

SUBCHAPTER L—SWINE HEALTH PROTECTION

PART 166—SWINE HEALTH PROTECTION

GENERAL PROVISIONS

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AUTHORITY: 7 U.S.C. 3802-3804, 3808, 3809, and 3811; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 47 FR 49945, Nov. 3, 1982, unless otherwise noted.

GENERAL PROVISIONS

§ 166.1 Definitions in alphabetical order.

For the purposes of this part, the following terms shall have the meanings assigned them in this section. Unless otherwise required by the context, the singular form shall also import the plural and the masculine form shall also import the feminine, and vice versa. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

Act. The Swine Health Protection Act (Pub. L. 96-468) as amended by the Farm Credit Act Amendments of 1980 (Pub. L. 96-592).

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

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

Animals. All domesticated and wild mammalian, poultry, and fish species, and wild and domesticated animals, including pets such as dogs and cats.

Area Veterinarian in Charge. The veterinarian of APHIS who is assigned by the Administrator to supervise and perform the official work of APHIS in a State or States or any other official to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

Facility. The site and all objects at this site including equipment and structures where garbage is accumulated, stored, handled, and cooked as a food for swine and which are fenced in or otherwise constructed so that swine are unable to have access to untreated garbage.

Garbage. All waste material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking or consumption of food, except that such term shall not include waste from ordinary household operations which is fed directly to swine on the same premises where such household is located.

Inspector. Any individual employed by the United States Department of Agriculture or by a State for the purposes of enforcing the Act and this part.

License. A permit issued to a person for the purpose of allowing such person to operate a facility to treat garbage that is to be fed to swine.

Licensee. Any person licensed pursuant to the Act and regulations.

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

Premises. The location of a garbage treatment facility, as defined in this part, and any areas owned or controlled by the operator of the facility where swine are kept or fed by the operator.

Rendered product. Waste material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking or consumption of food that has been ground and heated to a minimum temperature of 230 °F. to make products such as, but not limited to, animal, poultry, or fish protein meal, grease or tallow.

State. The fifty States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs or any other official to whom authority is delegated to act for the State animal health official.

Treated garbage. Edible waste for animal consumption derived from garbage (as defined in this section) that has been heated throughout at boiling or equivalent temperature (212 °F. or 100 °C. at sea level) for 30 (thirty) minutes under the supervision of a licensee.

Treatment. The heating of garbage to specifications as set forth in this part.

Untreated garbage. Garbage that has not been treated in accordance with the Act and these regulations.

[47 FR 49945, Nov. 3, 1982, as amended at 48 FR 22290, May 18, 1983; 52 FR 4890, Feb. 18, 1987; 56 FR 26899, June 12, 1991; 66 FR 21064, Apr. 27, 2001]

§ 166.2 General restrictions.

(a) No person shall feed or permit the feeding of garbage to swine unless the garbage is treated to kill disease organisms, pursuant to this Part, at a facility operated by a person holding a valid license for the treatment of garbage; except that the treatment and license requirements shall not apply to the feeding or the permitting of the feeding to swine of garbage only because the garbage consists of any of the following: rendered products; bakery waste; candy waste; eggs; domestic dairy products (including milk); fish

from the Atlantic Ocean within 200 miles of the continental United States or Canada; or fish from inland waters of the United States or Canada which do not flow into the Pacific Ocean.

(b) No person operating such a facility may be licensed to treat garbage unless he or she meets the requirements of this part designed to prevent the introduction or dissemination of any infectious or communicable disease of animals and unless the facility is so constructed that swine are unable to have access to untreated garbage or equipment and material coming in contact with untreated garbage.

(c) The regulations of this part shall not be construed to repeal or supersede State laws that prohibit feeding of garbage to swine or to prohibit any State from enforcing requirements relating to the treatment of garbage that is to be fed to swine or the feeding thereof which are more stringent than the requirements contained in this part. In a State which prohibits the feeding of garbage to swine, a license under the Act will not be issued to any applicant.

[47 FR 49945, Nov. 3, 1982, as amended at 49 FR 14497, Apr. 12, 1984; 52 FR 4890, Feb. 18, 1987; 66 FR 21064, Apr. 27, 2001]

§ 166.3 Separation of swine from the garbage handling and treatment areas.

(a) Access by swine to garbage handling and treatment areas shall be prevented by construction of facilities to exclude all ages and sizes of swine.

(b) All areas and drainage therefrom, used for the handling and treatment of untreated garbage shall be inaccessible to swine on the premises. This shall include the roads and areas used to transport and handle untreated garbage on the premises.

§ 166.4 Storage of garbage.

(a) Untreated garbage at a treatment facility shall be stored in covered and leakproof containers until treated.

(b) Treated garbage shall be transported to a feeding area from the treatment facility only in (1) containers used only for such treated garbage; (2) containers previously used for garbage which have been cleaned and disinfected in accordance with § 166.14 of

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this part; or (3) containers in which the garbage was treated.

[47 FR 49945, Nov. 3, 1982, as amended at 52 FR 4890, Feb. 18, 1987]

§ 166.5 Licensed garbage-treatment facility standards.

Garbage-treatment facilities shall be maintained as set forth in this section.

(a) Insects and animals shall be controlled. Accumulation of any material at the facility where insects and rodents may breed is prohibited.

(b) Equipment used for handling untreated garbage, except for the containers in which the garbage has been treated, may not be subsequently used in the feeding of swine unless first cleaned and disinfected as set forth in § 166.14(b).

(c) Untreated garbage that is not to be fed to swine and materials in association with such garbage shall be disposed of in a manner consistent with all applicable governmental environmental regulations and in an area inaccessible to swine.

[47 FR 49945, Nov. 3, 1982, as amended at 52 FR 4890, Feb. 18, 1987]

§ 166.6 Swine feeding area standards.

Untreated garbage shall not be allowed into swine feeding areas. Any equipment or material associated with untreated garbage, except for containers holding treated garbage which was treated in such containers, shall not be allowed into swine feeding areas at treatment premises until properly cleaned and disinfected as set forth in § 166.14(b) of this part.

[47 FR 49945, Nov. 3, 1982, as amended at 52 FR 4890, Feb. 18, 1987]

§ 166.7 Cooking standards.

(a) Garbage shall be heated throughout at boiling (212 °F. or 100 °C. at sea level) for 30 (thirty) minutes.

(b) Garbage shall be agitated during cooking, except in steam cooking equipment, to ensure that the prescribed cooking temperature is maintained throughout the cooking container for the prescribed length of time.

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§ 166.8 Vehicles used to transport garbage.

Vehicles used by a licensee to transport untreated garbage, except those that have also been used to treat the garbage so moved, shall not be used for hauling animals or treated garbage until cleaned and disinfected as set forth in § 166.14(c) of this part.

[47 FR 49945, Nov. 3, 1982, as amended at 52 FR 4890, Feb. 18, 1987]

§ 166.9 Recordkeeping.

(a) Each licensee shall record the destination and date of removal of all treated or untreated garbage removed from the licensee's premises.

(b) Such records shall be legible and indelible.

(c) Each entry in a record shall be certified as correct by initials or signature of the licensee or an authorized agent or employee of the licensee.

(d) Such records shall be maintained by the licensee for a period of 1 year from the date made and shall be made available to inspectors upon request during normal business hours at that treatment facility.

(Approved by the Office of Management and Budget under control number 0579-0066)

[47 FR 49945, Nov. 3, 1982, as amended at 48 FR 57474, Dec. 30, 1983; 52 FR 4890, Feb. 18, 1987]

§ 166.10 Licensing.

(a) *Application.* Any person operating or desiring to operate a treatment facility for garbage that is to be treated and fed to swine shall apply for a license on a form which will be furnished, upon request, by the Area Veterinarian in Charge or, in States with primary enforcement responsibility, by the State animal health official in the State in which the person operates or intends to operate. When a person operates more than one treatment facility, a separate application to be licensed shall be made for each facility. Exemptions to the requirements of this paragraph may be granted in States other than those with primary enforcement responsibility by the Administrator, if he finds that there would not be a risk to the swine industry in the United

States. Any person operating or desiring to operate a facility to treat garbage to be fed to swine who would otherwise be required under this part to obtain a license to treat garbage only because it contains one or more of the items allowed to be fed to swine under § 166.2(a) of this part is exempted from the requirements of this paragraph.

(b) *Acknowledgement of Act and regulations.* A copy of the Act and regulations shall be supplied to the applicant at the time the applicant is given a license application. The applicant shall sign a receipt at the time of the precicensing inspection acknowledging that the applicant has received a copy of the Act and regulations, that the applicant understands them, and agrees to comply with the Act and regulations.

(c) *Demonstration of compliance with the regulations.* (1) Prior to licensing, each applicant shall demonstrate during an inspection of the premises, facilities, and equipment that the facilities and equipment to be used in the treatment of garbage comply with these regulations. If the applicant's facilities and equipment do not meet the standards established by the regulations, the applicant shall not be licensed and shall be advised of the deficiencies and the measures that must be taken to comply with the regulations.

(2) The licensee shall make the premises, facilities, and equipment available during normal business hours for inspections by an inspector to determine continuing compliance with the Act and regulations.

(3) The facilities and equipment of an applicant for a license shall be in compliance with all applicable governmental environmental regulations before the applicant will be licensed.

(d) *Issuance of license.* A license will be issued to an applicant when the requirements of paragraphs (a), (b), and (c) of this section have been met, provided that such facility is not located in a State which prohibits the feeding of garbage to swine; and further, that if the Administrator has reason to believe that the applicant for a license is unfit to engage in the activity for which application has been made by reason of the fact that the applicant is engaging in or has, in the past, engaged

in any activity in apparent violation of the Act or the regulations which has not been the subject of an administrative proceeding under the Act, an administrative proceeding shall be promptly instituted in which the applicant will be afforded an opportunity for a hearing in accordance with the rules of practice under the Act, for the purpose of giving the applicant an opportunity to show cause why the application for license should not be denied. In the event it is determined that the application should be denied, the applicant shall be precluded from reapplying for a license for 1 year from the date of the order denying the application.

(Approved by the Office of Management and Budget under control number 0579-0065)

[47 FR 49945, Nov. 3, 1982, as amended at 48 FR 57474, Dec. 30, 1983; 49 FR 14497, Apr. 12, 1984; 52 FR 4890, Feb. 18, 1987; 56 FR 26899, June 12, 1991; 66 FR 21064, Apr. 27, 2001]

§ 166.11 Suspension and revocation of licenses.

(a) *Suspension or revocation after notice.* In addition to the imposition of civil penalties and the issuance of cease and desist orders under the Act, the license of any facility may be suspended or revoked for any violation of the Act or the regulations in this part. Before such action is taken, the licensee of the facility will be informed in writing of the reasons for the proposed action and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action, in accordance with rules of practice which shall be adopted for the proceeding.

(b) *Summary suspension.* If the Administrator has reason to believe that any licensee has not complied or is not complying with any provisions of the Act or regulations in this part and the Administrator deems such action necessary in order to protect the public health, interest, or safety, the Administrator may summarily suspend the license of such persons pending a final determination in formal proceedings and any judicial review thereof, effective upon verbal or written notice of such suspension and the reasons therefor. In the event of verbal notification, written confirmation shall follow as

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soon as circumstances permit. This summary suspension shall continue in effect pending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Administrator.

(c) The license of a person shall be automatically revoked, without action of the Administrator, upon the final effective date of the second criminal conviction of such person, as is stated in section 5(c) of the Act. The licensee will be notified in writing of such revocation by the Area Veterinarian in Charge or, in States having primary enforcement responsibility, by the State animal health official.

(d) Any person whose license has been suspended or revoked for any reason shall not be licensed in such person's own name or in any other manner, nor shall any of such person's employees be licensed for the purpose of operating the facility owned or operated by said licensee while the order of suspension or revocation is in effect. Any person whose license has been revoked shall not be eligible to apply for a new license for a period of 1 year from the effective date of such revocation. Any person who desires the reinstatement of a license that has been revoked must follow the procedure for new licensees set forth in § 166.10 of this part.

[47 FR 49945, Nov. 3, 1982, as amended at 52 FR 4890, Feb. 18, 1987; 56 FR 26899, June 12, 1991]

§ 166.12 Cancellation of licenses.

(a) The Area Veterinarian in Charge or, in States listed in § 166.15(d) of this part, the State animal health official shall cancel the license of a licensee when the Area Veterinarian in Charge or, in States listed in § 166.15(d) of this part, the State animal health official finds that no garbage has been treated for a period of 4 consecutive months at the facility operated by the licensee. Before such action is taken, the licensee of the facility will be informed in writing of the reasons for the proposed action and be given an opportunity to respond in writing. In those instances where there is a conflict as to the facts, the licensee shall, upon request, be afforded a hearing in accord-

ance with rules of practice which shall be adopted for the proceeding.

(b) Any licensee may voluntarily have his or her license canceled by requesting such cancellation in writing and sending such request to the Area Veterinarian in Charge,¹ or, in States listed in § 166.15(d) of this part, to the State animal health official. The Area Veterinarian in Charge or, in States listed in § 166.15(d) of this part, the State animal health official shall cancel such license and shall notify the licensee of the cancellation in writing.

(c) Any person whose license is canceled in accordance with paragraph (a) or (b) of this section may apply for a new license at any time by following the procedure for obtaining a license set forth in § 166.10 of this part.

[52 FR 4891, Feb. 18, 1987, as amended at 56 FR 26899, June 12, 1991; 59 FR 67618, Dec. 30, 1994]

§ 166.13 Licensee responsibilities.

(a) A licensed facility shall be subject to inspections. Each inspector will be furnished with an official badge or identification card, either of which shall be sufficient identification to entitle access during normal business hours to the facility for the purposes of inspection. At such time the inspector is duly authorized to:

(1) Inspect the facility, including cooker function;

(2) Take samples of garbage;

(3) Observe and physically inspect the health status of all species of animals on the premises;

(4) Review records and make copies of such records; and

(5) Take photographs. A copy of each photograph will be provided to the licensee within 14 days.

(b) A licensee shall notify an inspector immediately upon detection of illness or death not normally associated with the licensee's operation in any animal species on the licensee's premises.

(c) A licensee shall notify an inspector or the State animal health official

¹The name and address of the Area Veterinarian in Charge may be obtained from the Veterinary Services, Operational Support, 4700 River Road, Unit 33, Riverdale, Maryland 20737-1231.

or the Area Veterinarian in Charge, as appropriate, of any change in the name, address, management or substantial control or ownership of his business or operation within 30 days after making such change.

(d) A licensee shall supply, upon request by an inspector, information concerning sources of garbage. Such information shall include the dates of supply and the names and addresses of the person and/or organization from which the garbage was received.

(Approved by the Office of Management and Budget under control number 0579-0065)

[47 FR 49945, Nov. 3, 1982, as amended at 48 FR 57474, Dec. 30, 1983; 52 FR 4890, Feb. 18, 1987. Redesignated at 52 FR 4891, Feb. 18, 1987]

§ 166.14 Cleaning and disinfecting.

(a) *Disinfectants to be used.* Disinfection required under the regulations in this Part shall be performed with one of the following:

(1) A permitted brand of sodium orthophenylphenate that is used in accordance with directions on the Environmental Protection Agency (EPA) approved label.

(2) A permitted cresylic disinfectant that is used in accordance with directions on the EPA-approved label, provided such disinfectant also meets the requirements set forth in §§ 71.10(b) and 71.11 of this chapter.

(3) Disinfectants which are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*), with tuberculocidal claims and labeled as efficacious against any species within the viral genus *Herpes*, that are used for purposes of this Part in accordance with directions on the EPA-approved label.

(b) All premises at which garbage has been fed to swine in violation of the Act or regulations in this part shall, prior to continued use for swine feeding purposes, be cleaned and disinfected under the supervision of an inspector or an accredited veterinarian as defined in Part 160 of this chapter as follows: Empty all troughs and other feeding and watering appliances, remove all litter, garbage, manure, and other organic material from the floors, posts, or other parts of such equipment, and handle such litter, garbage, manure,

and other organic material in such manner as not to allow animal contact with such material; clean all surfaces with water and detergent and saturate the entire surface of the equipment, fencing, troughs, chutes, floors, walls, and all other parts of the facilities, with a disinfectant prescribed in paragraph (a) of this section. An exemption to the requirements of this paragraph may be given by the Administrator or, in States with primary enforcement responsibility, by the State animal health official, when it is determined that a threat to the swine industry does not exist.

(c) Any vehicle or other means of conveyance and its associated equipment which has been used by the licensee to move garbage, except any vehicle or other means of conveyance which also has been used to treat the garbage so moved, shall, prior to use for livestock-related or treated garbage hauling purposes, be cleaned and disinfected as follows: Remove all litter, garbage, manure, and other organic material from all portions of each means of conveyance, including all ledges and framework inside and outside, and handle such litter, garbage, manure, and other organic material in such manner as not to allow animal contact with such material; clean the interior and the exterior of such vehicle or other means of conveyance and its associated equipment with water and detergent; and saturate the entire interior surface, including all doors, endgates, portable chutes, and similar equipment with a disinfectant prescribed in paragraph (a) of this section.

(d) The owner of such facilities and vehicles shall be responsible for cleaning and disinfecting as required under this section, and the cleaning and disinfecting shall be done without expense to the United States Department of Agriculture.

[47 FR 49945, Nov. 3, 1982. Redesignated and amended at 52 FR 4891, Feb. 18, 1987; 56 FR 26899, June 12, 1991]

§ 166.15 State status.

(a) The following States prohibit the feeding of garbage to swine: Alabama, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Mississippi, Nebraska, New York, North Dakota,

South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin.

(b) The following States and Puerto Rico permit the feeding of treated garbage to swine: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.

(c) The following States have primary enforcement responsibility under the Act: Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wisconsin.

(d) The following States issue licenses under cooperative agreements with the Animal and Plant Health Inspection Service, but do not have primary enforcement responsibility under the Act: Kentucky, Maryland, Puerto Rico, Texas, and Washington.

(e) The public may contact the Area Veterinarian in Charge, Animal and Plant Health Inspection Service, United States Department of Agriculture or State animal health official, or the Animal and Plant Health Inspection Service, Veterinary Services, Swine Health, 4700 River Road, Unit 37, Riverdale, Maryland 20737–1231, concerning the feeding of garbage to swine.

[47 FR 49945, Nov. 3, 1982, as amended at 51 FR 2348, Jan. 16, 1986; 51 FR 15757, Apr. 28, 1986. Redesignated and amended at 52 FR 4891, Feb. 18, 1987; 52 FR 13231, Apr. 22, 1987; 52 FR 34208, Sept. 10, 1987; 52 FR 37283, Oct. 6, 1987; 55 FR 30688, July 27, 1990; 56 FR 7555, Feb. 25, 1991; 56 FR 26899, June 12, 1991; 56 FR 37827, Aug. 9, 1991; 59 FR 67618, Dec. 30, 1994]

PART 167—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE SWINE HEALTH PROTECTION ACT

Subpart A—General

Sec.

167.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

167.10 Stipulations.

AUTHORITY: 7 U.S.C. 3804, 3805, and 3811; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 48 FR 30095, June 30, 1983, unless otherwise noted.

Subpart A—General

§ 167.1 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 under sections 5 and 6 of the Swine Health Protection Act (7 U.S.C. 3804, 3805). 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

§ 167.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under the Act, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the Act, or the regulations issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

(2) Such person expressly waives hearing and agrees to a specified order which may include an agreement to