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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

National Veterinary Accreditation Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending 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 adding and revising certain definitions and terms used in the regulations. These changes will update the program regulations.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

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@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 by 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.

On March 8, 2019, we published in the *Federal Register* (84 FR 8476-8479, Docket No. APHIS-2017-0065) a proposal¹ to amend the regulations governing the NVAP. We proposed to clarify the veterinary programs for which accredited veterinarians are authorized to perform duties under the AHPA and update certain definitions. We solicited comments concerning our proposal for 60 days ending May 7, 2019. We received five comments by that date. The comments were from veterinarians, State departments of agriculture, and a national veterinary medical association. The comments are discussed below.

General

A commenter, an accredited veterinarian, expressed concern about administrative obstacles associated with performing NVAP-related tasks. The commenter stated that these

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0065>.

obstacles are caused by States and asked that APHIS help reduce the amount of “red tape” that accredited veterinarians experience by encouraging reciprocity agreements between States and taking other actions to reduce burden.

While APHIS works to minimize burden whenever practicable, we note that veterinary licensing requirements are controlled by, and specific to, individual States and vary according to the predominant animal industries and diseases of concern in a State, as well as each State’s separate reporting and oversight requirements.

Definitions

In § 160.1, we proposed to revise the definition for *Category I animals* to clarify which animals fall under that category and revise the definition for *Category II animals* to read “all animals.” As we noted in the proposed rule, veterinarians accredited to work on Category II animals are authorized to perform duties on animals listed in both categories.

A commenter recommended that we revise the definition of *Category I animals* by adding “Select animals, excluding...” and removing “All animals, except...” The commenter reasoned that the words “All animals” should be used exclusively for *Category II animals* because the definition actually includes all animals.

We acknowledge the commenter’s reasoning but are making no changes to the proposed definitions. APHIS has been using the updated definitions in online training modules with no confusion observed as to which animals are included in each of the categories.

We also proposed to replace the term *Veterinarian-in-Charge* with *Program official* in §§ 160.1, 161.2(a), 161.4, 161.6(c), 162.11, and 162.12. We proposed this change to provide flexibility to cover changes to official titles in VS.

A commenter representing a national veterinary medical association stated that the current term *Veterinarian-in-Charge* should not be replaced with the proposed term *Program official*. The commenter noted that, unlike *Veterinarian-in-Charge*, the title of *Program official* could conceivably be held by a non-veterinarian who lacks the knowledge and training required of a veterinarian to competently assess or oversee animal health. The commenter cited a historical correspondence in APHIS-VS between job titles and job descriptions and stated that a non-veterinarian should not be in a position to provide oversight of Federal or other accredited veterinarians.

We agree with the commenter that officials designated to oversee veterinarians and perform official veterinary duties on behalf of APHIS should be veterinarians and that titles should generally reflect that fact. Accordingly, in § 160.1 and throughout subchapter J, we will not replace *Veterinarian-in-Charge* with *Program official* as proposed. Instead, we will remove all instances of *Veterinarian-in-Charge* and replace them with *Veterinary Official*. This change preserves the role of the veterinarian while allowing APHIS some flexibility in the duties of veterinarians holding the title. We will define *Veterinary Official* as the APHIS veterinarian who is assigned by the Administrator to supervise and perform the official work of APHIS in a State or group of States.

Accreditation Requirements

Among the requirements for NVAP accreditation, § 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 proposed adding to this requirement 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.

Two commenters raised concerns about our proposal to require written permission from the State to confirm that an unlicensed veterinarian is legally able to practice veterinary medicine in that State.

One of these commenters asked how APHIS would consider the status of an unlicensed laboratory animal veterinarian employed by a drug company when the company at which the veterinarian works is located in a State that excludes veterinarians who work on animals for their employer from the statutory definition of "practice of veterinary medicine." The commenter stated that while a laboratory animal veterinarian is legally able to practice veterinary medicine at that company without a license, that person cannot get a letter from the State veterinary board allowing him or her to legally practice without a license because the State does not consider that veterinarian to be practicing veterinary medicine. The commenter recommended that APHIS accept a citation of the State statute exempting the lab veterinarian from licensing requirements in lieu of the State's written evidence permitting the veterinarian to legally practice veterinary medicine in that State without a license.

The other commenter, representing a State department of agriculture, similarly questioned the need to provide written permission as evidence of being legally able to practice veterinary medicine in her State. The commenter noted that regulations in her State provide several written exemptions from licensure requirements for veterinarians, including those employed by schools, institutions, foundations, business corporations, or associations. According to the commenter, veterinarians working under one of these exemptions can practice without a license under certain conditions. Although these exemptions are authorized by State

law, the commenter noted that there is no individual authorization of veterinarians by the State's veterinary licensing authority. Instead, the State maintains records of veterinarians within a database that is accessible to APHIS-VS. The commenter considered this record to serve the same purpose as the written permission requirement but noted that the proposed requirement, as written, would not be considered sufficient to allow unlicensed, exempted veterinarians in the State to continue to be accredited. The commenter recommended that APHIS remove the written permission requirement from proposed §§ 161.1(e)(2) and 161.2(b), where it occurs in the same context.

As both of these commenters have indicated, there are State-specific regulations and practices that may not be compatible with our proposed requirement that the State provide written permission confirming that an unlicensed veterinarian is legally able to practice in that State. However, it is clear to us that the States discussed by the commenters have exemption provisions in place for unlicensed veterinarians to legally practice under certain conditions, and that there are different means by which APHIS can confirm an individual's status for the purposes of accreditation. Given these considerations, we are providing an additional means by which it can be shown that an unlicensed veterinarian is legally able to practice veterinary medicine in a State. While we are retaining written permission from the State as one means, APHIS' determination of a person's legal status to practice veterinary medicine in a State may also be obtained through reference to State statutes providing veterinary services for a veterinary employer such as a cooperative, corporation, laboratory, school, or other institution recognized by the State authority but not involving contact with animals owned by the public. We are revising §§ 161.1(e)(2) and 161.2(b) to include this option.

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. None of the changes to these regulations imposes new requirements.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This rule is not an Executive Order 13771 regulatory action because this 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 on the Regulations.gov website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

The mission of the NVAP is to provide accredited veterinarians with the information they need to ensure the health of U.S. livestock, poultry, and other animal populations and to protect the public's health and well-being. APHIS is 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. The amendments do not impose new regulatory requirements.

About 70,000 of the approximately 108,000 veterinarians in the United States are accredited by APHIS. 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, virtually all veterinarians are considered small

entities. However, this rule will not impose new or additional burdens on APHIS accredited veterinarians or those veterinarians seeking accreditation. No economic impact is anticipated, as this is a purely administrative action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this final 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.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

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 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 final rule, please contact Mr. Joseph Moxey, 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 are amending 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 “B, C, and D” and adding “B, C, D, and G” in its place;
- c. By adding, in alphabetical order, a definition for *Authorization*;
- d. By revising the definitions of *Category I animals*, *Category II animals*, and *Official certificate, form, record, report, tag, band, or other identification*;
- e. By removing the definition of *Veterinarian-in-Charge*; and
- f. By adding, in alphabetical order, a definition for *Veterinary Official*.

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 of this chapter, 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 of this chapter, 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 regulations, or prescribed by a State form approved by the Administrator, for use by an accredited veterinarian performing official functions under this subchapter.

* * * * *

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

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 “B, C, and D” and adding “B, C, D, and G” in its 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 or given legal authority through State statute to provide veterinary services for a veterinary employer (such as a cooperative, corporation, laboratory, or other institution recognized by the State authority but not involving contact with animals owned by the public, or a college or school of veterinary medicine). Such authorizations may limit accredited duties to specific geographical areas and/or 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 removing the words "Veterinarian-in-Charge" each time they occur and adding the words "Veterinary 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 otherwise permitted by the State’s veterinary licensing authority to practice veterinary medicine in that State without a license.

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§ 161.4 [Amended]

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

§ 161.7 [Amended]

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

§§162.11, 162.12, and 162.13 [Amended]

10. Sections 162.11, 162.12, and 162.13 are amended by removing the words “Veterinarian-in-Charge” each time they occur and adding the words “Veterinary Official” in their place.

Done in Washington, DC, this 19th day of February 2020 .

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

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