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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 04–109–1]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the swine health protection regulations by removing Kentucky from the list of States that permit the feeding of treated garbage to swine and adding it to the list of States that prohibit garbage feeding. This action is necessary to reflect changes in the status of Kentucky, and thereby facilitate the administration of the swine health protection regulations.

DATES: This rule is effective December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, National Surveillance Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1231; (301) 734–3752.

SUPPLEMENTARY INFORMATION:

Background

The swine health protection regulations in 9 CFR part 166 (referred to below as the regulations) were established under the Swine Health Protection Act (7 U.S.C. 3801 *et seq.*, referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

The regulations in § 166.15 categorize States according to the respective status of each with regard to the feeding of garbage to swine. Some States prohibit this activity, while other States permit the feeding of garbage to swine; these States are listed in § 116.15(a) and (b), respectively.

Under section 9 of the Act (7 U.S.C. 3808), the Animal and Plant Health Inspection Service (APHIS) is authorized to enter into cooperative agreements with State agencies, including States departments of agriculture, to more efficiently regulate the feeding of garbage to swine. These cooperative agreements may be entered into when APHIS determines that a State agency has adequate facilities, personnel, and procedures to assist the Department in the administration and enforcement of the regulations; the Department, however, retains primary enforcement under the Act. States that have entered into cooperative agreements to issue licenses under the regulations are listed in § 166.15(d).

Prior to this rulemaking, Kentucky was listed in § 166.15(b) as a State that permitted the feeding of treated garbage to swine and in § 166.15(d) as a State in a cooperative agreement with APHIS to issue licenses. However, Kentucky has repealed its laws permitting the feeding of treated garbage to swine. We are, therefore, removing Kentucky from the list in § 166.15(b) of States that permit the feeding of treated garbage to swine and are adding it to the list in § 166.15(a) of States that prohibit the feeding of garbage to swine. We are also removing Kentucky from the list in § 166.15(d) of States that issue licenses under cooperative agreements with APHIS.

Effective Date

We are taking this action to update our regulations with respect to changes that have already occurred in the laws of Kentucky regarding the feeding of garbage to swine. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary. We also find good cause for making this rule effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The decision regarding whether or not a State will permit the feeding of garbage to swine is made at the State level. Since the State of Kentucky has notified APHIS that State law now prohibits the feeding of garbage to swine, this rule simply amends the regulations to reflect the State's decision.

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* 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 166

Animal diseases, Hogs, Reporting and recordkeeping requirements.

■ Accordingly, 9 CFR part 166 is amended as follows:

PART 166—SWINE HEALTH PROTECTION

■ 1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3801–3813; 7 CFR 2.22, 2.80, and 371.4.

§ 166.15 [Amended]

■ 2. Section 166.15 is amended as follows:
■ a. In paragraph (a), by adding, in alphabetical order, the word ''Kentucky,''.
■ b. In paragraph (b), by removing the word ''Kentucky,''.
■ c. In paragraph (d), by removing the word ''Kentucky,''.

Done in Washington, DC, this 29th day of November, 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–26613 Filed 12–2–04; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE76

Small Business Size Regulations; Small Business Innovation Research Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is revising its small business size regulations regarding ownership and control of Small Business Innovation Research (SBIR) Program awardees. The final rule provides that an SBIR awardee must meet the following requirements: It must be a for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States (as the regulations currently require); or it must be a for-profit business concern that is at least 51% owned and controlled by another for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. This rule does not change the size standard requiring that an SBIR awardee, together with its affiliates, have no more than 500 employees. Because SBA received a large number of comments concerning ownership of SBIR Program participants by Venture Capital Companies, SBA will issue an Advanced Notice of Proposed Rulemaking seeking additional information this issue.

DATES: This rule is effective January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618, or Edsel Brown, Assistant Administrator for Technology, at (202) 205–6540. You may also e-mail questions to *sizestandards@SBA.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On June 4, 2003, the SBA published in the **Federal Register** (68 FR 33412) a proposed rule to modify the eligibility requirements for the SBIR Program. The proposed rule provided that small business concerns (SBCs), which are 100% owned and controlled by another concern, could receive SBIR awards so long as the concern that owned and controlled the awardee was at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. In addition, the SBIR awardee, including its affiliates (the parent company and any other affiliates), would have to meet the 500-employee size standard.

The SBA sought comments on its proposed rule together with alternatives that it considered. Below is a summary and discussion of the comments the SBA received, as well as a summary of the final rule.

Summary of Comments

The SBA received 164 comments on the proposed rule. Although the majority of the comments supported a change to the eligibility requirements for the SBIR Program, many of them recommended additional changes. The significant issues raised by the comments included: (1) Less than 100% ownership and control by one other concern; (2) majority ownership and control by large businesses; (3) ownership and control by more than one concern; (4) foreign ownership and control; (5) majority ownership and control by venture capital companies (VCCs); (6) ownership by Small Business Investment Companies (SBICs), employee stock option plans (ESOPs) and trusts; (7) joint ventures (JVs) in relation to the proposed rule; and (8) the 500-employee size standard.

Ownership by Other Concerns or Entities and Foreign Ownership

The SBA received several comments recommending a rule that would allow less than 100% ownership and control of an SBIR participant by another concern. Some of these comments stated that the level of ownership or control is not material to the overall success of the SBIR Program. Others contended that allowing less than 100% ownership or control is consistent with the Small Business Innovation Development Act (SBIDA) of 1982 (which can be found at *http://thomas.loc.gov/bss/d097/d097laws.html*) and its legislative history, and in fact furthers the SBIDA's intent. One commenter added that requiring 100% ownership would stifle investment from others.

Several commenters recommended a regulation that would allow an SBIR awardee to be owned and controlled by two or more other business concerns, which in turn are at least 51% owned and controlled by U.S. citizens or permanent resident aliens. Four commenters supported the idea of multiple corporate owners because it would permit one concern to ''spin off'' another, and then add one or more other corporate investors in the ''spin off.'' Other commenters recommended variations of the proposed rule, including: Allowing indirect ownership by U.S. citizens or permanent resident aliens, defining the term individuals to include U.S. corporations, and providing for a net worth test for the parent company.

Three commenters argued that allowing foreign ownership and control would be consistent with Federal procurement regulations. One commenter stated that it needed to go overseas to raise funds through the London Stock Exchange. Several commenters believed that rather than have a U.S. citizen or permanent resident alien ownership requirement, SBA should require the SBIR participant to have a base of operations in the United States, incorporate in the United States, employ U.S. citizens and/or pay taxes to the United States.

One commenter recommended allowing nonprofits to own and control more than 49% of the SBIR participant, but require the non-profit to license its technology exclusively to the start-up so that the non-profit cannot use the program to its advantage. Several commenters supported ownership and control of an SBIR participant by SBICs. One commenter stated that it believed the statutes and rules governing SBICs, as well as the SBA's regulatory authority over them, could provide adequate safeguards against abuse of the SBIR program by such larger businesses. One commenter did not support allowing more than 49% ownership by an SBIC. Other commenters supported ownership and control by trusts for estate/tax planning purposes and by Employee Stock Ownership Plans (ESOPs) for investment and employee incentive purposes.

Conversely, 50 commenters expressed concern that permitting another business concern to own an SBIR Program participant could permit large companies to participate in the SBIR