

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 78

[Docket No. APHIS–2006–0183]

RIN 0579–AC21

#### Brucellosis in Cattle; Research Facilities

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the brucellosis regulations in order to facilitate research to be conducted on brucellosis-exposed or infected animals. Under the current regulations, such research could adversely affect a State's brucellosis classification. For example, the criteria for achieving and maintaining Class Free status provide that all cattle herds in the State or area must be released from quarantine and remain free of brucellosis for 12 consecutive months. Because the current definition of *herd* includes animals held in a research facility, a State could lose its Class Free status by allowing such research. By providing an exception for brucellosis-exposed or infected animals held within federally approved research facilities, this proposed rule would enable the initiation of necessary brucellosis research in Class Free States.

**DATES:** We will consider all comments that we receive on or before February 12, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS–2006–0183 to submit or view public comments and to view supporting and related materials available electronically. Information on using

Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:*

Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0183, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0183.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room 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) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Debra Donch, National Brucellosis Epidemiologist, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1231; (301) 734–5952.

#### SUPPLEMENTARY INFORMATION:

##### Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for

States or areas with the highest rate of brucellosis. Class A and Class B fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The regulations require that, to achieve and retain Class Free status, a State or area must have no cattle herds under quarantine. As a practical matter, this precludes any brucellosis research in Class Free States or areas, since infected animals may be used for such research, and the animals held in a research facility would be considered a herd under the current definition of that term. In § 78.1, *herd* is defined, in part, as, "all animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm, or ranch)." Currently, 48 of the 50 States are classified as brucellosis Class Free. Since research expertise and infrastructure potentially applicable to this country's brucellosis eradication efforts can be found in many Class Free States, this limitation may impede the progress of brucellosis research and delay eradication of the disease in the United States. We are proposing, therefore, to amend the definition of *herd* to specifically exclude animals that are contained within a federally approved research facility. While primarily intended to facilitate brucellosis research in Class Free States, this proposed change to the definition of *herd* would ensure that the presence of infected animals held for brucellosis research would not adversely affect the State's brucellosis classification.

In order to gain Federal approval, a research facility must first adopt and demonstrate compliance with a series of guidelines established by the Animal and Plant Health Inspection Service (APHIS) and the Agricultural Research Service. These guidelines address, among other things, biological security, recordkeeping, identification, and sanitation standards. Additionally, each study conducted in a federally approved research facility must be approved by the State animal health official and the APHIS Area Veterinarian in Charge. Currently, certain facilities in Colorado, Idaho, Iowa, and Louisiana are approved to conduct brucellosis research under these guidelines. Our proposed change to the definition of

*herd* would remove an obstacle to the initiation of brucellosis research, primarily in Class Free States, by ensuring that the animals held for such research are not considered a “herd” for the purposes of assigning or renewing a State’s brucellosis status.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The 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.

Brucellosis is a contagious, costly disease of ruminants that also affects humans. Although brucellosis can infect other animals, it is primarily a threat to cattle, bison, and swine. In animals, the disease causes weight loss, decreased milk production, loss of young, infertility, and lameness. There is no cure for brucellosis in animals, nor is there a preventative vaccine that is 100 percent effective.

Given the potential for costly consequences related to an outbreak of brucellosis, additional research is needed in order to eradicate this economically damaging disease. In 1952, when brucellosis was widespread throughout the United States, annual losses from lowered milk production, aborted calves and pigs, and reduced breeding efficiency were estimated at \$400 million. Subsequent studies show that if eradication efforts were stopped, the costs of producing beef and milk would increase by an estimated \$80 million annually in less than 10 years.

We expect that the groups affected by this proposed action would be herd owners and the entities that would operate any brucellosis research facilities established in Class Free States. To the extent that it would allow for more research with the goal of eradicating brucellosis in the United States, this proposed rule would benefit all herd owners over time. Brucellosis research facilities in Class Free States would be operated by the State in which they were located or exist as part of colleges or universities that have government contracts to conduct brucellosis research.

The latest agricultural census data show that there were 732,660 farms in the United States primarily engaged in beef cattle ranching and farming and dairy cattle and milk production that reported sales in 2002. Of those farms, over 99 percent were classified as small entities according to Small Business Association (SBA) standards. There were 82,028 farms in the United States

primarily engaged in raising hogs and pigs that reported sales in 2002. Of those farms, over 90 percent were classified as small entities by the SBA. Most, if not all, of the farms primarily engaged in bison production are classified as small entities under SBA standards. Accordingly, the majority of herd owners potentially affected by this proposed rule are considered small entities. For herd owners, any economic effects stemming from this proposed rule would result from advances made toward the eradication of brucellosis in the United States. As such, these economic effects would be positive, but long-term and generalized.

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 7 CFR part 3015, subpart V.)

#### **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**

This proposed 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 78**

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 78 as follows:

#### **PART 78—BRUCELLOSIS**

1. The authority citation for part 78 would continue to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 78.1, the definition of **herd** would be revised to read as follows:

#### **§ 78.1 Definitions**

\* \* \* \* \*

*Herd.* (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm, or ranch); or

(b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with each other.

(c) For the purposes of this part, the term **herd** does not include animals that are contained within a federally approved research facility.

\* \* \* \* \*

Done in Washington, DC, this 6th day of December 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E6–21172 Filed 12–12–06; 8:45 am]

**BILLING CODE 3410–34–P**

#### **DEPARTMENT OF AGRICULTURE**

#### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 93**

[Docket No. APHIS–2006–0013]

**RIN 0579–AC00**

#### **Standards for Permanent, Privately Owned Horse Quarantine Facilities**

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

**ACTION:** Proposed rule; withdrawal and rep proposal.

**SUMMARY:** We are proposing to amend the regulations pertaining to the importation of horses to establish standards for the approval of permanent, privately owned quarantine facilities for horses. We are taking this action because demand for quarantine services for horses exceeds the space available at existing facilities. This proposed rule replaces a previously published proposed rule, which we are withdrawing as part of this document, that contained substantially different restrictions on ownership and substantially different requirements for the physical plant, operating procedures, and compliance date. We believe that allowing imported horses to be quarantined in permanent, privately owned quarantine facilities that meet these newly proposed criteria would facilitate the importation of horses while continuing to protect against the