed pursuant to the requirements contained in this part, any claim for indemnity shall be presented on forms furnished by APHIS on which the owner of the animals or materials shall certify that the animals or materials covered thereby, are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, forms furnished by APHIS shall be signed by the owner and by each person holding a mortgage on the animals or materials, consenting to the payment of any indemnity allowed to the person specified thereon.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

**§ 53.10 Claims not allowed.**

(a) The Department will not allow claims arising under the terms of this part if the payee has not complied with all quarantine requirements.

(b) Expenses for the care and feeding of animals held for destruction will not be paid by the Department, unless the payment of such expense is specifically authorized or approved by the Administrator.

(c) The Department will not allow claims arising out of the destruction of animals or materials unless they shall have been appraised as prescribed in this part and the owners thereof shall have executed a written agreement to the appraisals.

(d) The Department will not allow claims arising out of the destruction of animals or materials which have been moved or handled by the owner thereof or its officer, employee, or agent, acting within the scope of his or its office, employment or agency, in violation of a law or regulation administered by the Secretary for the prevention of the introduction into or the dissemination within the United States of any communicable disease of livestock or poultry for which the animal or material was destroyed, or in violation of a law or regulation for the enforcement of which the Secretary enters or has entered into a cooperative agreement for the control and eradication of such disease.

[28 FR 5935, June 13, 1963, as amended at 45 FR 86411, Dec. 31, 1980; 56 FR 51974]

**PART 54—CONTROL OF SCRAPIE**

Sec.

54.1 Definitions.

**Subpart A [Reserved]**

**Subpart B—Voluntary Scrapie Flock Certification Program**

54.10 Administration.

54.11 Participation.

54.12 State Scrapie Certification Boards.

54.13 Cooperative agreements with States.

AUTHORITY: 21 U.S.C. 111, 114, 114a, and 134a-134h; 7 CFR 2.22, 2.80, and 371.2(d).

SOURCE: 28 FR 5936, June 13, 1963, unless otherwise noted.