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\* \* \* \* \*

Dated: December 27, 2004.

**Russell T. Davis,**

*Administrator, Rural Housing Service.*

[FR Doc. 05-2429 Filed 2-7-05; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 53 and 71

[Docket No. 02-091-2]

#### Spring Viremia of Carp; Payment of Indemnity

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the general indemnity regulations to provide for the payment of indemnity to owners for fish destroyed because of spring viremia of carp. We also amended the interstate movement regulations to prevent the movement of fish infected with or exposed to spring viremia of carp. These actions were necessary to help control and eradicate this disease in the United States.

**DATES:** *Effective Date:* The interim rule became effective on May 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jill Rolland, Fishery Biologist, Certification and Control Team, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737-1231; (301) 734-7727.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective May 12, 2004, and published in the **Federal Register** on May 17, 2004 (69 FR 27823-27827, Docket No. 02-091-1), we amended the general indemnity regulations contained in 9 CFR part 53 to provide for the payment of indemnity to owners for fish destroyed because of spring viremia of carp (SVC). We also amended the interstate movement regulations to prevent the movement of fish infected with or exposed to SVC. These actions were necessary to help

control and eradicate this disease in the United States.

Comments on the interim rule were required to be received on or before July 16, 2004. We received one comment by that date, from a private citizen. This commenter raised several issues related to the interim rule. These issues are discussed below.

The commenter objected to payment of indemnity to eligible owners on the grounds that such payment is contrary to the public interest and will only reward poor practice among aquaculturists. We believe that payment of indemnity is necessary to provide an incentive for aquaculturists to participate in the surveillance and eradication program and thus to ensure the success of the program. We are making no changes to the rule in response to this comment.

The commenter stated that since fish destroyed as a result of infection or exposure to SVC may be sold for rendering or salvage value, the payment received for such sales should be all the recompense aquaculturists receive. We note that not all fish destroyed because of SVC may be sold for rendering or salvage value, such as ornamental fish infected with SVC. The regulations provide that any salvage value collected for fish destroyed because of SVC will be subtracted from the amount of any indemnity payment a producer may receive.

The commenter stated that the United States Department of Agriculture should neither support aquaculture nor extend payment of indemnity to aquaculturists because fish are not livestock. We point out that the National Aquaculture Act of 1980, as amended by the National Aquaculture Improvement Act of 1985 (16 U.S.C. 2801-2810), requires the Secretary to support and develop aquaculture programs. Furthermore, the Animal Health Protection Act (7 U.S.C. 8301-8317), from which the Animal and Plant Health Inspection Service (APHIS) derives its authority to regulate matters associated with animal health, defines livestock as "all farm-raised animals." We interpret this to mean aquatic as well as terrestrial animals. We are making no changes to the rule in response to this comment.

The commenter further stated that the importation of carp should be prohibited and carp should be banned in the United States. We believe such measures to be unwarranted. We are making no changes to the rule in response to this comment.

The commenter noted that since the disease survives in mud and water, eradication would be impossible or at least expensive. We note that there are

two treatments available to control the survival of the virus in mud and water. Depending on the size of the pond, it may simply be allowed to dry out, or it may be treated with slaked lime, which raises the pH of the pond, penetrates the mud, and renders the virus inactive. Neither of these treatments is difficult or excessively expensive. We are making no changes to the rule in response to this comment.

The commenter also objected to the practice of aquaculture on the grounds that it represents an environmental threat. We note that APHIS's mission is to protect plant and animal health, not to dictate the means by which plants and animals are raised, unless those means pose a risk to plant or animal health. We do not believe that aquaculture in itself poses an inherent risk to the health of fish so raised. We are making no changes to the rule in response to this comment.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this action 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.

#### List of Subjects

##### 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

##### 9 CFR Part 71

Animal disease, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

#### PART 71—GENERAL PROVISIONS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR parts 53 and 71 and that was published at 69 FR 27823-27827 on May 17, 2004.