

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 78

[Docket No. 04–103–1]

#### Brucellosis in Swine; Add Arkansas, Louisiana, and Michigan to List of Validated Brucellosis-Free States

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of swine by adding Arkansas, Louisiana, and Michigan to the list of validated brucellosis-free States. We have determined that Louisiana and Arkansas meet the criteria for classification as validated brucellosis-free States. We are also adding Michigan to the list of validated brucellosis-free States as it is currently considered a validated brucellosis-free State, but was inadvertently omitted from the list. This action relieves certain restrictions on the interstate movement of breeding swine from Arkansas and Louisiana and confirms Michigan's current status as a validated brucellosis-free State.

**DATES:** This interim rule is effective on November 18, 2004. We will consider all comments that we receive on or before January 18, 2005.

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

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View

Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04–103–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–103–1.

- **E-mail:** Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–103–1" on the subject line.

- **Agency Web site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**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:** You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Korslund, Staff Veterinarian (Swine Health), Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5914.

#### SUPPLEMENTARY INFORMATION:

##### Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella*. The disease mainly affects cattle, bison, and swine, but goats, sheep, horses, and even humans are susceptible. In its

principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

The brucellosis regulations in 9 CFR part 78 (referred to below as the regulations) contain specific provisions for cattle, bison, and swine. Under the regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for animals are based upon the disease status of the individual animals or the herd or State from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated swine brucellosis-free States, to include Arkansas, Louisiana, and Michigan. A State may apply for validated brucellosis-free status when: (1) Any herd found to have swine brucellosis during the 2-year qualification period preceding the application has been depopulated. More than one finding of a swine brucellosis-infected herd during the qualification period disqualifies the State from validation as brucellosis-free; and (2) during the 2-year qualification period, the State has completed surveillance, annually, by either complete herd testing, market swine testing, or statistical analysis.

Breeding swine originating from a validated brucellosis-free State or herd may be moved interstate without having been tested with an official test for brucellosis within 30 days prior to interstate movement, which would otherwise be required.

After reviewing their brucellosis program records, we have concluded that Arkansas and Louisiana meet the criteria for classification as validated brucellosis-free States. Therefore, we are adding Arkansas and Louisiana to the list of validated brucellosis-free States in § 78.43. This action relieves certain restrictions on the interstate movement of breeding swine from Louisiana and Arkansas.

We are also adding Michigan to the list of validated brucellosis-free States. In practice, Michigan is already being

treated as a validated brucellosis-free State, as that State was previously determined to meet the criteria for classification as a validated brucellosis-free State. However, following that determination, we inadvertently neglected to add Michigan to the list in § 78.43. We are therefore correcting this omission by adding Michigan to the list of validated brucellosis-free States.

#### Immediate Action

Immediate action is warranted to remove restrictions that are no longer necessary on the interstate movement of swine from Louisiana and Arkansas, as well as to confirm Michigan's current status as a validated brucellosis-free State. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### 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.

We are amending the brucellosis regulations concerning the interstate movement of swine by adding Arkansas, Louisiana, and Michigan to the list of validated brucellosis-free States. As of January 1, 2004, 45 States, plus Puerto Rico and the U.S. Virgin Islands, were classified as validated brucellosis-free States. The States of Arkansas and Louisiana have been classified as Stage II States, but now meet the requirements for being listed as Stage III (validated brucellosis-free) States. Michigan is already considered a validated brucellosis-free State, but was inadvertently omitted from the list of validated brucellosis-free States in the regulations.

In 2003, there were approximately 1,000 hog and pig operations in Arkansas, with a total of 310,000 swine. The average value per head of swine in Arkansas was \$64 with a reported cash value of approximately \$19.8 million. In the same year, there were approximately 580 hog and pig operations in

Louisiana, with a total of 20,000 swine. The average value per head of swine in Louisiana was \$71 with a reported cash value of approximately \$1.42 million. Arkansas and Louisiana, combined, account for less than 1 percent of the total value of hogs and pigs produced in the United States. The small business size standards for hogs and pigs, as identified by the Small Business Administration using North American Industry Classification System codes, is \$750,000 or less in annual receipts. It is estimated that 74 percent of the hog and pig operations in Arkansas and nearly 100 percent of the hog and pig operations in Louisiana are small businesses.

This interim rule will grant swine producers in Arkansas and Louisiana validated brucellosis-free status. The rule will benefit breeding stock owners who will no longer have to incur the cost of brucellosis testing on sows and other breeding stock. The estimated cost of brucellosis testing ranges from \$7.50 to \$15 per animal, which includes veterinary and handling fees. Breeding stock was estimated at 79,079 swine and 4,062 swine for Arkansas and Louisiana, respectively. It is estimated that the proportion of hogs and pigs used or to be used for breeding by small entities is approximately 57.8 percent and 100 percent of the total breeding stock in Arkansas and Louisiana, respectively. The estimated number of hogs and pigs used or to be used for breeding purposes by small entities in Arkansas is 45,708 swine; the total cost savings for small entities in Arkansas would range from \$342,810 to \$685,620 if all those swine were to be moved interstate. The estimated number of hogs and pigs used or to be used for breeding purposes by small entities in Louisiana is 4,062 swine; the total cost savings for small entities in Louisiana would range from \$30,465 to \$60,930 if all those swine were to be moved interstate.

As of October 2004, the national average value of a sow was \$207 per head. Thus, cost savings associated with suspending brucellosis testing for breeding swine to be moved interstate from Arkansas and Louisiana is roughly between 3.6 and 7.2 percent of the value of the animal.

Arkansas and Louisiana have been classified as Stage II States requiring annual testing of the breeding stock in its swine operations. However, Arkansas and Louisiana have met the requirements to be listed as validated brucellosis-free States. Michigan, currently considered a validated brucellosis-free State, is currently not listed in the regulations due to an oversight. This interim rule reclassifies

Arkansas, Louisiana, and Michigan as validated brucellosis-free States. The change in the status of Arkansas and Louisiana would lead to cost savings to the breeding segment of swine production ranging from 3.6 to 7.2 percent of the value of the breeding herd if all breeding swine were to be moved interstate. APHIS does not expect cost savings of this magnitude to have a significant economic impact on affected small entity producers. The interim rule will have no effect on Michigan, as it has already been operating as a validated brucellosis-free State. This rule will not result in any additional costs for affected small entities.

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 in conflict 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 interim 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 are amending 9 CFR part 78 as follows:

#### PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

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

#### § 78.43 [Amended]

■ 2. Section 78.43 is amended by adding, in alphabetical order, the words,

“Arkansas,” “Louisiana,” and  
“Michigan.”

Done in Washington, DC, this 12th day of  
November 2004.

**Elizabeth E. Gaston,**

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

[FR Doc. 04-25600 Filed 11-17-04; 8:45 am]

BILLING CODE 3410-34-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 40, 41, and 145

#### Confidential Information and Commission Records and Information

**AGENCY:** Commodity Futures Trading  
Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures  
Trading Commission is amending its  
regulations to specify which portions of  
an application for registration as a  
derivatives transaction execution  
facility (DTEF) or derivatives clearing  
organization (DCO), or for designation  
as a contract market (DCM), will be  
public. The amendments also  
implement a procedure requiring  
registered entities to submit a cover  
sheet for all rule submissions.  
Additionally, the Commission is  
updating its regulations under the  
Freedom of Information Act (FOIA) to  
implement expedited processing and  
increased time limits; revise the  
schedule of fees for FOIA requests; and  
correct certain provisions concerning  
publicly available records.

**DATES:** Effective December 20, 2004.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- Mail/Hand Deliver: Jean A. Webb,  
Secretary of the Commission,  
Commodity Futures Trading  
Commission, Three Lafayette Centre,  
1155 21st Street, NW., Washington, DC  
20581.

E-mail: [secretary@cftc.gov](mailto:secretary@cftc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Eileen A. Donovan, Assistant Secretary  
to the Commission for FOIA Matters,  
(202) 418-5096, electronic mail:  
[edonovan@cftc.gov](mailto:edonovan@cftc.gov), or David Steinberg,  
Attorney Advisor, (202) 418-5102,  
electronic mail: [dsteinberg@cftc.gov](mailto:dsteinberg@cftc.gov),  
Office of the Secretariat, Commodity  
Futures Trading Commission, Three  
Lafayette Centre, 1155 21st Street, NW.,  
Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

### I. Background

#### A. Public Availability of Applications Submitted by DTEFs, DCOs, and DCMs

On July 28, 2004, the Commission  
requested comment from the public  
regarding its proposal to specify that the  
following portions of DTEF, DCO, and  
DCM applications are publicly  
available:<sup>1</sup> transmittal letter, proposed  
rules, the applicant's regulatory  
compliance chart, documents  
establishing the applicant's legal status  
(e.g., corporate charters), and documents  
setting forth the applicant's governance  
structure.<sup>2</sup> The proposed change to  
§ 40.8 addresses the absence in the  
Commission's regulations of any  
guidance to applicants or the public  
about the availability of the  
applications.

In response to this proposal, the  
Commission received comment letters  
from the Chicago Mercantile Exchange  
("CME") and the Chicago Board of  
Trade ("CBOT") (collectively,  
"exchanges"). Both exchanges noted  
strong support for the rule proposal, but  
requested that the Commission expand  
the proposal to make additional  
information public as a matter of course.  
The Commission has carefully  
considered the comments from the  
exchanges and does not believe the  
proposal should be expanded at this  
time. First, the exchanges contend that  
the Commission should ensure the  
public has the opportunity to comment  
meaningfully on the salient operational  
features of the proposed exchange, as  
well as any proposed plans that could  
adversely impact market integrity, such  
as payment for order flow or  
internalization plans. The CBOT also  
believes that applicant plans to allow or  
encourage trading off the centralized  
market should be public. The  
Commission understands the  
importance of interested parties being  
able to comment meaningfully on this  
information. The Commission notes that  
applicant plans regarding payment for  
order flow or internalization plans are  
either submitted in the rules section of  
the proposed application or may be part  
of the applicant's future plans filed  
separately from the application.  
Applicant plans for trading off the  
centralized market are also submitted in  
the rules section of the proposal. Rules  
are defined in § 40.1 and are already  
generally considered public  
information. Consequently, the  
Commission does not believe it is

<sup>1</sup> 69 FR 44981.

<sup>2</sup> The rule proposal indicated that the identical  
sections of applications seeking designation or  
registration as a DCM or DTEF under section 6(a)  
of the CEA would be publicly available.

necessary to separately list this  
information in § 40.8(a).

Second, both exchanges assert that  
information concerning outsourcing  
arrangements upon which the applicant  
tends to rely should be made public.  
The CME notes that to the extent that an  
applicant proposes to outsource any of  
its operational, self-regulatory, or  
clearing functions, the public cannot  
provide the Commission with useful  
comments regarding the applicant's  
proposed compliance with the  
Commodity Exchange Act's core  
principles or designation criteria unless  
the key provisions are made public.  
Again, the Commission recognizes the  
importance of interested parties being  
able to comment on a proposed  
application, but must balance this with  
the intent of the applicant to protect  
commercially sensitive information.  
Outsourcing arrangements often include  
compliance and surveillance techniques  
and the public release of this  
information could cause competitive  
harm to the applicant. The Commission  
notes that § 40.8(a) is not intended to  
limit which applicant information will  
be released, but to specify the portions  
of an application that are automatically  
public and therefore would not be  
granted confidential treatment under  
any circumstances. Therefore, even  
though the Commission does not specify  
outsourcing information in § 40.8(a),  
portions of this material in a redacted  
form could still be made public if  
requested under the Freedom of  
Information Act. The Commission also  
notes that the rule states that any  
portion of the application not covered  
by a request for confidential treatment  
will also be made public. The  
Commission is committed to providing  
transparency in the application process  
and will continue to evaluate whether  
additional information should be  
included in § 40.8(a).

#### B. Appendix D—Submission Cover Sheet and Instructions and Public Availability of Rule Submissions

The Commission proposed to amend  
the part 40 and 41 regulations requiring  
DTEFs, DCOs, and DTEFs to attach a  
Commission-generated submission  
cover sheet with all self-certified rules,<sup>3</sup>  
self-certified products,<sup>4</sup> rules submitted  
for Commission approval,<sup>5</sup> products  
submitted for Commission approval,<sup>6</sup>  
notifications of rule amendments,<sup>7</sup> and

<sup>3</sup> Commission Regulations 40.6(a) and 41.24.

<sup>4</sup> Commission Regulations 40.2 and 41.23.

<sup>5</sup> Commission Regulations 40.4(a) and 40.5.

<sup>6</sup> Commission Regulation 40.3.

<sup>7</sup> Commission Regulation 40.6(c).