

responsibilities among the various levels of government.”

#### H. Plain Language Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act and requests public comment on this effort.

#### List of Subjects in 42 CFR Part 70

Communicable diseases, CDC, Isolation, Public health, Quarantine, Quarantinable Communicable Disease.

#### Proposed Text

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention proposes to amend 42 CFR part 70 as follows:

#### PART 70—INTERSTATE QUARANTINE

1. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

2. Amend § 70.1 as follows:

a. Remove paragraph designations (a), (b), (c), (d), (e), (f), and (g).

b. Add in alphabetical order definitions of CDC, Conditional release, Director, Isolation, Master or Operator, Quarantine, Quarantinable communicable disease, and U.S. Territory.

c. Revise the definitions of Possession and State. The revisions and additions read as follows:

##### § 70.1 General definitions.

\* \* \* \* \*

*CDC* means the Centers for Disease Control and Prevention, Department of Health and Human Services.

\* \* \* \* \*

*Conditional release* means “surveillance” as that term is defined in 42 CFR 71.1.

\* \* \* \* \*

*Director* means the Director, Centers for Disease Control and Prevention, Department of Health and Human Services, or another authorized representative as approved by the CDC Director or the Secretary of HHS.

\* \* \* \* \*

*Isolation* means the separation of an individual or group reasonably believed to be infected with a quarantinable

communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.

*Master or Operator* means the aircrew or sea crew member with responsibility respectively for aircraft or vessel operation and navigation, or a similar individual with responsibility for a conveyance.

*Possession* means U.S. Territory.

*Quarantine* means the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.

*Quarantinable communicable disease* means any of the communicable diseases listed in an Executive Order, as provided under section 361 of the Public Health Service Act. Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at <http://www.cdc.gov> and [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register). If this Order is amended, HHS will enforce that amended order immediately and update that Web site.

*State* means any of the 50 states, plus the District of Columbia.

*U.S. Territory* means any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

\* \* \* \* \*

3. Revise § 70.6 to read as follows:

##### § 70.6 Apprehension and detention of persons with specific diseases.

Regulations prescribed in this part authorize the detention, isolation, quarantine, or conditional release of individuals, for the purpose of preventing the introduction, transmission, and spread of the communicable diseases listed in an Executive Order setting out a list of quarantinable communicable diseases, as provided under section 361(b) of the Public Health Service Act. Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at <http://www.cdc.gov/quarantine> and [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register). If this Order is amended, HHS will enforce that amended order immediately and update its Web site.

Dated: December 13, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### 42 CFR Part 71

[Docket No. CDC–2012–0017]

RIN 0920–AA12

#### Control of Communicable Diseases: Foreign; Scope and Definitions

**AGENCY:** Centers for Disease Control and Prevention (HHS/CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of Proposed Rulemaking and request for comments.

**SUMMARY:** Through this Notice of Proposed Rulemaking (NPRM), the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is proposing to update and reorganize the Scope and Definitions for foreign quarantine regulations and add a new section to contain definitions for *Importations*. This NPRM proposes to update the Scope and Definitions to reflect modern terminology and plain language used globally by industry and public health partners. As part of the proposed updates, we are updating five existing definitions; adding thirteen new definitions to help clarify existing provisions; creating a new scope and definitions section for *Importations* under a new section by reorganizing existing definitions into this new section; and updating regulations to reflect the language used by the most recent Executive Order regarding quarantinable communicable diseases.

**DATES:** Submit written or electronic comments by January 25, 2013.

**ADDRESSES:** You may submit comments, identified by “RIN 0920–AA12”: by any of the following methods:

- *Internet:* Access the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–03, Atlanta, Georgia 30333, ATTN: Part 71 NPRM.

*Instructions:* All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All

relevant comments will be posted without change to <http://regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, please go to <http://www.regulations.gov>. Comments will also be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Standard Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to 1-866-694-4867 and ask for a representative in the Division of Global Migration and Quarantine (DGMQ) to schedule your visit. To download an electronic version of the rule, access <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this notice of proposed rulemaking: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E-03, Atlanta, Georgia 30333; telephone 404-498-1600.

**SUPPLEMENTARY INFORMATION:** HHS/CDC is simultaneously publishing a companion direct final rule (DFR) in the **Federal Register** that proposes identical updates because we believe that these requirements are non-controversial and unlikely to generate significant adverse comment. If HHS/CDC does not receive any significant adverse comments on the DFR within the specified comment period, we will publish a document in the **Federal Register** withdrawing this NPRM and confirming the effective date of the DFR within 30 days after the public comment period on the DFR ends. If HHS/CDC receives any timely significant adverse comment, we will withdraw the DFR in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends. If the DFR is withdrawn, we will carefully consider all public comments before proceeding with any subsequent final rule based on the NPRM. A significant adverse comment is one that explains: (1) why the DFR is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the DFR will be ineffective or unacceptable without a change.

This preamble is organized as follows:

- I. Public Participation
- II. Authority for These Regulations

- III. Proposed Updates to 42 CFR 71.1, 71.32(a) and 71.50
- IV. Proposed Scope and Definitions for Section 71.1
  - A. Definitions Updated Under Section 71.1
  - B. Definitions Added to Section 71.1
- V. Proposed Update of Section 71.32(a)
- VI. Proposed Scope and Definitions for Section 71.50
  - A. Definitions Added to Section 71.50
- VII. Alternatives Considered
- VIII. Required Regulatory Analysis
  - A. Required Regulatory Analyses Under Executive Orders 12866 and 13563
  - B. Regulatory Flexibility Act
  - C. Small Business Regulatory Enforcement Fairness Act of 1996
  - D. The Paperwork Reduction Act of 1995
  - E. National Environmental Policy Act (NEPA)
  - F. Civil Justice Reform (Executive Order 12988)
  - G. Executive Order 13132 (Federalism)
  - H. Plain Language Act of 2010

### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed publicly. Comments are invited on any topic related to this NPRM.

### II. Authority for These Regulations

The primary authority supporting this rulemaking is section 361 of the Public Health Service Act (42 U.S.C. § 264). Section 361 authorizes the Secretary of HHS to make and enforce regulations as in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions of the United States and from one state or possession into any other state or possession. Regulations that implement federal quarantine authority are currently promulgated in 42 CFR Parts 70 and 71. Part 71 contains regulations to prevent the introduction, transmission, and spread of communicable diseases into the states and possessions of the United States, while Part 70 contains regulations to prevent the introduction, transmission, or spread of communicable diseases from one state into another. CDC is proposing to update the term "possession" to "territory." The U.S. Department of the Interior's Office of Insular Affairs, the lead federal agency on issues involving the territories, no longer uses the term "possession" to

refer to the insular areas. Therefore, CDC is adopting the predominant term "territory" consistent with how other federal agencies use this term. The Secretary has delegated to the Director of the Centers for Disease Control and Prevention the authority for implementing these regulations.

Authority for carrying out most of these functions has been delegated to HHS/CDC's Division of Global Migration and Quarantine (DGMQ). The Secretary's authority to apprehend, examine, detain, and conditionally release individuals is limited to those quarantinable communicable diseases published in an Executive Order of the President. This list currently includes cholera, diphtheria, infectious tuberculosis (TB), plague, smallpox, yellow fever, and viral hemorrhagic fevers, such as Marburg, Ebola, and Crimean-Congo hemorrhagic fever (CCHF), Severe Acute Respiratory Syndrome (SARS), and influenza caused by novel or re-emergent influenza viruses that are causing or have the potential to cause a pandemic (see Executive Order 13295, as amended by Executive Order 13375 on April 1, 2005).

### III. Updates to 42 CFR 71.1, 71.32(a) and 71.50

Through this Notice of Proposed Rulemaking (NPRM), HHS/CDC proposes to update the Scope and Definitions for 42 CFR Part 71 under section 71.1 and adding a new section 71.50, to reflect modern terminology and plain language commonly used by global private sector industry and public health partners. Specifically, we are updating five existing definitions, adding thirteen new definitions to help clarify existing provisions, and creating a new scope and definitions section within Part 71, under subpart F for Importations, by reorganizing certain existing definitions. In updating the definitions in Part 71, it became evident to us that certain definitions pertain more directly to *Importations* under subpart F than to Part 71 in general; therefore, we have decided to reorganize the existing definitions by creating a new section 71.50 for this subpart to contain these definitions to better clarify the terms for importers. We are also adding new definitions for section 71.50 to clarify the intent of certain provisions under subpart F.

Finally, as part of the proposed changes to definitions, we are also updating section 71.32(a) incorporate the most recent listing of quarantinable communicable diseases under Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of

April 1, 2005. These proposed changes are not substantive and will not affect current practices.

**IV. Proposed Scope and Definitions for Section 71.1**

Proposed section 71.1(a) has been updated to include the current interstate quarantine regulations administered by HHS/CDC found at “42 CFR part 70” to the existing cross-reference citing “21 CFR parts 1240 and 1250.”

On August 16, 2000, the Secretary transferred certain authority for interstate control of communicable disease, including the authority to apprehend, examine, detain, and

conditionally release individuals moving from one state into another from HHS/Food and Drug Administration (FDA) to HHS/CDC, which became 42 CFR Part 70. As part of this transfer, FDA retained regulatory authority over animals and other products that may transmit or spread communicable disease. These other regulations may be found at 21 CFR parts 1240 and 1250. This rule has no effect upon FDA’s regulatory authority. Accordingly, the proposed scope reads: “The provisions of this part contain the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the States or

territories (also known as possessions) of the United States. Regulations pertaining to preventing the interstate spread of communicable diseases are contained in 21 CFR parts 1240 and 1250 and 42 CFR part 70.”

Current section 71.1 (b) *Definitions* contains definitions of terms used in the current CFR. The NPRM proposes new or updated definitions for clarification and to be consistent with current industry and public health principles and practice.

Table 1 lists the definitions found in the current 42 CFR part 71, subpart A, and compares them with the updated definitions in this NPRM.

**TABLE 1—SUBPART A—FOREIGN QUARANTINE DEFINITIONS AND CORRESPONDING CHANGES IN DEFINITIONS IN THE NPRM**

Existing definitions in Part 42 CFR 71.1	Corresponding, new or updated definition in NPRM
Carrier .....	No Change.
Communicable disease .....	Commander.
Contamination .....	No Change.
Controlled Free Pratique .....	No Change.
Deratting Certificate .....	No Change.
Deratting Exemption Certificate .....	No Change.
Detention .....	No Change.
Director .....	No Change.
Disinfection .....	No Change.
Disinfestation .....	No Change.
Disinsection .....	No Change.
Educational Purpose .....	Moved to new 71.50.
Exhibition Purpose .....	Moved to new 71.50.
Ill person .....	No Change.
International Health Regulations .....	Updated.
International voyage .....	No Change.
Isolation .....	Updated.
Military Services .....	No Change
	Quarantine.
	Quarantinable Communicable disease.
	Possession.
Scientific Purpose .....	Moved to new 71.50.
Surveillance .....	Updated.
U.S. port .....	No Change.
	U.S. Territory.
United States .....	Updated.
Vector .....	Updated.

**A. Definitions Updated Under Section 71.1**

*International Health Regulations or IHR.* This NPRM defines International Health Regulations or IHR as the International Health Regulations of the World Health Organization (WHO), adopted by the 58th World Health Assembly in 2005, as may be further amended, and subject to the United States’ reservation and understandings. The NPRM proposes to update the current CFR’s definition to reflect that the 1969 IHR, as amended in 1973 and 1981 by the World Health Assembly, has been superseded by the 2005 IHR currently in place. This definition also

reflects that the United States accepted the IHR with the reservation that it will implement them in line with U.S. principles of federalism. In addition, the United States submitted three understandings, setting forth its views that: (1) incidents that involve the natural, accidental or deliberate release of chemical, biological or radiological materials are notifiable under the IHR; (2) countries that accept the IHR are obligated to report potential public health emergencies that occur outside their borders to the extent possible; and (3) the IHR do not create any separate private right to legal action against the federal government.

*Isolation.* The NPRM proposes to update the term “isolation” to mean the separation of an individual or group of individuals who are reasonably believed to be infected with a quarantinable communicable disease from others who are healthy in such a manner as to prevent the spread of the quarantinable communicable disease. The current definition of “isolation,” when applied to an individual or group of individuals is stated as “the separation of that person or group of persons from other persons, except the health staff on duty, in such a manner necessary as to prevent the spread of infection.” Not only does the updated definition help to clarify the distinction between

quarantine and isolation, but it removes the current reference to “health staff on duty” to which the separation does not apply. HHS/CDC believes that the reference to “health staff on duty” is unnecessary and outmoded because, in practice, a patient may have his or her needs attended to by a variety of individuals. The new definition focuses on the measures used to prevent the spread of infection and not on the types of individuals who may attend to the patient. This is not a substantive change from current practice.

**Surveillance.** Under this NPRM, HHS/CDC is proposing to define “surveillance” as the temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease, to determine the risk of disease spread. We are proposing to update the term “surveillance” to more accurately reflect current practice and to clarify that, just as with quarantine and isolation, this public health measure is applicable to individuals and groups of individuals.

**United States.** We are proposing to update the definition of “United States” to mean the 50 States, the District of Columbia, and the territories (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. We are proposing this action to better clarify the authority of provisions within Part 71. The current definition includes the Trust Territory of the Pacific Islands, which have not been administered by the United States since 1986.

**Vector.** We propose to update the term “vector” to be defined as any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system (e.g., plasmids or other molecular vector) or animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human. To provide further clarity, we have defined the term “animal products” in subpart F. This revision more adequately reflects modern science and current practice which are focused on protecting public health.

#### B. Definitions Added to Section 71.1

**Commander.** Consistent with current industry practice, this NPRM proposes to define “commander” as the aircrew member with responsibility for the aircraft’s operations and navigation.

**Quarantine.** HHS/CDC is proposing to separately define “quarantine” as the separation of an individual or group of

individuals who are reasonably believed to have been exposed to a quarantinable communicable disease, who are not ill, from others who have not been so exposed, in such a manner as to prevent the possible spread of the quarantinable communicable disease. HHS/CDC is separately defining quarantine, isolation, and surveillance, and is using these terms in a manner that is consistent with public health practice. In current practice, quarantine, isolation, and surveillance may apply either to individuals or groups of individuals. Indeed, the current definition of Isolation in 42 CFR 71.1 applies to “a person or group of persons.” HHS/CDC is clarifying that quarantine and surveillance are public health practices that may also be applied to groups of individuals. This is not a substantive change, but rather consistent with CDC’s current practice.

**Quarantinable communicable disease.** Under the proposed definition, “quarantinable communicable disease” means any of the communicable diseases listed in an Executive Order, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264). Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at <http://www.cdc.gov/quarantine> and [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register). If this Order is amended, HHS/CDC will enforce that amended order immediately and update its appropriate Web site. A proposed definition for “quarantinable communicable disease” is being added to Part 71 through this NPRM to incorporate the most recent applicable Executive Order. The addition of this proposed definition will also be reflected in section 71.32(a), *Persons, carriers and things*.

**Possession.** To best add clarity to Part 71 and to align this Part with 42 CFR Part 70, we propose to update the term “possession” to mean “U.S. territory” and define U.S. territory to include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Currently, only Puerto Rico and the Virgin Islands are explicitly listed in the definition. Thus, CDC is updating this provision to explicitly list the other U.S. jurisdictions to which this part applies.

**U.S. territory.** Consistent with current practice, this NPRM includes a proposed definition of “U.S. territory”, to mean any territory (also known as possessions) of the United States including American Samoa, Guam, the

Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The Department of the Interior’s Office of Insular Affairs, the federal government’s lead agency for U.S. territories, no longer uses the term “possession” to refer to these jurisdictions.

Consequently, HHS/CDC is proposing to add a new definition for U.S. territory consistent with current federal usage.

#### V. Proposed Update of Section 71.32(a)

In 2003, in response to the emergence of Severe Acute Respiratory Syndrome (SARS), the HHS amended 42 CFR 70.6 and 71.32 to incorporate by reference the Executive Order listing the quarantinable communicable diseases subject to detention, isolation, quarantine, or conditional release, thereby eliminating the administrative delay involved in separately publishing the list of diseases through rulemaking.

Section 71.32(a), *Persons, carriers, and things*, contains the general authority for the Director to take measures to protect public health against “any of the communicable diseases listed in an Executive Order, as provided under section 361(b) of the Public Health Service Act.” The current § 71.32(a) lists Executive Order (E.O) 13295, of April 4, 2003. The subpart states that “If this Order is amended, HHS will enforce that amended order.”

On April 1, 2005, the existing Executive Order was amended by Executive Order 13375. Therefore, as part of the non-controversial proposed changes to in this NPRM, we are also updating section 71.32(a) to reflect the most recent Executive Order that lists the “Quarantinable Communicable Diseases,” which we have also defined. These proposed changes are not substantive and will not affect current practices.

#### VI. Proposed Scope and Definitions for Section 71.50

This NPRM proposes to move certain definitions from section 71.1 to new section 71.50, because these definitions only apply to the regulations found in subpart F, *Importations*. Subpart F, *Importations*, contains the restrictions on importations of nonhuman primates; certain kinds of animals; etiological agents, hosts, and vectors; and dead bodies. The proposed addition of § 71.50 Scope and Definitions is not a substantive change. To clarify the regulations for the reader, the terms used only in subpart A through subpart G are found in § 71.1, while the terms used only in subpart F, have been moved to new § 71.50. We also propose separate definitions for quarantine and

isolation to reflect current practices as they apply to individuals (71.1) and animals (71.50).

Proposed section 71.50(a) *Scope* under subpart F—*Importations*, clarifies that HHS/CDC also has the statutory authority to prevent the introduction, transmission, and spread of

communicable human diseases resulting from importations of various animal hosts, product, vectors, or other etiological agents that pose a threat to human health.

Proposed section 71.50 (b) *Definitions* contains updated definitions used in the current CFR. The NPRM promulgates

new and updated definitions to be consistent with current medical and public health principles and practice.

Table 2 lists the definitions found in the current 42 CFR part 71, subpart A, and the corresponding new or updated proposed definitions in this NPRM.

TABLE 2—SUBPART F—IMPORTATIONS

Definitions and Corresponding Changes in Definitions in the NPRM

Existing definitions in 42 CFR Part 71.1	Corresponding, new and modified definition in proposed 42 CFR 71.50
Educational purpose .....	Animal product or Product.
Exhibition purpose .....	No Change.
	No Change.
	In transit.
	Isolation, when applied to animals.
	Licensed Veterinarian.
	Person.
	Quarantine, when applied to animals.
	Rendered Noninfectious.
Scientific purpose .....	No Change.
	You or Your.

A. *Definitions Added to Section 71.50*

*Animal product or Product.* We have defined the term “animal product” or “product” to describe those items that are known to transfer, or are capable of transferring, an infectious biological agent to a human and that are prohibited from entering the United States unless accompanied by a permit or rendered noninfectious. For the purposes of this NPRM, “animal product” or “product” means the hide, hair, skull, teeth, bones, claws, blood, tissue, or other biological samples from an animal, including trophies, mounts, rugs, or other display items. We have proposed this definition, which is used in subpart F, to best describe the current prohibition on animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human and that as a condition of entry into the United States must be accompanied by a permit or rendered noninfectious.

*In transit.* In this NPRM, we are proposing to define “in transit” as animals that are located within the United States, including animals whose presence is anticipated, scheduled, or otherwise, as part of the movement of those animals between a foreign country of departure and foreign country of final destination without clearing customs and officially entering the United States. As part of modern global trade and travel practices, animals commonly pass through the United States without being formally admitted into this country. These animals pose a potential risk to U.S. public health where the improper

handling of these shipments during exchange of cargo could introduce zoonotic diseases into the United States. We note that the term “in-transit” is currently only found in section 71.51 relating to the importation of dogs and cats and we believe it is useful to add clarity to this section by defining to what is meant by this term.

*Isolation, when applied to animals.* We have proposed a definition of “isolation” under this subpart to mean the separation of an ill animal or ill group of animals from individuals, other animals, or vectors of disease in such a manner as to prevent the spread of infection. We have proposed a separate definition under this subpart to distinguish the concept of isolation for individuals from isolation of animals,

*Licensed Veterinarian.* We have proposed defining “licensed veterinarian” to mean an individual who has obtained both an advanced degree and a valid license to practice animal medicine. This new definition best describes the intent of provisions of this subpart.

*Person.* We have proposed to define “person” to mean any individual or partnership, firm, company, corporation, association, organization, or similar legal entity, including those that are not-for-profit. With the exception of 42 CFR section 71.55, which refers to the imported remains of a natural person, this definition is intended to clarify the relevant import prohibitions applicable to individuals and organizations under this subpart.

*Quarantine, when applied to animals.* We have proposed defining

“quarantine” as it applies to animals as the practice of separating live animals that are reasonably believed to have been exposed to a communicable disease, but are not yet ill, in a setting where the animal can be observed for evidence of disease, and where measures are in place to prevent transmission of infection to humans or animals. This new definition best clarifies the current public health measure of quarantining animals, and it distinguishes it from public health practice of isolation when applied to animals.

*Render Noninfectious.* In this NPRM, we have proposed “render noninfectious” to mean treating an animal product (e.g., by boiling, irradiating, soaking, formalin fixation, or salting) in such a manner renders the product incapable of transferring an infectious biological agent to a human. Acceptable methods of rendering a product noninfectious typically include the following:

(1) Boiling in water to ensure that any matter other than bone, horns, hooves, claws, antlers, or teeth is removed,

(2) Irradiating with gamma irradiation at a dose of at least 20 kilogray at room temperature (20 °C or higher),

(3) Soaking, with agitation, in a 4 percent (weight/volume) solution of washing soda (sodium carbonate, Na<sub>2</sub>CO<sub>3</sub>) maintained at pH 11.5 or above for at least 48 hours,

(4) Soaking, with agitation, in a formic acid solution (100 kg salt [sodium chloride, NaCl] and 12 kg formic acid per 1,000 liters water) maintained at below pH 3.0 for at least 48 hours;

wetting and dressing agents may be added.

(5) In the case of raw hides, salting for at least 28 days with sea salt containing 2 percent washing soda (sodium carbonate, Na<sub>2</sub>CO<sub>3</sub>).

(6) Formalin fixation.

(7) Another method approved by HHS/CDC.

Through this definition within the NPRM, HHS/CDC is proposing to better clarify and explain existing practices that limit limiting the importation of animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human. Such products must be accompanied by an HHS/CDC import permit or rendered noninfectious as a condition of entry into the United States. Items that have been rendered noninfectious, as described in this subpart, may be imported without an HHS/CDC permit.

*You or your.* To best identify and assign responsibilities under this subpart, we have defined the terms “you” or “your” to mean an importer, owner, or an applicant.

## VII. Alternatives Considered

Under Executive Order 13563 agencies are asked to consider all feasible alternatives to current practice and the rule as proposed. HHS/CDC notes that the main impact of the proposed rule is to clarify the current practices and intent of HHS/CDC updating and defining terms used in the existing 42 CFR Part 71. As explained in Section III. “Rationale for Updates to 42 CFR 71.1, 71.32(a) and 71.50,” through this NPRM, HHS/CDC proposes to update the Scope and Definitions for 42 CFR Part 71 under sections 71.1 and add new section 71.50, to reflect modern terminology and plain language commonly used by global private sector industry and public health partners. By clarifying and explaining the provisions within part 71, HHS/CDC hopes to assist the regulated community in complying with the provisions to best protect public health. HHS/CDC believes that this rulemaking complies with the spirit of the Executive Order; updating definition and clarifying language provides good alternatives to the current regulation.

## VIII. Required Regulatory Analyses

### A. Required Regulatory Analyses Under Executive Orders 12866 and 13563

Under Executive Order 12866 (EO 12866), Regulatory Planning and Review (58 FR 51735, October 4, 1993) HHS/CDC is required to determine whether this regulatory action would be

“significant” and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Orders. This order defines “significant regulatory action” as any regulatory action that is likely to result in a rule that may:

Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or,
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in EO 12866.

Executive Order 13563 (EO 13563), Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011), updates some of the provisions of EO 12866 in order to promote more streamlined regulatory actions. This EO charges, in part, that, while protecting “public health, welfare, safety, and our environment” that regulations must also “promote predictability and reduce uncertainty” in order to promote economic growth. Further, regulations must be written in common language and be easy to understand. In the spirit of EO 13563, this NPRM enhances definitions related to control of communicable diseases and adds more recent medical information where appropriate. HHS/CDC has determined that this NPRM is an update of definitions and compliant with the spirit of EO 13563. Further, HHS/CDC has determined that this NPRM is not a significant regulatory action as defined in EO 12866 because the NPRM is definitional and does not change the baseline costs for any of the primary stakeholders.

### B. Regulatory Flexibility Act

We have examined the impacts of the proposed rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. We certify that this

proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

### C. Small Business Regulatory Enforcement Fairness Act of 1996

This regulatory action is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### D. The Paperwork Reduction Act of 1995

HHS/CDC has determined that the Paperwork Reduction Act does apply to the date collection and record keeping requirements of 42 CFR Part 71 and has obtained approval by the Office of Management and Budget (OMB) under OMB Control No. 0920–0134, expiration 07/31/2015. The updates proposed in this rule do not impact the data collection and record keeping requirements already approved by OMB.

### E. National Environmental Policy Act (NEPA)

Pursuant to 48 FR 9374 (list of HHS/CDC program actions that are categorically excluded from the NEPA environmental review process), HHS/CDC has determined that this action does not qualify for a categorical exclusion. In the absence of an applicable categorical exclusion, the Director, HHS/CDC, has determined that provisions amending 42 CFR Part 71 will not have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### F. Civil Justice Reform (Executive Order 12988)

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent 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.

*G. Executive Order 13132 (Federalism)*

HHS/CDC has reviewed this proposed rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have “federalism implications.” The rule does not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

*H. Plain Language Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act and requests public comment on this effort.

**List of Subjects in 42 CFR Part 71**

Communicable diseases, Isolation, In Transit, Public health, Quarantine, Quarantinable Communicable Disease, Render Noninfectious.

**Proposed Text**

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention proposes to amend 42 CFR Part 71 as follows:

**PART 71—FOREIGN QUARANTINE**

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

**Authority:** Secs. 215 and 311 of Public Health Service (PHS) Act as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

2. Amend § 71.1 as follows:

a. Revise paragraph (a).  
b. In paragraph (b), add in alphabetical order definitions of Commander, Quarantine, Quarantinable communicable disease, and U.S. territory.

c. In paragraph (b), revise definitions of International Health Regulations, Isolation, Surveillance, United States, and Vector. The revisions and additions read as follows:

**§ 71.1 Scope and definitions.**

\* \* \* \* \*

(a) The provisions of this part contain the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the States or territories (also known as possessions) of the United States. Regulations pertaining to preventing the interstate spread of

communicable diseases are contained in 21 CFR parts 1240 and 1250 and 42 CFR part 70.

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

*Commander* means the aircrew member with responsibility for the aircraft’s operations and navigation.

\* \* \* \* \*

*International Health Regulations or IHR* means the International Health Regulations of the World Health Organization, adopted by the Fifty-Eighth World Health Assembly in 2005, as may be further amended, and subject to the United States’ reservation and understandings.

\* \* \* \* \*

*Isolation* means the separation of an individual or group who is reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.

\* \* \* \* \*

*Possession* means U.S. territory.

*Quarantine* means the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who is not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.

*Quarantinable communicable disease* means any of the communicable diseases listed in an Executive Order, as provided under § 361 of the Public Health Service Act (42 U.S.C. § 264). Executive Order 13295, of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at <http://www.cdc.gov> and [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register). If this Order is amended, HHS will enforce that amended order immediately and update that Web site.

*Surveillance* means the temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease, to determine the risk of disease spread.

\* \* \* \* \*

*U.S. territory* means any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

*United States* means the 50 States, District of Columbia, and the territories (also known as possessions) of the United States, including American

Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

*Vector* means any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system (e.g., plasmids or other molecular vector) or animal products that are known to transfer, or are capable of transferring, an infectious biological agent to a human.

3. Revise § 71.32(a) to read as follows:

**§ 71.32 Persons, carriers, and things.**

(a) Whenever the Director has reason to believe that any arriving person is infected with or has been exposed to any of the communicable diseases listed in an Executive Order, as provided under section 361(b) of the Public Health Service Act, he/she may isolate, quarantine, or place the person under surveillance and may order disinfection or disinfestation, fumigation, as he/she considers necessary to prevent the introduction, transmission or spread of the listed communicable diseases. Executive Order 13295, of April 4, 2003, as provided under section 361 of the Public Health Service Act (42 U.S.C. 264), and as amended by Executive Order 13375 of April 1, 2005, contains the current revised list of quarantinable communicable diseases, and may be obtained at <http://www.cdc.gov> and [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register). If this Order is amended, HHS will enforce that amended order immediately and update this reference.

\* \* \* \* \*

4. Add § 71.50 to subpart F to read as follows:

**§ 71.50 Scope and definitions.**

(a) The purpose of this subpart is to prevent the introduction, transmission, and spread of communicable human disease resulting from importations of various animal hosts or vectors or other etiological agents from foreign countries into the United States.

(b) In addition to terms in § 71.1, the terms below, as used in this subpart, shall have the following meanings:

*Animal product* or *product* means the hide, hair, skull, teeth, bones, claws, blood, tissue, or other biological samples from an animal, including trophies, mounts, rugs, or other display items.

*Educational purpose* means use in the teaching of a defined educational program at the university level or equivalent.

*Exhibition purpose* means use as part of a display in a facility comparable to a zoological park or in a trained animal act. The animal display must be open to

the general public at routinely scheduled hours on 5 or more days of each week. The trained animal act must be routinely schedule for multiple performances each week and open to the general public except for reasonable vacation and retraining periods.

*In transit* means animals that are located within the United States, whether their presence is anticipated, scheduled, or not, as part of the movement of those animals between a foreign country of departure and foreign country of final destination without clearing customs and officially entering the United States.

*Isolation when applied to animals* means the separation of an ill animal or ill group of animals from individuals, or other animals, or vectors of disease in such a manner as to prevent the spread of infection.

*Licensed veterinarian* means an individual who has obtained both an advanced degree and valid license to practice animal medicine.

*Person* means any individual or partnership, firm, company, corporation, association, organization, or similar legal entity, including those that are not-for-profit.

*Quarantine when applied to animals* means the practice of separating live animals that are reasonably believed to have been exposed to a communicable disease, but are not yet ill, in a setting where the animal can be observed for evidence of disease, and where measures are in place to prevent transmission of infection to humans or animals.

*Render noninfectious* means treating an animal product (e.g., by boiling, irradiating, soaking, formalin fixation, or salting) in such a manner that renders the product incapable of transferring an infectious biological agent to a human.

*Scientific purpose* means use for scientific research following a defined protocol and other standards for research projects as normally conducted at the university level. The term also includes the use for safety testing, potency testing, and other activities related to the production of medical products.

*You or your* means an importer, owner, or an applicant.

Dated: December 13, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012-30725 Filed 12-21-12; 4:15 pm]

**BILLING CODE 4150-28-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 12-352; RM-11686; DA 12-2002].

### Radio Broadcasting Services; Dove Creek, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules. The Commission requests comment on a petition filed by Cochise Media Licenses, LLC, proposing to amend the Table of Allotments by allotting FM Channel 229C3 as a first local service at Dove Creek, Colorado. Channel 229C3 can be allotted at Dove Creek, Colorado, in compliance with the Commission's minimum distance separation requirements, at the proposed reference coordinates: 37-48-05 North Latitude and 108-59-33 West Longitude. See **SUPPLEMENTARY INFORMATION** *infra*.

**DATES:** The deadline for filing comments is February 4, 2013. Reply comments must be filed on or before February 21, 2013.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Susan A. Marshall, Esq., Anne Goodwin Crump, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 12-352, adopted December 10, 2012, and released December 11, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, or via the company's Web site, [www.bcpweb.com](http://www.bcpweb.com). This document does not contain proposed information collection requirements subject to the

Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Dove Creek, Channel 229C3. [FR Doc. 2012-30971 Filed 12-21-12; 4:15 pm]

**BILLING CODE 6712-01-P**