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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, and 86

[Docket No. APHIS-2009-0091]

RIN 0579-AD24

Traceability for Livestock Moving Interstate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under this rulemaking, unless specifically exempted, livestock belonging to species covered by the regulations that are moved interstate must be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation. These regulations specify approved forms of official identification for each species but 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.

EFFECTIVE DATE: [Insert date 60 days after date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

Background

I. Purpose of the Regulatory Action

a. Need for the Regulatory Action

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 have clear indications that higher levels of official identification enhance tracing capability. For example, through the National Scrapie Eradication Program, 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, particularly 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 address 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.

On August 11, 2011, we published in the Federal Register (76 FR 50082-50110, Docket No. APHIS-2009-0091) a proposal¹ to amend the regulations by establishing minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under the proposed regulations, unless specifically exempted, livestock belonging to species covered by the rulemaking that are moved interstate would have to be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or comparable appropriate documentation. The proposed rule specified approved forms of official identification for each species but allowed the livestock covered under the 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 the proposed rule was to improve our ability to trace livestock in the event that disease is found.

b. Legal Authority for the Regulatory Action

Under the Animal Health Protection Act (AHPA, 7 U.S.C. 8301 et seq.), the Secretary of Agriculture has the authority to issue orders and promulgate regulations to prevent the introduction into the United States and the dissemination within the United States of any pest or disease of livestock. APHIS' regulations in 9 CFR subchapter B govern cooperative programs to control and eradicate communicable diseases of livestock. The regulations in 9 CFR subchapter C establish requirements for the interstate movement of livestock to prevent the dissemination of diseases of livestock within the United States.

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0091>.

II. Summary of the Major Provisions of the Regulatory Action

a. New or Revised Provisions

This section provides a brief summary of the more significant changes we are making to this final rule in response to comments on the August 2011 proposed rule. Both the comments and the changes will be discussed in greater detail later in this document. The changes are listed below in the order they are discussed later in this document.

- We are extending the phase-out period for manufacturer-coded AINs from 12 months to 24 months to make the transition less burdensome for producers.
- We are revising the definition of official eartag and adding a new definition of official eartag shield. These changes will allow the use of State or Tribal postal abbreviation or codes within the US Route Shield in lieu of “US.”
- We are revising the language of the exemption from the traceability requirements for animals moved interstate to custom slaughter to indicate clearly that the exemption applies to all interstate movement to a custom slaughter facility. The proposed rule contained language that implied that the meat must be consumed by the person moving the animal to custom slaughter. This was not the intent of the proposed rule. A significant number of backyard poultry growers commented and expressed concerns about the official identification requirement for movement of poultry to a custom slaughter facility.
- We are reducing the requirement for the maintenance of interstate movement records for poultry and swine from 5 years to 2 because, as noted by numerous commenters representing those industries, poultry and swine have shorter lifespans than do the other

livestock species covered by this rulemaking. The requirement will remain 5 years for cattle and bison, sheep and goats, cervids, and equines.

- In addition to eartags, in this final rule, we are recognizing brands, when accompanied by an official brand inspection certificate as means of official identification for cattle when the shipping and receiving States or Tribes are in agreement. We are making this change in response to the many comments we received on this issue advocating that we retain brands as a means of official identification for cattle. Additionally, we are allowing similar provisions for tattoos and breed registry certificates.
- In response to many commenters from the cattle industry, we will make feeder cattle (cattle under 18 months of age) subject to our official identification requirements in a separate rulemaking rather than in this one.
- We will continue to allow backtags to be used in lieu of official identification on direct-to-slaughter cattle rather than eventually requiring official identification, as we had originally proposed to do. We are stipulating, however, that for backtags to be used on such animals, the animals will have to be slaughtered within 3 days of their movement to the slaughter plant.
- We are no longer requiring that cattle and bison moved interstate to an approved tagging site be officially identified at the site prior to commingling with cattle or bison from other premises. Under this final rule, commingling can occur prior to official identification provided that other practices are used that will ensure that the identity of the animal's consignor is accurately maintained until the animal is tagged with an official eartag. We are making this change in response to numerous comments expressing concerns that operations at approved tagging sites could be slowed during busy periods.

- We are clarifying the circumstances under which multiple official identification methods, including official eartags, may be used on the same animal.
- We are exempting poultry growers that are not participating in the National Poultry Improvement Plan (NPIP) and that receive chicks from a hatchery or redistributor from the official identification requirements, with the stipulation that the producers maintain certain records, e.g., of the supplier of the birds. Many backyard poultry growers noted that group/lot identification of these birds was not applicable and that individual identification of these chicks was impractical.
- We are allowing the use of other interstate movement documentation, in lieu of an ICVI, as agreed to by the shipping and receiving States or Tribes, for cattle and bison of all ages. The proposed rule only allowed such an exemption for cattle and bison under 18 month of age.
- We are providing additional exemptions from the ICVI requirement for equines moving interstate under certain conditions.

b. New Part Number

In the August 2011 proposed rule, the new traceability regulations were contained in a new 9 CFR part 90. In this final rule, we are placing them in a new part 86 instead. The discussion below of the comments and our responses to them will reflect this change in numbering. When citing specific changes we are making in this final rule to the regulatory text, we refer to part 86.

III. Costs and Benefits

While this rulemaking applies to cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids, the focus of this analysis is on expected

economic effects for the beef and dairy cattle industries. These enterprises are likely to be most affected operationally by the rule. For the other species, APHIS will largely maintain and build on the identification requirements of existing disease program regulations.

There are two main cost components for this rule: Using eartags to identify cattle and having ICVIs for cattle moved interstate. The combined annual costs of the rule for cattle operations of official identification and movement documentation will range between \$14.5 million and \$34.3 million, assuming official identification will be undertaken separately from other routine management practices; or between \$10.9 million and \$23.5 million, assuming that tagging will be combined with other routine management practices that require working cattle through a chute.

Direct benefits of improved traceability include the public and private cost savings expected to be gained under the rule. Case studies for bovine tuberculosis, bovine brucellosis, and 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 rule.

The benefits of this rulemaking are expected to exceed the costs overall.

IV. Discussion of Comments

We solicited comments concerning our proposal for 90 days ending November 9, 2011. We reopened and extended the deadline for comments until December 9, 2011, in a document published in the Federal Register on October 7, 2011 (Docket No. APHIS-2009-0091, 76 FR 62313). We received 1,618 comments by that date. They were from cattle and other livestock producers and producers' associations, livestock marketers and marketing associations,

representatives of State and Tribal governments, and individuals. They are discussed below by topic.

Rationale for and Scope of the Rulemaking

Some commenters viewed our proposed animal traceability regulations as a one-size-fits-all approach to animal disease management. It was suggested that a risk-based approach focusing on specific animal diseases would be more effective than an overarching animal traceability program.

Traceability is a common epidemiological need, regardless of the disease. If APHIS relied only on the traceability provided by disease control and eradication programs, there would be a void when the programs were concluded. That, in fact, is the case today with our progress toward successful eradication of many diseases. For example, as we noted in the preamble to the August 2011 proposed rule, the success of our brucellosis eradication program, while certainly a positive development, has resulted in a steep decline in the number of cattle required to be officially identified. As a result of decreasing levels of official identification in cattle, the time required to conduct other disease investigations has been increasing. An improved traceability system would help address the risk of new, emerging, foreign, or reoccurring diseases. Our new approach to animal disease traceability provides a flexible solution that is endorsed by the animal health officials who conduct disease control programs.

Other commenters offered criticisms of our approach from the opposite perspective. A commenter stated that to ensure adequate traceability, the rule should apply to all livestock sold commercially, and not just livestock moving interstate. The commenter further stated that covering all commercial livestock under our regulations can be justified under the commerce clause of the U.S. Constitution. A commenter representing a foreign government stated that our

proposed traceability system was not sufficiently comprehensive in that it would cover only animals moving interstate, would exempt animals being slaughtered for personal consumption from the requirements, and would allow different States to have their own traceability systems. Another commenter emphasized the latter point, stating that an overarching national system would be more beneficial for traceability purposes than would allowing States to enact their own requirements.

We are not making any changes to the final rule in response to these comments. Our statutory authority to regulate livestock movement derives from the Animal Health Protection Act (7 U.S.C. 8305), which authorizes the Secretary “to prohibit or restrict the movement in interstate commerce of any animal, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of dissemination of any pest or disease of livestock.” Interstate commerce is defined in the Act as “trade, traffic, or commerce between a place in a State and a place in another State.” The question of when or where that trade or traffic begins is subject to interpretation, and it is possible that some intrastate livestock movements may be regulated under the authority of the Act. Regulating the intrastate movement of livestock, however, would be contrary to the Secretary's vision, laid out on February 5, 2010, for the animal disease traceability system. The Secretary's approach, which called for the establishment of minimum uniform national traceability standards, was nevertheless intended to be sufficiently flexible to allow State and Tribal animal health officials to implement, with the cooperation of industry, the traceability systems that worked best for them; it was not intended to be a top-down system under Federal control. Additionally, it was not the intent behind the proposed rule to provide for a full-scale farm-to-plate traceability system, which would be beyond the scope of our statutory authority. Regarding the comments

on the need for greater standardization, as we have noted, the proposed rule did provide for a uniform set of minimum national standards for States and Tribes to follow. This rulemaking allows States and tribes to adapt their individual traceability systems to meet local needs, but those systems will need to comply with these traceability regulations and will need to satisfy the traceability performance standards that will be set forth in future rulemaking.

Many commenters expressed concern about the possible impact on small producers of the proposed regulations, suggesting that the traceability requirements could be more burdensome to small entities than to large ones. It was recommended by some commenters that we exempt small producers. Specific recommendations included exempting producers with less than 300 or 500 mature livestock and producers who are sole proprietors of their operations.

We note that the size of the herd or flock is not the only factor contributing to the risk of the spread of animal diseases. Much more important is the degree to which the animals are moved interstate and commingled with other animals. Herds with no movement across State lines are exempt from these traceability requirements, regardless of the size of the operation, though the States and Tribes may have their own requirements. Additionally, we do exempt certain interstate movements where the risk of disease spread is minimal or where tracing such animals is easily achieved without additional requirements, e.g., movement of livestock to a custom slaughter facility.

A commenter recommended that we exempt registered heritage livestock from the proposed traceability requirements. The commenter stated that there already are adequate identification standards in place for such animals.

We agree in part with this comment. Specifically, we do agree that the identification provided by purebred registries may be adequate for disease traceability of heritage livestock.

Nothing in these regulations would preclude the use of means of identification commonly employed on such animals. Our definition of official identification device or method is broad enough to allow for the use of tattoos and identification methods acceptable to a breed association for registration purposes when accompanied by a breed registration certificate, provided that those methods are determined to be official by the receiving State or Tribal animal health authorities. We do not believe, however, that heritage livestock moving interstate should be categorically exempt from all Federal identification and movement documentation requirements.

A commenter recommended that we exempt horses from the proposed traceability regulations and stated that interstate movements of equines should not have to be reported. According to the commenter, an adequate traceability and notification system, which includes brand inspections, certificates of veterinary inspection, and permits, already exists for equines, rendering additional Federal requirements unnecessary.

We do not agree that horses or other equines should be categorically exempt from traceability requirements; however, we believe that most horse owners are already in compliance with these provisions and need take no further action. A considerable amount of time in the last few years has been related to equine diseases, e.g., contagious equine metritis, equine herpes virus, equine infectious anemia, and equine piroplasmiasis. Additionally, we do not view our traceability requirements as excessively onerous for equine owners, since, under these regulations, methods of identification and movement documentation that are already employed in the equine industry e.g., written descriptions, digital photographs, and electronic identification methods, and are approved by State and Tribal animal health officials will be recognized as official.

It was recommended by commenters that APHIS recognize existing export verification programs as satisfying the requirements of the proposed rule and that livestock in such programs should not be subject to the animal traceability requirements.

While APHIS does support the use of official animal identification methods for various programs, including age and source verification programs used for export purposes, not all systems that verify age, source, or management processes for marketing animal products are necessarily designed to address the needs of animal disease traceability. Official identification methods used in these programs now can be used on animals moving interstate under these regulations if those methods meet our requirements for officially identifying such animals. Options to ensure that export verification programs cover disease traceability requirements more uniformly in the future will be developed in collaboration between APHIS and the USDA's Agricultural Marketing Service (AMS). States and Tribes currently have the flexibility under these traceability regulations to accept the identification and documentation such programs provide in lieu of official identification and ICVIs for animals moving into their jurisdictions.

Our overall justification for the proposed regulations was questioned by some commenters. It was stated that we did not explain or document how the proposed rule would correct problems that have occurred in previous traceback investigations. It was further stated that the lack of identification on individual animals was not the sole source of our problems in conducting tuberculosis traceback investigations in the past.

The Regulatory Impact Analysis (RIA) accompanying the proposed rule provided several actual scenarios where the lack of traceability resulted in significant costs to producers and the public in general. We agree that the lack of identification on individual animals is not the only issue related to tuberculosis traceback investigations, but it is an ongoing and significant issue.

There is general consensus among animal health officials that insufficient traceability has helped to prevent the successful completion of the tuberculosis eradication program, which began in 1917.

A commenter representing a Tribal Government, while generally supportive of the proposed rule, cautioned that the proposed regulations should not contain language diminishing or implying a waiver of Tribal sovereignty. Tribal lands have defined borders that cannot be bisected by State borders.

We agree with this comment, but on further review, we were unable to identify any language in the proposed rule implying a waiver of Tribal sovereignty, nor did the commenter cite any specific problem areas. Therefore, we are not making any changes to the final rule in response to this comment.

Definitions

In the August 2011 proposed rule, definitions were contained in § 90.1; in this final rule, they are contained in § 86.1.

The August 2011 proposed rule included a new definition of animal identification number (AIN) that was similar to the one being used elsewhere in the regulations at the time, albeit with one important difference. The proposed definition stated that the AIN consists 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 may be used as alternatives to the 840 prefix until 1 year after the effective date of the final rule for this proposal. Existing definitions of animal identification number (AIN) in the regulations contained the same formatting requirements but did not specify a sunset date for the use of AINs beginning with the characters

USA or the manufacturer's code. We proposed 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 to enable them to work through existing inventories of eartags.

Some commenters suggested that phasing out AINs with manufacturers' codes would economically harm many producers and that we should instead continue to recognize such AINs as official under certain circumstances. Specifically, it was suggested that manufacturer-coded AIN tags should be recognized as official if the cattle bearing them have been enrolled in a process verified program (PVP) or a Quality System Assessment (QSA) program recognized by the AMS; if producers provide listings of the AINs to their State or Tribal animal health official; or if a system were developed whereby private organizations or marketing entities, in cooperation with State and Tribal animal health officials, could coordinate the application, recording, and/or management of the manufacturer-coded AIN tags.

APHIS does support the use of official identification devices for management and marketing purposes and is sensitive to the concerns about additional cost if such systems are not compatible with our traceability regulations. While the commenters did not specifically state what additional cost would result from the transition to 840 AINs, as provided for in the proposed rule, we have evaluated factors that could potentially increase costs. Low frequency radio frequency identification (RFID) AIN tags are based on ISO 11784 and 11785; thus, the manufacturing of tags in regards to technology would be unchanged. Likewise, electronic reading infrastructure currently in place would not need to be replaced. We acknowledge that retagging animals that already have been tagged with AIN tags using manufacturers' codes would increase costs to producers. The phasing out of such tags over time was intended to allow producers to avoid the need to retag animals. AIN tags with manufacturers' codes that are applied

to animals before the 840 requirement becomes effective will be recognized as official for the remainder of the animal's life. Cattle enrolled in PVP and QSA programs are primarily feeder cattle, and these animals will be exempt from official identification requirements under this rulemaking; therefore, the need for producers of such cattle to transition to 840 AINs and possibly incur additional costs is further minimized. Future official identification options for feeder cattle, including options used in PVP and QSA programs, can be evaluated prior to initiating rulemaking to subject feeder cattle to the official identification requirements.

We do recognize that some producers may have larger inventories of manufacturer-coded tags that may not be used by the date previously proposed for the phase-out to be completed. To address the possible economic burden on these producers resulting from the transition, we are amending the definition of animal identification number (AIN) in this final rule to extend by 12 additional months the phase-out period for manufacturer-coded AINs. The amended definition states that the provision under which the 840 AIN will be the only one recognized as official will become effective on [INSERT DATE 24 MONTHS AFTER THE EFFECTIVE DATE OF THIS FINAL RULE]. Tamper-evident AIN tags with a manufacturer code or USA prefix that are applied to animals before that date will be recognized as official identification for the life of the animals. In that the date of tagging cannot always be known or documented, we will continue to be flexible through the transition period, realizing that breeding animals with manufacturer-coded tags may be in the population for several years. .

APHIS does not oppose the other options suggested by the commenters of having producers provide listings of the manufacturer-coded AINs to their State or Tribal animal health official or having private organizations or marketing entities, in cooperation with State and Tribal animal health officials, coordinate the application, recording, and/or management of the

manufacturer-coded AIN tags. These alternatives are best implemented at the local level between the State and Tribal animal health officials and the producers in their area. If the shipping State continues to allow the use of manufacturer-coded AIN tags after APHIS no longer recognizes them as official, the receiving State can refuse shipments of animals identified with such tags.

We are also making a change to the AIN definition in this final rule based on another comment we received. A comment from an association representing Puerto Rican cattle producers noted that Puerto Rico has a unique country code under ISO (PR, PRI, or 630). The commenter requested that we amend the definition of AIN in the final rule to allow producers in Puerto Rico to use the 630 code on RFID tags. We support this recommendation and are amending the definition of the AIN in this final rule to allow Puerto Rico and other U.S. territories to use their country codes instead of the 840 code issued to the United States. However, the territories may continue to use 840 AIN tags if they prefer. We are also updating the Animal Disease Traceability General Standards document to reference these country codes.

Finally, we are making a minor change to the wording of the requirement, contained in the proposed definition of the AIN, that 840 AIN tags be used only on animals born in the United States. The amended provision states that 840 AIN tags may not be applied to animals known to have been born in another country. This change reflects our view that we cannot reasonably expect that the person responsible for tagging an animal, or having it tagged, will, in every instance, possess documentation that verifies a U.S. birth location for the animal. In many cases, our import requirements for live animals in 9 CFR part 93 lessen the need for such documentation. For example, the overwhelming majority of cattle imported into the United States come from Canada or Mexico and are required to have a brand denoting their country of

origin. This requirement ensures that almost all cattle of non-U.S. origin, i.e., cattle ineligible for identification with 840 AIN tags, are clearly identified as such.

Some commenters suggested that we should expand the proposed definition of approved tagging site to include any location in the receiving State where tagging can be completed prior to commingling, as verified by the State animal health official.

The definition contained in the August 2011 proposed rule provides for locations to become tagging sites when authorized by APHIS, State, or Tribal animal health officials. It is important that such locations are approved by animal health officials to ensure that the exemption from official identification requirements at time of movement interstate to an approved tagging site is properly administered. While livestock markets are frequently referenced as being potential approved tagging sites, other locations, such as feedlots, could become approved tagging sites under our definition. Therefore, it is not necessary to make any changes to the definition of approved tagging site in this final rule for the commenters' suggestion to be adopted.

In the August 2011 proposed rule, we defined 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. Under the proposed rule, cattle or bison moving interstate as part of a commuter herd were to be exempted from both official identification and ICVI requirements.

One commenter recommended that we amend the definition so that shipments of feeder cattle that are infrequently consigned or leased as rodeo stock could be moved interstate as commuter herds. The commenter stated that the commuter herd exemptions could be justified

for such feeder cattle because they are not associated with the same level of disease risk as are cattle regularly used for rodeos or exhibitions.

We do not agree with this comment. Cattle that move interstate, commingle with animals from other locations, and then return to the original location pose a risk for disease transmission. We recently experienced an outbreak of a disease of horses that was disseminated from a regional rodeo to several States. Cattle diseases can also be spread in a similar manner.

Some commenters viewed our proposed definition of 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) as vague and overly broad, stating that they thought it would create significant problems for small-scale and diversified dairy operations. In particular, commenters stated that the definition lacked clarity regarding dual-purpose breeds, potentially creating confusion about which cattle are subject to the more stringent dairy cattle requirements.

After considering these comments, we determined that greater precision in the definition of dairy cattle would be desirable. In this final rule, therefore, we are adding to the definition of dairy cattle a list of some common dairy breeds to serve as examples. Specifically, we define dairy cattle as all cattle, regardless of age or sex or current use, that are of a breed(s) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites. The list of representative dairy breeds we are incorporating into this definition comes from the Purebred Dairy Cattle Association. As noted in the definition, however, the category of dairy cattle is not limited to the listed breeds. While we believe that this new definition of dairy cattle is clearer than the original one we proposed, State, Tribal, or Federal animal health officials may

still be called upon at times to exercise their judgments as to whether the cattle in a shipment are indeed dairy cattle, taking into account such factors as the intended use of the animals.

It was also suggested that we should amend the definition of dairy cattle to exclude dairy steers and spayed heifers, as such animals will not be in the U.S. herd for an extended period and therefore do not pose a major disease risk.

We disagree with this comment. Dairy steers and spayed heifers are part of an industry that has been identified as posing a high risk for disease transmission. Many dairy heifers and bull calves are moved from the dairy to calf-raising facilities, while some calves, mostly bull calves, are marketed privately or through livestock markets. This degree of movement and commingling at young ages and as yearlings makes them “animals of interest” regardless of whether they become herd replacements or feeder cattle. Furthermore, dairy steers typically are in feeding channels longer than beef cattle due to the length of time required for the former to reach finishing weight. Dairy steers and heifers may also undergo more changes of ownership and movements where commingling occurs than beef calves that typically stay with their dams until they are weaned.

Some commenters took issue with our proposed definition of 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.” A commenter representing the pork industry stated that while these restrictions were acceptable for swine moving for other purposes, swine considered to be in slaughter market channels should be exempted. Another commenter, noting that the proposed definition did not allow the animals to

be unloaded from a conveyance even if they aren't commingled, recommended modifying the definition to address "the real risk factor" of commingling.

After reviewing these comments, we have decided to revise the definition of directly in this final rule to clarify that it will allow for necessary stops while addressing the risk factor of commingling. We are defining directly as "moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and with no commingling of animals at such stops."

A commenter representing an egg producers' association stated that we should clarify the definition of group/lot identification number (GIN) to allow for its use on poultry managed together as a group throughout the production system even if initial placement of birds may occur over a more extended period than a single day. The proposed definition stated that a GIN may be applied to a group of animals managed together as one group throughout the preharvest production chain. The commenter stated that the proposed definition could be interpreted to mean that a group of birds must be assembled in one day in order to be eligible for official identification by means of a GIN. The commenter viewed such a requirement as being problematic for the commercial egg industry because it is a common practice at commercial egg farms to place hens in a laying house over a period of days.

The GIN formatting requirements contained in the Animal Disease Traceability General Standards document do lend some support to the commenter's concerns over the proposed definition. Those formatting standards specify that the GIN must include a six-digit representation of the date on which the group or lot was assembled (MM/DD/YY).

We agree with the commenter on the need to recognize current practices in the commercial egg industry. While we do not judge it to be necessary to amend the definition of

group/lot identification number (GIN) in the regulations, we are amending the GIN formatting standards in the Animal Disease Traceability General Standards document to specify that the six-digit date component of the GIN may represent either the date on which the group or lot of animals was assembled or the date when the assembly of the group was initiated.

Another commenter suggested that we modify the definition of group/lot identification number (GIN) as it applies to cattle to recognize that a GIN may be effectively used for some classes of livestock that may move from one location to another but are not managed as a group throughout the production system.

We do not agree with this comment. The GIN is intended to provide a method of livestock identification that is cost effective without sacrificing traceability. Due to the current gaps in animal disease traceability in the cattle sector, allowing the formation of marketing “groups” using a GIN, meaning that a GIN could, for example, be used when a group of animals is moved from or assembled at one premises but then split and/or commingled in subsequent movements, would be unwise from an epidemiological perspective.

In the August 2011 proposed rule, we defined 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 also listed information requirements for the ICVI. A commenter representing a pork industry association expressed concern that the proposed definition could be misconstrued to require the ICVI to be physically issued by the veterinarian at the shipping location. The commenter stated that it is common in the industry for livestock to be inspected at veterinary offices and an ICVI issued while the animals are in transport from origin to destination, a practice that provides a

savings to the producer by supporting timely movement and clear identification of animals involved in interstate transportation.

The proposed definition of the ICVI did not prohibit the issuance of an ICVI at a veterinary clinic. The interstate movement could very well begin at a veterinary clinic, with prior movements to the clinic considered to be “intrastate” and not covered by these regulations. In order to clarify that ICVIs may be issued at veterinary clinics, however, as well as the premises at which they originated and other locations, we are amending the definition of interstate certificate of veterinary inspection (ICVI) in this final rule. The amended definition states that the ICVI is an official document issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement.

A commenter stated that our definition of livestock as “all farm-raised animals” is vague and open to problems of interpretation. It was stated that, rather than tying our definition to a farm, we should define livestock by species.

As we noted in the preamble to the August 2011 proposed rule, our definition of livestock was incorporated directly from the Animal Health Protection Act. As we also noted then, the definition is a broad one covering species that are not included in this rulemaking but that could be commingled at venues, such as approved livestock facilities, with those species that are. Along with the definition of livestock, we included in the proposed rule a separate definition of covered livestock that listed the species subject to the requirements of the proposed new CFR traceability part. We included the latter definition in the proposed rule to remove any possible ambiguity regarding which species were covered under the rulemaking. Therefore, we are not making any changes to the final rule in response to this comment.

In the August 2011 proposed rule, we defined official eartag as an identification tag approved by APHIS that bears an official identification number for individual animals. The proposed definition further stated that beginning 1 year after the effective date of the final rule, all official eartags applied to animals would have to bear the U.S. shield. Previously, the definition of official eartag used elsewhere in the regulations, e.g., in § 71.1, required that the U.S. shield be used only on official eartags bearing an 840 AIN. We proposed to broaden the U.S. shield requirement to all official eartags in order to achieve greater standardization of this type of official identification device.

Some commenters objected to the proposed U.S. shield requirement for all official eartags. It was stated that the proposed requirement effectively mandated that private property be identified with a U.S. shield. Some commenters recommended that we allow official eartags to bear a State seal rather than the U.S. shield or that we allow States and Tribes to issue their own official identification tags without the U.S. shield, as long as combining the tag number and State identifier resulted in a unique number. It was claimed that a State code on an eartag actually provides the most important information enabling traceback.

After considering these comments, we have decided to amend the definition of official eartag in this final rule in a way that will allow the imprinting of a State postal abbreviation or Tribal alpha code within the shield in lieu of "US." Instead of a U.S. shield, official eartags will have to bear an official eartag shield. This final rule includes a new definition of official eartag shield in § 86.1, as well as in §§ 71.1, 77.2, and 78.1. We define official eartag shield as the shield-shaped graphic of the U.S. Route Shield, with "US" or the State postal abbreviation or a Tribal alpha code imprinted within the shield. The alpha codes for Tribes, published in the Animal Disease Traceability General Standards document, may be used by Tribes that

administer their own traceability systems. The States or Tribes will have the discretion to request that their postal abbreviations or alpha codes be imprinted on tags they obtain from approved manufacturers. Additionally, to ease the transition for producers, the revised definition will state that beginning on [INSERT EFFECTIVE DATE OF THIS FINAL RULE], all official eartags manufactured will have to bear the official eartag shield, but all official eartags applied to animals will not have to bear that official eartag shield until [INSERT DATE 24 MONTHS AFTER THE EFFECTIVE DATE OF THIS FINAL RULE].

We believe that these changes are responsive to the issues raised by the commenters, while still achieving greater standardization of official eartags without lessening traceability or increasing costs.

A commenter representing a cattle producers' association favored altering the proposed definition of official identification device or method, which stated that such devices or methods were means of applying an official identification number to an animal or group of animals or otherwise officially identifying an animal or group of animals. The commenter wanted the definition to be broadened so that it would not preclude the use of other, non-numerical means of identification, such as brands.

The proposed definition allowed for the use of brands or tattoos or other methods in lieu of official identification devices when agreed to by the States or Tribes involved in the movement. Nevertheless, as discussed in greater detail below, we are making changes in this final rule to recognize brands, tattoos, and other methods as means of official identification for cattle and bison.

The same commenter also suggested that we add a definition to the final rule of official identification as "any means of identification agreed upon by animal health officials in the

shipping and receiving States or Tribes." Other commenters took a similar view, though they did not recommend adding that specific definition.

It is our view that recognizing any identification method agreed to by the shipping and receiving States or Tribes as official would expand the range of identification methods that would be so recognized to an unacceptable degree, thereby hindering traceability. However, in keeping with our goal of having a flexible traceability system, we will allow for the use of other options deemed adequate at the local level by retaining in this final rule the provision that the shipping and receiving States or Tribes may agree to accept any other form of identification in lieu of official identification.

We are making a change to the definition of recognized slaughtering establishment in 9 CFR parts 77, 78, and 86 of this final rule. In the proposed rule, recognized slaughtering establishment was defined 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. Under the existing regulations in 9 CFR 71.21, slaughtering establishments may receive animals moved in interstate commerce only if they have been approved for that purpose by the Administrator. The amended definition of recognized slaughtering establishment in this final rule states that, in addition to meeting the requirements listed above, the establishment must be approved in accordance with § 71.21.

Finally, while we are issuing a revised version of the Animal Disease Traceability Standards document concurrently with this final rule, we are removing the definition of that document from the definitions section because it is not used elsewhere in the regulatory text.

Recordkeeping Requirements

Recordkeeping requirements, which were contained in § 90.3 of the August 2011 proposed rule, are contained in § 86.3 of this final rule.

Many commenters expressed the view that the requirements in the proposed rule for maintaining official identification device distribution records and interstate movement records would be burdensome for veterinarians, sale barns, livestock markets and/or small producers. Under the proposed rule, any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices was required to maintain for 5 years a record of the names and addresses of anyone to whom the devices were distributed. Approved livestock facilities were required to keep for at least 5 years any ICVIs or alternate documentation that is required under the regulations for the interstate movement of any covered livestock entering the facility. It was stated that the proposed requirements were excessive for traceability needs in the poultry industry, since most broilers are slaughtered by about 8 weeks of age. A commenter representing a poultry association recommended that the requirement be for 2 years for poultry. The 5-year requirement was also deemed by some commenters to be excessive for feeder cattle, given their relatively short life spans. It was also suggested that the requirement should be 2 years for swine.

We agree with the commenters who stated that the requirements for maintaining movement records should reflect animal life cycles and industry practices. The lifespans of poultry and swine are relatively short compared with those of other species of covered livestock. We are therefore reducing the requirement for maintaining movement records to 2 years for poultry and swine.

In this final rule, however, we are retaining the 5-year requirement for the maintenance of official identification device distribution records. This requirement is warranted, as many of the species typically identified with eartags are those with the longer lifespans, with the exception of swine. Also, many official eartag distribution records do not include a species indicator; thus, having tag distribution records maintained specifically by species would often not be practical. Increasingly, these records will be maintained in electronic information systems, rather than on paper, making the recordkeeping requirement less burdensome.

It was also stated that the records that would be required under the proposed rule are maintained by States already, making our proposed requirements duplicative and burdening States unnecessarily.

Many States and Tribes do already have recordkeeping requirements at the local level. For States and Tribes with requirements that meet or exceed those included in this rule, there would be no additional burden. For States and Tribes that do not meet the minimum requirements, additional administrative processes may be needed or new rules may need to be promulgated at the State or Tribal level. States and Tribes receive Federal assistance through cooperative agreements for data processing and recordkeeping for animal disease traceability, lessening their financial burdens. We have the endorsement of the United States Animal Health Association, which has representation from all State animal health officials, for our recordkeeping requirements and for this rulemaking overall.

Contrary to the sentiments voiced by many of the commenters, a few questioned whether a 5-year recordkeeping requirement was adequate, given the long incubation period of such animal diseases as bovine spongiform encephalopathy (BSE). One commenter stated that movement records should be kept for the entire life span of an individual animal.

We will not be making any changes to this final rule as a result of these comments. As States and Tribes convert from paper-based to electronic recordkeeping systems, the length of time that records need to be stored becomes less of an issue. We believe, in fact, that those electronic records will be maintained well beyond the minimum requirements. At the present time, we believe that the requirements we include in this rulemaking achieve a good balance between what is needed and what is cost effective to achieve.

Official Identification Requirements

Official identification requirements for covered livestock, which were contained in § 90.4 of the August 2011 proposed rule, are contained in § 86.4 of this final rule.

Cattle and bison

The August 2011 proposed rule included a schedule for the phasing in of official identification requirements for cattle and bison. We proposed that, beginning on the effective date of this final rule, the requirements would cover all sexually intact cattle and bison aged 18 months and over; dairy cattle of any age; and cattle and bison of any age used for rodeos, recreational events, shows, or exhibitions. We deemed it essential to apply the official identification requirements immediately to those categories because they tend to live longer than feeder cattle, move around more, and have more opportunities for commingling, thus presenting a great risk of spreading disease via interstate movement. We further proposed to initiate a second implementation phase, in which we would extend the requirements to cover all other classes of cattle and bison, including feeders, after conducting an assessment and determining that the requirements were being implemented effectively throughout the production chain for the cattle and bison covered under the initial phase.

Many commenters objected to our plans to include feeder cattle (cattle under 18 months of age) in the second phase of our implementation of these traceability regulations. It was stated that it was unnecessary to include feeder cattle because most of them are destined for slaughter before the age of 2 years and hence do not pose much risk of spreading disease. Other commenters stated that the sheer number of animals that will be required to be identified and tracked under these regulations will make including feeder cattle very costly for producers, veterinarians, sale barns, and State agencies and that the volume of information that will need to be generated may swamp the whole system, for no significant benefit. The eartagging requirement for feeder cattle was viewed by some commenters as particularly burdensome for producers and others, and it was stated that identifying feeder cattle will not help in disease control.

We view the inclusion of feeder cattle in the traceability regulations as an essential component of an effective traceability system in the long term. Typical cattle management systems do not isolate feeder cattle from exposure to diseases. The epidemiological factors that support a complete, overarching traceability system in the United States require that all ages and classes of cattle be included in the animal disease traceability framework.

Many other commenters, including several representing cattle producers' organizations, recognized the necessity of adding feeder cattle to the traceability system but stated that such cattle should be added in a separate rulemaking for maximum transparency. Some of these commenters stated that they could not support the proposed rule as written if feeder cattle were not added in a separate rulemaking rather than under the notice-based process that we proposed.

After reviewing these comments, we have concluded that the inclusion of feeder cattle within the traceability framework can best be achieved through a separate future rulemaking, as the commenters recommended.

As noted above, we indicated in the August 2011 proposed rule that we would apply the official identification requirements to feeder cattle only after conducting an assessment and determining that the requirements were being implemented effectively throughout the production chain for those classes of cattle and bison covered under the initial implementation phase. Many industry commenters offered suggestions for an alternative assessment model to the one we described in the proposed rule. While feeder cattle will be subject to the official identification requirements in a future rulemaking rather than the current one, APHIS still recognizes the merits of conducting such an assessment as that future rulemaking is being considered. APHIS plans to consult closely with representatives from States, Tribes, and industry, including individuals from stocker/feeder sectors most affected by applying the official identification requirements to feeder cattle and most knowledgeable about the practical issues and concerns that can arise as a result.

One commenter expressed the concern that by requiring individual identification for sexually intact cattle over 18 months in the current rulemaking, we will inadvertently be including feeder heifers that were never intended to go into a breeding herd but that are being shipped to feedlots out of State.

When this final rule becomes effective, sexually intact beef heifers less than 18 months of age will be exempt from the official identification requirements, thus avoiding potential conflicts in determining if the animal is in feeder channels or being used for breeding purposes.

Some commenters, including the one who wrote to express concerns about including feeder heifers in this rulemaking, advocated increasing the age for the category of feeder cattle. It was stated that the identification requirements should apply to sexually intact cattle 24 months and older rather than 18 months and older. Another commenter from the same State indicated that 24 months would better represent the age of feeder cattle in that State, as under common operating conditions, calves after weaning may remain on pasture or grass until 2 years of age before being sold as feeder cattle.

We recognize the management and marketing challenges the 18-month age limit may cause, but emphasize the importance of retaining it based on the need to identify cattle and bison for disease control purposes. The 18-month age threshold has been used successfully in the brucellosis eradication program to define test-eligible cattle. Age, when not documented, can more accurately be determined for cattle at 18 months of age, as they would have lost their first pair of temporary incisors, than it can at 24 months. The need to officially identify this class and age category is further demonstrated when we note that since 1995, the number of heifers vaccinated for brucellosis has declined by approximately 50 percent, and the trend continues. Today, fewer than 20 percent of heifers are vaccinated for brucellosis. This low level of official identification is concerning, in particular for a class of animals of which many will be part of the breeding herd. For those heifers that were vaccinated for brucellosis, the official eartag applied to meet the identification requirements for vaccinates would meet the need for official identification required by this rule. We have noted several times that the States and Tribes have the option to recognize alternative forms of identification when both the shipping and receiving animal health officials agree. This flexibility allows unique and/or regional issues to be considered at the local level. In the scenario provided by the commenters, we believe that the

alternatives to the official identification requirement for interstate movement of feeder heifers over 18 months of age to feedlots can best be administered by the shipping and receiving State and Tribe. Exempting all heifers over 18 months of age would hinder traceability nationwide; thus, in these regulations, we are maintaining the 18-month age cut-off for the official identification requirement. Under these regulations, however, calves that remain after weaning on pasture or grass until 2 years of age before being sold as feeder cattle will not have to be officially identified before 24 months because they are not moving interstate until then.

Use of brands as official identification for cattle

One aspect of the August 2011 proposed rule that generated many comments was our decision to recognize only official eartags as a means of officially identifying individual cattle. Many commenters expressed the view that brands should continue to be recognized as an official method of identification for cattle and bison when the shipping and receiving States and Tribes agreed. Many of these commenters also maintained that we should continue to recognize tattoos as official. Commenters pointed out that brands have worked effectively in brand States for many years and that they provide a permanent method of identification, whereas eartags can be removed or lost. It was further stated by one commenter that electronic brand inspection certificates are a great aid to traceability, as they can provide traceback to the premises of origin for individual animals in less than 30 minutes. It was also claimed that the delisting of brands as a means of official identification would strip from States and Tribes the option of continuing to rely upon the brand accompanied by a brand certificate. A commenter further claimed that removing brands from the regulations as a means of official identification for cattle would discriminate against producers in States that require brand inspection as a condition of leaving a

brand inspection area because such producers would have to pay for both the brand inspection and for other identification as well, as required by the proposed rule.

APHIS recognizes that brands and brand-certificate information can provide timely information that may enhance disease traceback investigations. The original intent of the proposed official identification requirements was to define as official identification devices and methods those that could easily be administered by all States and Tribes, since all States and Tribes would be required to accept all official identification devices and methods listed in the regulations for each species. As we noted in the preamble to the proposed rule, we did not view brands as suitable for listing as a means of official identification for cattle because 36 States currently do not have brand inspection authorities. The option for States and Tribes to accept other identification methods, such as brands, in lieu of official identification was provided for in the proposed rule.

Some commenters provided recommendations for alternative text that would maintain the initial intent of the proposed requirements, while achieving the recognition of brands as an official identification method under specific conditions. Several commenters suggested that brands be accepted as official identification via bilateral or multilateral agreements or memorandum(s) of understanding between or among agreeing shipping and receiving States or Tribes.

APHIS appreciates and supports the suggested text revisions, and in this final rule, we are modifying § 86.4(a)(1) to add to the list of official identification devices and methods for cattle brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate if the shipping and receiving State or Tribal animal health authorities agree to recognize them as such. We are also amending the paragraph to recognize as official

identification tattoos and other identification methods acceptable to a breed association for registration purposes, provided that the animals are accompanied by a breed registration certificate and that the shipping and receiving States or Tribes agree to recognize them as such.

Some commenters cited as a concern the possible effects of the proposed official identification requirements for cattle on our import requirements. A commenter stated that in the in an earlier rulemaking (70 FR 459-553, Docket No. 03-080-3) in which we established requirements for the importation of animals and animal products from minimal-risk regions for BSE, we cited brands as a permanent form of identification and acknowledged that eartags may be lost. Under that rulemaking, imported bovines had to be identified with both brands and eartags. Another commenter stated that since cattle imported from Canada and Mexico are currently required to have a hot-iron brand, if we were to stop recognizing hot-iron brands as official identification for domestic cattle, those nations could claim that the United States is imposing a higher standard on their producers than on domestic producers. The commenter stated that we may not be able to keep the branding requirement in effect for imported cattle.

This rulemaking does not affect our import/export requirements. While brands may be used as official identification for cattle moving interstate in accordance with the provisions of this final rule, the branding of imported cattle from Canadian and Mexico is not intended to provide official individual identification, but is rather a permanent mark used to designate the country that exported the animal.

One commenter stated that brands, accompanied by a certificate from a recognized brand inspection authority, should be allowed as a group/lot identifier. It was claimed that brands are more effective than any other means of group/lot identification provided for in the proposed rule

and are the only means that would enable a traceback of a group/lot that inadvertently becomes separated from a herd and for which the paperwork is lost or destroyed.

The GIN provides a uniform standard for identifying groups of animals that are managed together throughout the preharvest production chain. In such a situation, the group is identified in its entirety as it moves from location to location with the GIN. The Animal Disease Traceability General Standards document provides the format specifications for the GIN. This standard number format is needed to establish and maintain compatibility of information systems.

Animals that are not maintained with the group will need to be identified with an official eartag or as otherwise agreed to by the animal health officials of the shipping and receiving State or Tribe. The revised definition of official identification device or method recognizes brand certificates as official when agreed to by the shipping and receiving State and Tribe. While we will be maintaining the numbering format specification for the GIN, States and Tribes have the option to accept other methods of identification, including those of groups of animals.

Finally, in contrast to the general trend of the comments on branding, one commenter supported the delisting of brands as a means of individual identification because of the cost to producers of brand inspections and health papers in brand-inspection States.

We are not making any changes to this final rule in response to this comment. Health papers and brand inspection are two different activities. States that have elected to administer brand inspections have done so for purposes of determining ownership and preventing theft. Health papers, such as ICVIs, provide documentation that an accredited veterinarian has examined the health of the animals.

Identification of direct-to-slaughter cattle

Many commenters favored exempting all direct-to-slaughter cattle from any identification requirements. It was stated that the risks to animals and the personnel that would be tasked with tagging them, along with the costs of tagging and reading tags, outweigh the benefits of tagging.

We agree that cattle moving directly to slaughter pose less of a disease risk than do other cattle, and we did allow in the August 2011 proposed rule for the use of backtags in lieu of official identification for cattle moving directly to slaughter. We view exempting such animals from any identification requirements as a hindrance to traceability, however.

In the August 2011 proposed rule, we indicated that our recognition of backtags in lieu of official identification for direct-to-slaughter cattle was to be phased out. Many commenters opposed the phase-out of backtags for identifying slaughter cattle. It was stated that while backtags have a poor reputation when placed improperly and when not collected by USDA's Food Safety and Inspection Service (FSIS) or plant personnel at slaughter, when they are properly placed, carefully collected, and recorded, backtags are an economically efficient, easily readable, and recordable form of identification for slaughter cattle.

After reviewing these comments, we have decided to amend § 86.4(b)(1) in this final rule to allow permanently the use of backtags in lieu of official identification, albeit with some new stipulations. One commenter who supported the proposed phase-out of the use of backtags in lieu of official identification for direct-to-slaughter animals thought the phase-out appropriate because some slaughter establishments put some cattle on feed after they arrive at the plant for conditioning purposes. After this extended period of time, the backtags are unlikely to be on the animals when the animals are harvested. Therefore, we are stipulating that the exemption from

the requirement for official identification only applies when the animals going directly to slaughter are harvested within 3 days of their movement to the slaughter plant. This exemption is intended to apply only to cattle that are moving directly to a slaughter plant to be slaughtered shortly after arrival. We agree with the commenter's concern about the practicality of using backtags for slaughter animals when the animals are not going to be slaughtered shortly after their arrival. We believe that the 3-day timeframe adequately address that concern. Cattle moved to slaughter will typically be slaughtered within 3 days of that movement. If they are not slaughtered within 3 days, the movement is not considered to be directly to slaughter, and permanent official identification is required to ensure that proper identification is maintained until slaughter. If the determination to hold animals for more than 3 days is made after the animals arrive at the slaughter establishment, the animals must be officially identified with an official identification device. Such identification will be considered a retagging event in accordance with § 86.4(d)(4)(ii).

Another commenter stated that backtags used on slaughter cattle can sometimes be lost during high-pressure washing prior to slaughter. To address this issue, we have amended § 86.4(d)(2) in this final rule to account for the cross referencing of all animals, as well as their carcasses, with backtags or other identification received by the slaughter plant. Requiring the cross-referencing of the devices with the live animals, and not just their carcasses, will help to ensure that traceback capability is not lost between arrival at the plant and slaughter.

Approved tagging sites

In the August 2011 proposed rule, we provided an exemption to the requirement that cattle and bison must be officially identified prior to interstate movement if the cattle or bison were moved directly to an approved tagging site and officially identified prior to commingling

with cattle and bison from other premises. Some commenters favored allowing approved tagging sites to tag cattle moved interstate with a back tag prior to commingling, which then could be correlated with the official eartag once the cattle are sold and sorted and before further movement. It was suggested that such an approach would enable markets that become approved tagging sites to better manage the flow of cattle in and out of the sites on a sale day, since having to tag cattle and bison with an eartag prior to commingling could prevent such facilities from operating at the speed of commerce.

We recognize that applying the official eartag on cattle or bison received at approved tagging sites before they are commingled can be problematic in some situations. Therefore, this final rule allows the use of backtags prior to commingling, as well as other practices that will enable approved tagging sites to efficiently manage livestock while ensuring that the identity of each animal is accurately maintained until tagging so that official eartags may be correlated to the person responsible for shipping the animals to the tagging site.

Commuter herds

Another exemption from the official identification requirements was provided for cattle and bison moving interstate as part of a commuter herd with a copy of the commuter herd agreement. It was recommended that we also allow the use of other documentation or forms as agreed to by the States or Tribes involved in these movements that may not specifically be labeled or called commuter herd agreements. We agree with this comment, as it is in keeping with our approach to developing a traceability system that will allow States and Tribes to use the methods that work best for them, and we are amending § 86.4(b)(1) accordingly.

Use of multiple eartags

In the August 2011 proposed rule, we prohibited the use of multiple official identification devices on a single animal with the following exceptions:

- 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.
- An eartag with an AIN beginning with the 840 prefix (either RFID 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.
- 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.

Many commenters opposed the proposed restrictions, with some questioning our rationale that the use of multiple official identification devices on the same animal can cause confusion and impede efforts to track the movements of that animal. Some of these commenters stated that, contrary to our view, using multiple official identification devices on the same animal can create redundancies and thereby aid traceability. Other commenters requested clarification of the requirements, suggesting that if brands or tattoos were to be allowed as official identification for cattle in the final rule, then the prohibition on multiple official identification devices would seem to preclude the use of eartags on branded or tattooed cattle.

As stated in the preamble of the August 2011 proposed rule, the use of multiple official eartags with multiple official identification numbers for a single animal can cause confusion and impede efforts to track the movements of that animal. This problem has primarily occurred when the same animal had multiple National Uniform Eartagging System (NUES) eartags, sometimes as many as three or more. We acknowledge that having more than one NUES tag may provide additional points of reference for the animal's location. For example, if the animal with multiple NUES tags is the index animal that has tested positive for the disease under investigation, the multiple NUES tag numbers for that animal are all recorded when the traceback investigation is initiated. While applying an additional NUES eartag effectively identifies the cattle in the shipment, however, the animals become difficult to trace when the official number on the new official eartag is not recorded or aligned with the initial or existing NUES tag number. An investigating animal health officer often sees tag numbers on epidemiological reports of suspect animals that need to be located for testing. Without being able to cross-reference the multiple official identification numbers, the animal health official can only assume that each official identification number that becomes part of the investigation represents a different animal that must each be traced. This increases the complexity of the traceback and lengthens the investigation.

After reviewing the comments on this issue, we considered requiring recording the initial number(s) when applying an additional official eartag to align the official identification numbers of the new tag and the tag(s) already attached to the animal and reflect that both the existing eartag(s) and the new eartag are on the same animal. However we determined it was more practical to adhere to the general approach we took in the proposed rule, which was to prohibit the application of additional official identification devices to a single animal unless warranted by

a specific situation. We are, however, clarifying that the restriction applies to official eartags only. As noted above, under the provisions of this final rule, brands, tattoos, and breed registry certificates may be recognized as official by shipping and receiving States and Tribes. Because only the use of multiple official eartags will be restricted, it will be permissible to tag animals already identified with brands or tattoos.

Adjusting for instances where stakeholders have indicated that additional official eartags would provide herd management advantages, we are also clarifying the language of the above-listed exceptions, including information recording requirements, and adding an exception that will allow the use of multiple official eartags with the same official identification number on a single animal. Producers often use AIN tags to manage herds because the tags are large enough to contain both management numbers and the AIN. Tag manufacturers, at the request of producers, have provided sets of two or three tags with the same AIN. This allows the AIN eartag to be applied in each ear; in some situations, a smaller button or RFID tag with the same number is applied to one of the ears. AIN tags with the same number thus may be applied to the same animal. While metal NUES tags have not been provided in sets, this option will apply to any official eartag produced with the same number and attached to the same animal.

Removal or loss of official identification devices

Some cattle producers stated that traceability considerations are often ignored by slaughterhouses, and the traceability of an animal is lost and open to fraud once an animal is dismembered and its tags separated from the meat. It was suggested that such noncompliance could continue to hinder traceability even after traceability program is implemented. Many of these commenters stated that before the proposed rule is finalized, APHIS must have a defined plan and agreement in place with FSIS and/or the harvesting establishments relative to the

collection and recording of retired tags at slaughter. Such recording and retirement is necessary for a bookend system to function.

We recognize that compliance with all the regulations is important to support traceability and plan to work with FSIS and slaughter plants to ensure the collection of identification devices. A memorandum of understanding (MOU) will be established between APHIS and FSIS regarding the responsibilities of the two agencies for the collection of identification at the slaughter plants. We are also amending § 86.4(d)(2) to state explicitly that collecting identification devices at slaughter and providing them to APHIS and FSIS is the responsibility of the slaughter plant. Additionally, this rulemaking requires that a cross reference of the carcass and the animal's identification be maintained through carcass inspection. Maintaining the identity past that inspection is outside the scope of these regulations, however. When the carcass passes inspection, the collected identification devices are to be provided to APHIS, which will be responsible for the administration of tag and animal termination recording.

Replacement of official eartags

Some commenters stated that our proposed process for replacing lost tags would necessitate additional recordkeeping and place an unrealistic burden on small producers. It was recommended that producers be exempted from the 5-year recordkeeping requirement associated with applying a new device after one has been lost.

The vast majority of the records that support the traceability regulations will be maintained by individuals other than producers. Since producers may retag animals that lose their official eartags, they may be the only ones that have such information. Therefore, these records must be maintained by the producer. While tag loss is expected, the percentage of

animals that lose their eartags is a small percentage of all animals tagged. Therefore, the volume of records any producer will need to maintain for this requirement is expected to be quite low.

Some commenters requested that we amend the final rule to allow producers to obtain a replacement AIN tag with the same 840 AIN when a tag has been lost or is no longer a viable tag. It was stated that because these tags are already used for management purposes in many dairies and some beef operations, allowing producers to replace AIN/840 tags with duplicates would avoid unnecessary confusion that could be caused by assigning an animal more than one number and thus help to maintain the viability and integrity of the national traceability system.

We agree with this comment. In fact, while the proposed rule did not include regulatory text allowing for the issuance of such duplicate tags, it did not expressly prohibit such issuance either. The existing Animal Identification Management System (AIMS) has had a tag reporting option established for AIN device manufacturers for reporting the distribution of duplicate AIN eartags. Additionally, ISO 11784, which AIN radio frequency tags adhere to, provides for the encoding of a portion of the code for the administration of duplicate replacement tags.

Nonetheless, we are amending § 86.4(d)(4) in this final rule to allow for both the retagging of animals with tags imprinted with different official identification numbers from the ones being replaced and retagging of animals with replacement or duplicate tags that have the same official identification number as was imprinted on the animal's initial official eartag. While the commenters referenced the issuance of duplicate replacement eartags for 840 AIN tags only, the amended text allows for the use, as well, of other animal numbering systems that can readily be produced with the animal's original number. The protocol for the administration of duplicate replacement eartags is provided for in the Animal Disease Traceability General Standards document, a revised version of which is being released in conjunction with this final rule.

Other issues pertaining to the use of official eartags on cattle

Some commenters recommended that the final rule should allow the use of owner-shipper tags, for feeder cattle only, at receiving locations for cattle owners or shippers who lack tagging facilities and who sell directly to buyer in another State. A few of these commenters, while supporting the recommendation, stated that this tagging option should be allowed only at an approved tagging site.

While markets are likely to be the most common locations that become approved tagging sites, animal health officials may approve feedlots to tag animals on behalf of the producer that shipped or sold the animals. This exemption from the requirement for official identification prior to interstate movement, however, is limited to locations that are approved tagging sites. Producers that elect to use a tagging site may choose to obtain the official eartags and provide them to the personnel of the tagging site to have those official tags applied to their animals. We consider the option of officially identifying animals at any destination to be too broad, potentially leading to deficiencies in the maintenance of identification records. The approval process for tagging sites allows for oversight of these locations to ensure that necessary records are properly maintained and provides adequate flexibility to allow States and Tribes to determine the extent to which tagging sites are utilized.

Some commenters suggested that we should require a State code to be imprinted on official eartags. It was claimed that a State code provides the most important information needed to enable traceback.

While the numbering system for the NUES utilizes State and Tribal codes, the 840 AIN does not. States that obtain AIN devices may elect to have the State abbreviation imprinted on the AIN eartags, and several States are doing so when they obtain the tags. Unlike NUES tags,

the AIN tags are available in many tag types, currently exceeding 40. The inventorying of multiple tag types by States and Tribes creates significant logistical challenges, and to minimize the options would lessen the flexibility currently provided. While States and/or producers that obtain the tags may have their State or Tribal codes imprinted on them, we determined that requiring it to be imprinted on the tag or to be part of the AIN would cause tag distribution inefficiencies that outweighed the potential advantages. For example, because the distribution of AIN tags is not limited to direct shipment from the manufacturer to the producer's farm at the time of manufacture, the State where the farm receiving the tags is located may be unknown. Additionally, maintaining distribution records of both NUES tags and AIN tags in electronic systems is imperative for timely retrieval of tag distribution data for traceback investigations, as the State designations alone are typically not specific enough for this purpose.

Our reliance on eartags for official identification in the proposed traceability regulations was questioned by some commenters on the grounds that tagging is not necessarily synonymous with effective traceability.

We agree that official identification in itself is not sufficient for an effective traceability system. When combined, however, with the information obtained from the records of tag distribution and the availability of management records and movement documents with nationally unique numbers, eartags have been and will continue to be invaluable to traceback investigations.

In our earlier discussion of the definition of official eartag, we noted that some commenters opposed the U.S. shield requirement, and we amended the definition in response to those comments. Some of those commenters recommended that we allow States and Tribes to

issue their own official identification tags without the U.S. shield, as long as combining the tag number and State identifier resulted in a unique number.

A standardized way of marking all official tags is considered critical to help clarify the confusion that currently exists relative to eartags being official. Standardization will support a more user-friendly system and help increase the level of compliance. We believe it is important to have a simple and standardized means of determining if a tag is official. The standardization of numbers also allows for automated error checking, resulting in greater data integrity in information systems. The addition of the definition of official eartag shield, discussed above, to the regulations allows the States and Tribes to imprint their postal abbreviations or alpha codes instead of “US” on the tag. States and Tribes will be able to administer their own official eartags, provided that those eartags adhere to our definition of official eartag.

A commenter questioned how a producer or organization would request printed AIN tags for a location without a national premises identification number (PIN). The commenter recommended allowing AIN eartags to be ordered with a State location identifier in lieu of a national PIN.

In this rulemaking, while continuing to allow for the use of the PIN, we also provide for the use of a location identification (LID) number, which we define 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 noted in Section B of the Animal Disease Traceability General Standards document, producers may obtain AIN tags provided they have either a PIN or an LID.

Some commenters recommended that we add language to the final rule to provide a method for the use of electronic identification of cattle that are currently located in the United States but that originated in another country.

APHIS does recognize that limiting the use of 840 AINs to cattle born in the United States and the transition from accepting manufacturer-coded AINs as official will cause a void in the availability of official RFID tags for imported livestock. The use of the manufacturer-coded RFID AIN tags will provide an option for the identification of such cattle until the date such tags are no longer recognized as official at time of application. Consideration of a long-term solution to this issue is being given, and any resulting changes will be reflected in future updates of the Animal Disease Traceability General Standards document.

A commenter recommended that we require official 840 RFID tags for all female dairy cattle and those male dairy cattle used for reproductive purposes and that we require an official 840 “brite” or RFID tag for those male dairy cattle (bull calves) used for meat purposes, i.e., fed veal or dairy beef steers.

In keeping with the vision for the animal disease traceability system set out by the Secretary on February 5, 2010, we have elected not to specify which eartag is required for any sector of the cattle population, as it is our thinking that this decision is best made by the producers and animal owners.

A commenter stated that we should not allow exemptions from official identification requirements for cattle and bison moving to approved livestock facilities, as he believed we did in the August 2011 proposed rule. The commenter stated that such facilities may be high-risk facilities due to the possibility of commingling of animals on the premises.

In the proposed rule, we provided an exemption from the official identification requirements for cattle and bison moving interstate to an approved tagging site. This exemption was intended to allow producers to have their animals tagged at such a site when they were unable to tag the animals themselves. We did not propose to exempt cattle and bison moving interstate to an approved livestock facility from the official identification requirements. The exemption for movement to an approved livestock facility applies to the ICVI and was provided because livestock markets are the approved facilities where accredited veterinarians are typically available on sale days to conduct the necessary inspections and issue the ICVIs.

Miscellaneous cattle identification issues

Under the August 2011 proposed rule, beef cattle under the age of 18 months did not have to be officially identified prior to interstate movement during the initial phase of the implementation process, but dairy cattle, regardless of age or sex or current use, were required to be officially identified. Some dairy producers stated that the age for requiring official identification prior to interstate movement should be the same for dairy and beef cattle.

We do not agree with this comment. Dairy calves are raised much differently than calves in the beef sector, which typically stay with their dams until weaning. The significant movement of dairy calves and yearlings and their commingling with cattle from multiple dairies increases the risk of disease spread, justifying their inclusion in the current rulemaking. As we have already noted, we now intend to subject feeder cattle to the official identification requirements in a separate future rulemaking.

A commenter requested clarification on whether steers of dairy origin would be exempted from identification requirements when this final rule became effective.

Under the proposed rule, all dairy cattle were to be subject to the official identification requirements beginning on the effective date of this final rule. Upon further consideration, we have concluded that there would be minimal value in officially identifying for the first time older dairy steers that may have already moved interstate before the effective date of this final rule. While the identification of animals in the dairy sector is important, in particular at young ages, we have determined it to be appropriate, at this point, to apply the official identification requirements only to male dairy animals born after the effective date of this final rule. We have revised the provision pertaining to the official identification of dairy cattle for interstate movement to state that beginning on [INSERT EFFECTIVE DATE OF THIS FINAL RULE], all dairy females, regardless of age, and all male dairy animals that are born after that date will be required to be officially identified prior to interstate movement.

A commenter requested that we include third-party traceability programs, such as the above-mentioned AMS-recognized programs, currently used by numerous cattle producers to verify the age and source of livestock as an official identification method.

The use of the official identification devices or methods allowed for cattle under these regulations can easily support such programs if the eartags used in the programs bear numbers that meet our definition of official identification number. The AMS programs referred to earlier require a unique number only within their certified programs, however. Since there are a number of other systems that verify processes, feeding claims, exports, quality system assessment, or product label claims, relying only on system-specific or proprietary numbers would cause problems in traceability systems that require nationally unique numbers. Therefore, we are not making any changes to the final rule in response to this comment. However, as noted earlier, APHIS will work with AMS to establish greater standardization, in particular for animal

numbering systems, to ensure that identification methods meet the requirements necessary for both programs.

A commenter stated that the cattle industry cannot afford to have individual tags read and that APHIS should allow tags or brands to be used to identify groups of cattle.

These traceability regulations do allow for the use of group identification when the animals move through the preharvest production chain as one group. In such a situation, the group can be identified in its entirety. However, when individual animals are moved and commingled with cattle from other premises, the determination of which animal was at what location can no longer be achieved with a group identifier; therefore, we cannot allow for the broad use of group identification for cattle that the commenter recommends. APHIS does recognize the complexity of recording official identification numbers on the ICVI and has limited that requirement in this rulemaking to those cattle and bison that will be covered by the official identification requirements on the date when this final rule becomes effective.

A commenter took the position that APHIS should allow one PIN to apply to all cattle at various ranches owned by a single operation.

Location identifiers are administered by the States and Tribes. The use of one location identifier is often appropriate when cattle typically move among those locations. Allowing the use of a single location identifier to designate multiple premises or locations, however, can be problematic if there are large distances between the various locations. For example, consider an operation with a home location and one or more locations at various distances, one of which is 20 miles from the home premises. In this example, suppose that a disease is traced to the home farm and a 10-mile quarantine zone is placed around it. If at the time of quarantine, the animal health official is only aware of the location of the home premises (because all locations are

reported as one), the operations outside the 10-mile zone would initially be left out of the investigation. As the investigation is further conducted, the quarantine zone will be extended, but having knowledge of those additional locations early on helps animal health officials quickly determine the scope of the disease and reduces the time and expense of the investigation. Since States and Tribes administer location identifiers, it is their prerogative to determine how to issue them in such situations.

It was suggested by a commenter that APHIS should require the approval of both the sending and receiving States or Tribes for use of group/lot identification with cattle. A location-based GIN would appear to be most useful in identifying calves from the ranch of origin to the backgrounding feedlot, according to the commenter. A location-based GIN, particularly when associated with a registered brand, would provide a level of traceability that is cost-effective for the producer, and would likely yield the level of granularity that animal health officials seek when conducting a disease traceback investigation.

While State and Tribes have the option to agree on other methods of group/lot identification, for such identification to be recognized under these regulations as official, the animals in a shipment must meet our criteria for recognition as a group or lot, i.e., they must be of the same species and must comprise a “unit” that is managed as one group throughout the preharvest production chain. In such a situation, the entire group of animals is being traced, and one number for the entire group is very adequate for traceability. It is the view of APHIS that these criteria for a group or lot of animals should be uniformly applied, so that, while States and Tribes may agree on alternative forms of group/lot identification, if they do not agree, a receiving State or Tribe will not be required to accept shipments of animals that do not meet the criteria.

Some commenters stated that what they termed "event cattle," meaning cattle that may be used for a single event, are not a high-risk group like rodeo cattle and, therefore, should not be grouped with the classes of cattle and bison subject to the official identification requirements on that date that this final rule becomes effective. It was further suggested that event cattle should not have to be individually identified and, even if they were, that their identification numbers should not have to be recorded on an ICVI.

We do not agree with these comments. The commingling of cattle with rodeo stock, even for a short period of time, increases the risk of disease exposure. Additionally, due to the frequent movement of such animals, the documentation of individual animal numbers is important.

It was suggested that when commuter herds are approved for movement of animals between States or Tribes without meeting the requirements of the proposed regulations, language should be added indicating that if any of these animals are shipped to a different State not included in the commuter herd agreement, then these animals must be officially identified and documented to the original State of origin.

We agree with this comment and are incorporating it into § 86.4(b)(1)(i)(A) in this final rule.

Official identification requirements for poultry

Many commenters opposed our proposed poultry identification requirements. It was stated that the proposed regulations would allow vertically integrated operations to use group identification for thousands of birds, while mandating individually numbered leg bands for any bird that crosses State lines and is not kept in an isolated group "throughout the preharvest chain." Such leg bands are impractical, according to the commenters, and requiring them could

be devastating for many pastured poultry and backyard poultry owners. It was also maintained that since many pastured poultry operations and backyard poultry owners order day-old chicks from hatcheries scattered around the country, the proposed regulations would apply to many people who never take their birds across State lines after that first shipment.

We have reviewed these comments and are revising this final rule to take into account the situation of poultry growers that are not part of the National Poultry Improvement Plan (NPIP) but that receive chicks from a hatchery and/or re-distributor (feed store, etc.). Poultry belonging to such growers will be exempted from the official identification requirements under this final rule, but we will require that the persons responsible for the animals received from the hatchery and/or redistributor maintain a record of where they obtained the birds. Redistributors will be required to maintain a record of where they received chicks and which growers received the birds. Most growers already retain these records, so the recordkeeping requirement should not cause an additional burden.

It was suggested by some commenters that we substitute for the proposed poultry identification provisions a statement that interstate movement of poultry would be governed by the NPIP. The existing NPIP program has worked well, according to the commenters, and there is no reason to add new, onerous tagging requirements.

While the voluntary NPIP meets our traceability requirements and has worked well for those States that require it, we acknowledge that not all poultry growers and sectors of the industry participate in NPIP. We believe it is important to maintain poultry, a major commodity group, as a covered species in these regulations and have done so. We continue to maintain reference to NPIP, but as noted above, we are amending this final rule to address the primary concerns raised by the “backyard” poultry growers.

Some commenters also stated that existing poultry numbering systems have been working well and should be recognized in this rulemaking as group or flock identifiers.

This final rule establishes a standard for identifying groups or flocks of poultry by means of the GIN. Shipping and receiving States or Tribes may also agree, however, to recognize alternate methods of identification in lieu of official identification for animals moved from the shipping State or Tribe into the receiving one, thus allowing for the use of other numbering systems that have been working effectively as group or flock identifiers.

Commenters representing the poultry industry also stated that requiring identification of chickens moved to a custom slaughter facility would cause a significant and unwarranted economic burden for producers.

In the proposed rule, we did exempt from the requirements of these regulations any covered livestock moving interstate to a custom slaughter facility in accordance with Federal and State regulations for preparation of meat for personal consumption. To alleviate concerns expressed by the commenters, we are clarifying the intent of the exemption in this final rule by removing the phrase "for personal consumption." Therefore, under § 86.2(e)(2) of this final rule, all livestock moved to a custom slaughter facility will be exempted from the traceability regulations.

Some commenters suggested that commuter herd provisions, which exempt cattle and bison meeting the commuter herd requirements from official identification requirements, should be extended to include commercial poultry flocks as well. One of the commenters stated that the commercial broiler industry should be allowed to form agreements with States to ensure traceability.

Our commuter herd provisions were intended to address a specific need in the cattle industry, where cattle move across State lines under retained ownership for grazing purposes. What the commenter is asking for more closely resembles the provisions in 9 CFR 71.19 that provide for the movement of swine within a production system. We do not believe that changes are necessary in this final rule in regards to expanding the concept of commuter herds to the commercial poultry industry, as the NPIP guidelines, which are well-established in the commercial poultry industry, have provided very good traceability solutions. Additionally, the proposed rule did provide for States and Tribes to use other methods of identification and movement documentation for poultry. That is still the case under this final rule; thus, States and Tribes may enter into agreements with the commercial broiler industry, as suggested by the commenter.

Official identification requirements for equines

Many commenters stated that a physical description of the animal should qualify as official identification for equines without that description having to be approved by an official of the receiving State or Tribe, as provided for in the proposed rule.

That proposed requirement was intended to apply only to those situations where the person examining the equine's identity had questions regarding the description provided. Where such uncertainty existed, an animal health official in the receiving State or Tribe was to determine if the description was sufficient or not. In this final rule, § 86.4(a)(2) has been revised to provide, as an option, that the animal health official at the destination may make the determination when called upon, but the use of the animal health official is not required. For example, the accredited veterinarian or authority at an equine exhibition may elect to make the determination of the equine's identity without review by the animal health official.

A commenter suggested that we should provide for additional identification methods for equines, such as existing microchips and biometric measurements.

These traceability regulations do provide for various methods of identification, including physical descriptions, electronic identification, digital photographs or other methods agreed to by the shipping and receiving States or Tribes. Most of these methods are already in use, though biometrics is relatively new. Adding a second microchip that is ISO compliant to an equine that already has an existing non-ISO injectable transponder is not practical. We are, however, amending § 86.4(a)(2) of this final rule to add an option to recognize the non-ISO transponders as official for those applied to the equine on or prior to [INSERT DATE 12 MONTHS AFTER THE EFFECTIVE DATE OF THIS FINAL RULE]. We are also adding a reference to biometric measurements as official identification.

Additionally, in response to other commenters who viewed our proposed equine official identification requirements as burdensome, we are adding some exemptions from the official identification requirements. Most of these parallel the exemptions allowed for cattle and bison. One, however, reflects the unique nature of equines. Equines moving interstate would be exempted from the official identification requirements if used as a mode of transportation, e.g., for riding or to pull a buggy, provided they then return to the original location. These exemptions will also be added to the ICVI requirements for equines in § 86.5(f).

A commenter questioned the need for imposing additional identification and veterinary inspection requirements for equines when current requirements for Coggins tests are being met.

Horse owners who are meeting vaccination and Coggins-test requirements would likely satisfy the requirements for official identification and documentation of equines under these regulations. Documentation completed in accordance with the equine infectious anemia (EIA)

requirements in 9 CFR part 75 may be used in lieu of ICVIs. Identification previously used on EIA test reports may be accepted by the animal health official in the receiving State or Tribe.

Official identification requirements for swine

Some commenters representing the swine industry expressed concern that allowing for the use of LIDs in lieu of PINs defeats the purpose of a single nationally standardized number and may lead to unnecessary confusion and difficulties in implementation. The commenters state that the PIN has become the preferred location identifier for the pork industry, with more than 95 percent of swine premises having registered with the standard PIN to date. Members of the industry strongly supported our maintaining the National Premises Allocator, National Premises Information Repository, and the data elements that are currently included in the repository. One comment from a pork producer stated that the use of the PIN should be mandatory on tags applied to sows going to cull markets.

This rulemaking does not disallow the use of a PIN, nor does it prohibit an industry from adopting it as a standard. We are simply providing additional flexibility for States or Tribes that offer an acceptable alternative means of identifying locations where livestock are raised.

Commenters representing the pork industry also expressed concern about our modifying some current definitions in the CFR by removing the data standards for GINs and PINs and defining them in the Animal Disease Traceability General Standards document. The commenters stated that while the proposed changes would allow for flexibility in defining various location identifiers and for the use of the LID as a component of a GIN, they will lead to unnecessary confusion. To avoid that confusion, these industry commenters requested that APHIS recognize the data standards defined in § 71.1 for the PIN and GIN as the official data standards for the pork industry.

We do not agree that it is the role of APHIS to establish industry standards; rather, it is to set minimum standards for States and Tribes that provide flexibility at the local level. If an industry chooses to adopt a specific standard, that is its prerogative as long as the standard meets the minimum guidelines of these regulations or is agreed to by animal health officials involved in the interstate movement.

Pork industry commenters further stated that, to avoid any possible conflicts that might arise between the requirements set out in this rulemaking and the currently applicable sections of the regulations that deal with the identification of swine in interstate commerce, veterinary inspection, and issuance of ICVI's, APHIS should clearly indicate in this final rule that the requirements of § 71.19 are the ones that govern the interstate movement of swine.

We agree with this comment. The August 2011 proposed rule did, in fact, state that swine moving interstate were subject to the requirements of § 71.19, and this final rule does so as well.

Official identification requirements for captive cervids

A commenter stressed the importance of flexibility in identification requirements for cervids. It was stated that such identification methods as brands, tattoos, and microchips, may be more appropriate than eartags for some markets within the cervid industry.

This rulemaking does not change the requirements for official identification of captive cervids, which are currently contained in 9 CFR part 77. Those existing regulations provide for various official identification methods, including tattoos and electronic implants.

Official identification requirements for sheep and goats

A commenter representing sheep and goat producers stated that, if in the future, APHIS should determine that identification for sheep is needed beyond what is currently required for the scrapie program, then group identification should be allowed.

Group/lot identification is allowed under this rulemaking. Group/lot identification is not species-specific and will be available as an option for sheep and goat producers, as well as other livestock producers.

Miscellaneous identification issues

A commenter questioned how the LID is different from the PIN and stated that having two different numbering systems for the identification or premises may be unnecessarily complex and expensive.

The option of allowing a State or Tribe to issue a location identifier resulted from the strong negative feedback we received from livestock owners opposed to the premises registration component of the NAIS. While having location information on where livestock are raised is critical to traceability, it is recognized that States may have their own systems to maintain information on such locations. The LID option was established to provide that flexibility. Data standards for both LIDs and PINs are contained in the Animal Disease Traceability General Standards document.

A commenter questioned why the proposed regulations allowed the use of other identification methods and devices, if agreed to by the shipping and receiving States or Tribes, in lieu of the official identification devices for the various species of covered livestock. In the commenter's view, allowing the use of other identification devices would result in a lack of standardization of official identification devices and would be detrimental to traceability.

These traceability regulations list official identification devices and methods for each species of covered livestock. The diversification of animal agriculture across the United States is tremendous, and, taking into account all the feedback we received over the last few years, we recognized that “one size does not fit all.” Thus we designed these regulations to support the efforts of States and Tribes to work with producers at the local level to implement traceability solutions that work best for all concerned.

A commenter stated that allowing group/lot identification of animals managed together as one group through the production chain would give a competitive advantage to vertically integrated operations over smaller producers.

The group/lot identification option is based on the need to have adequate information available to State, Tribal, and Federal animal health officials to conduct traceback investigations. Requiring there to be individual identification on each animal that moved through the preharvest production chain would not improve the traceability of those animals. Thus, group/lot identification is a justified option in those situations, regardless of the size of the group.

A commenter stated that there should be a uniform requirement, with no exemptions, that all livestock in interstate commerce be individually officially identified before moving interstate, as is now the case with horses, according to the commenter.

We do not agree with this comment. We recognize that there are circumstances where official identification and/or ICVIs for interstate movement of animals are not warranted from a disease-risk perspective or that the traceability of animals moving interstate may be possible without requiring official identification of individual animals. For example, livestock moved interstate to a custom slaughter facility are already identified to the person responsible for

bringing the animal to the facility. An official eartag would not make the animal more traceable; thus, we exempted such livestock from the traceability requirements.

It was the view of some commenters that we should allow States and Tribes to choose the identification methods that work best for them and to select the level of traceability that works best for them, based on their needs and infrastructure constraints.

State and Tribes may use the forms of identification they prefer in lieu of official identification when the receiving States or Tribes agree to accept that method of identification for animals moving into its jurisdiction. Likewise, the level of traceability States or Tribes establish within their jurisdictions is at their discretion.

Documentation Requirements

Documentation requirements, which were contained in § 90.5 of the August 2011 proposed rule, are contained in § 86.5 of this final rule.

Many cattle organizations recommended that a fully electronic ICVI system be in place in all the States and Tribes as a prerequisite to expanding the official identification requirements to include cattle and bison exempted in this rulemaking.

The conditions for initiating a second rulemaking to cover those additional classes of cattle and bison have yet to be determined. The merits of electronic ICVIs are fully recognized by APHIS, and we believe their adoption is important to increase administrative efficiencies and to support timely traceability. APHIS provides an electronic ICVI system that all States and Tribes may utilize and supports options for third-party developed and supported systems. We have established data standards that third-party system providers need to incorporate so that their systems and ours will be compatible.

Some commenters took the argument further, stating that paper copies of ICVIs are not needed at all and that electronic copies are not only sufficient for traceability needs but should be required. It was also stated that the regulations need to allow for the use of electronic ICVI addenda.

We agree that electronic ICVIs have inherent benefits in terms of data retrieval, readability, and ease of execution, but disagree that paper ICVIs have no place in our traceability program. Although all States currently have the electronic ICVIs available for use, full implementation by the majority of accredited veterinarians will take time. We have areas of the country where electronic issuance of certificates that are Web-based is not possible at the locations where they are needed. While moving to increased use of electronic ICVIs is important, paper-based ICVIs will have a role in the foreseeable future. Additionally, even as the use of electronic ICVI systems become more widespread, it will still be necessary for enforcement purposes for the printouts of such certificates to accompany the livestock in transit.

Some commenters stated that the proposed ICVI requirements would be burdensome for producers. Because there are not enough veterinarians available in all States to conduct the necessary inspections on animals preparing to move interstate, having to obtain an ICVI would require some producers to pen their calves longer to arrange for those inspections. The result would be greater stress on the animals and reduced profits for the producers.

We acknowledge that there may be situations where the issuance of an ICVI is an economic burden. For that reason, we allow States or Tribes to issue alternative movement documentation in lieu of ICVIs when agreed to by the States or Tribes involved in the interstate movement. In this final rule, we are extending this exemption to include breeding cattle over 18

months of age, which would have been required to be accompanied by an ICVI under the proposed rule.

A number of commenters viewed the proposed requirement for the recording of individual identification numbers on the ICVI as burdensome to producers and market operators, stating that the benefits of such recording would not outweigh the costs. It was suggested that State officials should be allowed to waive the recording of individual identification numbers on ICVIs.

An ICVI is a certification that a veterinarian has inspected specific animals. The requirement for recording the animals' identification numbers on the ICVI ensures that the inspections have actually taken place for those specific animals. State and Tribal animal health officials use the ICVIs to help in animal disease investigations. If the animals' identification numbers are not listed on the ICVI, it is more difficult to determine which animals were moved. To limit any possible burdens resulting from the recording requirements, the only animals we require to be listed on the ICVI are those we have determined to be associated with a higher risk of disease spread.

Some commenters stated that we should allow for the stapling of a printed list of RFID tag numbers to a paper ICVI rather than requiring the writing down of the numbers on the ICVI itself.

We agree with this comment and are amending the ICVI definition in this final rule to allow for State-approved addenda that would include an option for an attached printout of official identification numbers generated by computer or other means. The amended definition will also note, however, that such addenda or attachments may only be used if agreed to by the receiving State or Tribe.

Some commenters took the opposite view, stating that when official identification is required, the identification numbers should always be recorded on the ICVI. Attaching another sheet of paper to the ICVI was not seen as adequate because that other sheet seldom accompanies the ICVI to the State of destination.

While this final rule will allow for the use of attachments to the ICVI, as noted above, States and Tribes are not required to accept them if they do not view that method of recording official identification numbers as sufficient to meet their traceability needs.

Some commenters stated that we should allow for greater flexibility than we originally proposed in the use of alternative, State-approved methods of ICVI addenda. It was stated that we should allow for the listing of a series or range of numbers included in a shipment rather than the exact identification tag numbers for each animal in the shipment.

The ability to find individual animals quickly and determine what other animals they had contact with is key to effective epidemiological investigations. If ICVIs did not have individual identification numbers listed for the animals in a shipment, the ability of State, Tribal, and Federal animal health officials to conduct traceback investigations on those animals would be hampered. Alternative methods can only be used if States or Tribes involved in the interstate movement have agreed to them.

Some commenters stated that to avoid placing undue burdens on small entities, there should be a farm, business, or herd size threshold for exemption from the ICVI requirement.

Traceability is more related to the number of animals that move interstate than it is to herd size. Regardless of size, herds that do not move animals interstate are exempt. Furthermore, APHIS has no intent to monitor the size of herds, require the reporting of

inventory, or conduct any activity along those lines that would be necessary to establish herd size exemptions.

A commenter stated that there is no need to require an ICVI for equines moving interstate because the movement documents already required for equine species are adequate for traceback purposes.

We will not be making any changes to the final rule in response to this comment. It is true that most States already have movement requirements for equines. This rulemaking helps to make existing requirements more uniform throughout the nation. The EIA test chart, commonly required for interstate movement, certifies that a horse is not infected with the disease, but does not document the origin and destination of an interstate movement. The ICVI, issued by a veterinarian, does provide the ship-from and ship-to locations. These regulations also provide that States and Tribes may use other methods of movement documentation, which may include an EIA test chart, when agreed upon by the animal health officials in the States or Tribes involved in the interstate movement.

Some commenters stated that an exemption from the ICVI requirements in the proposed rule for cattle and bison moving interstate to a veterinary clinic and then returning to their farm of origin without a change in ownership should be also be allowed for equines and other species as well.

We acknowledge the support for the exemption, which was included in the proposed rule for poultry as well as for cattle and bison. In this final rule, we are adding the same exemption for equines.

Under the proposed rule, individual identification numbers of cattle and bison moving interstate were required to be recorded on the ICVI with certain exceptions. Exempted

categories were sexually intact cattle and bison under 18 months of age or steers or spayed heifers, excluding sexually intact dairy cattle of any age or cattle or bison used for rodeos, exhibitions, or recreational purposes. Many cattle organizations strongly supported maintaining those exemptions from the ICVI recording requirements rather than phasing them out, as they claimed we proposed to do.

We agree with these comments. The proposed rule did not in fact contain language suggesting that we intended to phase out these exemptions.

Many commenters stated that we should allow the use of other movement documents in lieu of the ICVI for all ages of cattle and bison when the shipping and receiving States or Tribes agree. The potential burden to producers of the ICVI requirement, resulting from a decline in the availability of veterinary coverage around the country, was cited as a reason for this recommended change from the proposed rule, which only allowed such an exemption for cattle and bison under 18 months of age.

We agree with the commenters on the need for flexibility and alternatives in areas of the country where obtaining an ICVI would impose an economic hardship on producers. We are, therefore, amending § 86.5(c)(6) in this final rule to allow for the use of alternative movement documentation for all ages of cattle and bison when agreed to by the animal health officials in the shipping and receiving States or Tribes.

It was recommended that the ICVI exemption contained in the proposed rule for poultry moved directly to a recognized slaughtering establishment should be expanded to cover poultry moved directly to rendering establishments as well.

We agree that the exemption is appropriate for poultry moving directly to either destination and are amending § 86.5(g)(2) of this final rule accordingly.

While we received many comments recommending exemptions to the ICVI requirements, we also received one stating that we should allow no exemptions and no use of alternative forms of documentation. The ICVI, the commenter stated, should be used for all interstate movements because standard documentation is necessary for an effective traceability program.

We do not agree with this comment. Due to the lack of large-animal veterinarians in some areas of the country, allowing only the ICVI to be used for interstate movement could result in significant economic hardship for some producers. We view a more flexible approach, one which allows the use of alternative movement documentation when agreed to by the animal health officials in the shipping and receiving States or Tribes, as more effective and less burdensome.

Some commenters stated that we should allow an ICVI to be valid for a period of time, e.g., 30 days, for brief and frequent out-of-State movements not involving a change of ownership of the livestock. One commenter recommended issuing an alternative document called an "event passport" for equines for this purpose. It was stated that allowing an ICVI to be valid for a period of time would alleviate burdens on livestock owners and veterinarians.

We realize that there are many ways in which livestock move interstate. These include movements in which animals return to their original location and, in some cases, move again a few days later to another location. While a new ICVI for each movement would aid in traceability, we realize that in some situations, other options are more practical for both the animal owner and accredited veterinarian. However, to account specifically for each variable in the regulation would likely create significant confusion. The rule, as proposed, provided the local officials with the authority to utilize other movement documents when agreed to at the local level by the State and Tribes involved. While not specifically referenced, such documents could

include an event passport. We have maintained these options in the final rule to support the use of other movement documentation as agreed to by the involved State or Tribe animal health officials. Yet, we do believe that a standard and uniform definition for the ICVI and standard and uniform requirements for its administration are critical, and we have maintained those as proposed.

It was stated by a commenter representing a swine industry association that the ICVI requirements contained in the proposed rule included some data not currently required for swine and could cause some confusion regarding issuance. Specifically, the commenter questioned why it was necessary for an accredited veterinarian to indicate on the ICVI the purpose for which the animals are being moved interstate.

As we explained in the preamble to the August 2011 proposed rule, the information requirements for the ICVI were closely modeled on the requirements for certificates in the brucellosis regulations. The requirement for the accredited veterinarian to state the purpose of the interstate movement is to differentiate between temporary movements (shows, exhibitions, etc.) and permanent movements (sales, retained ownership, etc.). On many existing State-issued ICVIs, there is a box that can be checked indicating the purpose of the movement. In any event, the establishment of these traceability regulations does not affect the documentation requirements for the interstate movement of swine, which will continue to be governed by § 71.19.

A commenter representing the swine industry stated that while swine moved directly to slaughter are not currently required to have an ICVI, under the proposed rule, the requirements would become more stringent, since only animals moved to custom slaughter would be exempt.

The commenter requested that, in the final rule, we reference exemptions for ICVIs for swine going into official slaughter channels.

This rulemaking does not alter the documentation requirements for swine moving interstate for slaughter or other purposes. Such swine will continue to be subject to the documentation requirements of § 71.19. Swine that are not moving within a swine production system and that are covered by the pseudorabies regulations in part 85 will continue to be subject to the documentation requirements of that part.

It was stated by commenters that we needed to be clearer regarding the location at which the ICVI must be issued and when the 5-day period for forwarding the ICVI begins.

The ICVI is required to show the address at which the animals in a shipment are loaded for interstate movement. As we noted earlier, however, we are amending this final rule to clarify that veterinary inspection of the animals and issuance of the ICVI do not have to be done at that address. The inspection may take place at an alternate site, such as a veterinary clinic, and the actual completion of the ICVI may take place at another location, such as the office of the issuing veterinarian. To clarify the forwarding requirements, we are also amending § 86.5(b) of this final rule to specify that the ICVI or other document accompanying the covered livestock must be forwarded by the person issuing it to the State or Tribal animal health official in State or Tribe of origin within 7 calendar days from the date of issuance and that that official must then forward it to the State or Tribe of destination within 7 calendar days of having received it.

Additionally, to close a potential gap in the movement recordkeeping requirements, we are adding a new 86.5(b)(2) to this final rule stating that an animal health official or accredited veterinarian who issues or receives an ICVI or other interstate movement document in accordance with the paragraph above must retain a copy of the ICVI or other document. The

timeframes are the same as those for approved livestock facilities: Such documents must be retained for 2 years for poultry and swine and 5 years for cattle and bison, equines, cervids, and sheep and goats.

A commenter expressed concern about the provision in the proposed rule that stated that 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 commenter indicated that it is common in the pork industry for the production system veterinarian to be the person responsible for writing the ICVI or other documents used for interstate movements. It is also common for movements to be arranged by a designated person in the production system. In the view of the commenter, we needed to better define or explain what we meant by “directly responsible.”

It is not our intention to single out the accredited veterinarian or any other individual as being the primary responsible party in all cases. To avoid this, and to eliminate any possible ambiguity, we are revising the language of this provision slightly. Specifically, we are inserting, in § 86.5(a) of this final rule, the words “the persons responsible” in place of “the person directly responsible.”

Some commenters stated that we should include fitness-to-travel requirements in the ICVI process and should require ICVIs to show the estimated travel times and stops. It was further stated that the ICVI should include a certification of intent to comply with the 28-hour law, which states that animals should not be driven for more than 28 hours without food or rest.

Although these comments may have merit, the suggested requirements are beyond the scope of this rule, which is designed to improve animal disease traceability, and of our statutory authority under the Animal Health Protection Act.

A few commenters expressed the view, contrary to that of most, that there is no justification for the exemption from ICVI requirements of direct-to-slaughter cattle.

We do not agree with this comment. Cattle, upon arrival at a recognized slaughtering establishment, are inspected ante mortem and throughout the slaughtering process under the veterinary supervision of FSIS or State employees. When animals are shipped directly to slaughter, the location the animals were shipped from is known, and if there is any disease found at slaughter, it can easily be traced to that location. A requirement to have a veterinarian come to a farm to issue an ICVI for animals that are destined for immediate slaughter is unwarranted.

Finally, a commenter stated that we should allow for greater flexibility in documentation by allowing inventory verification by a third party or at a shipment's destination rather than only its origin.

We disagree with this comment. Movement documentation is an essential part of our animal disease tracing capability. Allowing animals to move without documentation and relying instead on the destination to verify the identity of animals, would require a complex and expensive system of reporting and compliance. Although we are aware that at certain times of the year, handling of animals can be difficult, with added risk to animal health, there are management techniques and procedures that can minimize the time required to identify animals and reduce the strain of preparing them for interstate movement.

Regulatory Impact Analysis

Costs

It was claimed by some commenters that the regulatory impact analysis (RIA) we published in conjunction with the August 2011 proposed rule grossly underestimated the economic cost to be borne by U.S. cattle producers. Some commenters expressed the view that

we did not properly account for the cost of expanding the official identification requirements to cover feeder cattle.

In the RIA, we attempted to estimate the new costs that will be associated with the provisions of the rulemaking. We acknowledged the significant portion of the cattle industry that already uses some method of identification, as reported in the National Animal Health Monitoring System 2007 and 2008 surveys. In the RIA, we noted that two-thirds of the beef operations and 90 percent of dairy operations use some method of identification. Additionally, within beef operations, over 60 percent of the calves had some form of individual identification. Consideration of these existing practices is important when estimating new costs that may be attributed to the new traceability requirements, as we believe that official eartags, in many cases, will likely be applied at the same time at which cattle are already being tagged or worked through chutes for other management purposes. Additionally, with an array of official eartags, producers may choose a single eartag that meets both management and official identification needs. This option would make the additional cost of official eartags quite small. Likewise, we believe that producers will continue to develop tagging practices that minimize the cost of applying official eartags. Producers that are not able to tag their own cattle may find a tagging site to be the most practical option for meeting the official identification requirements. We believe that the RIA accurately identified tagging costs that may occur at tagging sites. We acknowledge that our estimates for the number of animals moved interstate that would require official identification is based on several assumptions and that the estimation of costs involves many variables. The range of \$12.5 million to \$30.5 million annually for official identification costs to producers resulting from this rulemaking is our best estimate at this time.

Regarding ICVI costs, we noted that most States already require ICVIs for many interstate movements. Thus, we do not believe the overall volume of ICVIs issued will increase significantly as a result of this rule. In this final rule, the exemption that allowed other documentation to be used in lieu of an ICVI, provided that the shipping and receiving States or Tribes agreed, for cattle and bison under 18 months of age moving interstate has been extended to cover all ages and classes of cattle and bison. This revision will likely make the potential increase in the volume of ICVIs issued less than originally anticipated.

One commenter, citing a study on the cost of tagging, asserted that the likely cost of the proposed rule to producers would range from \$1.2 billion to \$1.9 billion.

The commenter cited testimony before the U.S. International Trade Commission (ITC). We believe that the costs described in that testimony included activities not associated with the provisions of the proposed rule. The estimated costs per calf cited in the U.S. ITC testimony included \$5 for tags, data management, and verification; \$7 for working calves, tag placement, and documentation; and \$8 for feedlot and harvest data collection and chute fees. The U.S. ITC testimony cited estimated losses due to shrinkage as \$10 to \$20 in lost income potential per calf. The U.S. ITC testimony was also based on an electronic animal identification system involving data management and verification activities at the producer level.

We are not disputing the cost factors for the practices referenced in the U.S. ITC report. However, we do not believe they reflect management practices necessary for producers to comply with the identification requirements of the traceability rule and, therefore, do not believe those cost factors are applicable in our economic analysis.

Commenters stated that we ignored the cost to distribute official identification devices and collect and maintain data on people receiving them and animals moved with them. It was

stated that we also ignored the costs of official tags bearing the required emblem, the costs of replacing existing tag systems with official tags, the costs of equipment to read the tags, the costs of configuring corrals and handling facilities to allow for collection of identification information, and the costs associated with technology problems when tags are not read.

We included information in the RIA about the cost of the tags, the cost of the labor to work the cattle in chutes and apply the tags, and the cost of the ICVI when the official identification information is recorded. Since the U.S. Shield has been imprinted on the NUES tags obtained by APHIS for disease-control programs for many years, we do not agree that the standardized use of the official eartag shield will increase the cost of official eartags. This rulemaking is designed to allow producers to use tags that do not require any electronic or special equipment to read the official eartags.

As described in the RIA, States and Tribes would bear responsibility for the collection, maintenance, and retrieval of data on interstate livestock movements. Federal funding, as available, would be allocated to assist States and Tribes in meeting program goals. Additionally, APHIS continues to provide information systems that States and Tribes may elect to use at no charge.

Some commenters stated that we underestimated the cost to producers of the rulemaking because we did not factor in the costs of buying chutes in calculating the costs of tagging.

As stated previously, in the RIA, we attempted to determine only the costs and benefits that were associated with the provisions of the proposed rule. While we included estimated costs for chute operations for tagging, we did not include the entire costs of buying or renting chutes because we were only trying to determine the costs associated with the rule. If an operation does not currently own equipment needed for tagging, such as chutes, we note that tagging may take

place at an approved tagging site. We do realize that some operations may elect to purchase a chute that will allow them to tag their own animals. However, we do not believe the investment in the chute will be made solely for applying the official ear tags to the operation's cattle. Rather, the chute is likely to be used for many other management practices. Therefore, we believe that analyzing the cost of tagging animals at tagging sites provides a more reliable basis for a reasonable estimate of producer costs for tagging animals than would including the entire costs of buying or renting chutes in such an estimate.

Commenters stated that we did not adequately account for the added costs to producers, sale barns, veterinarians, and veterinary clinics that would be associated with our proposed ICVI requirements.

As mentioned previously, many States already require ICVIs for interstate movements of livestock covered in the traceability rule. Therefore, we do not believe the volume of ICVIs issued is likely to change significantly. We did, however attempt to account for an increase in these cost to producers, which was projected to be \$2.0 million to \$3.8 million. In this final rule, as we have already noted, the exemption allowing the use of other documentation in lieu of ICVIs has been extended to all ages and classes of cattle and bison when agreed to by the receiving and shipping States and Tribes, thus limiting the increase in the number of ICVIs issued. If sale barns and veterinarians are providing services associated with the rulemaking, we anticipate that they would charge an appropriate price for those services. Costs that could be incurred by producers as a result were estimated in the RIA.

One commenter stated that our RIA grossly underestimated the costs of ICVIs for horse owners. Another stated that the increased costs for the ICVI would place a greater burden on the horse industry than on the cattle industry because horses move more regularly.

The RIA included information about estimated costs for equines. We estimated the incremental cost of an ICVI for most horses moved interstate to range between \$4.00 and \$7.50, based on the cost of testing for EIA. We estimated that the total additional cost for the equine industry could range from \$8.8 million to \$16.5 million, given the current number of EIA tests per year.

Many commenters expressed concerns about the potential economic burdens on small producers and livestock markets, arguing that the rulemaking favored larger, vertically integrated entities.

While APHIS is sensitive to these concerns, many commenters did not provide specific information to support these claims or provide traceability solutions that would be more cost effective. While larger, vertically integrated entities may realize economic benefits from the size of their operations, those benefits result from market forces and are not due to specific provisions of this rulemaking. However, in this final rule, we did add exemptions in response to comments from small poultry producers for certain movements, so as not to put such producers at a disadvantage. In particular, we exempted from the official identification requirements chicks moving interstate from a hatchery to a poultry producer or redistributor.

It was stated that the rulemaking would disadvantage U.S. producers because they would be required to meet our traceability requirements when moving cattle across State lines, while we would place no such requirement on foreign producers.

The official identification and documentation requirements for imported livestock are well established through 9 CFR part 93 and are not affected by this rulemaking. The requirements in part 93 are at least equivalent to those specified in this rulemaking, so domestic producers will not be placed at a competitive disadvantage.

It was stated that the proposed rule was unfair in that it would only regulate interstate movement. As a result, producers may choose to take cattle to in-State markets that are farther away, thus incurring increased transportation costs, in order to avoid the cost and burden of the proposed requirements. Producers and markets located in the interiors of States may be given an unfair competitive advantage by not having to comply.

We realize there are many factors that producers will consider when marketing their animals. While the cost of officially identifying animals moved interstate to a market may be considered, there are many other economic factors associated with marketing decisions, including, but not limited to, transportation costs and the availability of local and out-of-State buyers. Therefore, we cannot conclude that this final rule favors livestock markets based on their geographic location or distance from State borders.

Many commenters viewed the proposed traceability program as an unfunded mandate. For example, it was said that State agencies would have to build database storage, management, and retrieval systems, which could strain their budgets. It was suggested that we provide funds to help States modernize and upgrade their data systems and train people to use them.

The RIA discussed the estimated Federal funding available to support animal disease traceability. A significant portion of the budgeted funds are targeted to field implementation. However, APHIS has taken the position that it will not fund the development of duplicative information systems, as such investments cannot be justified. Rather, APHIS will provide information systems that the States and Tribes may use at no charge. If a State or Tribe elects to develop its own system, however, it will have to cover the cost. Federal funds, however, may be used for the overall administration of the local traceability activities.

It was stated that our proposed traceability system would enhance the bargaining power of packers at the expense of producers.

The commenters who expressed this view did not describe how the proposed rule would alter the relative bargaining power of packers at the expense of producers, and we are unable to determine how this point is applicable to the rulemaking.

Many commenters noted that our RIA did not include a cost analysis for poultry producers.

The RIA noted that there would be no additional costs for poultry enterprises that participate in the NPIP. As noted earlier, a primary concern about the cost of identifying individual birds, in particular chicks shipped from hatcheries, has been accounted for in the exemption from the official identification requirements for such poultry shipments. Likewise, it has been clarified that interstate movements to a custom slaughter facility are exempt from these traceability regulations. Poultry moved interstate to live bird markets would need to have an ICVI or other documentation as agreed to by the States. States have the option of maintaining current requirements for movement documentation, in which case no additional costs will be incurred.

Benefits

It was stated by some commenters that the RIA indicated that the primary benefits of this rulemaking would be to minimize losses and enable the reestablishment of foreign and domestic markets. This rationale was questioned. A commenter requested more detailed information on tuberculosis traceouts in the last 5 years and how animal identification has contributed to successful or unsuccessful traceouts. The commenter also requested data on foreign market access lost due to tuberculosis and brucellosis. Some other commenters stated that the

discussion of benefits focused too much on the benefits of exports. It was maintained that, while exporters would likely benefit from the proposed rule, the costs would mainly be borne by domestic producers and related businesses.

The ability of U.S. producers to export affects all producers, even those who do not directly sell to an international market. Trade restrictions lead to products intended for the export market being diverted to the domestic market. An increase in the supply of a product that otherwise may have been exported on the domestic market may lead to lower prices in the short run. In the event that exports cannot be re-established, the likely result is a smaller domestic herd.

A commenter stated that since the potential cost-benefit ratio of the rule could not be determined, the costs should be borne by the Federal Government.

The RIA provided our estimate of who would bear the costs and the amount of those costs. In cases where we cannot quantify benefits or costs, we have described those benefits and costs qualitatively. The benefits of an efficient system for tracing animal disease occurrences, as set forth in the proposed rule and in this document, would accrue directly to the livestock and meat industries and indirectly to other sectors of the economy.

Performance Standards

Many commenters stated that we should not finalize the proposed rule until the actual traceability performance standards that States and Tribes would have to meet are established through rulemaking. In a system that would be so dependent upon the performance levels achieved by the States and Tribes, the current lack of performance measures, it was suggested, could be a barrier to successful implementation.

We do not agree with these comments, as we believe that it would be premature to enact traceability performance requirements in this rulemaking. As noted in the preamble to the August 2011 proposed rule, our current thinking is that we will measure the performance of States and Tribes by evaluating their ability to carry out, in a timely manner, certain activities that animal health officials would typically conduct during a trace investigation of covered livestock that have moved interstate. The establishment of actual traceability performance standards, however, can only be done following review and analysis of actual data compiled from animal movement records after these regulations have been implemented. Without such information, the establishment of performance standards would be too subjective. Therefore, we maintain our initial position: We will establish the traceability performance standards at a later date to ensure we have necessary data to objectively define and establish those performance standards. As the rule is implemented, we will continue to work with States and Tribes to measure tracing capabilities resulting from these regulations. Comparing the results obtained earlier on and over time will help document the progress being made.

One commenter stated that the discussion of the performance standards in the preamble to the proposed rule did not adequately address possible consequences for States with traceability systems that do not meet our goals. Several others stated that it would be counterproductive to place additional restrictions on producers from States that do not comply with our traceability standards, as was discussed in the preamble.

This rulemaking does not contain any traceability performance standards or provisions for additional restrictions based on non-compliance. The discussion in the preamble to the August 2011 proposed rule was presented as our “current thinking,” with the understanding that any performance and compliance measures will be developed with input from individuals and

organizations that would be affected. We made it clear in that discussion that the performance measures will be developed in a separate rulemaking process.

One commenter stated that the performance standards we ultimately implement should be more rigorous than the ones we discussed in the preamble to the proposed rule. Specifically, the commenter stated that 3 years is too long a time to allow States to come into compliance with our requirements.

As noted above, the discussion in the preamble to the proposed rule reflects our current thinking on performance standards. That thinking is likely to evolve as we accumulate more data after this final rule becomes effective.

Preemption

Provisions related to preemption of State and local requirements, which were contained in § 90.8 of the August 2011 proposed rule, are contained in § 86.8 of this final rule.

Some commenters stated that APHIS should not preempt any State's identification requirements.

It is our view that the minimal preemption provisions provided in these regulations are necessary to ensure that no one State or Tribe can establish certain requirement for having livestock moved into their State or Tribe. For example, we do not believe a State should be able to require that all cattle entering its jurisdiction have an RFID eartag, nor should a receiving State be able to require a method of identification that is not listed as official in our regulations unless agreed to by the shipping State.

It was stated that APHIS should preempt States' or Tribes' identification requirements, except when those requirements are stricter than ours. States and Tribes should be able to

impose more strict requirements than ours, e.g., requiring the official identification of feeder cattle during the time they are exempt from the Federal regulation.

These regulations only preempt the specific items noted in the preemption clause in § 86.8. A State or Tribe may require official identification for livestock to enter its jurisdiction when these regulations do not, so long as that State or Tribe does not specify a particular official identification device or method to be used if multiple ones are allowed under these regulations, or to impose requirements that would otherwise cause the shipping State or Tribe to have to develop a particular kind of traceability system or modify its existing one.

A commenter representing a State government expressed concern that that State's stricter existing official identification requirements, e.g., requiring official identification of all sexually intact beef cattle as well as all classes of dairy and rodeo cattle prior to importation, could be preempted under this rulemaking.

As noted above, there is no provision in these regulations that would prevent a State from requiring official identification for cattle that are exempted under this rulemaking.

While we are not making any substantive changes to the preemption provisions as a result of the comments we received, we are making some editorial changes for the sake of clarity.

Miscellaneous Comments

Some commenters stated that the proposed rule did not address the two main reservoirs of cattle disease in the United States: The introduction of tuberculosis from imported Mexican cattle and the spread of brucellosis and tuberculosis from wildlife to livestock. A number of these commenters further stated that it was unfair for U.S. cattle producers to be burdened with additional requirements and costs when a principal cause of the resurgence of cattle diseases is cattle imported from Mexico.

This rulemaking is not intended to provide methods of disease prevention or establish policy for international trade or wildlife issues. Having these traceability regulations in place will help us to build a uniform infrastructure of animal disease traceability that will aid us in disease response.

This rulemaking is intended to put the recordkeeping responsibility and data in the hands of States and Tribes. States and Tribes may choose to use the data systems already developed by APHIS, but the data contained in those systems are controlled at the local level. Maintenance of distribution records of official identification devices is shared among States/Tribes, APHIS, and the private sector. For instance, the distribution of official AIN eartags purchased by private individuals is recorded in an APHIS system by the tag manufacturers and distributors. Other official eartags purchased with State or Tribe resources are recorded in databases or logs at the discretion of the State or Tribe. While APHIS provides NUES tags to States and Tribes, the States and Tribes also may obtain official identification tags from approved manufacturers.

Many commenters faulted the proposed rule for not addressing potential liabilities to producers and associated individuals and entities under our traceability system. It was stated that under the bookend system we are attempting to implement, the person applying an identification tag would be the primary suspect in any disease traceback investigation, even if the animal was sold by that person well before detection of the disease.

Our animal disease programs are not designed to find fault or assign blame for disease, but to find and control disease. With a bookend system of traceability, the point-of-origin identification merely provides a starting point for an epidemiological investigation to trace an animal forward. The identification collected at slaughter is a starting point for tracing the animal backward. Good identification and recordkeeping at the farm level can actually reduce the

impact of a disease investigation on producers, livestock markets, and other entities. For example, if a producer has a record that the animal of interest in an investigation was tested prior to movement or that a herd test was conducted, the amount of time Federal, State, or Tribal officials may be required to spend at the farm could be minimized, thereby minimizing the effect on the producer's operations.

It was stated by one commenter that our proposed traceability system would eliminate redundancies built into current systems and actually degrade, rather than enhance, traceability. The commenter did not offer any evidence to support that claim, however.

The same commenter also stated that APHIS lacks the constitutional and statutory authority to establish a traceability system. According to the commenter, the language of the Animal Health Protection Act does not confer broad authority to mandate overt action by producers in the form of an animal traceability system. The commenter claimed that our assertion of such broad powers is contrary to Article 1, Section 8 of the U.S. Constitution.

We do not agree with this comment. The Animal Health Protection Act authorizes the Secretary “to prohibit or restrict the movement in interstate commerce of any animal, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of dissemination of any pest or disease of livestock.” The promulgation of regulations establishing an animal disease traceability system is clearly within APHIS' statutory authority.

It was also maintained that the proposed rule represented an unauthorized attempt by APHIS to implement OIE codes and standards domestically.

We do not agree with this comment. In this rulemaking, we are promulgating regulations that improve traceability nationally and yet allow the flexibility at the local level for States and Tribes to implement traceability solutions that work best for them.

One commenter noted that horses are not classified as livestock by the Food and Drug Administration and stated that agencies need to decide on a single classification before traceability requirements for horses go into effect.

We will not be making any changes to the final rule in response to this comment. Horses are classified as livestock under the Animal Health Protection Act, from which we derive our authority to regulate to protect animal health.

A commenter pointed out a possible discrepancy in the regulations regarding cervid herd tuberculosis testing and reaccreditation intervals. In current and proposed §§ 77.25, 77.27, and 77.29, reference is made to requirements for testing within 24 months of interstate movement. In § 77.35, however, there is a reference to a 36-month interval for herd testing for reaccreditation.

While we did not propose any changes to the requirements for testing intervals in these sections, we note that the differing intervals to which the commenter refers are associated with testing for different purposes.

A commenter representing a community of Old Order Amish opposed the proposed rule on religious grounds.

The commenter would only be subject to the traceability regulations if moving livestock interstate, and the availability of alternate tagging sites would make it possible for identification practices to which he might object to be carried out after a change of ownership of the livestock. While we respect the commenter's religious beliefs, we do need to be able to trace animals to

prevent the spread of livestock pests and diseases. Congress has authorized the Secretary to regulate animals moving interstate when necessary to prevent the spread of disease.

A commenter representing a State Government stated that the proposed rule did not explain whether an approved livestock facility would be treated the same as the approved livestock markets in the existing regulations. The commenter maintained that cattle buying stations should be considered to be approved livestock facilities.

The regulations in § 71.20 use the term “approved livestock facility,” and we use the term in these regulations to provide consistency and a source of reference. Cattle buying stations could be recognized as approved livestock facilities if they are approved under § 71.20.

A commenter stated that a concern in Pennsylvania about the proposed rule was that the proposed traceability plan would revert to older, more conventional technologies, such as metal tags and paper. Pennsylvania already uses RFID technology and has a rather sophisticated electronic database system. The commenter questioned how APHIS' proposed system would mesh with the electronic system that currently works very well in the State.

This rulemaking does not prohibit the use of RFID technology and electronic records. No State can deny entry to animals identified with electronic eartags and accompanied by electronic records if they met the standards provided for in these regulations. The regulations do, however, prohibit a State or Tribe from mandating the use of RFID or electronic records, or any other specific technology, for animals moving into their jurisdiction.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final 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 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

We are establishing 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 applies to cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids, the focus of this analysis is on expected economic effects for the beef and dairy cattle industries. These enterprises are likely to be most affected

operationally by the rule. For the other species, APHIS will largely maintain and build on the identification requirements of existing disease program regulations.

Costs for cattle producers are estimated in terms of activities that will need to be conducted for official animal identification and issuance of an ICVI, or other movement documentation, for 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 will 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 will simply replace current requirements, the incremental costs of the rule for private enterprises will be minimal.

There are two main cost components for this rule: Using eartags to identify cattle and having ICVIs for cattle moved interstate. Approximately 20 percent of cattle are not currently eartagged as part of routine management practices, and an estimated 45 percent of cattle are identified for management purposes other than by using official identification. 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 will tag their cattle as an activity separate from other routine management practices. More likely, some producers who are not already using official eartags can be expected to combine tagging with other routine activities such as vaccination or de-worming, 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 will range from \$8.9 million to \$19.7

million. After considering public comments, we have increased the estimated cost of this second scenario. We recognize that all producers may not combine tagging with other management activities and therefore some will continue to incur higher costs.

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 rule for ICVI's 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 rule, the ICVI requirement in this rule will not result in any additional costs.

The combined annual costs of the rule for cattle operations of official identification and movement documentation will range between \$14.5 million and \$34.3 million, assuming official identification will be undertaken separately from other routine management practices; or between \$10.9 million and \$23.5 million, assuming that some producers will combine tagging 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 will be maintained under this rulemaking, but the way they are administered will likely change. Based on availability, Federal funding will 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 rule. Case studies for bovine tuberculosis, bovine brucellosis, and 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 rule.

Benefits of the 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 regulations will 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 will 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 rule for cattle enterprises—between \$14.5 million and \$34.3 million, assuming official identification is a separately performed activity, and between \$10.9 million and \$23.5 million, assuming some official identification is combined by some operations 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 only a very small proportion of these markets would justify estimated private sector costs attributable to the animal disease traceability program.

Most cattle operations in the United States are small entities. USDA will 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, published concurrently with the August 2011 proposed rule, includes a summary of Tribal officials' concerns and of how APHIS has attempted to address them.

Copies of the tribal impact summary statement are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are in conflict with this rule, as provided in § 86.8; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains two information collection requirements that were not included in the proposed rule. Specifically, in response to comments we received on the proposed rule,

this final rule allows States and Tribes to use eartags with their State or Tribal code printed inside an official eartag shield. The rule also includes an ICVI-related recordkeeping requirement for accredited veterinarians that was not noted in the proposed rule.

Notwithstanding these additional requirements, the total paperwork burden is reduced from what we determined it to be in the proposed rule because we did not adequately account for the increasing use by States of electronic recordkeeping for ICVIs and, as a result, overestimated the ICVI reporting burden for the States. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this information collection requirement has been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the Federal Register providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

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 86

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 eartag shield, 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 or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). 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 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after [Insert date 24 months after effective date of final rule]. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside 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 manufactured must bear an official eartag shield. Beginning [Insert date 2 years after effective date of final rule], all official eartags applied to animals must bear an official eartag 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 eartag shield. The shield-shaped graphic of the U.S. Route Shield with “U.S.” or the State postal abbreviation or Tribal alpha code imprinted within the shield.

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, 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 eartag shield, 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 or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). 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 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after [Insert date 24 months after effective date of final rule]. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside the United States.

* * * * *

Directly. Moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and with no commingling of animals at such stops.

* * * * *

Interstate certificate of veterinary inspection (ICVI). An official document issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement.

(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. An ICVI may not be issued for any animal that is not officially identified if official identification is required. 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 do not belong to one of the classes of cattle and bison to which the official identification requirements of 9 CFR part 86 apply). 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.

(b) As an alternative to typing or writing individual animal identification on an ICVI, if agreed to by the receiving State or Tribe, 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 or a printout of official identification numbers generated by computer or other means;

(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.

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 manufactured must bear an official eartag shield. Beginning [Insert date 2 years after effective date of final rule], all official eartags applied to animals must bear an official eartag 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 eartag shield. The shield-shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

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.

* * * * *

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 that is approved in accordance with 9 CFR 71.21.

* * * * *

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 that is approved in accordance with 9 CFR 71.21.

* * * * *

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 86 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 86 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 86 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 86 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 86" 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 86 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 86 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 86 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 86 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 86" 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, officially identified, 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 eartag shield, official identification number, 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 or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). 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 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after [Insert date 24 months after effective date of final rule]. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside 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) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

* * * * *

Directly. Moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water or rest the animals being moved, and with no commingling of animals at such stops.

* * * * *

Interstate certificate of veterinary inspection (ICVI). An official document issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement.

(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. An ICVI may not be issued for any animal that is not officially identified if official identification is required.

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 do not belong to one of the classes of cattle and bison to which the official identification requirements of 9 CFR part 86 apply). 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.

(b) As an alternative to typing or writing individual animal identification on an ICVI, if agreed to by the receiving State or Tribe, 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 or a printout of official identification numbers generated by computer or other means;

(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 § 86.4(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 manufactured must bear an official eartag shield. Beginning [Insert date 2 years after effective date of final rule], all official eartags applied to animals must bear an official eartag 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 eartag shield. The shield-shaped graphic of the U.S. Route Shield with “U.S.” or the State postal abbreviation or Tribal alpha code imprinted within the shield.

* * * * *

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 that is approved in accordance with 9 CFR 71.21.

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 86. 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 86 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 or other documents as agreed to by the shipping and receiving States or Tribes..

(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 or other documents as agreed to by the shipping and receiving States or Tribes..

(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 or other documents as agreed to by the shipping and receiving States or Tribes., * * *

* * * * *

(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 86," 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 86.

(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 86" 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 86 is added to subchapter C to read as follows:

PART 86--ANIMAL DISEASE TRACEABILITY

Sec.

86.1 Definitions.

86.2 General requirements for traceability.

86.3 Recordkeeping requirements.

86.4 Official identification.

86.5 Documentation requirements for interstate movement of covered livestock.

86.6 [Reserved]

86.7 [Reserved]

86.8 Preemption.

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

§ 86.1 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 or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). 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 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after [Insert date 24 months after effective date of final rule]. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside 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) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

Directly. Moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and with no commingling of animals at such stops.

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 certifying the inspection of animals in preparation for interstate movement.

(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. An ICVI may not be issued for any animal that is not officially identified if official identification is required. 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 do not belong to one of the classes of cattle and bison to which the official identification requirements of this part apply). 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.

(b) As an alternative to typing or writing individual animal identification on an ICVI, if agreed to by the receiving State or Tribe, 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 or a printout of official identification numbers generated by computer or other means;

(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.

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 manufactured must bear an official eartag shield. Beginning [Insert date 2 years after effective date of final rule], all official eartags applied to animals must bear an official eartag 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 eartag shield. The shield-shaped graphic of the U.S. Route Shield with “U.S.” or the State postal abbreviation or Tribal alpha code imprinted within the shield.

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 that is approved in accordance with 9 CFR 71.21.

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

§ 86.2 General requirements for traceability.

(a) The regulations in this part apply only to covered livestock, as defined in § 86.1.

(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.

§ 86.3 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 any ICVIs or alternate documentation that is required by this part for the interstate movement of covered livestock that enter the facility on or after [Insert effective date of final rule]. For poultry and swine, such documents must be kept for at least 2 years, and for cattle and bison, sheep and goats, cervids, and equines, 5 years.

§ 86.4 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) Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or

(iii) Tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or

(iv) 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 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, blemishes or biometric measurements). When the identity of the equine is in question at the receiving destination, the State or Tribal animal health official in the State or Tribe of destination or APHIS representative may determine if the description provided is sufficient; or

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

(iii) Non-ISO electronic identification injected to the equine on or before [Insert date 12 months after effective date of final rule]; or

(iv) Digital photographs sufficient to identify the individual equine; or

(v) For equines being commercially transported to slaughter, a device or method authorized by 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) All cattle and bison listed in paragraphs (b)(1)(iii)(A) through (b)(1)(iii)(D) of this section 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 or other documents as agreed to by the shipping and receiving States or Tribes. If any of the cattle or bison are shipped to a State or Tribe not included in the commuter herd agreement or other documentation, then these cattle or bison must be officially identified and documented to the original State of origin.

(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 or identified by the use of backtags or other methods that will ensure that the identity of the animal is accurately maintained until tagging so that the official eartag can be correlated to the person responsible for shipping the animal to the approved tagging site.

(D) The cattle and bison are 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 States or Tribes.

(ii) 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 and then directly to a recognized slaughtering establishment, where they are harvested within 3 days of arrival; 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.

(C) If a determination to hold the cattle or bison for more than 3 days is made after the animals arrive at the slaughter establishment, the animals must be officially identified in accordance with § 86.4(d)(4)(ii).

(iii) Beginning on [Insert effective date of final rule], all cattle and bison listed below are subject to the official identification requirements of this section:

(A) All sexually intact cattle and bison 18 months of age or over;

(B) All female dairy cattle of any age and all dairy males born after [Insert effective date of final rule];

(C) Cattle and bison of any age used for rodeo or recreational events; and

(D) Cattle and bison of any age used for shows or exhibitions.

(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 moved interstate must be officially identified prior to the interstate movement, using an official identification device or method listed in paragraph (a)(2) of this section unless:

(i) They are used as the mode of transportation (horseback, horse and buggy) for travel to another location and then return direct to the original location.

(ii) They are moved from the farm or stable for veterinary medical examination or treatment and returned to the same location without change in ownership.

(iii) They are moved directly from a location in one State through another State to a second location in the original State.

(iv) They are 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 States or Tribes.

(5) Poultry. Poultry moving interstate must be officially identified prior to interstate movement unless:

(i) The shipment of poultry is from a hatchery to a redistributor or poultry grower and the person responsible for receiving the shipment maintains a record of the supplier; or

(ii) The shipment is from a redistributor to a poultry grower and the person responsible for receiving the chicks maintains a record of the supplier of the chicks; or

(iii) The poultry are 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 eartag. Beginning on [Insert effective date of final rule], no more than one official eartag may be applied to an animal, except that:

(1) Another official eartag may be applied providing it bears the same official identification number as an existing one.

(2) 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), a State or Tribal animal health official or an area veterinarian in charge may approve the application of an additional official eartag to an animal that already has one or more. The

person applying the additional official eartag must record the following information about the event and maintain the record for 5 years: The date the additional official eartag is added; the reason for the additional official eartag device; and the official identification numbers of both the new official eartag and the one(s) already attached to the animal.

(3) 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 one or more National Uniform Eartagging System tags and/or an official vaccination eartag used for brucellosis. The person applying the AIN eartag must record the date the AIN tag is added and the official identification numbers of both official eartags and must maintain those records for 5 years.

(4) 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 with one or more official eartags under this part. The person applying the vaccination eartag must record the date the tag is added and the official identification numbers of both the existing official eartag(s) and the vaccination eartag and must maintain those records for 5 years.

(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 unloaded at slaughter plants after moving interstate must be removed at the slaughter facility by slaughter-facility personnel with the devices correlated with the animal and its carcass through final inspection or condemnation 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 or condemnation by means approved by FSIS. Devices collected at slaughter must be made available to APHIS and FSIS by the slaughter plant.

(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: (i) A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number must 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.

(ii) Replacement of a temporary identification device with a new official identification device is considered to be a retagging event, and all applicable information must be maintained in accordance with paragraph (d)(4)(i) of this section.

(iii) A duplicate replacement eartag with the official number of the lost tag may be applied in accordance with APHIS' protocol for the administration of such tags.

(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.

§ 86.5 Documentation requirements for interstate movement of covered livestock.

(a) The persons 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)(1) 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 7 calendar days from the date on which the ICVI or other document is issued. 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 7 calendar days from date on which the ICVI or other document is received.

(2) The animal health official or accredited veterinarian issuing or receiving an ICVI or other interstate movement document in accordance with paragraph (b)(1) of this section must keep a copy of the ICVI or alternate documentation. For poultry and swine, such documents must be kept for at least 2 years, and for cattle and bison, sheep and goats, cervids, and equines, 5 years.

(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 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 or other document as agreed to by the States or Tribes involved in the movement.

(6) Additionally, cattle and bison 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 or, if applicable, with part 85.

(f) Horses and other equines. Horses and other equines moved interstate must be accompanied by an ICVI unless:

(1) They are used as the mode of transportation (horseback, horse and buggy) for travel to another location and then return direct to the original location.

(2) They are moved from the farm or stable for veterinary medical examination or treatment and returned to the same location without change in ownership.

(3) They are moved directly from a location in one State through another State to a second location in the original State.

(4) Additionally, equines may be moved between shipping and receiving States or Tribes with documentation other than an ICVI, e.g., an equine infectious anemia test chart, as agreed to by the shipping and receiving States or Tribes involved in the movement.

(5) 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; or

(2) They are moved directly to a recognized slaughtering or rendering establishment; or

(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; or

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

(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.

§ 86.6 [Reserved]

§ 86.7 [Reserved]

§ 86.8 Preemption.

State, Tribal, and local laws and regulations 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 _____ day of _____.

Under Secretary for Marketing and Regulatory Programs.