

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. 98-060-1]

Brucellosis; Procedures for Retaining Class Free State Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations to allow a State to retain its Class Free status following the detection of an affected herd if the State meets certain conditions. These conditions, which would include quarantining, testing, and depopulating the affected herd and conducting an investigation to ensure that brucellosis has not spread from the affected herd, would allow a State to avoid losing its Class Free status due to an isolated case of infection being detected in the State. We believe that providing this option to States would encourage the prompt resolution of isolated cases of brucellosis and thus ensure the continued progress of State and Federal efforts toward the eradication of brucellosis in domestic cattle and bison herds. Without this proposed change in the regulations, a State could lose its Class Free status following the detection of a single affected herd and would not have as great an incentive to take swift and decisive action to determine the source of the infection, eliminate the affected herd, and ensure that the disease had not spread to other herds in the State.

DATES: Consideration will be given only to comments received on or before November 2, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-060-1, 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. 98-060-1. 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. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-7708.

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 July 31, 1998, there were only 9 known infected domestic cattle and bison herds, and the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) had declared 43 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.

To maintain Class Free status, the regulations require, among other things, that a State must have a herd infection rate of 0.0 percent or 0 herds per 1,000. A State's herd infection rate is based on the number of herds found to have

brucellosis reactors within the State during any 12 consecutive months due to field strain *Brucella abortus*. The required 0.0 percent herd infection rate means that a Class Free State would no longer qualify for Class Free status if a single brucellosis-affected herd was detected in the State. A downgrade in status from Class Free to Class A results in increased costs for States and their livestock owners, with most of those added costs arising from the increased testing requirements that accompany Class A status.

The cooperative State/Federal brucellosis eradication program is nearing its conclusion, with eradication of the disease in domestic cattle and bison herds being projected by the end of 1998. With the eradication program entering its latter stages, several States that historically had significant levels of brucellosis have been able to attain Class Free status. Although these States have successfully eliminated the remaining known infected herds within their borders, we believe that it is possible that some of these States may find an isolated herd affected with brucellosis. That was the case recently with Louisiana. Louisiana attained Class Free status in October 1996, but, due to the detection of brucellosis in two herds within the State, was downgraded to Class A in an interim rule effective on June 16, 1998, and published in the **Federal Register** on June 24, 1998 (63 FR 34264-34266, Docket No. 98-068-1).

State and Federal animal health officials have recognized the need for a procedure that would allow a brucellosis Class Free State to maintain its status if an isolated case of brucellosis infection occurs and it can be confirmed that the disease did not spread outside of the herd. We agree that such a strategy is appropriate at this stage of the brucellosis eradication program, when each new herd found to be affected with brucellosis is handled in an emergency action mode in order to quickly resolve the case and ensure continued progress toward eradication. We believe that a procedure that gives a Class Free State the opportunity to retain its status following the detection of an affected herd would be a powerful incentive that would encourage a State in that situation to take swift and decisive action to determine the source of the infection, eliminate the affected

herd, and ensure that the disease has not spread to other herds in the State.

Therefore, we are proposing to amend the definition of *Class Free State or area* in § 78.1 of the regulations by adding a new paragraph (b)(4) that would explain the conditions that a State would have to meet in order to retain its Class Free status after the detection of an affected herd within the State.

This proposed procedure is intended to address cases in which a Class Free State encounters an isolated incident in which a herd affected with brucellosis is discovered; it is not intended to be a regular feature of a State's maintenance of its Class Free status. Therefore, the introductory text of new paragraph (b)(4) would provide that a State could use the procedure only in cases where a single herd is found to be affected with brucellosis, and only once in any 2-year period. We would impose these limitations because we believe that the detection of more than one affected herd within a 2-year period is indicative of a brucellosis problem that is more widespread than the isolated cases this proposed procedure is intended to address.

The steps that a State would have to take to retain its Class Free status would be clear-cut and consistent with the goals of emergency disease management: Within 60 days of identifying the initial infected animal, the State would have to eliminate the affected herd and ensure that infection has not spread. To attain these goals, we would require that the State immediately quarantine the affected herd upon its disclosure. After quarantining the herd to ensure that there is no potential for further spread of the disease from the herd, all the animals in the herd would have to be tested for brucellosis and slaughtered as soon as possible within the 60-day period. Testing the herd prior to, or at the time of, depopulation would provide epidemiologists with information as to the extent of the brucellosis infection in the herd and other information of that nature that would be useful as animal health personnel pursue the other aspect of the State's response to the detection of the affected herd, i.e., a complete epidemiological investigation of the herd to attempt to determine the source of the infection and ensure that brucellosis has not spread.

The epidemiological investigation that would be required would involve the identification and investigation of all herds on premises adjacent to the affected herd (adjacent herds), all herds from which animals may have been brought into the affected herd (source

herds), and all herds that may have had contact with or accepted animals from the affected herd (contact herds). Once all adjacent, source, and contact herds had been identified, each of those herds would have to be placed under an approved individual herd plan.

An approved individual herd plan, as defined in 78.1, is a herd management and testing plan designed by the herd owner, the owner's veterinarian if requested, and a State representative or APHIS representative to determine the disease status of the animals in the herd and, in those cases where the disease is found to be present, to control and eradicate brucellosis within the herd. An individual herd plan must be jointly approved by the State animal health official and the APHIS Veterinarian in Charge. The use of an approved individual herd plan under the circumstances envisioned in this proposed rule would ensure that any testing or other measures determined to be necessary could be instituted after being agreed upon by the herd owner, the State, and APHIS.

In most cases, the approved individual herd plan will require herd blood tests—i.e., the brucellosis testing of all test-eligible animals in a herd—for each of the adjacent, source, and contact herds identified in the course of the epidemiological investigation. However, we acknowledge that there may be some instances in which a herd blood test may not be necessary given the facts of the situation. For example, a herd may be identified as a contact herd on the basis of its having received animals from the affected herd. If, however, it was determined that the only animals the contact herd received from the affected herd were steers, which pose no threat of disseminating brucellosis, then it would serve little practical purpose from an epidemiological standpoint to require a herd blood test for the contact herd. Another example of this type of situation would be a case in which a herd is identified as a source herd on the basis of its having provided a heifer to the affected herd. If it was determined that the heifer left the source herd 8 years ago to join the affected herd, and the source herd has been a certified brucellosis-free herd for the last 10 years, then once again it would likely be unnecessary from an epidemiological standpoint to require that source herd to undergo a herd blood test.

Given that situations such as those described in the previous paragraph may occur, we are proposing to allow the epidemiologist investigating the affected herd to place an adjacent, source, or contact herd under an individual herd plan that does not

require a herd blood test if he or she determines that such testing is not warranted. That determination, along with the reasons supporting it, would have to be documented in the individual herd plan, which, as noted above, must be jointly approved by the State animal health official and the APHIS Veterinarian in Charge.

If additional herds affected with brucellosis were detected during the course of the epidemiological investigation and subsequent testing, the State would not be eligible to retain its Class Free status under this proposed procedure, but the identification of those herds would nonetheless aid the State in its efforts to eliminate brucellosis and begin the process of requalifying for Class Free status.

At the close of the 60-day period during which the State conducted the activities described in the preceding paragraphs, APHIS would review the actions taken by the State in response to the detection of the affected herd to confirm that the State had met all the conditions necessary to retain its Class Free status.

Alternatives Considered

The criteria for retaining Class Free status proposed in this document are similar in scope and substance to the requirements found in the definition of *accredited-free (suspended) State* in § 77.1 of our tuberculosis regulations in 9 CFR part 77. Specifically, an accredited free (suspended) State may regain its accredited-free status after quarantining the herd in which tuberculosis was detected, conducting an epidemiological investigation to determine that the infection has not spread from the herd, and destroying all reactor cattle and bison. The similarity of our proposed criteria for retaining Class Free status to those requirements led us to consider the possibility of establishing a new classification such as "Class Free (suspended) State" in the brucellosis regulations. However, for the reasons explained below, we have determined that an entirely new State classification would not be necessary in order for the objectives of this proposed rule to be accomplished.

Under the tuberculosis regulations, two herds must be found to be affected with tuberculosis within a 48-month period before a State's accredited-free status will be revoked. Without the accredited-free (suspended) classification, the detection of a single tuberculosis-affected herd in a State would have little effect other than to start the 48-month clock; there would not necessarily be an incentive for a State to act quickly to quarantine the

affected herd and ensure that tuberculosis has not and will not spread from that herd. The accredited-free (suspended) classification provides that incentive by allowing a State to qualify for redesignation as accredited-free as soon as the required quarantine, investigation, and destruction of reactors has been completed.

The brucellosis regulations, on the other hand, provide that a State may lose its Class Free status at any time upon the detection of a single brucellosis-affected cattle or bison herd. Given that immediacy, there is no need to provide for an interim downgrading of State status in order for a Class Free State to have an incentive for reacting quickly to the detection of brucellosis within its borders; any necessary incentive for quick action would be provided by this proposed rule's provisions for retaining Class Free status.

Another consideration in our rejection of the "Class Free (suspended)" alternative is the fact that the requirements of this proposed rule would have to be satisfied within 60 days in order for a State to retain its Class Free status. That necessarily brief window for action means that any rulemaking giving notice of a suspension in status would have to be followed in short order by another rulemaking returning the State to Class Free status or lowering it to Class A status. Given that this proposed rule would not place any additional requirements on the State's herds in general, we believe that adding a "suspended" classification would have little effect other than to cause a short-term shuffling of State status.

One benefit of adding a "suspended" classification would be that it would serve as a mechanism to notify other States of the detection of a brucellosis-affected herd in a Class Free State. However, that notification can also be accomplished through normal reporting methods, so we see no need to add a new classification simply to ensure that other States are made aware of a particular situation. Under current procedures, whenever a herd is found to be affected with brucellosis and the epidemiological investigation leads to an adjacent, source, or contact herd in another State, that other State is immediately notified and joins in the investigation. For States that are not directly affected in that way, notification of the situation is accomplished through the monthly reports that APHIS sends to the animal health officials in every State. The need for a more immediate all-States notification mechanism was not

identified by the State and Federal animal health officials who suggested the procedure for retaining Class Free status that led to this proposed rule. However, we encourage State animal health officials and others to offer their suggestions regarding this notification issue in any comments they may wish to submit on this proposed rule.

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.

Producers and consumers have realized great financial savings from the success of the Cooperative State/Federal Brucellosis Eradication Program. Annual losses from lowered milk production, aborted calves and pigs, and reduced breeding efficiency have decreased from more than \$400 million in 1952 to less than \$1 million today. Studies indicate that if the brucellosis eradication program efforts were stopped, the costs of producing beef and milk could increase by an estimated \$80 million annually in less than 10 years with the gradual spread of brucellosis.

This proposed rule would amend the brucellosis regulations to allow a State to retain its Class Free status following the detection of an affected herd if the State meets certain conditions. These conditions, which would include depopulating the affected herd and taking measures to ensure that brucellosis has not spread from the affected herd, would allow a State to avoid losing its Class Free status due to an isolated case of infection being detected in the State.

The entities potentially affected by this proposed rule are the 43 States, Puerto Rico, and the U.S. Virgin Islands that currently hold Class Free status and the producers of livestock in those States and territories. The total number of cattle and bison in United States was approximately 101.4 million in 1997, valued at about \$53.2 billion. There were 1,167,910 U.S. operations with cattle and bison in 1997. Over 97 percent of these operations are considered to be small entities, with gross cash value of less than \$500,000 each (USDA, National Agricultural Statistics Service, "Agricultural Statistics 1997," Washington, DC, 1997).

Allowing a State to retain its Class Free status under certain conditions could be expected to have an overall positive economic effect for several reasons. First, when a State's status is

upgraded from Class A to Class Free, the State realizes a cost savings through the reduction in the required level of brucellosis ring test (BRT) surveillance. The BRT must be conducted in a Class A State or area at least four times per year at approximately 90-day intervals, with all herds producing milk for sale in the State being required to be included in at least three of the four brucellosis ring tests conducted each year. When a State attains Class Free status, the level of BRT surveillance is lowered to two brucellosis ring tests per year for each herd producing milk for sale in the State. Thus, allowing a State to retain its Class Free status would enable the State to avoid the added testing and personnel costs associated with the higher level of BRT surveillance required of Class A States.

Second, allowing a State to retain its Class Free status would mean that herd owners in the State could continue to avoid the costs of pre-movement testing of their test-eligible cattle and bison. In a Class A State, test-eligible cattle and bison offered for sale interstate from other than certified-free herds must test negative for brucellosis prior to movement. Because that testing is not required for test-eligible cattle and bison in Class Free States, herd owners in a State allowed to retain its Class Free status under the provisions of this proposed rule would continue to be able to move their cattle or bison interstate without incurring the approximately \$3.25 per-head cost of testing.

Finally, in those cases in which a brucellosis-affected herd was depopulated in order for a State to retain its Class Free status, the costs of that depopulation could be largely offset through the payment of Federal indemnity for the destroyed animals. Under the brucellosis indemnity regulations in 9 CFR part 51, any owner whose herd of cattle or bison is destroyed because of brucellosis is eligible for the payment of Federal indemnity. The rate of indemnity is set as either: (1) The appraised value of each animal, minus its salvage value, or (2) a fixed rate of no more than \$250 per animal.

Class Free States would not be required to pursue the option offered by this proposed rule for retaining Class Free status following the detection of a brucellosis-affected herd. However, we believe that the economic benefits that a State would realize by taking action to avoid being downgraded to Class A status would far outweigh the costs of the herd depopulation, epidemiological investigation, and testing that would be required to retain Class Free status.

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 new 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: 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. In § 78.1, in the definition of *Class Free State or area*, a new paragraph (b)(4) would be added to read as follows:

§ 78.1 Definitions.

* * * * *

Class free State or area. * * *

(b) * * *

(4) *Retaining Class Free status.* (i) If a single herd in a Class Free State is found to be affected with brucellosis, the State may retain its Class Free status if it meets the conditions of this paragraph. A State may retain its status in this manner only once during any 2-year period. The following conditions must be satisfied within 60 days of the identification of the infected animal:

(A) The affected herd must be immediately quarantined, tested for brucellosis, and depopulated; and

(B) An epidemiological investigation must be performed and the investigation must confirm that brucellosis has not spread from the affected herd. All herds on premises adjacent to the affected herd (adjacent herds), all herds from which animals may have been brought into the affected herd (source herds), and all herds that may have had contact with or accepted animals from the affected herd (contact herds) must be epidemiologically investigated, and each of those herds must be placed under an approved individual herd plan. If the investigating epidemiologist determines that a herd blood test for a particular adjacent herd, source herd, or contact herd is not warranted, the epidemiologist must include that determination, and the reasons supporting it, in the individual herd plan.

(ii) After the close of the 60-day period following the identification of the infected animal, APHIS will conduct a review to confirm that the requirements of paragraph (b)(4)(i) have been satisfied and that the State is in compliance with all other applicable provisions.

* * * * *

Done in Washington, DC, this 11th day of September 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–24950 Filed 9–16–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–71–AD]

RIN 2120–AA64

Airworthiness Directives; Burkhart GROB Luft-und Raumfahrt GmbH Model G 109B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Burkhart GROB Luft-und Raumfahrt GmbH (Grob) Model G 109B gliders. The proposed AD would require inspecting the elevator and trim tab for water and

to assure that the necessary drain holes are installed and that the existing drain holes are open. The proposed AD would also require drilling any necessary drain holes and opening any existing drain holes that are closed; and, if a significant amount of water (more than ½ liter) is found in the elevator, assuring that the glider's residual momentum and center of gravity (C.G.) are within the limits specified in the flight manual, and adjusting the residual momentum and C.G., as needed. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent water from penetrating the elevator and trim tab because of inadequate drainage, which could result in a delaminated elevator and trim tab structure with consequent elevator imbalance and flutter.

DATES: Comments must be received on or before October 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–71–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic,