

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. 96-090-1]

Brucellosis; State and Area Classification Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations to provide for the Administrator to conduct a special review of areas with fewer than 10,000 herds of cattle or bison in order to determine whether an area may qualify for Class A brucellosis status. Currently, the brucellosis regulations provide for such reviews to be conducted at the State level. Extending the provisions for special review to the area level would allow areas with a herd infection rate over 0.25 percent, but that might otherwise meet the criteria for Class A status, to undergo a special review to determine whether Class A status should be conferred on the area.

DATES: Consideration will be given only to comments received on or before March 11, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96-090-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-090-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis

Epidemiologist, Brucellosis Eradication Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1228, (301) 734-7708; or E-mail: mgilsdorf@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. In its principal animal hosts, brucellosis is characterized by abortion and impaired fertility.

Through a cooperative State and Federal effort, the United States is now approaching total eradication of the field strain *Brucella abortus* in domestic cattle and bison herds. As of November 30, 1996, there were only 40 known infected domestic cattle and bison herds, and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) had declared 36 States, Puerto Rico, and the U.S. Virgin Islands free of the disease.

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 (areas) according to the rate of *Brucella abortus* infection present and the general effectiveness of the brucellosis control and eradication program conducted in the State or area. 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 may be placed under Federal quarantine. At this point in the cooperative State/Federal brucellosis eradication program, all States have achieved either Class Free or Class A status; there are no classified areas. (An "area" is defined in the regulations as "that portion of any State which has a separate brucellosis classification under this part.")

The definition of "Class A State or area" provides, in part, that for a State or area to qualify for Class A status, no more than 0.25 percent of all herds in the State or area (i.e., 2.5 herds per 1,000 herds) may contain brucellosis reactors during any consecutive 12-month period. However, those regulations also provide for an exception to be made to that herd infection rate requirement when a State contains 10,000 or fewer herds. In such cases, the Administrator may conduct a special review to determine whether a

State with such a small herd population would qualify for Class A status; the location of herds in the State, sources of brucellosis, and the brucellosis control measures taken by the State are considered in that review. Based on the results of the review, the Administrator may determine that the State may be granted Class A status despite a herd infection rate higher than 0.25 percent. As currently written, this special review exception applies only to States—no provision is made for a special review of an area with fewer than 10,000 herds.

In some Class A States where there are only a few remaining affected herds, it is likely that most of the area within the State could qualify for Class Free area status. However, the lack of a special review exception to qualify areas as Class A is deterring the States from requesting that the brucellosis-free portions of the State be considered a Class Free area. This is because the remaining area within the State—i.e., that portion of the State that still contains affected herds—would likely have its status downgraded from Class A to Class B or lower because the ratio of affected herds to total herds in that area would place its herd infection rate above 0.25 percent. Given that the potentially downgraded area has met the criteria for, and enjoyed the benefits of, the Class A status held by the State as a whole, it does not appear reasonable to downgrade that area's status in the absence of any actual increase in the incidence of brucellosis within that area.

Therefore, we are proposing to amend the definition of "Class A State or area" to extend the provisions for special review in States with fewer than 10,000 herds to areas with fewer than 10,000 herds. The same considerations that factor into the special review of States—i.e., locations of herds, sources of brucellosis, and brucellosis control measures—would apply to the special review of areas. Thus, an area with fewer than 10,000 herds that has a herd infection rate greater than 0.25 percent, but that might otherwise be eligible for Class A status, could be the subject of a special review by APHIS. If the disposition of the herds within that area made the transmission of brucellosis from affected herds to other herds unlikely, if the sources of brucellosis infection within the brucellosis-affected herds were found to not present a threat

of also infecting other herds, and if the measures taken within the area to control brucellosis were found to be satisfactory, then the area could be granted Class A status. We believe that granting an area Class A status based on the satisfactory outcome of such a review would not result in an increased likelihood that brucellosis might be spread to adjacent States or areas, especially given that one of the factors that would be considered is the measures taken within the area to control the spread of brucellosis. If those measures were found to be inadequate, the area would not be granted Class A status.

Miscellaneous

We are also proposing to amend several sections of the regulations that contain references to cattle without also referring to bison. In nearly all instances, those general provisions of the regulations that apply to cattle also apply to bison; however, several definitions in §78.1, as well as one sentence in §78.40 and several sentences in §78.44, refer only to cattle when the reference should include both cattle and bison. We would amend those three sections to rectify those omissions.

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.

This proposed rule would amend the brucellosis regulations to provide for the Administrator to conduct a special review of areas with fewer than 10,000 herds of cattle or bison in order to determine whether an area may qualify for Class A brucellosis status. Extending the provisions for special review to the area level would allow areas with a herd infection rate over 0.25 percent, but that might otherwise meet the criteria for Class A status, to undergo a special review to determine whether Class A status could be conferred on the area.

This proposed rule would allow the brucellosis status of some parts of a State to advance without triggering a concomitant decrease in the brucellosis status of the remaining areas within the State. Thus, the status quo in terms of testing requirements would be maintained in the area of the State that maintains Class A status, while testing requirements would be eased in that portion of the State gaining Class Free status, which would result in an overall

positive economic effect due to decreased testing costs within the State.

Test-eligible cattle and bison from Class A States or areas must have a negative blood test for brucellosis within 30 days prior to movement to be moved to a Class Free State or area. If a portion of a State were to qualify as a Class Free area and the remaining area within the State retained Class A status, the regulations would allow breeding cattle and bison to be moved from the Class Free area of the State to herds in Class Free States without prior testing for brucellosis. Therefore, cattle and bison owners in that portion of a State that qualified as a Class Free area would collectively realize a savings in testing expenses, which is, on average, approximately \$5.00 per head. The testing requirements for the movement of cattle and bison from the Class A area of the State would remain the same, so there would be neither an increase nor a decrease in testing costs for cattle and bison owners within the Class A area.

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

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 78

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

Accordingly, 9 CFR part 78 would be amended as follows:

PART 78—BRUCELLOSIS

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

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 78.1 would be amended as follows:

§78.1 [Amended]

a. In the definition of *Certificate*, paragraph (a), the second sentence, by adding the words “or bison” immediately after the word “cattle”.

b. In the definition of *Class A State or area*:

i. In paragraph (a)(3), by adding the words “or bison” immediately after the word “cattle” each time it appears;

ii. In paragraph (b)(1), the first sentence, by removing the word “cattle” and by adding the words “or areas” after the words “except in States”;

iii. In paragraph (b)(1), the second sentence, by adding the words “or areas” after the word “States”; and

iv. In paragraph (b)(1), the third sentence, by adding the words “or area” after the word “State”.

c. In the definition of *Class B State or area*, paragraph (a)(3), by adding the words “or bison” immediately after the word “cattle” each time it appears; and in paragraph (b)(1), the first sentence, by removing the word “cattle”.

d. In the definition of *Class C State or area*, paragraph (a)(3), by adding the words “or bison” immediately after the word “cattle” each time it appears; and in paragraph (b)(1), the first sentence, by removing the word “cattle”.

e. In the definition of *Class Free State or area*, in paragraph (a)(3), by adding the words “or bison” immediately after the word “cattle” each time it appears; and in paragraph (b)(1), by removing the word “cattle” both times it appears.

f. By revising the heading and definition of *Market cattle identification test cattle* to read as set forth below.

g. In the definition of *Official brand inspection certificate*, by adding the words “or bison” immediately after the word “cattle”.

h. In the definition of *Official brand recording agency*, by adding the words “or bison” immediately after the word “cattle”.

i. In the definition of *Originate*, paragraph (c), by adding the words “or

bison" immediately after the word "cattle" both times it appears.

j. In the definition of *Permit for entry*, by adding the words "or bison" immediately after the word "cattle".

§ 78.1 Definitions.

* * * * *

Market cattle identification test cattle and bison. Cows and bulls 2 years of age or over that have been moved to recognized slaughtering establishments, and test-eligible cattle and bison that are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, quarantined feedlots, or other assembly points. Such cattle and bison shall be identified by an official eartag and/or United States Department of Agriculture backtag prior to or at the first market, stockyard, quarantined feedlot, or slaughtering establishment they reach.

* * * * *

§ 78.40 [Amended]

3. In § 78.40, paragraph (c) would be amended by adding the words "and bison" immediately after the word "cattle".

§ 78.44 [Amended]

4. Section 78.44 would be amended as follows:

a. In paragraph (c), in paragraph (9) of the Agreement, by adding the words "and bison" immediately after the word "cattle".

b. In paragraph (c), in paragraph (10) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

c. In paragraph (c), in paragraph (11) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

d. In paragraph (c), in paragraph (12) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

e. In paragraph (c), in paragraph (13) of the Agreement, by adding the words "or bison" immediately after the word "cattle" both times it appears.

f. In paragraph (d), in paragraph (9) of the Agreement, by adding the words "and bison" immediately after the word "cattle".

g. In paragraph (d), in paragraph (10) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

h. In paragraph (d), in paragraph (11) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

i. In paragraph (d), in paragraph (12) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

j. In paragraph (d), in paragraph (13) of the Agreement, by adding the words "or bison" immediately after the word "cattle" both times it appears.

Done in Washington, DC, this 7th day of January 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-624 Filed 1-9-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Montana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: The State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) are proposing to amend the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands within Montana under the permanent regulatory program. The proposed rulemaking would streamline the permitting process in Montana by delegating to Montana the sole responsibility to issue permits for coal mining and reclamation operations on

Federal lands under the revised Federal lands program regulations, and would eliminate duplicative permitting requirements, thereby increasing governmental efficiency, which is one of the purposes of the cooperative agreement. This amendment would also update the cooperative agreement to reflect current regulations and agency structures. Cooperative agreements are provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice provides information on the proposed changes to the cooperative agreement.

DATES: *Written comments:* Written comments must be received by 4:00 p.m., M.S.T. on March 11, 1997.

Public hearing: Anyone wishing to testify at a public hearing must submit a request on or before 4:00 p.m., M.S.T. on January 31, 1997. Because OSM will hold a public hearing only if one is requested, hearing arrangements, dates and times, if any, will be announced in a subsequent Federal Register notice. If no one requests an opportunity to testify at the public hearing, the hearing will not be held. Any disabled individual who has need for special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Suite 3320, 1999 Broadway, Denver, CO 80202-5733.

Copies of the Montana program, proposed amendments to the cooperative agreement and the related information required under 30 CFR Part 745 will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed revisions by contacting any one of the following persons.