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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 160, 161, and 162

[Docket No. APHIS-2017-0065]

RIN 0579-AE40

Administrative Changes to the Regulations Governing the National Veterinary Accreditation Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the National Veterinary Accreditation Program by clarifying the veterinary programs for which accredited veterinarians are authorized to perform duties under the Animal Health Protection Act. We are also proposing to add or revise certain definitions and terms used in the regulations. The changes we propose would update the program regulations.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

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

- Federal eRulemaking Portal: Go to

<http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0065>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2017-0065, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0065> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Todd Behre, Coordinator, National Veterinary Accreditation Program; National Animal Disease Traceability and Veterinary Accreditation Center, APHIS Veterinary Services; (518) 281-2157; todd.h.behre@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Health Protection Act, or AHPA (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to protect the health of U.S. livestock by preventing the introduction and interstate spread of diseases and pests of livestock and for eradicating such diseases from the United States when feasible. The Secretary may also establish a veterinary accreditation program consistent with the AHPA, which includes standards of conduct for accredited veterinarians. The administration of this program, known as the National Veterinary Accreditation Program (NVAP), has been delegated to the Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS). The NVAP allows private practitioners, once

accredited by APHIS, to assist Federal veterinarians with performing certain tasks to control and prevent the spread of animal diseases throughout the United States and internationally.

Title 9 of the Code of Federal Regulations (CFR), chapter I, subchapter J (parts 160 through 162, referred to below as the regulations) contains regulations for accreditation of veterinarians and suspension or revocation of accreditation. Part 160 contains definitions pertaining to the NVAP. Part 161 includes standards for accredited veterinarians, conditions for veterinary accreditation application, renewal, revocation and suspension, and provisions for program certification of accredited veterinarians. Part 162, subpart A, describes the scope and applicability of the rules of practice for proceedings for the revocation or suspension of accreditation of veterinarians as provided in parts 160 and 161. Part 162, subpart B, provides supplemental rules of practice for summary suspension or revocation of accreditation of veterinarians. Under subpart B, the Administrator may summarily suspend the accreditation of a veterinarian where there is reason to believe that the veterinarian has knowingly violated the AHPA.

Although we are proposing several changes to parts 160 through 162, none of the changes we propose to make imposes new regulatory requirements. The purpose of the changes is to clarify and update the NVAP regulations.

Additions and Changes to Definitions

In § 160.1, *accredited veterinarian* is currently defined as a veterinarian approved by the Administrator in accordance with the provisions of part 161 of subchapter J to perform functions specified in subchapters B, C, and D of chapter I.

We propose to amend the definition of *accredited veterinarian* so that it lists all subchapters in 9 CFR chapter I under which accredited veterinarians may perform duties

consistent with the AHPA. Specifically, we would reference subchapter G, “Livestock Improvement,” in the definition along with subchapters B, C, and D currently listed in the definition. Subchapter G includes programs constituting the National Poultry Improvement Plan and the Voluntary Trichinae Certification Program, both of which derive their authority from the AHPA. We would also reference subchapter G along with subchapters B, C, and D in §§ 161.1(g)(2)(xi) and 161.7(a). We propose to make this change to ensure that the regulations contain an accurate record of all programs covered under the AHPA, but we do not expect the change to affect the current status of these programs under subchapter G with respect to administration or staffing.

The terms “accreditation” and “authorization,” as used in current § 161.2, have distinct meanings. “Accreditation” means the action of the Administrator initially approving a veterinarian in accordance with the provisions of part 161 to perform functions in one State, while “authorization” means the action of the Administrator approving an accredited veterinarian in accordance with the provisions of part 161 to perform functions in a State or States other than the State in which the veterinarian was initially accredited.

Some stakeholders have been confused as to the distinction between the two terms. For this reason, we propose to add definitions for *accreditation* and *authorization* to § 160.1. If an accredited veterinarian wishes to perform accredited duties in a State other than the State in which that veterinarian was initially accredited, he or she must complete an application to request authorization to perform accredited duties in the new State from the Veterinarian-in-Charge of that State. Although accreditation is a one-time action and valid nationally, an accredited veterinarian may not perform accredited duties in a State other than the one in which

he or she was initially accredited until APHIS provides the authorization to perform accredited duties in the additional State.

To further underscore the distinction between *accreditation* and *authorization*, we also propose to add a definition for *authorization* to mean the action of the Administrator approving an accredited veterinarian in accordance with the provisions of part 161 to perform functions specified in subchapters B, C, D, and G, in a State or States other than the State in which the veterinarian was initially accredited.

Accredited veterinarians are assigned to one of two categories under which they are authorized to perform accredited duties on certain types of animals. As noted in § 161.1(b) of the current regulations, those accredited under Category I are authorized to perform duties on Category I animals only, while veterinarians accredited under Category II are authorized to perform duties on animals listed in both Category I and Category II. Category I animals are currently defined as “any animals other than Category II animals, e.g., cats and dogs,” and Category II animals are defined as “food and fiber animal species; horses; birds; farm-raised aquatic animals; all other livestock species; and zoo animals that can transmit exotic animal diseases to livestock.”

In § 160.1, we propose to revise the current definition for *Category I animals* to address confusion voiced by stakeholders as to which animals fall under that category, as the current definition of *Category I animals* does not actually list the animals covered. The revised definition for *Category I animals* would state “All animals except: Food and fiber species, horses, birds, farm- raised aquatic animals, all other livestock species, and zoo animals that can transmit exotic animal diseases to livestock.” Accordingly, we would revise the definition for

Category II animals to include “all animals.” This helps to clarify the point that veterinarians accredited under Category II may perform duties on all animal species.

In § 160.1, *official certificate, form, record, report, tag, band, or other identification* is currently defined as any certificate, form, record, report, tag, band, or other identification, prescribed by statute or by regulations issued by the Administrator, for use by an accredited veterinarian performing official functions.

We propose to amend that definition by adding “document” and “seal” to the term and revising the definition to read “Any certificate, document, seal, form, record, report, tag, band, or other identification, prescribed by statute or by regulations issued or a State form approved by the Administrator, for use by an accredited veterinarian performing official functions under this subchapter.” We are proposing this change in order to reflect the current use of State-issued documents and seals approved by the Administrator by an accredited veterinarian performing official functions.

In §§ 160.1, 161.2(a), 161.4, 161.6(c), 162.11, and 162.12 of the regulations, the veterinary official of APHIS assigned by the Administrator to supervise and perform the official work of APHIS in a State or group of States is currently referred to as the *Veterinarian-in-Charge*.

We propose to replace the term *Veterinarian-in-Charge* with *Program official* in each of the above sections and paragraphs noted. This proposed change provides the flexibility to cover changes to official titles in VS.

Other Changes

Section 161.1 includes accreditation requirements and application procedures for veterinary accreditation. An accreditation requirement in paragraph § 161.1(e)(2) states in part

that the veterinarian must be "licensed or legally able to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties." We would amend this requirement in order to clarify that an unlicensed veterinarian is legally able to practice veterinary medicine in a State provided that the veterinarian is granted written permission to do so by that State's veterinary licensing authority.

Another accreditation requirement includes participation in an orientation that covers animal health regulations, disease control programs, and ethical responsibilities. The introduction to these topics in § 161.1(e)(4) refers to a "core orientation program." For consistency with other references to the orientation program in the regulations, we propose to remove the word "core."

Section 161.2, "Performance of accredited duties in different States," requires that an accredited veterinarian wishing to perform accredited duties in a State other than the State in which he or she was initially accredited complete an application to request authorization to perform accredited duties in the new State. We propose to replace all references to "new" State in § 161.2 to "additional" State and replace "different" with "additional" in the section heading. This replacement would improve consistency of language within the regulations with no new requirements.

Section 161.2(b) requires that an accredited veterinarian not perform accredited duties in a State in which he or she is not licensed or legally able to practice veterinary medicine. We propose to amend paragraph § 161.2(b) to clarify that VS may accept documentation issued by a State's veterinary licensing authority as a basis to verify the accreditation eligibility of unlicensed veterinarians in the same way that a license serves to verify eligibility for licensed veterinarians. The proposed change would state that "an accredited veterinarian may not

perform accredited duties in a State in which the accredited veterinarian is not licensed or in possession of a document from the State's veterinary licensing authority that he or she is legally able to practice veterinary medicine in that State without a license.”

Executive Orders 13771 and 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This proposed rule is not expected to be an Executive Order 13771 regulatory action because the proposed rule is not significant under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov).

The mission of the NVAP is to provide accredited veterinarians with the information they need to ensure the health of the nation's livestock and animal population and to protect public health and well-being. APHIS relies on accredited veterinarians to carry out many program duties.

APHIS is not proposing new regulatory requirements, but rather amending the regulations governing the NVAP by adding, updating, or clarifying certain definitions and terminology in 9 CFR parts 160, 161, and 162 that pertain to veterinary accreditation.

There are approximately 108,000 veterinarians in the United States, of which about 69,000 are accredited under the NVAP. According to the Small Business Administration, entities that provide veterinary services (classified under NAICS 541940) are considered to be

small if they have \$7,500,000 or less in annual receipts. Therefore, many veterinarians would be considered small entities. However, because this action amends and clarifies definitions for the NVAP and is purely administrative, it would not impose new or additional burdens on APHIS accredited veterinarians or those veterinarians seeking accreditation. Thus, no economic impact is anticipated.

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

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 2 CFR chapter IV.)

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed rule are approved by the Office of Management and Budget (OMB) under OMB control number 0579-0297.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

List of Subjects in 9 CFR Parts 160, 161, and 162

Administrative practice and procedure, Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we propose to amend 9 CFR parts 160, 161, and 162 as follows:

PART 160—DEFINITION OF TERMS

1. The authority citation for part 160 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

2. Section 160.1 is amended as follows.

a. By adding, in alphabetical order, a definition for *Accreditation*;

b. In the definition of *Accredited veterinarian*, by removing the words “B, C, and D” and adding the words “B, C, D, and G” in their place;

c. By adding in alphabetical order a definition for *Authorization*;

d. By revising the definitions of *Category I animals* and *Category II animals*;

e. By revising the definition of *Official certificate, form, record, report, tag, band, or other identification*;

f. By adding in alphabetical order a definition for *Program official*; and

g. By removing the definition of *Veterinarian-in-Charge*.

The additions and revisions read as follows:

§ 160.1 Definitions.

* * * * *

Accreditation. The action of the Administrator initially approving a veterinarian in accordance with the provisions of part 161 of this subchapter to perform functions specified in subchapters B, C, D, and G, in one State.

* * * * *

Authorization. The action of the Administrator approving an accredited veterinarian in accordance with the provisions of part 161 of this subchapter to perform functions specified in subchapters B, C, D, and G, in a State or States other than the State in which the veterinarian was initially accredited.

* * * * *

Category I animals. All animals except: Food and fiber species, horses, birds, farm-raised aquatic animals, all other livestock species, and zoo animals that can transmit exotic animal diseases to livestock.

Category II animals. All animals.

* * * * *

Official certificate, document, seal, form, record, report, tag, band, or other identification. Any certificate, document, seal, form, record, report, tag, band, or other identification, prescribed by statute or by regulations issued or a State form approved by the Administrator, for use by an accredited veterinarian performing official functions under this subchapter.

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

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

3. The authority citation for part 161 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

4. Section 161.1 is amended as follows:

a. By revising paragraph (e)(2);

b. In paragraph (e)(4) introductory text by removing the word “core”; and

c. In paragraph (g)(2)(xi) by removing the words “B, C, and D” and adding the words “B, C, D, and G” in their place.

The revision reads as follows:

§ 161.1 Statement of purpose; requirements and application procedures for accreditation.

* * * * *

(e) * * *

(2) The veterinarian is licensed to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties. An unlicensed veterinarian is legally able to practice veterinary medicine in a State provided that the veterinarian is granted written authorization by that State’s veterinary licensing authority, but such authorization may limit practice to specific geographical areas and activities within the State. APHIS will confirm the licensing or legal status of the applicant by contacting the State board of veterinary medical

examiners or any similar State organization that maintains records of veterinarians licensed or otherwise legally able to practice in a State;

* * * * *

5. Section 161.2 is amended as follows:

a. By revising the section heading;

b. In paragraph (a) by removing the words “new State” each time they occur and adding the words “additional State” in their place and by removing the words “Veterinarian-in-Charge” each time they occur and adding the words “Program official” in their place;

c. By revising paragraph (b); and

d. In paragraph (c) by removing the words “new State” and adding the words “additional State” in their place.

The revisions read as follows:

§ 161.2 Performance of accredited duties in additional States.

* * * * *

(b) An accredited veterinarian may not perform accredited duties in a State in which the accredited veterinarian is not licensed or in possession of a document from the State’s veterinary licensing authority indicating that he or she is legally able to practice veterinary medicine in that State without a license.

* * * * *

§ 161.4 [Amended]

6. Section 161.4 is amended by removing the words “Veterinarian-in-Charge” each time they occur and adding the words “Program official” in their place.

§ 161.6 [Amended]

7. Section 161.6 is amended by removing the words “Veterinarian-in-Charge” each time they occur and adding the words “Program official” in their place.

§ 161.7 [Amended]

8. In § 161.7 paragraph (a) is amended by removing the words “B, C, and D” and adding the words “B, C, D, and G” in their place.

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

9. The authority citation for part 162 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

Subpart B [Amended]

10. Subpart B is amended by removing the words “Veterinarian-in-Charge” each time they occur and adding the words “Program official” in their place.

Done in Washington, DC, this 4th day of March 2019 .

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.
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