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Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, et al.

Traceability for Livestock Moving Interstate; Proposed Rule

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Parts 71, 77, 78, and 90**

[Docket No. APHIS-2009-0091]

RIN 0579-AD24

**Traceability for Livestock Moving Interstate****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under this proposed rule, unless specifically exempted, livestock belonging to species covered by this rulemaking that are moved interstate would have to be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation. The proposed regulations specify approved forms of official identification for each species but would allow the livestock covered under this rulemaking to be moved interstate with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes. The purpose of this rulemaking is to improve our ability to trace livestock in the event that disease is found.

**DATES:** We will consider all comments that we receive on or before November 9, 2011.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0091-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2009-0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0091> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Mr. Neil Hammerschmidt, Program Manager, Animal Disease Traceability, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737-1231; (301) 734-5571.

**SUPPLEMENTARY INFORMATION:****Background**

Preventing and controlling animal disease is the cornerstone of protecting American animal agriculture. While ranchers and farmers work hard to protect their animals and their livelihoods, there is never a guarantee that their animals will be spared from disease. To support their efforts, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) has promulgated regulations to prevent, control, and eradicate disease. Traceability does not prevent disease, but knowing where diseased and at-risk animals are, where they have been, and when, is indispensable in emergency response and in ongoing disease control and eradication programs.

We do not currently have a comprehensive animal traceability program. Some of our animal disease program regulations in 9 CFR subchapter C (“Interstate Transportation of Animals (Including Poultry) and Animal Products,” referred to below as “the existing regulations”), such as those for tuberculosis and brucellosis, contain components of a traceability program, *e.g.*, requirements for animals moving interstate to be officially identified and accompanied by documents recording, among other things, the animals’ official identification numbers and the locations from and to which they are being moved. Such requirements, however, do not apply to all livestock or to all interstate movements. Significant gaps exist that could impair our ability to trace animals, when necessary, that may be affected with a disease. Some species, or classes of animals within a species, are subject to official identification and/or movement requirements only under the existing animal disease program regulations.

We are particularly concerned with current inadequacies in disease tracing capabilities in the cattle industry. Previously, many cattle received official identification through USDA’s vaccination program for brucellosis, which requires that certain young female cattle and bison (aged 4 to 12 months) moving into and out of States or areas designated as Class B or Class C for brucellosis be vaccinated for the disease. These vaccinated calves must be permanently identified by means of

a tattoo and either an official vaccination eartag or other official eartag if one is already attached to the animal (9 CFR part 78). Our eradication efforts have been tremendously successful, and now all 50 States are brucellosis-free. While this is certainly a positive development, it has resulted in a steep decline in the number of officially identified cattle. In 1988, when there were only 27 Class Free States and many more calves were subject to those requirements, 10 million calves were officially identified, but by 2010 that number had fallen to 3.1 million.

As a result of decreasing levels of official identification in cattle, the time required to conduct other disease investigations is increasing. For example, disease investigations for bovine tuberculosis frequently now exceed 150 days as USDA and State investigative teams spend substantially more time and money in conducting tracebacks. The decreased level of official identification has resulted in an expansion of the scope of investigations to identify suspect and exposed animals, necessitating the testing of thousands of cattle that would otherwise not have needed to be tested.

We have clear indications that higher levels of official identification enhance tracing capability. For example, through the National Scrapie Eradication Program (NSEP), 92 percent of the cull breeding sheep are officially identified at slaughter, primarily using flock identification eartags. This level of official identification made it possible in fiscal year 2010 to achieve traceback from slaughter of scrapie-positive sheep to the flock of origin or birth as part of the scrapie surveillance program 96 percent of the time, typically in a matter of minutes. Other diseases, in particular contagious ones, require that we trace to more than the birth premises, *i.e.*, to other premises where the animal has been after leaving the birth premises but before going to slaughter, so the scrapie model is not a complete solution for such diseases.

APHIS believes that we must improve our tracing capabilities now not only to alleviate current concerns, including the increasing number of cases of bovine tuberculosis, but also to ensure that we are well prepared to respond to new or foreign animal diseases in the future.

The traceability framework we are proposing in this rule represents a departure from our initial attempt to address the problems described above through implementation of the National Animal Identification System (NAIS). NAIS was introduced in 2004 with the long-term goal of achieving 48-hour

traceability. NAIS was a voluntary system, with registration of all premises where livestock or poultry were housed or kept as the foundation of the system. Additional components of NAIS, which were expected to evolve over time, were animal identification and the recording of animal movements. In 2009, APHIS launched a series of efforts to assess the level of acceptance of NAIS, including public listening sessions in 14 cities and a review of written comments submitted by the public. Although there was some support for NAIS, the vast majority of listening session participants and commenters were highly critical of the program and of USDA's implementation efforts. Many commenters viewed the NAIS as a Government-imposed, "one-size-fits-all" approach to animal traceability. Producers were concerned about various issues, including having their data maintained in a Federal database and the cost of the technology that would be necessary to achieve the 48-hour traceability goal. Overall, the feedback revealed that NAIS had become a barrier to achieving meaningful animal disease traceability in the United States in partnership with America's producers.

On February 5, 2010, the Secretary announced that the Department planned to take a new approach to animal disease traceability. This new approach was developed through input from a State-Tribal-Federal working group, Tribal consultations, discussions with producers and industry, and feedback received in seven public meetings held during the spring and summer of 2010. Our overall goal is to have an adaptable approach that will help us find animals associated with a disease quickly, focus our efforts on those animals, and minimize harm to producers.

### Overview of the Proposal

We are proposing to establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate. These requirements are intended to improve our ability to locate animals that may be infected with or exposed to a disease. Because USDA's regulatory authority applies to interstate commerce, the requirements would not apply to movements within a State. They would also not apply to movements onto or from Tribal lands unless the movement is also an interstate movement. Additionally, in recognition of Tribal sovereignty, if a Tribe has its own system for identifying and tracing livestock, separate from those of a State, our requirements would not apply to movements entirely within that Tribal jurisdiction even if the

movements cross a State line that goes through the Tribal lands. We also propose to exempt from the regulations livestock moved to a custom slaughter facility in accordance with Federal and State regulations for preparation of meat for personal consumption.

The proposed requirements would apply to cattle and bison, sheep and goats, swine, horses and other equines, captive cervids (*e.g.*, deer and elk), and poultry. The greatest gaps in identification and movement documentation requirements for traceability purposes in our current program disease regulations are for cattle. As noted above, due to the near eradication of brucellosis in cattle, the number of vaccinated heifers, which are required under the brucellosis regulations to be officially identified, has decreased, and in turn, there has been a significant decrease in the number of officially identified cattle. Therefore, our proposed regulations would contain new requirements for cattle. Because we have very limited program regulations for horses and other equines, our proposed regulations would also contain new requirements for equines. On the other hand, the traceability-related requirements in our existing program regulations for swine, sheep and goats, captive cervids, and commercial poultry are more comprehensive and, we believe, largely sufficient at this time. While we are proposing to cover those animals in this proposal, we have chosen, in most cases, to refer the reader to the identification and documentation requirements in those existing program regulations. Our proposal, however, would establish traceability requirements for poultry moved interstate to live bird markets.

Our proposed traceability requirements would have two main elements.

First, animals moved interstate would have to be officially identified. The methods and devices for identifying animals would vary by species, and within a species there may be multiple choices. For certain species, for example cattle and bison and sheep and goats, this would typically involve attaching an eartag with a unique official identification number to the animal. In some cases, most commonly with poultry and swine, animals that move through the production chain are identified as a group rather than by means of an individual eartag or other identifier being attached to each animal.

The methods, devices, and numbering systems that we propose to recognize as official identification are those that would provide for effective traceability

and that can be used nationwide. All States and Tribal jurisdictions would be required to accept all official identification methods proposed for each species. An example for cattle would be an eartag with a national uniform eartagging system (NUES) number. We recognize, however, that different identification methods may exist or evolve in specific parts of the country and that there may be situations where other forms of identification may be effective and preferred by producers. Therefore, we are proposing to allow such identification to be used in lieu of official identification for livestock moved interstate when both the shipping and receiving States or Tribes agree to its use. Additionally, because we recognize that there will be logistical challenges associated with officially identifying a significantly higher number of cattle for interstate movement, we plan to phase in the requirements for identification of cattle and bison over time.

Second, animals moved interstate must be accompanied by an interstate certificate of veterinary inspection, also referred to as an ICVI. The ICVI would be issued by an accredited veterinarian (one authorized to perform work on behalf of the APHIS) or a Federal, State, or Tribal veterinarian, who would be responsible for ensuring that the animal meets applicable health requirements. The ICVI would, for certain classes of animals, show the official identification number of the animal. It would also contain information about where the animal is moving from and its destination.

We are proposing some exceptions to the requirements for an ICVI. For example, for cattle moving interstate directly to slaughter, we propose to allow use of an owner-shipper statement, rather than an ICVI. Additionally, we are proposing to allow alternatives to the ICVI for livestock moved interstate when both the shipping and receiving States or Tribes agree. We are also proposing some exceptions to the requirement for recording animal identification numbers on ICVIs (*e.g.*, for steers and spayed heifers).

These proposed identification and movement documentation requirements are the foundation for a successful traceability program.

We are also proposing some associated recordkeeping requirements. All of the specific requirements and exceptions we are proposing are explained in detail below in a section-by-section discussion of the proposed rule.

The purpose of the requirements we are proposing is to improve our ability to trace livestock in the event that disease is found. It is important to point out, though, that we do not prescribe methods or systems that States and Tribes must use in order to trace animals that have moved interstate. We expect that States (and interested Tribes) will set up systems to allow effective tracing of animals that have moved into or from their jurisdictions.

To enable us to evaluate the effectiveness of those systems, we anticipate that we will eventually establish traceability performance standards against which we could measure a State or Tribe's ability to trace covered livestock moved interstate. Later in this preamble, under the respective headings "Performance Standards for Traceability" and "Traceability Evaluations of States and Tribes," we discuss our current thinking regarding performance standards for measuring a State's or Tribe's ability to trace covered livestock moved interstate and the potential actions that could be taken when a State or Tribe fails to meet the standards for a particular species. We are not proposing any regulatory requirements pertaining to those issues at this time; any such requirements would be established through a future, separate rulemaking. At this time, however, we would welcome public comment on our current thinking regarding the traceability performance standards.

To facilitate the implementation of our new animal traceability approach, APHIS intends to consult with an advisory group featuring representation from APHIS, States, Tribes, and industry before we make a decision. The advisory group could offer advice and recommendations on our phase-in of official identification requirements for cattle and bison (discussed in more detail below) before we make a decision, as well as provide feedback on the effectiveness of various elements of the traceability program.

#### Definitions (§ 90.1)

Our proposed animal traceability requirements would be contained in a new 9 CFR part 90. The proposed regulations would include a number of new definitions pertaining to animal traceability. In addition, some definitions from the existing regulations would be incorporated into proposed part 90, in some cases as they are and in others, in modified form. Most of these proposed definitions are discussed below, by category (identification, documentation, movement, and miscellaneous). In a few cases, however,

proposed definitions are discussed later in this preamble as the terms are used, in order to provide needed context.

#### Definitions Pertaining to Official Identification

Official eartags are used for official identification of a number of species under the existing regulations and would continue to be under these proposed traceability regulations. The existing interstate movement and animal disease program regulations define *official eartag* in a number of places. We propose to define *official eartag* in part 90 as an identification tag approved by APHIS that bears an official identification number for individual animals. The proposed definition further states that, beginning 1 year after the effective date of the final rule for this proposed rule, all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the *official eartag* would depend on the needs of the users, subject to the approval of the Administrator. The official eartag would have to be tamper-resistant and have a high retention rate in the animal. This proposed definition of *official eartag* is similar to the one used in § 71.1 and elsewhere in the existing regulations. The current definition in § 71.1, however, requires that the U.S. shield be used only on eartags bearing an animal identification number (AIN) with an 840 prefix. We are proposing to broaden the U.S. shield requirement to all *official eartags* to achieve greater standardization of this type of official identification device. The delay in the effective date of the U.S. shield requirement is intended to ease the transition and allow producers time to run through existing stocks of eartags.

We propose to define *officially identified* as identified by means of an official identification device or method approved by the Administrator. The proposed definition is similar to the definition of *officially identified* in 9 CFR 77.2 but is intended to provide a more uniform definition that could eventually be applied throughout the existing regulations as well.

Further, we propose to define *official identification device or method* as a means approved by the Administrator of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species. This proposed definition is adapted from the existing one in § 71.1, where *official identification device or method* is defined as a means of officially

identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority. Our proposed definition of *official identification device or method* is intended to establish minimum, uniform national requirements and does not include a list of examples, since not all the devices or methods listed under the existing definition in § 71.1 would be accepted as official for all species under these proposed regulations. (Official identification devices and methods would be listed by species under proposed § 90.4 of these regulations.) For cattle and bison, for example, for reasons discussed in greater detail below, the only identification device we would recognize as official would be official eartags. However, these proposed regulations would allow brands and other methods that are not included in the proposed definition of *official identification device or method* to be used in lieu of official identification when agreed to by the shipping and receiving States and Tribes. The use of brands and other identification methods in lieu of official identification is discussed in more detail later in this document. Finally, for the sake of consistency, *i.e.*, to eliminate any possible conflict between our proposed traceability regulations and the existing ones, we would also amend the definition of *official identification device or method* in § 71.1 and in the tuberculosis and brucellosis regulations, as discussed below, to match the one we are proposing here.

As stated above, the intended use of an official identification device or method is to apply an official identification number to an individual animal or to associate such a number with a group of animals. We propose to define *official identification number* as a nationally unique number permanently associated with an animal or group of animals. The official identification number would have to adhere to one of the following systems, most of which are already in use:

- National Uniform Eartagging System (NUES).
- Animal identification number (AIN).
- Location-based number system.
- Flock-based number system.
- Any other numbering system approved by the Administrator for the official identification of animals.

We further propose in these regulations to provide definitions of

these numbering systems. Those definitions are discussed below.

#### *NUES*

The existing interstate movement regulations in 9 CFR part 71 and the animal disease regulations in parts 77, 78, 79, and 80 allow for the use of the NUES as a means of identifying individual animals in commerce. The system has been in use for many years, but the existing regulations do not define the term or specify a particular format. To allow for the use of this numbering system under these proposed animal traceability regulations and to ensure greater standardization and uniformity of the NUES, we are proposing to add a definition of the term to the new animal traceability part. We would define *National Uniform Eartagging System (NUES)* as a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. Formatting requirements for the NUES (and other numbering systems) would be set out in our Animal Disease Traceability General Standards Document, which we would make available on the Internet at <http://www.aphis.usda.gov/traceability>.

#### *AIN*

We propose to include in part 90 a definition of *animal identification number (AIN)*, which we would adapt from the existing definition of the term in 9 CFR 71.1. We propose to define the AIN, as we do in § 71.1, as a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. Under the proposed definition, the AIN would consist of 15 digits, with the first 3 being the country code (840 for the United States), except that the alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording could be used as alternatives to the 840 prefix until 1 year after the effective date of the final rule for this proposal. The existing definition lists the same formatting requirements but does not specify a sunset date for the use of AINs beginning with the characters USA or the manufacturer's code. We are proposing to phase out those two AIN formats in order to achieve greater standardization of this numbering system, while providing producers with adequate notice of the change and so they can work through existing inventories of eartags. This proposed requirement would apply only

to animals tagged 1 year or more after the effective date of the final rule for this proposal; producers would not have to retag animals that had been officially identified using the USA or manufacturer's code AIN prior to that date. As is now the case, the AIN beginning with the 840 prefix would be recognized for use only on animals born in the United States. Also, like the existing definition of the AIN, the proposed definition does not require producers to use the AIN; we would continue to recognize other numbering systems as official for the identification of individual animals.

#### *Location Identifiers*

The existing regulations, *e.g.*, in parts 77 and 78, allow for the use of premises-based numbering systems on official eartags. Such numbering systems combine an official premises identification number (PIN), discussed below, with a producer's livestock production numbering system to provide a unique identification number. Numbering systems using a PIN and a producer's production numbering system would continue to be allowed under this proposed rule, but we would expand the range of allowable location identifiers. In keeping with our goal of letting States and Tribes develop traceability systems that work best for them, we would allow them to determine, according to their needs, the location to which animals moving from their jurisdictions would have to be associated. The proposed traceability regulations, therefore, do not refer to premises-based numbering systems but instead include a definition of *location-based numbering system*. Under this proposed definition, a location-based numbering system could combine either a State- or Tribal-issued location identification number (LID number) or a PIN with a producer's unique livestock production numbering system to provide a nationally and herd-unique identification number for an animal.

We propose to define *location identification (LID) number* as a nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location, as determined by the State or Tribe in which it is issued. As proposed, the LID number could be used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It could also be used as a component of a group/lot identification number (GIN), which is described below. Formatting requirements for the LID would be contained in our Animal

Disease Traceability General Standards Document.

Since the PIN could be used as a component of a location-based numbering system, we are including a definition of *premises identification number (PIN)* in this proposed rule. We propose to define the PIN as a nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises. The PIN could be used in conjunction with a producer's own livestock production numbering system to provide a nationally and herd-unique identification number for an animal. It could be used as a component of a group/lot identification number (GIN), which is discussed below. The proposed definition of the PIN is similar to that used elsewhere in the existing regulations but would not include number and letter formatting requirements (*e.g.*, the State's two-letter postal abbreviation followed by the premises' assigned number, as is currently the case). The formatting requirements for the PIN would be contained in the Animal Disease Traceability General Standards Document.

#### *GIN*

The GIN, referred to above, provides a means of identifying groups of animals when individual animal identification is not required. Existing regulations allow for the identification of groups of animals of some species under certain conditions. The regulations in 9 CFR 71.19, which contain identification requirements for swine moving in interstate commerce, offer one such example. Adapting an existing definition of the GIN in § 71.1, we propose to define *group/lot identification number (GIN)* in this proposed rule as the identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain. The proposed definition also specifies that when a GIN is used, it must be recorded on documents accompanying the animals; it would not, however, be necessary to have the GIN attached to each animal. This last provision is a new one, not present in the current definition in § 71.1, and is in keeping with the purpose of allowing animals of certain species to be identified by group or lot rather than individually. Additionally, while the definition of the GIN in § 71.1 includes detailed formatting requirements, we

propose to remove them from the regulations and place them in the Animal Disease Traceability General Standards Document, as we are proposing to do with the requirements for the PIN.

#### FIN

At this time, the NSEP furnishes eartags to sheep and goat producers that bear a number that combines a unique flock identification number (FIN) with the producer's unique livestock production number. This flock-based number represents an animal group that is associated with one or more locations. This flock-based number system serves the sheep and goat industries well in their disease control and eradication efforts. The existing regulations in part 79, however, while allowing for the use of the system on eartags for sheep and goats in the NSEP, do not define flock-based number system or FIN and do not specify a particular format to be used. Therefore, to codify current practices and help ensure uniformity and consistency in the use of flock identification numbering, we are proposing to define both these terms. We propose to define *flock identification number (FIN)* as a nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership. Formatting requirements would be listed in the Animal Disease Traceability General Standards Document. We propose to define *flock-based number system* as a numbering system combining a FIN with a producer's livestock production numbering system to provide a nationally unique identification number for an animal.

#### Definitions Pertaining to Documentation

Under our existing interstate movement (9 CFR part 71) and animal disease program regulations (e.g., 9 CFR parts 77, 78, and 79), animals that are neither disease reactors nor exposed are generally required to be accompanied by certificates when moving interstate. The term *certificate* is defined in a number of places in those regulations. Among those definitions, however, there exists some variation according to species regarding information requirements and the use of the document. In addition, there is not a uniform requirement that certificates be issued by veterinarians. The proposed addition of the ICVI to the regulations, therefore, is intended to provide a standardized document, issued by a veterinarian, for the interstate movement of animals. We

would add definitions of the ICVI to these proposed traceability regulations, as well as to part 71 and to the tuberculosis (9 CFR part 77) and brucellosis (9 CFR part 78) regulations. Further, we would amend the tuberculosis and brucellosis regulations, as discussed in detail below, so that the use of ICVIs would replace the use of certificates in parts 77 and 78. The ICVI would have to be issued by a veterinarian because, among other things, it would certify that a veterinary inspection has in fact taken place. Our requirements for veterinary accreditation are contained in 9 CFR parts 160 and 161.

We are proposing, then, to define *interstate certificate of veterinary inspection (ICVI)* as an official document issued by a Federal, State, Tribal, or accredited veterinarian at the location from which animals are shipped interstate. The proposed definition further lists the information requirements for the ICVI. The ICVI must show the species of animals covered by the ICVI; the number of animals covered; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined. Additionally, unless the species-specific requirements for ICVIs provide an exception, the ICVI must list the official identification number of each animal or group of animals moved that is required to be officially identified, or, if an alternative form of identification has been agreed upon by the sending and receiving States or Tribes, the ICVI must include a record of that identification. If animals moving under a GIN also have individual official identification, only the GIN must be listed on the ICVI. If the animals are not required by the regulations to be officially identified, the ICVI must state the exemption that applies (e.g., the cattle and bison are of a class of cattle and bison exempted during the initial stage of the phase-in). For those categories of animals required to be officially identified but whose identification number does not have to be recorded on the ICVI, the ICVI must state that all animals to be moved under the ICVI are officially identified. An ICVI may not be issued for any animal that is not officially identified if official identification is required.

As an alternative to typing or writing individual animal identification on an ICVI, another document may be used to

provide this information, but only under the following conditions:

- The document must be a State form or APHIS form that requires individual identification of animals;
- A legible copy of the document must be stapled to the original and each copy of the ICVI;
- Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and
- The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:
  - The name of the document; and
  - Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

The information requirements for the ICVI are closely modeled upon requirements for certificates in § 78.1 of the brucellosis regulations. These proposed requirements are necessary to provide States, Tribes, and APHIS with adequate information to conduct successful traceback investigations.

In certain cases, we would allow for the use of an owner-shipper statement in lieu of an ICVI. We propose to define *owner-shipper statement* as a statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of animals covered by the statement; the species of animal covered; the name and address of the owner at the time of the movement; the name and address of the shipper; and the identification of each animal, as required by the regulations, unless the regulations specifically provide that the identification does not have to be recorded. The proposed information requirements enumerated under this definition are incorporated from existing regulations pertaining to identification of cattle for interstate movement in § 71.18.

#### Definitions Pertaining to Interstate Movement

Because these proposed regulations concern the movement of animals interstate, it is necessary to include a definition of *interstate movement*. We would define *interstate movement* as a movement from one State into or through any other State. This proposed

definition is taken from the definition of *interstate* currently used in our tuberculosis and brucellosis regulations in 9 CFR parts 77 and 78, respectively.

We propose to define the term *move* as to carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities. This proposed definition is incorporated from the Animal Health Protection Act, minus a provision concerning release into the environment that is not applicable to animal traceability.

As will be discussed later in this document, movement and documentation requirements may differ in some cases, depending on whether or not an animal is moved directly to a particular destination. For that reason, it is necessary to include a definition of *directly*. We would define *directly* as without unloading en route if moved in a means of conveyance and without being commingled with other animals, or without stopping, except for stops of less than 24 hours that are needed for food, water, or rest en route if the animals are moved in any other manner. This proposed definition has been adapted from the existing one in § 78.1 but modified to allow for stops needed to care for the animals in the shipment.

Not only the nature of an animal's interstate movement (directly or otherwise) but also the destination to which it is moved may affect the requirements governing such movement. Specifically, as discussed in greater detail later in this document, we would provide exemptions from the requirement for official identification for cattle and bison moved interstate directly to an approved livestock facility or recognized slaughtering establishment. It is necessary, for the sake of clarity, to include in this proposed rule definitions of such facilities. We propose to define *approved livestock facility* as a stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary inspection where livestock are assembled and that has been approved under § 71.20. This proposed definition matches the existing one in § 71.1. We propose to define *recognized slaughtering establishment* as any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts. This proposed definition is based on the

definitions of the term used elsewhere in the existing regulations.

#### *Miscellaneous Definitions*

As noted above in our overview section, these proposed regulations would only apply to certain species of livestock: Cattle and bison, sheep and goats, swine, horses and other equines, captive cervids, and poultry. We propose, therefore, to include in this proposed rule a new definition of *covered livestock* that would simply list those species.

Some of the proposed definitions discussed above, *e.g.*, *approved livestock facility*, refer to livestock more generally. Species that could be present at such a facility would not necessarily be limited to those covered under this rulemaking. It is necessary, therefore, to include a definition of *livestock* in this proposed rule. We propose to define *livestock* as all farm-raised animals. This proposed definition comes from the Animal Health Protection Act (7 U.S.C. 8302).

In the overview section of this preamble, we referred to our plans to phase in official identification requirements for cattle and bison. As discussed in greater detail below, cattle and bison associated with greater risk of contracting and spreading disease would be subject to the official identification requirements before those associated with lesser risk. The former category includes sexually intact cattle and bison 18 months of age or over, dairy cattle, and cattle and bison used for rodeos, recreational events, shows, or exhibitions. While most of these designations are self-explanatory, that of dairy cattle is not. We are therefore including in this proposed rule a definition of *dairy cattle*. Under this proposed definition, all cattle, regardless of age or sex or current use, that are of a breed(s) typically used to produce milk or other dairy products for human consumption would be considered dairy cattle. We propose to define *dairy cattle* in such an inclusive manner because both male and female calves are often moved from birth premises and managed at multiple locations. The movement and commingling of dairy calves and the associated risk of disease exposure and spread warrant the official identification of all dairy animals.

#### **General Requirements for Traceability (§ 90.2)**

Under these proposed regulations, no person (a term we propose to define, using a standard definition employed elsewhere in the regulations, as any individual, corporation, company,

association, firm, partnership, society, or joint stock company, or other legal entity) could move covered livestock interstate or receive such livestock moved interstate unless the livestock meet all applicable requirements of the traceability regulations. We consider these proposed requirements, which are discussed in detail later in this document, to be the minimum necessary for a successful animal traceability program.

In addition to these proposed traceability requirements, all covered livestock moving interstate would continue to be subject to existing disease control and eradication program regulations, *e.g.*, for tuberculosis, brucellosis, etc., in 9 CFR subchapter C. While this proposed rule would establish minimum traceability requirements, the disease program regulations may contain additional, or more specific, requirements necessary to control or eliminate livestock diseases. It is not our intention to loosen those disease program requirements; hence, they would be given precedence if they were to conflict in any way with the general traceability requirements being proposed here.

There are two circumstances when the traceability requirements would not apply to interstate movement of covered livestock:

- The movement occurs entirely within Tribal land that straddles a State line, and the Tribe has a separate traceability system from the States in which its lands are located; or
- The movement is to a custom slaughter facility in accordance with Federal and State regulations for preparation of meat for personal consumption.

Under this rulemaking, Tribal lands, whether entirely within a State or straddling State lines, would be covered by the same traceability system as the State or States within which they are contained, unless the Tribal representatives choose to have their own traceability system separate from the State(s). If a Tribal land straddling a State line does have a separate traceability system from the States in which it is contained, then, because of Tribal sovereignty, livestock movements taking place entirely within that Tribal land, even across State lines, would not be regarded as interstate movement under our regulations. Therefore, the proposed traceability requirements for interstate movement would not apply.

We do not deem it necessary to apply our proposed traceability requirements to interstate movement of covered livestock to a custom slaughter facility under the conditions described above.

Such animals are accurately identified so the meat products are properly provided to the owner or person responsible. Therefore, those animals are already highly traceable to the farm or other location from which the animals were moved to the slaughter facility.

### Recordkeeping Requirements (§ 90.3)

As we have noted, we are proposing in these regulations to require that, with certain exceptions, covered livestock moving interstate be officially identified and accompanied by an ICVI or other movement document. This proposed rule would require that any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices maintain for a minimum of 5 years a record of the names and addresses of anyone to whom the devices were distributed. We would also require that approved livestock facilities keep for a minimum of 5 years any ICVIs or alternate documentation used in lieu of an ICVI for covered livestock that enter the facilities. Our proposed 5-year requirement for maintaining records of official identification devices and ICVIs or other animal movement documents is necessary because certain animal diseases, such as tuberculosis and bovine spongiform encephalopathy, have very long latency or incubation periods, which can make traceback efforts quite challenging. Such diseases may not manifest themselves until an animal reaches adulthood, possibly several years after it was officially identified and/or moved interstate. The proposed recordkeeping requirements would enhance our ability to conduct traceback investigations of infected and exposed animals, even in cases where the disease that the animal has contracted or been exposed to has a very long latency period. We request comment on the burden and practical utility of this proposed requirement.

### Official Identification (§ 90.4)

#### *Official Identification Devices and Methods*

We will now discuss how persons moving covered livestock interstate may comply with the proposed requirement that such livestock bear official identification. Please note that, in order to provide flexibility, the Administrator could authorize the use of additional devices or methods of identification if they would provide for effective traceability.

In this proposed rule, official identification devices or methods approved by the Administrator for use

on covered livestock moving interstate are listed by species. (They would also be listed in our Animal Disease Traceability General Standards Document.) These requirements are described in detail below. Listing official identification methods by species provides clarity to livestock owners so they know what official identification options are accepted for the movement of their animals anywhere in the United States.

It is our intention that any device or method authorized by the proposed regulations as official identification for a species be accepted by any destination State or Tribe. Therefore, only those identification devices or methods that are available throughout the United States for a given species would be listed as official under the proposed regulations, and some identification practices that may be used regionally would not be listed, though we may allow them to be used in lieu of official identification.

Branding of cattle and bison is one prominent example of an identification method that would not be listed as official identification for cattle and bison under the proposed regulations but would be allowed to be employed in lieu of official identification. If we were to list brands as a means of official identification, all States would have to accept animals identified with brands into their jurisdictions. At this time, however, 36 States do not have brand inspection authorities, so brands would not be suitable for listing as a means of official identification. Yet, recognizing the value of brands and their prevalence in the western United States, the proposed rule does provide sufficient flexibility to allow for the use of brands on covered livestock moving interstate in lieu of official identification when brands are acceptable to both the shipping and receiving State or Tribe. This provision for use of alternative means of identification would apply to all other identification practices, including tattoos, breed registries, etc., that States and Tribes may elect to use instead of the official identification methods listed under these proposed regulations, provided that they are acceptable to both the shipping and receiving States or Tribes.

#### Official Identification Devices and Methods for Cattle and Bison

While the existing regulations recognize a number of means of identification, such as eartags, backtags, tattoos, and brands, as official for use on cattle and bison moving interstate, we are proposing to recognize eartags as the only device that may be used for the

official identification of individual cattle and bison. Official eartags provide a simple means of uniquely identifying the animal. Eartags are a more permanent means of identification than backtags, which may come off the animal, and provide greater readability and ease of recording than do tattoos. In addition to individual identification of cattle and bison by means of official eartags, we propose to provide for the use of GINs when cattle and bison are eligible for interstate movement using group/lot identification. The GIN provides identification for the entire group of animals. As we have already noted, the number itself does not need to be attached to each individual animal.

#### Official Identification Devices and Methods for Equines

Equines would have to be identified by one of the following methods:

- A description sufficient to identify the individual equine, as determined by a State or Tribal animal health official in the State or Tribe of destination, or APHIS representative, including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (*e.g.*, brands, tattoos, scars, cowlicks, or blemishes); or
- Electronic identification that complies with ISO 11784/11785 (ISO 11784 defines the code structure of the number which is embedded in the transponder's microchip. ISO 11785 defines the technical specifications of how the transceiver communicates with the transponder.); or
- Digital photographs of the equine sufficient to identify the individual equine, as determined by a State or Tribal animal health official in the State or Tribe of destination, or APHIS representative; or
- For equines being commercially transported for slaughter, a USDA backtag authorized by part 88 of this chapter.

The identification devices and methods listed above are all currently used on horses and other equine species in the United States and can provide for adequate traceability when they are moved interstate.

#### Official Identification Devices and Methods for Poultry

Poultry would have to be identified either by means of a GIN, or with sealed and numbered leg bands. These identification methods are consistent with those required for poultry flocks participating in the National Poultry Improvement Plan (NPIP) regulations (9

CFR parts 145 through 147), and thus would not represent a change for most poultry producers.

#### Official Identification Devices and Methods for Sheep and Goats

Currently, official identification devices or methods approved by the Administrator for sheep and goats required to be officially identified for interstate movement are listed in the scrapie regulations in 9 CFR 79.2.(a). These include electronic implants, official eartags, USDA backtags, official registry tattoos, premises identification eartags, and any other device or method approved by the Administrator. The process for approving official identification tags and new identification types for sheep or goats is described in § 79.2(f) and (g), respectively. This proposed rule would not change any of those requirements. We would simply refer the reader to part 79.

#### Official Identification Devices and Methods for Swine

Currently, official identification devices or methods approved by the Administrator for swine needing to be officially identified for interstate movement are listed in § 71.19. These include official eartags, USDA backtags, official swine tattoos and other tattoos, ear notching, and any other device or method approved by the Administrator. As is the case for sheep and goats, this proposed rule would not change those requirements, since, in our view, they already provide for adequate traceability. We would refer the reader to § 71.19.

#### Official Identification Devices and Methods for Captive Cervids

Interstate movement requirements for captive cervids are currently included in the tuberculosis regulations in part 77. Except for captive cervids from accredited-free States or zones, all captive cervids moving interstate are required under part 77 to be officially identified. As discussed in detail below, we are proposing in this document to amend part 77 to align the requirements in that part with our proposed traceability requirements. To avoid redundancy, this proposed rule would simply state that captive cervids that are required to be officially identified under these proposed regulations for interstate movement must be identified by a device or method authorized by part 77. It should be noted that captive cervids moved interstate from an accredited-free State or zone would not be exempted from official identification requirements under the traceability regulations. As

discussed further below, we would also amend part 77 to indicate that such captive cervids would be subject to the traceability requirements and thus not exempted from the requirement that they be officially identified in order to move interstate.

#### Official Identification Requirements for Interstate Movement

In the paragraphs that follow, we discuss proposed requirements for each species of covered livestock pertaining to aspects of official identification other than the devices or methods themselves. Included in this section are requirements for when covered livestock must be officially identified for interstate movement and, in some cases, other administrative requirements pertaining to official identification.

#### When Cattle and Bison Must Be Officially Identified

With certain exceptions, cattle and bison moved interstate would have to be officially identified prior to the interstate movement using one of the official identification devices or methods previously discussed. These exceptions, which include the use, in lieu of official identification, of devices or methods agreed to by the shipping and receiving States or Tribes, are discussed in detail in the paragraphs that follow.

An exception would be made for cattle and bison moving interstate as part of a commuter herd with a copy of the commuter herd agreement. In this proposed rule, we define *commuter herd* as a herd of cattle or bison moved interstate during the course of normal livestock management operations and without change of ownership directly between two premises, as provided in a commuter herd agreement. We propose to define *commuter herd agreement* as a written agreement between the owner(s) of a herd of cattle or bison and the animal health officials for the States and/or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the time period, up to 1 year, that the agreement is effective. A commuter herd agreement would be subject to annual renewal. Meeting commuter-herd requirements in lieu of official identification requirements would still provide adequate traceability in our view.

We would also provide an exception from the requirement for official identification prior to interstate movement for cattle and bison moved directly from one State through another

State and back to the original State. This exception would allow for movement without official identification in cases where State borders are configured such that a truck containing cattle or bison would pass through a second State when moving the animals to a second location within the State of origin. An example of this type of movement would be a shipment of cattle originating at a location in Texas and passing through Oklahoma territory en route to a second location in Texas. Because the animals would not exit the truck en route and therefore would not be commingled with other animals, we do not view official identification of the individual animals in the shipment as necessary.

Cattle and bison would also be allowed to move interstate without being officially identified prior to the movement if the interstate movement is directly to an approved tagging site, provided that the cattle and bison are officially identified there before they are commingled with cattle and bison from other premises. In this proposed rule, we define *approved tagging site* as a premises, authorized by APHIS or State or Tribal animal health officials, where livestock can be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises. Such sites would afford producers a safe and convenient alternative, not provided for in the existing regulations, to identifying their animals themselves. This proposed exception is intended to allow producers to take advantage of this alternative when they are unable to tag animals at their farm or ranch.

As discussed earlier, we would also allow cattle and bison to move interstate without using one of the types of official identification specifically approved for that purpose under these proposed regulations by the Administrator if the cattle and bison are moved between shipping and receiving States or Tribes with another form of identification, including but not limited to brands, tattoos, and breed registry certificates, as agreed upon by animal health officials in the shipping and receiving States or Tribes. In such situations, the shipping and receiving States or Tribes would determine whether that other form of identification is sufficient to enable the States or Tribes to meet their own traceability needs. This exemption is in keeping with our goal of allowing sufficient flexibility for States and Tribes to employ the traceability options that work best for them. If Tribal land straddles a State line and the Tribe does not have a separate traceability system

from the States in which it is contained, animal movements within the Tribal land that cross the State border would be considered interstate movements under this proposed rule. In such cases, the cattle and bison could still be moved across the State border using a form of identification agreed upon by animal health officials in the States of origin and destination.

As described in greater detail below, we plan to phase in our official identification requirements for cattle and bison, applying them immediately upon the effective date of the final rule for this proposed rule to certain classes of cattle and bison and over time to other classes of cattle and bison. Until the date on which the official identification requirements apply to all cattle and bison, cattle and bison would also be eligible for interstate movement without official identification if they are moved directly to a recognized slaughtering establishment or directly to no more than one approved livestock facility approved to handle "for slaughter only" animals (cattle or bison that, when marketed, are presented/sold for slaughter only) and then directly to a recognized slaughtering establishment; and

- They are moved interstate with a USDA-approved backtag; or
- A USDA-approved backtag is applied to the cattle or bison at the recognized slaughtering establishment or federally approved livestock facility approved to handle "for slaughter only" animals.

Because backtags are not considered to be a permanent form of identification, we are proposing to discontinue allowing the use of USDA backtags as official identification for cattle and bison. We would, however, allow their use in lieu of official identification for animals going to slaughter. We therefore propose to define *United States Department of Agriculture (USDA) approved backtag* as a backtag issued by APHIS that provides a temporary unique identification for each animal. The inclusion of the word temporary is what distinguishes this proposed definition from the otherwise identical definition of *United States Department of Agriculture (USDA) backtag* in § 71.1.

The phase-in of the proposed official identification requirements for cattle and bison would proceed as described in the paragraphs that follow. Beginning on the effective date of the final rule for this proposed rule, the official identification requirements would apply to all sexually intact cattle and bison 18 months of age or over, dairy cattle of any age, cattle and bison of any age used for rodeo or recreational events, and

cattle and bison used for shows or exhibitions. Because cattle and bison belonging to these categories tend to have longer lifespans than feeder animals and move around more, they have more opportunities for commingling and thus present a greater risk of spreading disease via interstate movement. It is therefore necessary to prioritize traceability of these animals over feeder animals. APHIS requests comment on this determination and the decision to implement the requirements for this subgroup first.

APHIS recognizes that the second stage of the phase-in process, the expansion of the official identification requirements to all remaining classes of cattle and bison, estimated to be approximately 20 million animals annually, could disrupt the management and marketing of cattle if not implemented properly. Critical to successful implementation is to ensure that our proposed official identification requirements are being implemented effectively throughout the production chain for all cattle required to be officially identified in the initial phase. Therefore, we are proposing to conduct an assessment of the workability of the requirements for cattle in the initial phase before expanding the official identification requirements to cover all remaining classes of cattle and bison. When we are ready to begin that assessment, we will publish a notice in the **Federal Register**. The notice will describe the procedures we will use in our assessment, as well as its objectives.

The assessment will involve an advisory group with industry representation from sectors most affected by the official identification requirements. The advisory group will provide feedback on the effectiveness of various elements of the initial phase of identifying cattle and offer recommendations regarding the application of the official identification requirements to beef cattle under 18 months of age.

APHIS requests comment on our proposal to apply the official identification requirements discussed above to all remaining classes of cattle, in particular, on the costs and benefits of doing so and on any practical difficulties or unintended consequences that may result. Further, we request comment on how APHIS should conduct the assessment process described above. We are particularly interested in comments on what information APHIS should collect and the methods by which it should be collected.

We are proposing to delay implementing official identification

requirements for beef cattle under 18 months of age until 70 percent of all cattle initially required to be officially identified are found to be in compliance with official identification requirements. We would evaluate a representative cross-section of the cattle population to determine whether the 70-percent compliance rate has been attained. While higher rates of compliance are ultimately expected and necessary, the 70-percent figure would represent a significant increase in the use of official eartags on adult cattle, indicating that effective tagging practices are in place. We will ask the advisory group, as part of their review of the initial phase, to consider and comment on our data and the evaluation methodology we used for determining that the 70-percent rate of compliance has been attained. As indicated above, the advisory group would also provide feedback that would aid us in making our determination that the official identification requirements were being effectively implemented during the initial phase.

Additionally, we welcome comments and suggestions from the public on factors other than compliance rate that APHIS should consider when assessing the effectiveness of the initial official identification requirements for cattle in enhancing traceability.

APHIS will consider the advisory report and all feedback from the public regarding the official identification of beef cattle under 18 months of age. When we have completed our assessment and determined that expansion of the official identification requirements for cattle is viable, APHIS will publish a notice of the availability of the assessment in the **Federal Register** and take comments from the public. If after reviewing the comments, APHIS decides to move forward with the implementation of the second stage of the phase-in process, APHIS will publish an additional notice in the **Federal Register** discussing the comments and announcing the date (1 year after the date of publication of the notice) upon which the official identification requirements will become effective for all cattle and bison.

#### When Sheep and Goats Must Be Officially Identified

Under this proposed rule, sheep and goats moving interstate would have to be officially identified prior to the interstate movement unless they are exempted under the scrapie regulations in part 79 from official identification requirements or are officially identified after the interstate movement, as provided in part 79.

#### When Swine Must Be Officially Identified

Swine moving interstate would have to be officially identified in accordance with § 71.19 of the existing regulations. Included in that section are requirements for the handling and administration of official identification devices or methods.

#### When Equines Must Be Officially Identified

Horses and other equines moving interstate would have to be officially identified prior to interstate movement in accordance with these proposed regulations or identified as agreed upon by State or Tribal officials in the jurisdictions involved in the movement, or, if the horses are being commercially transported to slaughter, in accordance with part 88.

#### When Poultry Must Be Officially Identified

The proposed requirements for poultry are similar to those for equines. Poultry moving interstate would have to be officially identified prior to interstate movement or identified as agreed upon by State or Tribal officials in the shipping and receiving jurisdictions.

#### When Captive Cervids Must Be Officially Identified

Captive cervids moving interstate would have to be officially identified prior to interstate movement in accordance with the tuberculosis regulations in part 77.

#### *Use of Multiple Official Identification Devices*

The use of multiple official identification devices or methods with multiple official identification numbers for a single animal has the potential to cause confusion and impede efforts to track the movements of that animal. We propose, therefore, to prohibit the use of more than one official identification device or method on an animal, beginning on the effective date of the final rule for this proposed rule, with some exceptions. Exceptions to the prohibition would be granted under the following circumstances when the use of more than one official identification device or method may be appropriate or necessary:

- A State or Tribal animal health official or an area veterinarian in charge could approve the application of a second official identification device in specific cases when the need to maintain the identity of an animal is intensified, such as for export shipments, quarantined herds, field trials, experiments, or disease surveys,

but not merely for convenience in identifying animals. The person applying the second official identification device would have to record the date on which the second official identification device was added, the official number of the device already applied to the animal, and the reason for the additional official identification device or method. Those records would have to be maintained for a minimum of 5 years.

- An eartag with an animal identification number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to an animal that is already officially identified with an eartag with a NUES number, as AIN devices are commonly used for herd management purposes. The animal's official identification number on the existing official identification eartag must be recorded and reported in accordance with the AIN device distribution policies, which can be found in our Animal Disease Traceability General Standards Document.

- A brucellosis vaccination eartag with a NUES number could be applied for management purposes in accordance with the existing brucellosis regulations to an animal that is already officially identified under the traceability regulations.

#### *Removal or Loss of Official Identification Devices*

We propose to modify certain existing requirements pertaining to the removal or loss of official identification devices. The existing regulations in § 71.22 state that official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Section 71.22 also prohibits the intentional removal of such devices except at the time of slaughter. We would incorporate that prohibition into our proposed regulations in part 90 in modified form, allowing for removal of official identification devices not only at slaughter, but also at any other location where the animal may be upon its death or as otherwise approved by the State animal health official or an area veterinarian in charge when a device needs to be replaced. This proposed change would codify existing practices.

We would provide that all man-made identification devices affixed to covered livestock moved interstate must be removed at slaughter and correlated with the carcasses through final inspection by means approved by the Food Safety and Inspection Service

(FSIS). If diagnostic samples are taken, the identification devices must be packaged with the samples and be correlated with the carcasses through final inspection by means approved by FSIS. Devices collected at slaughter must be made available to APHIS and FSIS. This proposed requirement is consistent with FSIS's requirements and would enhance our ability to conduct traceback investigations in the event of a positive post-mortem diagnosis.

We would further propose that all official identification devices affixed to covered livestock carcasses moved interstate for rendering must be removed at the rendering facility and made available to APHIS. This is a new requirement that would also enhance our traceback capabilities. APHIS requests comment on the costs and benefits of this proposed requirement.

The proposed rule would not require that producers keep records of animals that are tagged on their farms, moved onto or from their farms, or die on their farms. The percentage of animals that die on farms is so small in comparison with those that are slaughtered or rendered, that the overall access to terminated animal records would not be significantly impacted negatively if those records were not made available to APHIS. Producers are encouraged to record such information, however, for general herd-management recordkeeping and, if needed, to support disease investigation activities that may include their operations,

Under this proposed rule, if an animal were to lose an official identification device and need a new one, the person applying the new one would have to record the following information about the event and maintain the record for 5 years: The date the new official identification device was added; the official identification number on the device; and the official identification number on the old device, if known. This proposed recordkeeping requirement, which is a new one, would aid State, Tribal, and Federal officials when it is necessary to trace such animals.

#### *Replacement of Official Identification Devices*

We are also proposing some new requirements pertaining to the replacement of official identification devices for reasons other than loss. Though in practice there are circumstances that might necessitate the replacement of such devices, the existing regulations are silent on the matter. To prevent any confusion regarding when official identification devices may be replaced in accordance

with the regulations, it is necessary to specify those circumstances to the extent possible. We are therefore proposing to provide that a State or Tribal animal health official or an area veterinarian in charge could authorize the replacement of an official identification device under circumstances that include, but are not limited to, the following:

- Deterioration of the device such that loss of the device appears likely or the number can no longer be read;
- Infection at the site where the device is attached, necessitating application of a device at another location (*e.g.*, a slightly different location of an eartag in the ear);
- Malfunction of the electronic component of a radio frequency identification (RFID) device; or
- Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.

In order to facilitate traceback, we also propose to require that records be kept when official identification devices are replaced under such circumstances. The person replacing the device would have to record the following information about the event and maintain the record for 5 years:

- The date on which the device was removed;
- Contact information for the location where the device was removed;
- The official identification number (to the extent possible) on the device removed;
- The type of device removed (*e.g.*, metal eartag, RFID eartag);
- The reason for the removal of the device;
- The new official identification number on the replacement device; and
- The type of replacement device applied.

#### *Sale of Transfer of Official Identification Devices*

The sale or transfer of official identification devices between producers may complicate efforts to trace animals. We therefore provide that official identification devices may not be sold or otherwise transferred from the premises to which they were originally issued to another premises without the authorization of the Administrator or a State or Tribal animal health official.

#### **Documentation Requirements for Interstate Movement (§ 90.5)**

Generally, under these proposed regulations, covered livestock moving

interstate would have to be accompanied by an ICVI, unless the regulations allow a specific movement without an ICVI, or alternative documentation is agreed upon by the shipping and receiving States or Tribes, or another form of documentation is required for a particular species under the existing disease program regulations in 9 CFR subchapter C.

Information requirements for ICVIs have already been discussed above. We are also proposing to add new requirements for the issuance and use of ICVIs and other documents used for interstate movement of animals. The person directly responsible for animals leaving a premises would be responsible for ensuring that the animals are accompanied by the ICVI or other interstate movement document. The APHIS representative, State, or Tribal representative, or accredited veterinarian who issues an ICVI or other document required for the interstate movement of animals would have to forward a copy of the ICVI or other document to the State animal health official of the State of origin within 5 working days. The State or Tribal animal health official in the State or Tribe of origin, in turn, would have to forward a copy of the document to the State of destination within 5 working days. These proposed requirements would ensure that such documents would be issued only by qualified personnel, would accompany the animals being moved, and would be made available in a timely manner for use by APHIS and State animal health officials in traceback investigations. The proposed 5-day limit for forwarding is intended to facilitate a traceback and/or trace forward investigation if an animal moved interstate in accordance with the regulations were found to be infected. Requiring the person issuing the ICVI or other document only to forward it to the State of origin rather than the State of destination as well would lessen his or her paperwork burden.

These proposed requirements are similar to those in § 78.2 for the handling of certificates, but have been streamlined for clarity and adapted in such a way as to ensure to the greatest extent possible that the documents are received by all personnel that may need them for conducting traceback investigations. As discussed later in this document, we would amend § 78.2 so that the document handling requirements there and in these proposed traceability regulations would be consistent.

It should be noted that the proposed timeframes and forwarding requirements are based on the handling

of paper documents. As is now the practice generally when APHIS or State veterinarians issue veterinary certificates, if ICVIs or other documents were to be issued electronically, they would be transmitted simultaneously to both the State of origin and the State of destination.

We are proposing certain exemptions to the requirement that cattle and bison moving interstate must be accompanied by an ICVI. Such cattle and bison would be exempt from the requirement under the following circumstances:

- They are moved directly to a recognized slaughtering establishment, or directly to an approved livestock facility approved to handle “for slaughter only” animals and then directly to a recognized slaughtering establishment, and they are accompanied by an owner-shipper statement.
- They are moved directly to an approved livestock facility with an owner-shipper statement and do not move interstate from the facility unless accompanied by an ICVI.
- They are moved from the farm of origin for veterinary medical examination or treatment and returned to the farm of origin without change in ownership.
- They are moved directly from one State through another State and back to the original State.
- They are moved as a commuter herd with a copy of the commuter herd agreement.

• Additionally, cattle and bison under 18 months of age may be moved between shipping and receiving States or Tribes with documentation other than an ICVI, *e.g.*, a brand inspection certificate when a brand is used for identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes.

A number of these exceptions, such as those for movement of commuter herds, transit through a second State and return to the original State, and movement to slaughter, dovetail with the exemptions allowed from official identification requirements. Because of the other safeguards associated with such interstate movements, an ICVI is not considered to be necessary. The exemption for movement between States or Tribes that have agreed upon an alternative form of documentation would not be allowed for sexually intact cattle or bison 18 months of age or older. Adult breeding cattle moving interstate warrant inspection, which must be documented on the ICVI, because their longevity and contacts with other livestock make them a higher

risk for exposure to and transmission of disease.

Official identification numbers of cattle or bison moving interstate would have to be recorded on the ICVI or other documentation accompanying them, except under the following circumstances:

- If the cattle or bison are moved from an approved livestock facility directly to a recognized slaughtering establishment; or

- If the cattle and bison are sexually intact cattle or bison under 18 months of age, or are steers or spayed heifers of any age. This exception would not apply, however, to sexually intact dairy cattle of any age or to cattle or bison used for rodeo, exhibition, or recreational purposes.

We recognize that recording identification of feeder cattle and bison in ICVIs and other documentation would significantly slow commerce in those animals, which are often moved in large numbers. The other requirements proposed for these animals will nevertheless improve their traceability. Requiring official identification numbers for other cattle and bison to be recorded on ICVIs is a priority given their longer lifespans and increased opportunity for commingling with animals at different locations.

Horses and other equine species moving interstate would have to be accompanied by an ICVI or other interstate movement document as agreed to by the States or Tribes involved in the movement. Equines being commercially shipped to slaughter would have to be accompanied by documentation in accordance with part 88. Equine infectious anemia (EIA) reactors would have to be accompanied by documentation as required by 9 CFR part 75. Under the existing regulations, equines other than slaughter equines or EIA reactors generally are not required to be accompanied by documentation for interstate movement. The more comprehensive documentation requirements we are proposing here would improve traceability by closing a major gap in the regulations.

Poultry moving interstate would have to be accompanied by an ICVI, with some exceptions similar to those allowed for cattle and bison when other safeguards are in place. Specifically, the proposed exceptions to the ICVI requirements for poultry are as follows:

- The poultry are from a flock participating in the NPIP and are accompanied by the documentation required under the NPIP regulations for participation in that program;

- The poultry are moved directly to a recognized slaughtering establishment;

- The poultry are moved from the farm of origin for veterinary medical examination, treatment, or diagnostic purposes and either returned to the farm of origin without change in ownership or euthanized and disposed of at the veterinary facility;

- The poultry are moved directly from one State through another State and back to the original State;

- The poultry are moved between the shipping and receiving States or Tribes with a VS Form 9–3 or documentation other than an ICVI, as agreed upon by animal health officials in the shipping and receiving States or Tribes; or

- The poultry are moved under permit in accordance with 9 CFR part 82.

As we have noted previously, in the overview section of this preamble, traceability-related requirements in our existing regulations for some species of covered livestock, *e.g.*, sheep and goats, swine, and captive cervids, are already sufficiently comprehensive and rigorous at this time. For that reason, this proposed rule would not alter existing documentation requirements for sheep and goats, swine, and captive cervids moving interstate. Sheep and goats moved interstate would have to be accompanied by documentation as required by the scrapie regulations in part 79. Swine moved interstate would have to be accompanied by documentation in accordance with § 71.19. Captive cervids moving interstate would have to be accompanied by documentation as required under part 77. Captive cervids moving interstate from an accredited-free State would be subject to the proposed traceability requirements and, therefore, would have to have an ICVI or other movement document.

APHIS requests comment on the proposed requirement that covered livestock being moved interstate be accompanied by an ICVI or other movement documentation. In particular, we request comment on the benefits of veterinary inspection in the cases described above when ICVIs would be used. Will veterinary inspection, especially inspection of large herds, yield substantial benefits? We request comment on whether the proposal for veterinary inspection will impose costs on businesses, particularly on small or very small businesses.

#### **Performance Standards for Traceability**

When livestock are found to be infected with or exposed to a disease, we take action to prevent that animal from spreading it via interstate

movement. Because the infected or exposed animal may already have had contact with other animals, however, we need to determine which other animals have had contact with the sick or exposed livestock, find them, and take appropriate actions to be sure they do not spread the disease. To do this, we need to trace the prior movements of the livestock found to be infected or exposed and then trace the forward movements of animals with which they may have come into contact. Our ability to monitor, control, and eradicate livestock diseases is contingent upon our being able to trace livestock movements forward and backward. Our focus in this rulemaking is on tracing interstate animal movements.

Though we do not now have the data necessary to establish performance standards for States and Tribes and are not proposing to add any to the regulations at this time, in the paragraphs that follow, we discuss our current thinking on the issue. Additional information regarding performance standards is available on our traceability Web site at <http://www.aphis.usda.gov/traceability/>. We welcome comments from the public on all aspects of this issue. We propose to reserve a section in the regulations for the performance standards that we plan to establish through a future rulemaking.

To evaluate a State's or Tribe's ability to meet the traceability performance standards, APHIS would make use of animals it selects as "reference animals." APHIS could randomly select reference animals for a test exercise or could select animals that were included in an actual disease traceback investigation as reference animals. However, animals would be eligible to be used as reference animals only if they were moved interstate on or after the date they are required to be officially identified and only if they are identified with an official identification number issued on or after the effective date of the final rule for this proposed rule. These eligibility criteria would ensure that animals moved interstate prior to this rulemaking would not be included in the pool of reference animals. States and Tribes would be evaluated on their ability to trace animals moved in accordance with the new regulations only.

As we currently envision the performance standards, States and Tribes would have to be able to accomplish the four activities listed below, which are necessary components of a trace investigation, within a specified timeframe for any species covered under the traceability

regulations. These activities would measure a State's or Tribe's ability to trace the movement of reference animals backwards or forwards as necessary, depending on whether it is a shipping or receiving State or Tribe.

- The receiving State or Tribe of a reference animal determines the State or Tribe in which the animal was officially identified and notifies that State or Tribe of the reference animal's official identification number.

- The State or Tribe where a reference animal was officially identified confirms that it has documentation that the official identification number was issued within its jurisdiction and that it has contact information for the person who received that identification number.

- The receiving State or Tribe of a reference animal determines the State or Tribe from which the animal was moved interstate into its jurisdiction and notifies that State or Tribe of the reference animal's official identification number.

- The State or Tribe that receives notification that a reference animal moved interstate from its jurisdiction determines the address or location from which the reference animal was shipped.

We intend to conduct baseline studies by collecting information on States' and Tribes' abilities to carry out those four activities for each species covered by these regulations. The data we collect will enable us to establish firm measurements by which we could evaluate the performance of States and Tribes.

### Traceability Evaluations of States and Tribes

Because we have not yet finalized the performance standards, we are not proposing at this time to add to the regulations a description of the process we will use to evaluate States' and Tribes' performance or requirements for conducting such evaluations. In the paragraphs that follow, however, we discuss our current thinking on those issues. We welcome comments from the public regarding the evaluation process. We are reserving an additional section in the regulations for evaluation requirements that we plan to establish through future rulemaking.

Regardless of the final form the evaluation requirements take, we anticipate that Tribal lands within a State's boundaries would be included in the evaluation of that State unless the Tribe has a separate traceability system. To ensure equal treatment for Tribes, any Tribe wishing to have a separate traceability system and be evaluated

separately from the State(s) in which its lands are located could request separate consideration at any time.

As we currently envision the evaluation process, if a State or Tribe did not meet all traceability performance standards for a particular species but performed within what we determined to be an acceptable range, the State or Tribe would have opportunity to take corrective action without penalty. APHIS would reevaluate the State or Tribe upon request of State or Tribal animal health officials. If the State or Tribe did not request reevaluation or failed to meet all traceability performance standards for the species after 3 years, additional traceability requirements, which are described below, could be applied to the interstate movement of the applicable species from the State or Tribe. Animal movements from States or Tribes that fail to meet performance standards may be associated with a greater risk of spreading disease than animal movements from compliant States or Tribes. For that reason, the need to trace animal movements from the former category of States and Tribes may be more acute, necessitating more stringent traceability requirements.

If an evaluation were to show that a State or Tribe's performance was not within a defined acceptable range for a species, the Administrator would notify the State or Tribe in writing that additional traceability requirements would apply to the interstate movement of the applicable species from the State or Tribe beginning 60 days from the date of notification. The State or Tribe could appeal the decision in writing within 15 days of receiving notification. The appeal would have to provide all of the facts and reasons the State or Tribe believes that the Administrator should consider in rejecting the results of the evaluation and ordering a new one. The Administrator would grant or deny the appeal in writing, as promptly as circumstances allow, stating the reasons for the decision.

Any additional traceability requirements for States or Tribes not performing within an acceptable range would be established by the Administrator in each case, taking into consideration the results of the traceability evaluation, in order to enhance traceability of the species for which the performance standards are not being met. The additional requirements could include, but would not be limited to, requirements to apply or record official identification that would otherwise not be required under the regulations, or requirements for supplemental documentation, such as

movement permits. APHIS would reevaluate the State or Tribe at the request of State or Tribal animal health officials. So that the public would be informed, APHIS would announce the imposition or removal of any additional traceability requirements through documents published in the **Federal Register**.

### Preemption (§ 90.8)

Our proposed traceability regulations would preempt State, Tribal, and local laws and regulations that are in conflict with them, with certain exceptions. In keeping with our objective of allowing States and Tribes to develop the traceability systems that work best for them, we would allow them the latitude to impose some additional requirements for the movement of animals into their jurisdictions, so long as those additional requirements are consistent with our traceability goals and do not interfere with the right of another State or Tribe to determine what kind of traceability system to employ. Specifically, we would allow States and Tribes to require that covered livestock moving into their jurisdictions be officially identified even if those covered livestock are exempt from official identification requirements under these proposed regulations. The State or Tribe of destination could not, however, specify an official identification device or method, such as an RFID tag, that would have to be used by the shipping State or Tribe. Nor could the State or Tribe of destination compel the shipping State or Tribe to develop a particular kind of traceability system or change its existing system in order to meet the requirements of the State or Tribe of destination.

### Changes to 9 CFR Part 71

The addition of the new traceability part would necessitate some changes to part 71, which contains general provisions pertaining to the interstate movement of livestock. In § 71.1, we would revise the definitions of *animal identification number (AIN)*, *group/lot identification number (GIN)*, *livestock*, *official eartag*, *official identification device or method*, and *premises identification number (PIN)* so that they would match the definitions we are proposing in our traceability regulations. We would also replace the existing definitions of *moved (movement) in interstate commerce* and *United States Department of Agriculture backtag*, respectively, with our proposed definitions of *move* and *United States Department of Agriculture (USDA) approved backtag* and add to § 71.1 the definitions of *flock-based*

number system, flock identification number (FIN), National Uniform Eartagging System (NUES), and official identification number that we are proposing to include in part 90. We would remove and reserve § 71.18, which pertains to the identification of cattle aged 2 years and over for interstate movement, and § 71.22, which addresses the removal and loss of official identification devices. Both sets of requirements are addressed in the proposed new traceability part. Finally, we would make some minor editorial changes to § 71.19, so that the terminology used therein would be consistent with that of proposed part 90.

#### Changes to 9 CFR Parts 77 and 78

Adding the proposed traceability requirements to the regulations also necessitates some changes to the existing regulations pertaining to tuberculosis, in part 77, and brucellosis, in part 78. For species other than cattle and bison, the proposed traceability regulations, in most cases, refer the reader to the appropriate existing regulations for those species; for cattle and bison, however, the proposed traceability regulations will impose additional and, in some cases, slightly different requirements. To avoid potential conflicts with the traceability requirements, we are therefore proposing some amendments to the tuberculosis and brucellosis regulations. In both parts 77 and 78, we are proposing to amend certain definitions. We are also proposing to amend the regulatory text in parts 77 and 78 to incorporate the new and amended definitions and to ensure that the requirements in those parts pertaining to official identification of animals moving interstate and documentation of such movements are consistent with, when not more stringent than, the requirements in the proposed traceability part.

We are proposing to amend § 77.2, which contains definitions applicable to all of part 77, to revise the definitions of *animal identification number (AIN)*, *livestock*, *official eartag*, *officially identified*, and *premises identification number (PIN)*, remove the definitions of *certificate*, *moved*, *moved directly*, and *premises of origin identification*, and add definitions of *directly*, *interstate certificate of veterinary inspection (ICVI)*, *location-based numbering system*, *location identification (LID) number*, *move*, *National Uniform Eartagging System (NUES)*, *official identification number*, *recognized slaughtering establishment*, and *United States Department of Agriculture (USDA) approved backtag* as discussed

above. In § 77.5, which contains definitions applicable to cattle and bison, we are proposing to remove the definition of *approved slaughtering establishment* and add a definition of *recognized slaughtering establishment* in its place.

The existing definition of *officially identified* in § 77.2, referred to earlier under our discussion of official identification devices and methods for captive cervids, allows for the use of official eartags, tattoos and hot brands as means of official identification. We propose to define *officially identified* in § 77.2 as identified by means of an official eartag. As noted previously, eliminating tattoos and hot brands as means of official identification in part 77 would avoid a potential conflict between our tuberculosis regulations and our proposed traceability requirements.

Many of the amendments we are proposing to the remainder of part 77 are intended to incorporate the revised or new definitions into the regulatory text. Throughout part 77, sections listing interstate movement requirements (for cattle and bison, §§ 77.10, 77.12, 77.14, and 77.16; for captive cervids, §§ 77.25, 77.27, 77.29, 77.31, 77.32, 77.35, 77.36, 77.37, and 77.40) contain references to certificates and/or approved slaughtering establishments. Wherever those terms occur, the text would be amended to refer to ICVIs and recognized slaughtering establishments instead.

We are proposing some additional changes to make the regulations clearer. Current § 77.8 states that cattle and bison originating in an accredited-free State or zone may be moved interstate without restriction. Even under the existing regulations, that provision is not entirely accurate, since cattle over 2 years of age must meet the requirements of § 71.18 to move interstate. We therefore are proposing to amend § 77.8 to state that cattle and bison from an accredited free State or zone may be moved interstate in accordance with proposed part 90 (as noted earlier, proposed traceability requirements for cattle and bison would replace the existing ones in § 71.18) and without further restriction under the tuberculosis regulations.

Other proposed changes to part 77 are intended to eliminate possible conflicts with the proposed traceability regulations while also streamlining the existing ones. Under current § 77.23, captive cervids from an accredited-free State or zone may be moved interstate without restriction. We are proposing to amend that section to state that captive cervids may move interstate from an

accredited-free State or zone in accordance with the traceability regulations, (*i.e.*, as noted previously, they would no longer be exempted from official identification and documentation requirements) and without further restriction under the tuberculosis regulations. In a number of places the tuberculosis regulations allow for interstate movement of cattle and bison to slaughter (§§ 77.10, 77.12, 77.14) without the USDA approved backtags required under the proposed traceability regulations or for interstate movement of captive cervids (§§ 77.25, 77.27, 77.29, 77.32, 77.35, 77.36, and 77.37) either to slaughter without backtags or to other destinations without the official identification required under the proposed traceability regulations. We are proposing to amend these various sections to indicate that animals moving interstate under the tuberculosis regulations must, at a minimum, meet the traceability requirements of proposed part 90, *e.g.*, have backtags if being moved to slaughter, and meet any additional conditions that apply under the tuberculosis regulations. Where the existing regulations allow premises of origin identification in lieu of official identification, *e.g.*, in §§ 77.10, 77.12, and 77.14, we would eliminate the premises-of-origin alternative to bring our tuberculosis requirements into line with our proposed traceability requirements. In some cases, the sections being amended in part 77 would undergo some limited reorganization, in order to avoid unnecessary repetition. For example, we would remove some paragraphs that focus specifically on identification of animals moving to slaughter and instead refer to those requirements in amended introductory text. The changes we are proposing to part 77 would ensure that in all cases, the identification requirements in the tuberculosis regulations would, at a minimum, be equivalent to our proposed traceability requirements.

We propose to amend § 78.1, which defines terms pertaining to the regulation of brucellosis, in a manner similar to our proposed changes to § 77.2. Specifically, we would revise the definitions of *animal identification number (AIN)*, *dairy cattle*, *directly*, *market cattle identification test cattle*, *official eartag*, and *recognized slaughtering establishment*, remove the definitions of *certificate*, *official identification device or method*, and *rodeo bulls*, and add definitions of *commuter herd*, *commuter herd agreement*, *interstate certificate of*

*veterinary inspection (ICVI), location-based numbering system, location identification (LID) number, National Uniform Eartagging System (NUES), official identification number, officially identified, and rodeo cattle.*

The existing definition of *market cattle identification test cattle* in § 78.1 defines such cattle as cows and bulls 2 years of age or over which have been moved to recognized slaughtering establishments, and test-eligible cattle which are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, quarantined feedlots, or other assembly points. The definition further states that such cattle shall be identified by an official eartag and/or United States Department of Agriculture backtag prior to or at the first market, stockyard, quarantined feedlot, or slaughtering establishment they reach.

We are proposing here to define *market cattle identification test cattle* as cows and bulls 18 months of age or over which have been moved to recognized slaughtering establishments, and test-eligible cattle which are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, quarantined feedlots, or other assembly points. Under the proposed definition, such cattle must be identified with an official identification device or method as specified in the proposed traceability requirements prior to or at the first market, stockyard, quarantined feedlot, or slaughtering establishment they reach. These proposed changes to the definition bring it into line with our proposed traceability requirements by lowering from 2 years to 18 months the age of the cattle to which the requirements apply. By referring the reader to the traceability requirements for official identification devices and methods, rather than specifying the tags to be used, as in the existing definition, we would eliminate the option of using a backtag as official identification for such cattle, further aligning our brucellosis regulations with our proposed traceability requirements.

Our proposed definition of *rodeo cattle*—cattle used at rodeos or competitive events—takes the place of the existing definition of *rodeo bulls* and reflects current usage. Current § 78.14 contains requirements for the interstate movement of rodeo bulls. We propose to amend § 78.14 by replacing the term *rodeo bulls* wherever it is used, including in the section heading, with *rodeo cattle*.

Other proposed changes in part 78 align the terminology used in that part with that of the proposed traceability

regulations. References to certificates in §§ 78.2, 78.9, 78.12, 78.14, and 78.20 would be replaced wherever they occur with references to ICVIs. Current § 78.9(a)(3)(ii), (b)(3)(iv), and (c)(3)(iv) describe interstate movements that would be covered under our proposed definitions of *commuter herd* and *commuter herd agreement* but do not use those terms. To achieve greater consistency in our regulations, we propose to amend those paragraphs by incorporating into them the commuter herd language used in the proposed traceability regulations. As noted above, definitions of *commuter herd* and *commuter herd agreement* would be added to § 78.1.

As in part 77 of the existing regulations, there are a number of provisions in part 78, e.g., in §§ 78.5, 78.6, 78.9, 78.12, 78.20, 78.21, 78.23, and 78.24, that, as currently worded, could give the reader the mistaken impression that the interstate movements referred to in those provisions are either not restricted or subject to restriction only under the brucellosis regulations. In all such instances, we are proposing to amend the text to indicate that the interstate movements referred to must also meet our proposed traceability requirements.

Current § 78.2(b)(1) charges the APHIS representative, State representative, or accredited veterinarian responsible for issuing a certificate with the task of forwarding a copy of the certificate to the State animal health official in either the State of origin or the State of destination. If the APHIS representative, State representative, or accredited veterinarian issues a permit, he or she must forward a copy to the State of destination. We propose to amend that paragraph to require the APHIS, State, or Tribal representative or accredited veterinarian issuing an ICVI or other interstate movement document used in lieu of an ICVI or a permit to forward a copy of the ICVI, other document used in lieu of an ICVI, or permit to the State animal health official of the State of origin within 5 working days. The State animal health official of the State of origin must then forward a copy of the ICVI, other interstate movement document used in lieu of an ICVI, or permit to the State animal health official of the State of destination within 5 working days. As discussed earlier, this proposed change is intended to aid State officials in conducting both traceback and trace-forward investigations, should they become necessary.

Finally, we are proposing to add to § 78.5 a statement that cattle moved interstate under permit in accordance

with the brucellosis regulations are not required to be accompanied by an ICVI or owner-shipper statement. This proposed addition will help prevent unnecessary duplication of documentation or confusion about what documents are required.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13653, and an initial regulatory flexibility analysis that examines the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

We are proposing to establish general traceability regulations for certain livestock moving interstate. The purpose of this rulemaking is to improve APHIS' ability to trace such livestock in the event disease is found. The benefits of this rulemaking are expected to exceed the costs overall.

While the rule would apply to cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids (referred to below as covered livestock), the focus of this analysis is on expected economic effects for the beef and dairy cattle industries. These enterprises would be most affected operationally by the rule. For the other species, APHIS would largely maintain and build on the identification requirements of existing disease program regulations.

APHIS requests comment on this determination. We invite comment on whether the proposed rule would have significant effect on the poultry industry or other affected industries. We particularly welcome any quantified estimates of impacts that the proposed rule might have.

Costs for cattle producers are estimated in terms of activities that would need to be conducted for official animal identification and issuance of an ICVI, or other movement documentation, for covered livestock moved interstate. Incremental costs incurred are expected to vary depending upon a number of factors, including whether an enterprise does or does not already use eartags to identify individual cattle. For many operators, costs of official animal identification and ICVIs would be similar, respectively, to costs associated with current animal identification practices and the inshipment documentation currently required by individual States. Existing expenditures for these activities represent cost baselines for the private sector. To the extent that official animal identification and ICVIs would simply replace current requirements, the incremental costs of the rule for private enterprises would be minimal.

Certain animal disease traceability requirements would be implemented in stages, thereby lowering near-term costs of the program. For example, beginning on the effective date of the final rule, official identification requirements would apply only to sexually intact cattle and bison 18 months of age or over, dairy cattle of any age, and cattle and bison of any age used for rodeo, exhibition, or recreational purposes. Beginning 1 year after APHIS has established that the official identification requirements for those classes of cattle and bison to which the requirements would apply in the initial stage are being implemented effectively throughout the production chain and that there is a 70 percent rate of compliance with those requirements, initially exempted cattle and bison under 18 months of age would need to be officially identified as well, but the identification numbers of these younger animals would not need to be recorded on the ICVI.

There are two main cost components for the proposed rule, using eartags to identify cattle and having certificates for cattle moved interstate. Approximately 20 percent of cattle are not currently eartagged as part of routine management practices. Annual incremental costs of official identification for cattle enterprises are estimated to total from \$12.5 million to \$30.5 million, assuming

producers who are not already using official identification would tag their cattle as an activity separate from other routine management practices. More likely, producers who are not already using official eartags can be expected to combine tagging with other routine activities such as vaccination or deworming, thereby avoiding the costs associated with working cattle through a chute an additional time. Under this second scenario, the total incremental cost of official identification would be about \$3.5 million.

All States currently require a certificate of veterinary inspection, commonly referred to as a health certificate, for the inshipment from other States of breeder cattle, and 48 States require one for feeder cattle. Annual incremental costs of the proposed rule for ICVIs are estimated to range between \$2 million and \$3.8 million. If States currently requiring documentation other than ICVIs, such as owner-shipper statements or brand certificates, continue to accept these documents in lieu of an ICVI, as permitted by this proposed rule, the ICVI requirement in this proposed rule would not result in any additional costs.

The combined annual costs of the rule for cattle operations of official identification and movement documentation would range between \$14.5 million and \$34.3 million, assuming official identification would be undertaken separately from other routine management practices; or between \$5.5 million and \$7.3 million, assuming that tagging would be combined with other routine management practices that require working cattle through a chute.

Currently, States and Tribes bear responsibilities for the collection, maintenance, and retrieval of data on interstate livestock movements. These responsibilities would be maintained under the proposed rule, but the way they are administered would likely change. Based on availability, Federal funding would be allocated to assist States and Tribes as necessary in automating data collection, maintenance, and retrieval to advance animal disease traceability.

Direct benefits of improved traceability include the public and private cost savings expected to be gained under the proposed rule. Case studies for bovine tuberculosis, bovine brucellosis, and bovine spongiform encephalopathy (BSE) illustrate the inefficiencies currently often faced in tracing disease occurrences due to inadequate animal identification and the potential gains in terms of cost

savings that may derive from the proposed rule.

Benefits of the proposed traceability system are for the most part potential benefits that rest on largely unknown probabilities of disease occurrence and reactions by domestic and foreign markets. The primary benefit of the proposed regulations would be the enhanced ability of the United States to regionalize and compartmentalize animal health issues more quickly, minimizing losses and enabling reestablishment of foreign and domestic market access with minimum delay in the wake of an animal disease event.

Having a traceability system in place would allow the United States to trace animal disease more quickly and efficiently, thereby minimizing not only the spread of disease but also the trade impacts an outbreak may have. The value of U.S. exports of live cattle in 2010 was \$131.8 million, and the value of U.S. beef exports totaled \$2.8 billion. The value of U.S. cattle and calf production in 2009 was \$31.8 billion. The estimated incremental costs of the proposed rule for cattle enterprises—between \$14.5 million and \$34.3 million, assuming official identification is a separately performed activity, and between \$5.5 million and \$7.3 million, assuming official identification is combined with other routine management practices that require working cattle through a chute—represent about one-tenth of one percent of the value of domestic cattle and calf production. If there were an animal disease outbreak in the United States that affected our domestic and international beef markets, preservation of a very small proportion of these markets would need to be attributable to the proposed animal disease traceability program in order to justify estimated private sector costs.

Most cattle operations in the United States are small entities. USDA would ensure the rule's workability and cost effectiveness by collaborating in its implementation with representatives from States, Tribes, and affected industries.

#### **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.)

#### **Executive Order 13175**

In accordance with Executive Order 13175, APHIS has consulted with Tribal Government officials. A tribal summary

impact statement has been prepared that includes a summary of Tribal officials' concerns and of how APHIS has attempted to address them.

The tribal summary impact statement may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, except as provided in proposed § 90.8; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2009-0091. Please send a copy of your comments to: (1) Docket No. APHIS-2009-0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would establish general traceability regulations for cattle, bison, swine, sheep, goats, equines, captive cervids, and poultry moving interstate. As a result of this rulemaking, such livestock that are moved interstate would have to be officially identified and accompanied by an ICVI or other documentation, unless specifically exempted from those requirements. The proposed regulations specify approved forms of official identification for each covered species but would allow covered livestock to be

moved between shipping and receiving States or Tribes with another form of identification, as agreed upon by animal health officials in the shipping and receiving jurisdictions.

The proposed rule would place the greatest information collection burden on the cattle industry, because that sector has the greatest gaps in traceability and the greatest need for new traceability standards. For the other species, APHIS would largely maintain and build on the identification requirements of existing disease program regulations, and the burden associated with those disease programs is contained in information collections related to those programs.

APHIS is asking OMB to approve, for 3 years, its use of this information collection activity to facilitate animal disease traceability and support these disease control, eradication, and surveillance activities.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.0855715 hours per response.

*Respondents:* State, Tribal, and territorial animal health officials; accredited veterinarians; breed and registry associations; producers; livestock market operators; and harvest facility employees.

*Estimated Annual Number of Respondents:* 197,302.

*Estimated Annual Number of Responses per Respondent:* 42.85397.

*Estimated Annual Number of Responses:* 8,455,174.

*Estimated Total Annual Burden on Respondents:* 723,522 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### List of Subjects

##### 9 CFR Parts 71, 77, and 78

Animal diseases, Bison, Cattle, Hogs, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

##### 9 CFR Part 90

Animal diseases, Bison, Cattle, Interstate movement, Livestock, Official identification, Reporting and recordkeeping requirements, Traceability.

Accordingly, we propose to amend 9 CFR chapter I as follows:

#### PART 71—GENERAL PROVISIONS

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

**Authority:** 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 71.1 is amended by revising the definitions of *animal identification number (AIN)*, *group/lot identification number (GIN)*, *livestock, official eartag, official identification device or method*, and *premises identification number (PIN)*, removing the definitions of *moved (movement) in interstate commerce* and *United States Department of Agriculture Backtag*, and adding definitions of *flock-based number system*, *flock identification number (FIN)*, *move, National Uniform Eartagging System (NUES)*, *official identification number*, and *United States Department of Agriculture (USDA) approved backtag* in alphabetical order to read as follows:

#### § 71.1 Definitions.

\* \* \* \* \*

*Animal identification number (AIN).* A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 prefix; however, only the AIN beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [Insert date 1 year after effective date of final rule]. The AIN beginning with the 840 prefix may be used only on animals born in the United States.

\* \* \* \* \*

*Flock-based number system.* The flock-based number system combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

*Flock identification number (FIN).* A nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

\* \* \* \* \*

*Group/lot identification number (GIN).* The identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain. When a GIN is used, it is recorded on documents accompanying the animals moving interstate; it is not necessary to have the GIN attached to each animal.

\* \* \* \* \*

*Livestock.* All farm-raised animals.

\* \* \* \* \*

*Move.* To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

*National Uniform Eartagging System (NUES).* A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

\* \* \* \* \*

*Official eartag.* An identification tag approved by APHIS that bears an official identification number for

individual animals. Beginning [Insert date 1 year after effective date of final rule] all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

*Official identification device or method.* A means approved by the Administrator of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species.

*Official identification number.* A nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

- (1) National Uniform Eartagging System (NUES).
- (2) Animal identification number (AIN).
- (3) Location-based number system.
- (4) Flock-based number system.
- (5) Any other numbering system approved by the Administrator for the official identification of animals.

\* \* \* \* \*

*Premises identification number (PIN).* A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises. The PIN may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may be used as a component of a group/lot identification number (GIN).

\* \* \* \* \*

*United States Department of Agriculture (USDA) approved backtag.* A backtag issued by APHIS that provides a temporary unique identification for each animal.

#### **§ 71.18 [Removed and Reserved]**

3. Section 71.18 is removed and reserved.

#### **§ 71.19 [Amended]**

4. In § 71.19, in paragraphs (b)(2) and (d) introductory text, by removing the words "United States Department of Agriculture backtags" and adding the words "United States Department of Agriculture (USDA) approved backtag" in their place each time they occur.

#### **§ 71.22 [Removed and Reserved]**

5. Section 71.22 is removed and reserved.

#### **PART 77—TUBERCULOSIS**

6. The authority citation for part 77 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

7. Section 77.2 is amended by revising the definitions of *animal identification number (AIN)*, *livestock*, *official eartag*, *officially identified*, and *premises identification number (PIN)*, removing the definitions of *certificate*, *moved*, *moved directly*, and *premises of origin identification*, and adding definitions of *directly*, *interstate certificate of veterinary inspection (ICVI)*, *location-based numbering system*, *location identification (LID) number*, *move*, *National Uniform Eartagging System (NUES)*, *official identification number*, *recognized slaughtering establishment*, and *United States Department of Agriculture (USDA) approved backtag* in alphabetical order to read as follows:

#### **§ 77.2 Definitions.**

\* \* \* \* \*

*Animal identification number (AIN).* A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 prefix; however, only the AIN beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [Insert date 1 year after effective date of final rule]. The AIN beginning with the 840 prefix may be used only on animals born in the United States.

\* \* \* \* \*

*Directly.* Without unloading en route if moved in a means of conveyance and without being commingled with other animals, or without stopping, except for stops of less than 24 hours that are needed for food, water, or rest in route if the animals are moved in any other manner.

\* \* \* \* \*

*Interstate certificate of veterinary inspection (ICVI).* An official document issued by a Federal, State, Tribal, or accredited veterinarian at the location from which animals are shipped interstate.

(1) The ICVI must show the species of animals covered by the ICVI; the number of animals covered by the ICVI; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined. Additionally, unless the species-specific requirements for ICVIs provide an exception, the ICVI must list the official identification number of each animal, except as provided in paragraph (2) of this definition, or group of animals moved that is required to be officially identified, or, if an alternative form of identification has been agreed upon by the sending and receiving States, the ICVI must include a record of that identification. If animals moving under a GIN also have individual official identification, only the GIN must be listed on the ICVI. If the animals are not required by the regulations to be officially identified, the ICVI must state the exemption that applies (*e.g.*, the cattle and bison belong to one of the classes of cattle and bison exempted under § 90.4 of this chapter from the official identification requirements of 9 CFR part 90 during the initial stage of the phase-in of those requirements). If the animals are required to be officially identified but the identification number does not have to be recorded on the ICVI, the ICVI must state that all animals to be moved under the ICVI are officially identified. An ICVI may not be issued for any animal that is not officially identified if official identification is required.

(2) As an alternative to typing or writing individual animal identification on an ICVI, another document may be used to provide this information, but only under the following conditions:

(i) The document must be a State form or APHIS form that requires individual identification of animals;

(ii) A legible copy of the document must be stapled to the original and each copy of the ICVI;

(iii) Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(iv) The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or

boxed, also in ink, so that no additional information can be added:

(A) The name of the document; and

(B) Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

*Livestock.* All farm-raised animals.

*Location-based numbering system.*

The location-based number system combines a State or Tribal issued location identification (LID) number or a premises identification number (PIN) with a producer's unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal.

*Location identification (LID) number.*

A nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

*Move.* To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

*National Uniform Eartagging System (NUES).* A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

*Official eartag.* An identification tag approved by APHIS that bears an official identification number for individual animals. Beginning [Insert date 1 year after effective date of final rule] all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

*Official identification number.* A nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems: (1) National Uniform Eartagging System (NUES).

(2) Animal identification number (AIN).

(3) Flock-based number system.

(4) Location-based number system.

(5) Any other numbering system approved by the Administrator for the official identification of animals.

\* \* \* \* \*

*Officially identified.* Identified by means of an official eartag.

\* \* \* \* \*

*Premises identification number (PIN).* A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises. The PIN may be used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may be used as a component of a group/lot identification number (GIN).

*Recognized slaughtering establishment.* Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts.

\* \* \* \* \*

*United States Department of Agriculture (USDA) approved backtag.* A backtag issued by APHIS that provides a temporary unique identification for each animal.

\* \* \* \* \*

8. Section 77.5 is amended by removing the definition of *approved slaughtering establishment* and adding a definition of *recognized slaughtering establishment* in alphabetical order to read as follows:

**§ 77.5 Definitions.**

\* \* \* \* \*

*Recognized slaughtering establishment.* Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts.

\* \* \* \* \*

9. Section 77.8 is revised to read as follows:

**§ 77.8 Interstate movement from accredited-free States and zones.**

Cattle or bison that originate in an accredited-free State or zone may be moved interstate in accordance with 9 CFR part 90 without further restriction under this part.

10. Section 77.10 is revised to read as follows:

**§ 77.10 Interstate movement from modified accredited advanced States and zones.**

Cattle or bison that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 90 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers, and are officially identified.

(b) The cattle or bison are from an accredited herd, are officially identified, and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

(c) The cattle or bison are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that they were negative to an official tuberculin test conducted within 60 days prior to the date of movement.

(Approved by the Office of Management and Budget under control numbers 0579-0146, 0579-0220, and 0579-0229)

11. Section 77.12 is revised to read as follows:

**§ 77.12 Interstate movement from modified accredited States and zones.**

Cattle or bison that originate in a modified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 90 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; are officially identified, and are accompanied by an ICVI stating that they were classified negative to an official tuberculin test conducted within 60 days prior to the date of movement.

(b) The cattle or bison are from an accredited herd, are officially identified, and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

(c) The cattle or bison are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the herd from which they

originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 60 days prior to the date of movement, except that the additional test is not required if the animals are moved interstate within 60 days following the whole herd test.

(Approved by the Office of Management and Budget under control number 0579-0146)

12. Section 77.14 is revised to read as follows:

**§ 77.14 Interstate movement from accreditation preparatory States and zones.**

Cattle or bison that originate in an accreditation preparatory State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 90 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 60 days prior to the date of movement; *Except that:* The additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

(b) The cattle or bison are from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement and that the animals to be moved were negative to an official tuberculin test conducted within 60 days prior to the date of movement.

(c) The cattle or bison are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to two additional official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of

movement; *Except that:* The second additional test is not required if the animals are moved interstate within 60 days following the whole herd test.

(Approved by the Office of Management and Budget under control number 0579-0146)

**§ 77.16 [Amended]**

13. Section 77.16 is amended by removing the words “an approved” and adding the words “a recognized” in their place.

**§ 77.17 [Amended]**

14. Section 77.17 is amended as follows:

a. In paragraphs (a) introductory text and (b) introductory text, by removing the words “an approved” and adding the words “a recognized” in their place.

b. In paragraph (a)(4), by removing the words “transportation document” and adding the words “VS Form 1-27” in their place.

c. In paragraph (c), by removing the words “to an approved slaughtering establishment” and adding the words “to a recognized slaughtering establishment in accordance with 9 CFR part 90” in their place.

15. Section 77.23 is revised to read as follows:

**§ 77.23 Interstate movement from accredited-free States and zones.**

Notwithstanding any other provisions of this part, captive cervids that originate in an accredited-free State or zone may be moved interstate in accordance with 9 CFR part 90 and without further restriction under this part.

16. Section 77.25 is revised to read as follows:

**§ 77.25 Interstate movement from modified accredited advanced States and zones.**

Captive cervids that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 90 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The captive cervids are from an accredited herd, qualified herd, or monitored herd; are officially identified; and are accompanied by an ICVI stating that the herd completed the requirements for accredited herd, qualified herd, or monitored herd status within 24 months prior to the date of movement.

(b) The captive cervids are officially identified and are accompanied by an ICVI stating that they were negative to

an official tuberculin test conducted within 90 days prior to the date of movement.

(Approved by the Office of Management and Budget under control number 0579-0146)

17. Section 77.27 is revised to read as follows:

**§ 77.27 Interstate movement from modified accredited States and zones.**

Except for captive cervids from a qualified herd or monitored herd, as provided in §§ 77.36 and 77.37, respectively, captive cervids that originate in a modified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 90 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The captive cervids are from an accredited herd, are officially identified, and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 24 months prior to the date of movement.

(b) The captive cervids are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 90 days prior to the date of movement; *Except that:* The additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

(Approved by the Office of Management and Budget under control number 0579-0146)

18. Section 77.29 is revised to read as follows:

**§ 77.29 Interstate movement from accreditation preparatory States and zones.**

Except for captive cervids from a qualified herd or monitored herd, as provided in §§ 77.36 and 77.37, respectively, captive cervids that originate in an accreditation preparatory State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 90 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The captive cervids are from an accredited herd; are officially identified;

and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 24 months prior to the date of movement and that the individual animals to be moved were negative to an official tuberculin test conducted within 90 days prior to the date of movement.

(b) The captive cervids are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to two additional official tuberculin tests conducted at least 90 days apart and no more than 6 months apart, with the second test conducted within 90 days prior to the date of movement; *Except that:* The second additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

(Approved by the Office of Management and Budget under control number 0579-0146)

**§ 77.31 [Amended]**

19. Section 77.31 is amended by removing the words “an approved” and adding the words “a recognized” in their place.

**§ 77.32 [Amended]**

20. Section 77.32 is amended as follows:

a. In paragraph (a), by removing the words “§§ 77.25(a), 77.27(a), 77.29(a), and 77.31(d)” and adding the words “9 CFR part 90” in their place.

b. In paragraph (c), by removing the words “accompanied by a certificate” and adding the words “officially identified and accompanied by an ICVI” in their place.

21. In § 77.35, paragraph (b) is revised to read as follows:

**§ 77.35 Interstate movement from accredited herds.**

\* \* \* \* \*

(b) *Movement allowed.* Except as provided in § 77.23 with regard to captive cervids that originate in an accredited-free State or zone, and except as provided in § 77.31 with regard to captive cervids that originate in a nonaccredited State or zone, a captive cervid from an accredited herd may be moved interstate without further tuberculosis testing only if it is officially identified and is accompanied by an ICVI, as provided in § 77.32(c), that includes a statement that the captive cervid is from an accredited herd. If a group of captive cervids from an

accredited herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one ICVI.

\* \* \* \* \*

22. In § 77.36, paragraphs (b)(2), (b)(3), and (b)(4) are revised to read as follows:

**§ 77.36 Interstate movement from qualified herds.**

\* \* \* \* \*

(b) \* \* \*

(2) The captive cervid is officially identified and is accompanied by an ICVI, as provided in § 77.32(c), that includes a statement that the captive cervid is from a qualified herd. Except as provided in paragraphs (b)(3) and (b)(4) of this section, the ICVI must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a qualified herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one ICVI.

(3) Captive cervids under 1 year of age that are natural additions to the qualified herd or that were born in and originate from a classified herd may move without testing, provided that they are officially identified and that the ICVI accompanying them states that the captive cervids are natural additions to the qualified herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

(4) Captive cervids being moved interstate for the purpose of exhibition only may be moved without testing, provided they are returned to the premises of origin no more than 90 days after leaving the premises, have no contact with other livestock during movement and exhibition, are officially identified, and are accompanied by an ICVI that includes a statement that the captive cervid is from a qualified herd and will otherwise meet the requirements of this paragraph.

\* \* \* \* \*

23. In § 77.37, paragraphs (b)(2) and (b)(3) are revised to read as follows:

**§ 77.37 Interstate movement from monitored herds.**

\* \* \* \* \*

(b) \* \* \*

(2) The captive cervid is officially identified and is accompanied by an ICVI, as provided in § 77.32(c), that includes a statement that the captive cervid is from a monitored herd. Except as provided in paragraph (b)(3) of this section, the ICVI must also state that the captive cervid has tested negative to an

official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a monitored herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one ICVI.

(3) Captive cervids under 1 year of age that are natural additions to the monitored herd or that were born in and originate from a classified herd may move without testing, provided that they are officially identified and that the ICVI accompanying them states that the captive cervids are natural additions to the monitored herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

\* \* \* \* \*

#### § 77.40 [Amended]

24. In § 77.40, paragraph (a)(3) is amended by removing the words “an approved” and adding the words “a recognized” in their place.

#### PART 78—BRUCELLOSIS

25. The authority citation for part 78 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

26. Section 78.1 is amended by revising the definitions of *animal identification number (AIN)*, *dairy cattle, directly, market cattle identification test cattle, official eartag, and recognized slaughtering establishment*, removing the definitions of *certificate, official identification device or method, and rodeo bulls*, and adding definitions of *commuter herd, commuter herd agreement, interstate certificate of veterinary inspection (ICVI), location-based numbering system, location identification (LID) number, National Uniform Eartagging System (NUES), official identification number, officially identified, and rodeo cattle* in alphabetical order to read as follows:

#### § 78.1 Definitions.

\* \* \* \* \*

*Animal identification number (AIN)*. A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 prefix; however, only the AIN

beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [Insert date 1 year after effective date of final rule]. The AIN beginning with the 840 prefix may be used only on animals born in the United States.

\* \* \* \* \*

*Commuter herd*. A herd of cattle or bison moved interstate during the course of normal livestock management operations and without change of ownership directly between two premises, as provided in a commuter herd agreement.

*Commuter herd agreement*. A written agreement between the owner(s) of a herd of cattle or bison and the animal health officials for the States or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the time period, up to 1 year, that the agreement is effective. A commuter herd agreement may be renewed annually.

\* \* \* \* \*

*Dairy cattle*. All cattle, regardless of age or sex or current use, that are of a breed(s) typically used to produce milk or other dairy products for human consumption.

\* \* \* \* \*

*Directly*. Without unloading en route if moved in a means of conveyance and without being commingled with other animals, or without stopping, except for stops of less than 24 hours that are needed for food, water, or rest in route if the animals are moved in any other manner.

\* \* \* \* \*

*Interstate certificate of veterinary inspection (ICVI)*. An official document issued by a Federal, State, Tribal, or accredited veterinarian at the location from which animals are shipped interstate.

(a) The ICVI must show the species of animals covered by the ICVI; the number of animals covered by the ICVI; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined. Additionally, unless the species-specific requirements for ICVIs provide an exception, the ICVI must list the official identification number of each animal, except as provided in paragraph (b) of this definition, or group of animals moved

that is required to be officially identified, or, if an alternative form of identification has been agreed upon by the sending and receiving States, the ICVI must include a record of that identification. If animals moving under a GIN also have individual official identification, only the GIN must be listed on the ICVI. If the animals are not required by the regulations to be officially identified, the ICVI must state the exemption that applies (e.g., the cattle and bison belong to one of the classes of cattle and bison exempted under § 90.4 of this chapter from the official identification requirements of 9 CFR part 90 during the initial stage of the phase-in of those requirements). If the animals are required to be officially identified but the identification number does not have to be recorded on the ICVI, the ICVI must state that all animals to be moved under the ICVI are officially identified. An ICVI may not be issued for any animal that is not officially identified if official identification is required.

(b) As an alternative to typing or writing individual animal identification on an ICVI, another document may be used to provide this information, but only under the following conditions:

- (1) The document must be a State form or APHIS form that requires individual identification of animals;
- (2) A legible copy of the document must be stapled to the original and each copy of the ICVI;
- (3) Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(4) The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:

- (i) The name of the document; and
- (ii) Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

*Location-based number system*. The location-based number system combines a State or Tribal issued location identification (LID) number or a premises identification number (PIN) with a producer's unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal.

Location identification (LID) number. A nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

Market cattle identification test cattle. Cows and bulls 18 months of age or over which have been moved to recognized slaughtering establishments, and test-eligible cattle which are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, quarantined feedlots, or other assembly points. Such cattle must be identified with an official identification device as specified in § 90.4(a) of this chapter prior to or at the first market, stockyard, quarantined feedlot, or slaughtering establishment they reach.

National Uniform Eartagging System (NUES). A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

Official eartag. An identification tag approved by APHIS that bears an official identification number for individual animals. Beginning [Insert date 1 year after effective date of final rule] all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

Official identification number. A nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

- (1) National Uniform Eartagging System.
(2) Animal identification number (AIN).
(3) Location-based number system.
(4) Flock-based number system.
(5) Any other numbering system approved by the Administrator for the official identification of animals.

Officially identified. Identified by means of an official identification

device or method approved by the Administrator.

Recognized slaughtering establishment. Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or State meat or poultry inspection acts.

Rodeo cattle. Cattle used at rodeos or competitive events.

27. Section 78.2 is revised to read as follows:

§ 78.2 Handling of certificates, permits, and "S" brand permits for interstate movement of animals.

(a) Any ICVI, other interstate movement document used in lieu of an ICVI, permit, or "S" brand permit required by this part for the interstate movement of animals shall be delivered to the person moving the animals by the shipper or shipper's agent at the time the animals are delivered for movement and shall accompany the animals to their destination and be delivered to the consignee or the person receiving the animals.

(b) The APHIS representative, State representative, Tribal representative, or accredited veterinarian issuing an ICVI or other interstate movement document used in lieu of an ICVI or a permit, except for permits for entry and "S" brand permits, that is required for the interstate movement of animals under this part shall forward a copy of the ICVI, other interstate movement document used in lieu of an ICVI, or permit to the State animal health official of the State of origin within 5 working days. The State animal health official of the State of origin shall forward a copy of the ICVI, other interstate movement document used in lieu of an ICVI, or permit to the State animal health official of the State of destination within 5 working days.

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

28. Section 78.5 is revised to read as follows:

§ 78.5 General restrictions.

Cattle may not be moved interstate except in compliance with this subpart and with 9 CFR part 90. Cattle moved interstate under permit in accordance with this subpart are not required to be accompanied by an interstate certificate of veterinary inspection or owner-shipper statement.

29. Section 78.6 is revised to read as follows:

§ 78.6 Steers and spayed heifers.

Steers and spayed heifers may be moved interstate in accordance with 9 CFR part 90 and without further restriction under this subpart.

30. Section 78.9 is amended as follows:

a. In the introductory text, by revising the first sentence to read as set forth below.

b. By revising paragraphs (a)(3)(ii), (a)(3)(iii), (b)(3)(i), (b)(3)(ii), (b)(3)(iv), (c)(1)(i), (c)(1)(ii), (c)(1)(iv)(A), (c)(1)(vi)(A), (c)(2)(ii)(A), (c)(3)(i), (c)(3)(ii), (c)(3)(iv), (d)(1)(i), (d)(1)(ii), (d)(1)(iv)(A), (d)(1)(vi)(A), (d)(2)(ii)(A), and (d)(3) to read as set forth below.

§ 78.9 Cattle from herds not known to be affected.

Male cattle which are not test eligible and are from herds not known to be affected may be moved interstate without further restriction under this subpart.

(a) \* \* \*
(3) \* \* \*

(ii) Such cattle are moved interstate as part of a commuter herd in accordance with a commuter herd agreement.

(iii) Such cattle are moved interstate accompanied by an ICVI which states, in addition to the items specified in § 78.1, that the cattle originated in a Class Free State or area.

(b) \* \* \*
(3) \* \* \*

(i) Such cattle originate in a certified brucellosis-free herd and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are negative to an official test within 30 days prior to such interstate movement and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(iv) Such cattle are moved as part of a commuter herd in accordance with a commuter herd agreement.

(c) \* \* \*

(1) \* \* \* (i) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment without further restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly to an approved intermediate handling facility without further restriction under this subpart.

\* \* \* \* \*

(iv) \* \* \*

(A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied to slaughter by an ICVI or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(vi) \* \* \*

(A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by an ICVI or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) They are negative to an official test within 30 days prior to such movement and are accompanied by an ICVI which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(3) \* \* \*

(i) Such cattle originate in a certified brucellosis-free herd and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are negative to an official test within 30 days prior to interstate movement, have been issued a permit for entry, and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(iv) Such cattle are moved interstate as part of a commuter herd in accordance with a commuter herd agreement, \* \* \*

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* (i) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment without further restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly to an approved intermediate handling facility without further restriction under this subpart.

\* \* \* \* \*

(iv) \* \* \*

(A) They are negative to an official test conducted at the specifically approved stockyard and are

accompanied by an ICVI or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(vi) \* \* \*

(A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by an ICVI or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) They are negative to an official test within 30 days prior to such movement and are accompanied by an ICVI which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(3) *Movement other than in accordance with paragraphs (d)(1) or (2) of this section.*

Such cattle may be moved interstate other than in accordance with paragraphs (d)(1) or (2) of this section only if such cattle originate in a certified brucellosis-free herd and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd.

\* \* \* \* \*

#### § 78.12 [Amended]

31. Section 78.12 is amended as follows:

a. In the introductory text, by adding the words ", 9 CFR part 90," after the citation "§ 78.10".

b. In paragraph (a), by adding the word "further" after the word "without".

c. In paragraphs (d)(1)(i), (d)(2)(i), and (d)(3)(ii), by removing the words "a certificate" and adding the words "an ICVI" in their place each time they occur.

32. Section 78.14 is revised to read as follows:

#### § 78.14 Rodeo cattle.

(a) Rodeo cattle that are test-eligible and that are from a herd not known to be affected may be moved interstate if:

(1) They are classified as brucellosis negative based upon an official test conducted less than 365 days before the date of interstate movement: *Provided, however, That:* The official test is not required for rodeo cattle that are moved only between Class Free States;

(2) The cattle are identified with an official eartag or any other official

identification device or method approved by the Administrator in accordance with § 78.5;

(3) There is no change of ownership since the date of the last official test;

(4) An ICVI accompanies each interstate movement of the cattle; and

(5) A permit for entry is issued for each interstate movement of the cattle.

(b) Cattle that would qualify as rodeo cattle, but that are used for breeding purposes during the 365 days following the date of being tested, may be moved interstate only if they meet the requirements for cattle in this subpart and in 9 CFR part 90.

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

#### § 78.20 [Amended]

33. Section 78.20 is amended by adding the words "and with 9 CFR part 90" after the word "subpart".

#### § 78.21 [Amended]

34. Section 78.21 is amended by adding the word "further" after the word "without".

35. Section 78.23, paragraph (c) introductory text, is revised to read as follows:

#### § 78.23 Brucellosis exposed bison.

\* \* \* \* \*

(c) *Movement other than in accordance with paragraphs (a) or (b) of this section.* Brucellosis exposed bison which are from herds known to be affected, but which are not part of a herd being depopulated under part 51 of this chapter, may move without further restriction under this subpart if the bison:

\* \* \* \* \*

#### § 78.24 [Amended]

36. Section 78.24 is amended as follows:

a. In paragraphs (a) and (b), by adding the word "further" after the word "without" each time it occurs.

b. In paragraphs (d)(1), (d)(2), (d)(3), and (d)(4), by removing the words "a certificate" and adding the words "an ICVI" in their place each time they occur.

37. A new part 90 is added to subchapter C to read as follows:

### PART 90—ANIMAL DISEASE TRACEABILITY

Sec.

- 90.1 Definitions.
- 90.2 General requirements for traceability.
- 90.3 Recordkeeping requirements.
- 90.4 Official identification.
- 90.5 Documentation requirements for interstate movement of covered livestock.

- 90.6 [Reserved]  
 90.7 [Reserved]  
 90.8 Preemption.

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

### § 90.1 Definitions.

As used in this part:

**Animal Disease Traceability General Standards Document.** A document providing specific detail on, among other things, numbering systems, official identification devices, and ICVIs and other animal movement documents. The Animal Disease Traceability General Standards Document is available on the Internet at <http://www.aphis.usda.gov/traceability>.

**Animal identification number (AIN).** A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 prefix; however, only the AIN beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [Insert date 1 year after effective date of final rule]. The AIN beginning with the 840 prefix may be used only on animals born in the United States.

**Approved livestock facility.** A stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary inspection where livestock are assembled and that has been approved under § 71.20 of this chapter.

**Approved tagging site.** A premises, authorized by APHIS, State, or Tribal animal health officials, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

**Commuter herd.** A herd of cattle or bison moved interstate during the course of normal livestock management operations and without change of ownership directly between two premises, as provided in a commuter herd agreement.

**Commuter herd agreement.** A written agreement between the owner(s) of a herd of cattle or bison and the animal health officials for the States or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying

the time period, up to 1 year, that the agreement is effective. A commuter herd agreement may be renewed annually.

**Covered livestock.** Cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids.

**Dairy cattle.** All cattle, regardless of age or sex or current use, that are of a breed(s) typically used to produce milk or other dairy products for human consumption.

**Directly.** Without unloading en route if moved in a means of conveyance and without being commingled with other animals, or without stopping, except for stops of less than 24 hours that are needed for food, water, or rest in route if the animals are moved in any other manner.

**Flock-based number system.** The flock-based number system combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

**Flock identification number (FIN).** A nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

**Group/lot identification number (GIN).** The identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain. When a GIN is used, it is recorded on documents accompanying the animals moving interstate; it is not necessary to have the GIN attached to each animal.

**Interstate certificate of veterinary inspection (ICVI).** An official document issued by a Federal, State, Tribal, or accredited veterinarian at the location from which animals are shipped interstate.

(1) The ICVI must show the species of animals covered by the ICVI; the number of animals covered by the ICVI; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined. Additionally, unless the species-specific requirements for ICVIs provide an exception, the ICVI must list the official identification number of each animal, except as provided in paragraph (b) of this definition, or group of animals moved

that is required to be officially identified, or, if an alternative form of identification has been agreed upon by the sending and receiving States, the ICVI must include a record of that identification. If animals moving under a GIN also have individual official identification, only the GIN must be listed on the ICVI. If the animals are not required by the regulations to be officially identified, the ICVI must state the exemption that applies (e.g., the cattle and bison belong to one of the classes of cattle and bison exempted under § 90.4 from the official identification requirements of this part during the initial stage of the phase-in of those requirements). If the animals are required to be officially identified but the identification number does not have to be recorded on the ICVI, the ICVI must state that all animals to be moved under the ICVI are officially identified. An ICVI may not be issued for any animal that is not officially identified if official identification is required.

(2) As an alternative to typing or writing individual animal identification on an ICVI, another document may be used to provide this information, but only under the following conditions:

(i) The document must be a State form or APHIS form that requires individual identification of animals;

(ii) A legible copy of the document must be stapled to the original and each copy of the ICVI;

(iii) Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(iv) The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:

(A) The name of the document; and

(B) Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

**Interstate movement.** From one State into or through any other State.

**Livestock.** All farm-raised animals.

**Location-based numbering system.** The location-based number system combines a State or Tribal issued location identification (LID) number or a premises identification number (PIN) with a producer's unique livestock production numbering system to provide a nationally unique and herd-

unique identification number for an animal.

**Location identification (LID) number.** A nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

**Move.** To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

**National Uniform Eartagging System (NUES).** A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

**Official eartag.** An identification tag approved by APHIS that bears an official identification number for individual animals. Beginning [Insert date 1 year after effective date of final rule] all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

**Official identification device or method.** A means approved by the Administrator of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.

**Official identification number.** A nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

- (1) National Uniform Eartagging System (NUES).
- (2) Animal identification number (AIN).
- (3) Location-based number system.
- (4) Flock-based number system.
- (5) Any other numbering system approved by the Administrator for the official identification of animals.

**Officially identified.** Identified by means of an official identification

device or method approved by the Administrator.

**Owner-shipper statement.** A statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of animals covered by the statement; the species of animal covered; the name and address of the owner at the time of the movement; the name and address of the shipper; and the identification of each animal, as required by the regulations, unless the regulations specifically provide that the identification does not have to be recorded.

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

**Premises identification number (PIN).** A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises. The PIN may be used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may be used as a component of a group/lot identification number (GIN).

**Recognized slaughtering establishment.** Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts.

**United States Department of Agriculture (USDA) approved backtag.** A backtag issued by APHIS that provides a temporary unique identification for each animal.

#### **§ 90.2 General requirements for traceability.**

(a) The regulations in this part apply only to covered livestock, as defined in § 90.1.

(b) No person may move covered livestock interstate or receive such livestock moved interstate unless the livestock meet all applicable requirements of this part.

(c) The regulations in this part will apply to the movement of covered livestock onto and from Tribal lands only when the movement is an interstate movement; *i.e.*, when the movement is across a State line.

(d) In addition to meeting all applicable requirements of this part, all covered livestock moved interstate must be moved in compliance with all

applicable provisions of APHIS program disease regulations (subchapter C of this chapter).

(e) The interstate movement requirements in this part do not apply to the movement of covered livestock if:

(1) The movement occurs entirely within Tribal land that straddles a State line and the Tribe has a separate traceability system from the States in which its lands are located; or

(2) The movement is to a custom slaughter facility in accordance with Federal and State regulations for preparation of meat for personal consumption.

#### **§ 90.3 Recordkeeping requirements.**

(a) **Official identification device distribution records.** Any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices must maintain for 5 years a record of the names and addresses of anyone to whom the devices were distributed.

(b) **Interstate movement records.** Approved livestock facilities must keep for at least 5 years any ICVIs or alternate documentation that is required by this part for the interstate movement of any covered livestock that enter the facility on or after [Insert effective date of final rule].

#### **§ 90.4 Official identification.**

(a) **Official identification devices and methods.** The Administrator has approved the following official identification devices or methods for the species listed. The Administrator may authorize the use of additional devices or methods for a specific species if he or she determines that such additional devices or methods will provide for adequate traceability.

(1) **Cattle and bison.** Cattle and bison that are required to be officially identified for interstate movement under this part must be identified by means of:

- (i) An official eartag; or
- (ii) Group/lot identification when a group/lot identification number (GIN) may be used.

(2) **Horses and other equine species.** Horses and other equine species that are required to be officially identified for interstate movement under this part must be identified by one of the following methods:

- (i) A description sufficient to identify the individual equine, as determined by a State or Tribal animal health official in the State or Tribe of destination or APHIS representative, including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of

identification when present (e.g., brands, tattoos, scars, cowlicks, or blemishes); or

(ii) Electronic identification that complies with ISO 11784/11785; or

(iii) Digital photographs sufficient to identify the individual equine, as determined by a State or Tribal animal health official in the State or Tribe of destination or APHIS representative; or

(iv) For equines being commercially transported to slaughter, a device or method authorized by part 88 of this chapter.

(3) *Poultry*. Poultry that are required to be officially identified for interstate movement under this part must be identified by one of the following methods:

(i) Sealed and numbered leg bands in the manner referenced in the National Poultry Improvement Plan regulations (parts 145 through 147 of this chapter); or

(ii) Group/lot identification when a group/lot identification number (GIN) may be used.

(4) *Sheep and goats*. Sheep and goats that are required to be officially identified for interstate movement under this part must be identified by a device or method authorized by part 79 of this chapter.

(5) *Swine*. Swine that are required to be officially identified for interstate movement under this part must be

identified by a device or method authorized by § 71.19 of this chapter.

(6) *Captive cervids*. Captive cervids that are required to be officially identified for interstate movement under this part must be identified by a device or method authorized by part 77 of this chapter.

(b) *Official identification requirements for interstate movement*.

(1) *Cattle and bison*. (i) In accordance with the schedule in paragraph (b)(1)(iii) of this section, cattle and bison moved interstate must be officially identified prior to the interstate movement, using an official identification device or method listed in paragraph (a)(1) of this section unless:

(A) The cattle and bison are moved as a commuter herd with a copy of the commuter herd agreement.

(B) The cattle and bison are moved directly from a location in one State through another State to a second location in the original State.

(C) The cattle and bison are moved interstate directly to an approved tagging site and are officially identified before commingling with cattle and bison from other premises.

(D) The cattle and bison are moved between shipping and receiving States or Tribes with another form of identification, including but not limited to brands, tattoos, and breed registry certificates, as agreed upon by animal

health officials in the shipping and receiving States or Tribes.

(ii) Until the date on which the official identification requirements in this section apply to all categories of cattle and bison not specifically exempted, cattle and bison may also be moved interstate without official identification if they are moved directly to a recognized slaughtering establishment or directly to no more than one approved livestock facility approved to handle “for slaughter only” animals (cattle or bison that, when marketed, are presented/sold for slaughter only) and then directly to a recognized slaughtering establishment; and

(A) They are moved interstate with a USDA-approved backtag; or

(B) A USDA-approved backtag is applied to the cattle or bison at the recognized slaughtering establishment or federally approved livestock facility approved to handle “for slaughter only” animals.

(iii) Official identification requirements for cattle and bison will be phased in according to the schedule below. APHIS will publish a document in the **Federal Register** to announce the date upon which the requirements become effective for all cattle and bison not otherwise exempted from official identification requirements.

Date when specified cattle and bison must be officially identified for interstate movement	Classes of cattle and bison
(A) Beginning on [Insert effective date of final rule] .....	(1) All sexually intact cattle and bison 18 months of age or over. (2) Dairy cattle of any age. (3) Cattle and bison of any age used for rodeo or recreational events. (4) Cattle and bison of any age used for shows or exhibitions. All cattle and bison.
(B) Beginning 1 year after the date on which APHIS announces its determination that the official identification requirements are being effectively implemented throughout the production chain and that there is a 70 percent rate of compliance with those requirements for all classes of cattle that are subject to official identification requirements in the initial phase.	

(2) *Sheep and goats*. Sheep and goats moved interstate must be officially identified prior to the interstate movement unless they are exempt from official identification requirements under 9 CFR part 79 or are officially identified after the interstate movement, as provided in 9 CFR part 79.

(3) *Swine*. Swine moving interstate must be officially identified in accordance with § 71.19 of this chapter.

(4) *Horses and other equines*. Horses and other equines moving interstate must be officially identified prior to interstate movement or identified as agreed upon by the States or Tribes involved in the movement or, if being

commercially transported to slaughter, in accordance with part 88 of this chapter.

(5) *Poultry*. Poultry moving interstate must be officially identified prior to interstate movement or identified as agreed upon by the States or Tribes involved in the movement.

(6) *Captive cervids*. Captive cervids moving interstate must be officially identified prior to interstate movement in accordance with part 77 of this chapter.

(c) *Use of more than one official identification device or method*. Beginning on [Insert effective date of final rule], no more than one official

identification device or method may be applied to an animal; except that:

(1) A State or Tribal animal health official or an area veterinarian in charge may approve the application of a second official identification device in specific cases when the need to maintain the identity of an animal is intensified (e.g., such as for export shipments, quarantined herds, field trials, experiments, or disease surveys). Approval may not be granted merely for convenience in identifying animals. The person applying the second official identification device must record the following information about the event and maintain the record for 5 years: The

date the second official identification device is added; the reason for the additional official identification device; and the official identification numbers of both official identification devices.

(2) An eartag with an animal identification number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to an animal that is already officially identified with an eartag with a National Uniform Eartagging System number. The animal's official identification number on the existing official identification eartag must be recorded and reported in accordance with the AIN device distribution policies, which are described in the Animal Disease Traceability General Standards Document.

(3) A brucellosis vaccination eartag with a National Uniform Eartagging System number may be applied in accordance with part 78 of this chapter to an animal that is already officially identified.

(d) *Removal or loss of official identification devices.* (1) Official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices, including devices applied to imported animals in their countries of origin and recognized by the Administrator as official, is prohibited except at the time of slaughter, at any other location upon the death of the animal, or as otherwise approved by the State or Tribal animal health official or an area veterinarian in charge when a device needs to be replaced.

(2) All man-made identification devices affixed to covered livestock moved interstate must be removed at slaughter and correlated with the carcasses through final inspection by means approved by the Food Safety Inspection Service (FSIS). If diagnostic samples are taken, the identification devices must be packaged with the samples and be correlated with the carcasses through final inspection by means approved by FSIS. Devices collected at slaughter must be made available to APHIS and FSIS.

(3) All official identification devices affixed to covered livestock carcasses moved interstate for rendering must be removed at the rendering facility and made available to APHIS.

(4) If an animal loses an official identification device and needs a new one, the person applying new official identification device must record the following information about the event and maintain the record for 5 years: The

date the new official identification device is added; the official identification number on the device; the official identification number on the old device if known.

(e) *Replacement of official identification devices for reasons other than loss.*

(1) Circumstances under which a State or Tribal animal health official or an area veterinarian in charge may authorize replacement of an official identification device include, but are not limited to:

(i) Deterioration of the device such that loss of the device appears likely or the number can no longer be read;

(ii) Infection at the site where the device is attached, necessitating application of a device at another location (e.g., a slightly different location of an eartag in the ear);

(iii) Malfunction of the electronic component of a radio frequency identification (RFID) device; or

(iv) Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.

(2) Any time an official identification device is replaced, as authorized by the State or Tribal animal health official or area veterinarian in charge, the person replacing the device must record the following information about the event and maintain the record for 5 years:

(i) The date on which the device was removed;

(ii) Contact information for the location where the device was removed;

(iii) The official identification number (to the extent possible) on the device removed;

(iv) The type of device removed (e.g., metal eartag, RFID eartag);

(v) The reason for the removal of the device;

(vi) The new official identification number on the replacement device; and

(vii) The type of replacement device applied.

(f) *Sale or transfer of official identification devices.* Official identification devices are not to be sold or otherwise transferred from the premises to which they were originally issued to another premises without authorization by the Administrator or a State or Tribal animal health official.

#### **§ 90.5 Documentation requirements for interstate movement of covered livestock.**

(a) The person directly responsible for animals leaving a premises for interstate movement must ensure that the animals are accompanied by an interstate certificate of veterinary inspection

(ICVI) or other document required by this part for the interstate movement of animals.

(b) The APHIS representative, State or Tribal representative, or accredited veterinarian issuing an ICVI or other document required for the interstate movement of animals under this part must forward a copy of the ICVI or other document to the State or Tribal animal health official of the State or Tribe of origin within 5 working days. The State or Tribal animal health official in the State or Tribe of origin must forward a copy of the ICVI or other document to the State or Tribal animal health official the State or Tribe of destination within 5 working days.

(c) *Cattle and bison.* Cattle and bison moved interstate must be accompanied by an ICVI unless:

(1) They are moved directly to a recognized slaughtering establishment, or directly to an approved livestock facility approved to handle "for slaughter only" animals and then directly to a recognized slaughtering establishment, and they are accompanied by an owner-shipper statement.

(2) They are moved directly to an approved livestock facility with an owner-shipper statement and do not move interstate from the facility unless accompanied by an ICVI.

(3) They are moved from the farm of origin for veterinary medical examination or treatment and returned to the farm of origin without change in ownership.

(4) They are moved directly from one State through another State and back to the original State.

(5) They are moved as a commuter herd with a copy of the commuter herd agreement.

(6) Additionally, cattle and bison under 18 months of age may be moved between shipping and receiving States or Tribes with documentation other than an ICVI, e.g., a brand inspection certificate, as agreed upon by animal health officials in the shipping and receiving States or Tribes.

(7) The official identification number of cattle or bison must be recorded on the ICVI or alternate documentation unless:

(i) The cattle or bison are moved from an approved livestock facility directly to a recognized slaughtering establishment; or

(ii) The cattle and bison are sexually intact cattle or bison under 18 months of age or steers or spayed heifers; *Except that:* This exception does not apply to sexually intact dairy cattle of any age or to cattle or bison used for rodeo, exhibition, or recreational purposes.

(d) *Sheep and goats.* Sheep and goats moved interstate must be accompanied by documentation as required by part 79 of this chapter.

(e) *Swine.* Swine moved interstate must be accompanied by documentation in accordance with § 71.19 of this chapter.

(f) *Horses and other equines.* Horses and other equines moved interstate must be accompanied by an ICVI or other interstate movement document, as agreed to by the shipping and receiving States or Tribes involved in the movement. Equines moving commercially to slaughter must be accompanied by documentation in accordance with part 88 of this chapter. Equine infectious anemia reactors moving interstate must be accompanied by documentation as required by part 75 of this chapter.

(g) *Poultry.* Poultry moved interstate must be accompanied by an ICVI unless: (1) They are from a flock participating in the National Poultry Improvement Plan (NPIP) and are accompanied by the documentation required under the NPIP regulations (parts 145 through 147 of this chapter) for participation in that program.

(2) They are moved directly to a recognized slaughtering establishment.

(3) They are moved from the farm of origin for veterinary medical examination, treatment, or diagnostic purposes and either returned to the farm of origin without change in ownership or euthanized and disposed of at the veterinary facility.

(4) They are moved directly from one State through another State and back to the original State.

(5) They are moved between shipping and receiving States or Tribes with a VS Form 9-3 or documentation other than an ICVI, as agreed upon by animal health officials in the shipping and receiving States or Tribes.

(6) They are moved under permit in accordance with part 82 of this chapter.

(h) *Captive cervids.* Captive cervids moved interstate must be accompanied by documentation as required by part 77 of this chapter.

**§ 90.6 [Reserved]**

**§ 90.7 [Reserved]**

**§ 90.8 Preemption.**

The regulations in this part preempt State, Tribal, and local laws and

regulations that are in conflict with them, except as described in this section. States and Tribes may require covered livestock that are exempt from official identification requirements under this part to be officially identified to be eligible for interstate movement into their jurisdictions; *Except that:* The State or Tribe of destination may not specify an official identification device or method that would have to be used if multiple devices or methods may be used under this part for a particular species, nor may the State or Tribe of destination impose requirements that would otherwise cause the State or Tribe from which the shipments originate to have to develop a particular kind of traceability system or change its existing system in order to meet the requirements of the State or Tribe of destination.

Done in Washington, DC, this 5th day of August 2011.

**Edward Avalos,**

*Under Secretary for Marketing and Regulatory Programs.*

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