

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AC07

#### Common Crop Insurance Regulations; Basic Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations; Basic Provisions to conform to the requirements of section 780 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (2006 Appropriations Act) regarding written agreements and the use of similar agricultural commodities.

**DATES:** *Effective Date:* This rule is effective June 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Erin Reid, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control

number 0563-0053 through November 30, 2007.

#### Government Paperwork Elimination Act (GPEA) Compliance

FCIC is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. FCIC requires that all reinsured companies be in compliance with the Freedom to E-File Act and section 508 of the Rehabilitation Act.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Written agreement requirements for the Federal crop insurance program are the same for all producers regardless of the size of their operations. For instance, all producers requesting this type of written agreement must submit production history for at least the most recent three crop years in which the crop was planted during the base period, if they produced the crop for three years. If any producer has not produced the crop for three years, he or she may submit

evidence of production history for a similar crop, or for a combination of production history for the crop and a similar crop, provided a total of three years of production history is provided. Whether a producer has 10 acres or 100 acres there is no difference in the kind of information required for requesting a written agreement. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this change helps ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order 12988

This interim rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

#### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an

Environmental Impact Statement is needed.

### Background

This rule finalizes changes to the Common Crop Insurance Regulations; Basic Provisions, mandated by the 2006 Appropriations Act, that were published by FCIC on November 30, 2005, as a notice of interim rulemaking in the **Federal Register** at 70 FR 71749—71751. The public was afforded 60 days to submit written comments and opinions. The email address listed on the interim rule and the Federal eRulemaking Portal address were not operational during that time period, therefore, FCIC published a notice in the **Federal Register** at 71 FR 8923 on February 22, 2006, extending the comment period for an additional 30 days, until March 24, 2006.

A total of 11 comments were received from 4 commenters. The commenters were a reinsured company, an attorney, an agent, and an insurance service organization. The comments received and FCIC's responses are as follows:

*Comment:* A commenter stated that under the Administrative Procedure Act (APA), a substantive rule becomes effective 30 days after "the required publication" unless good cause is found by the agency. FCIC contends good cause existed and, therefore, the Interim Rule ostensibly became effective upon filing with the Office of the Federal Register (OFR). Filing a rule with the OFR is not "publication" within the meaning of APA; the appearance of the rule in the **Federal Register** is. Though the Interim Rule may now be effective, its effective date was November 30th, the date of publication, not November 25th, the date of filing.

*Response:* There have been instances where good cause has been shown to allow a rule to be effective upon filing with the **Federal Register**. However, with respect to this rule, this issue is moot because, not only was it filed before November 30, 2005, it was published on November 30, 2005. Therefore, there can be no dispute that the interim rule was effective for crops with a contract change date on or after November 30, 2005.

*Comment:* One commenter stated they believe written agreements which represent an exception to the standards established by FCIC, are actuarially unsound and expose both FCIC and approved insurance providers to unnecessary risks and moral hazard. In addition and recognizing the statutory mandate to which FCIC is subject, they oppose further expansion of written agreements.

*Response:* No written agreement can be approved unless there is actuarially sound data acceptable to FCIC upon which to base coverage and determine the appropriate premium rate. The interim rule and this final rule simply allow data from other similar crops to be used. It does not change the standards that must be met for RMA to offer and approve a written agreement. Further, FCIC is monitoring the performance of its written agreements to ensure that program integrity is protected and appropriate changes are made when problems arise. If the commenter has specific examples where written agreements are not properly underwritten, the commenter should notify the RMA Regional Office serving the area so appropriate action can be taken.

*Comment:* Two commenters expressed concern that FCIC and the industry will be insuring a producer who has never grown the crop before in a county in which the crop has rarely been raised before. Because the crop is new to the area, the county extension office might not be familiar with the growing requirements of the crop (For example, the best time to apply chemicals, fertilizers, etc.). Insuring crops that have rarely been grown in a county by a producer who has never grown the crop before is not actuarially sound. One commenter stated that FCIC is mandated to have an actuarially sound insurance program and questioned how the insurable risk is determined for a crop that has not been grown by the person making the request. The commenters stated that a person who had never grown the crop before would still be eligible for the Noninsured Crop Disaster Assistance Program (NAP); therefore, the producer would not be without a safety net until they accumulate the required three years of history.

*Response:* Although a particular crop may not have been grown extensively in a county, growing conditions in the county are generally known, including rainfall amounts and other weather conditions, soil productivity, length of growing season, etc. The major risk factors are also generally known in the county, such as freeze, adverse weather, etc. Information regarding growing requirements and risk susceptibility for a particular crop is also generally available from other sources, even if not personally known to the county extension office. Since the information needed to determine crop adaptability is generally known or readily available, it is possible to determine the proper coverage and underwriting standards for the written agreement. Further, the new

provisions require evidence of three years of verifiable production records from the producer for a crop with similar growing requirements. This production data, an assessment of the likely risks and the effect on the crop, and other generally available information are then used to offer written agreements in an actuarially sound manner. FCIC agrees if insurance is not offered, NAP coverage may be available. However, providing insurance coverage at actuarially sound rates gives the producer the opportunity to tailor the coverage to better meet the risk management needs of the producer.

*Comment:* One commenter asked whether the "similar crop" provisions apply to all crops/plans using the Basic Provisions or only to those crops under the actual production history (APH) plan of insurance. The commenter states while section 18(f)(2)(i) applies only to policies under APH, section 18(f)(2)(ii) is also revised by the Written Agreement Amendatory Endorsement and refers to "Acceptable production records for at least the most recent three crop years\* \* \*", which could apply to non-APH crops.

*Response:* FCIC agrees that the provision as drafted could suggest that section 18(f)(2)(i) only applies to APH crops. However, this is not the intent. The requirement to provide a completed APH form was intended to apply only to APH and all the other requirements, including the new provisions to require evidence of three years of verifiable production records was intended to apply to all crop policies that authorize written agreements. The provisions have been revised for clarification.

*Comment:* One commenter stated even though the Written Agreement Amendatory Endorsement amends sections 18(f)(2)(i) & (ii) of the Basic Provisions, it does not take priority over the applicable Crop Provisions that might have specific provisions that replace or revise those in the Basic Provisions. For example, the various Income Protection (IP) crop provisions state written agreement provisions do not apply for IP policies. Presumably the Written Agreement Amendatory Endorsement should not be considered to supersede the Crop Provisions in this case. The commenter states this could be misunderstood since the order of precedence at the beginning of the Basic Provisions does not address policy endorsements other than the CAT Endorsement, which takes priority over all other policy provisions.

*Response:* Unlike other endorsements that modify existing terms of the Basic Provisions or Crop Provisions only when the endorsement is selected by the

producer, such as the Catastrophic Risk Protection Endorsement or the Nursery Rehabilitation Endorsement, the Written Agreement Amendatory Endorsement modifies the existing terms of the Basic Provision for all producers. It operates no different than any other change made and incorporated directly into the Basic Provisions. Because the terms of the Written Agreement Amendatory Endorsement are incorporated into all producers' Basic Provisions, its terms will apply to all crop policies that authorize written agreements. It was referred to as an endorsement only as a means to allow its distribution to producers without having to copy and redistribute the entire Basic Provisions. However, FCIC realizes that using the term "endorsement" implies that it has the same meaning as other existing endorsements, which do affect the priority. Therefore, FCIC is removing the term "endorsement" and is now calling it the "Written Agreement Amendment."

*Comment:* Two commenters questioned why FCIC chose to keep the existing three-year production record requirement with the addition of the similar crop provisions. Actuarial data is available for these similar crops so markets are already known, yield potential is already known, and quality adjustment factors are already known. One commenter recommended requiring one year of production records. One year of production records may not reflect the producer's ability to grow the crop in the long term, but it would at least provide an indication of the producer's potential and of the expected risk as a basis for accepting or rejecting the request. One commenter stated having to get three years of production records for a specific crop may require the producer to go back many years.

*Response:* FCIC agrees that if the producer has been insuring the similar crop in the county or area for at least the three previous crop years, there is no need to provide the actual production records. Such records would only be useful in determining whether a similar crop can successfully be produced in the area and would not be used for the actual basis for insurance. Insurance would be based on information relating to the crop to be insured in an area that is similar and in which the crop is already insured. Therefore, for similar crops that have been insured, certified yields will be sufficient. However, the producer must still retain those production records under the terms of the crop insurance policy applicable to such similar crop and the producer may be required to produce such records.

*Comment:* One commenter stated if the similar crop provisions are retained, there are questions and concerns about exactly what constitutes a similar crop. For instance: (1) Would a farmer whose previous experience in growing wheat be given a written agreement to insure sunflowers (if the other requirements are met also) because they are both row crops; (2) Would apple history serve as the basis for a written agreement to insure pecans because they are both tree crops; and (3) Would burley tobacco be considered similar to other tobacco types even though the production practices and values are not similar? Another commenter raised concerns about exactly what constitutes a "similar crop." The commenter recommended tightening the definition of "similar crop" or adding more details in the Written Agreement Handbook.

*Response:* The type of crop, i.e. row crop, tree crop, etc., is only one of the factors to be considered when determining whether the crop is similar. Other factors to be considered are the growing season, agronomic conditions (e.g. comparable soil and water needs) and risk factors associated with the crops production. If the applicable factors are comparable, then the crop can be considered a similar crop. FCIC believes that these factors provide sufficient guidance to determine a similar crop and that tightening the provisions even further would be too restrictive. No change has been made.

*Comment:* A commenter asked whether three years of data are sufficient to establish reliable yield history and enable FCIC to calculate the appropriate premium rates. The commenter recommended the requirement be increased to five years of data because a request for a written agreement may involve the insuring of a crop not already included in the crop insurance program.

*Response:* Insurance can not be provided for a crop unless there is already a crop insurance program in place for it in another county. Therefore, this additional data is also used in determining the appropriate premium rate. The three years of production records from the producer is intended to show that the crop, or a crop with similar characteristics, can be produced in the county or area and allow the premium rate offered to the producer to be refined for that producer. Requiring more years of data would unnecessarily reduce the ability to make insurance offers to producers. If there is not sufficient information available to determine an appropriate premium rate, the written agreement is denied. No change has been made.

*Comment:* A commenter indicated written agreement requests utilizing "similar crops" had been accepted in the past and asked if it is possible to tell how many of those requests were approved and how many were rejected.

*Response:* Data is kept regarding the number of written agreement requests for crops in counties without actuarial documents and how many of those were denied. However, there is no breakdown between those submitted with verifiable production records for a similar crop and those submitted with verifiable production records for the crop to be insured. In 2001 (one year when similar crop data was accepted), the RMA Regional Offices received 4,276 requests and of those requests 2,968 were approved and accepted by the insured, for 69 percent. In 2005 (one year when similar crop data was not accepted), the Regional Offices received 1,638 requests and of those requests 1,192 were approved and accepted by the insured, for 73 percent. However, this comparison may not be reflective of what may take place under the new similar crop provisions because the standards for determining what constitutes a similar crop are different.

*Comment:* A commenter recommended that the rule distinguish between irrigated and non-irrigated crops. A distinction also should be made between crops produced using organic methods. Moreover, even with the criteria established by the Interim Rule, opinions may vary as to whether a crop is similar. The commenter was also aware FCIC has developed or is developing a chart that identifies the "requested crop" and the "similar crops." The commenter notes some crops have multiple "similar crops" whereas others have only one "similar crop." Because the chart is an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, the commenter considers it to be a substantive rule that must be published for public comment.

*Response:* FCIC agrees that irrigated and non-irrigated practices or organic and non-organic practices should be distinguished and reported on the request for a written agreement. However, each situation must be evaluated on a case-by-case basis because there may be instances where a different practice may perform just as well or better and would permit approval of the written agreement. FCIC does not agree procedures specifying which crops are considered to be similar have to be published for public comment. The chart is for informational purposes only and developed using the

standards that have been established through the rulemaking process. The chart will not have the force of law or policy because there may be circumstances where the designated similar crop on the chart may not be appropriate because of unique circumstances on the farm. It is still up to the approved insurance provider and FCIC to determine whether the crop qualifies as a similar crop.

*Comment:* A commenter suggested rewriting the parenthetical phrase in section 18(f)(2)(i)(B)(1)(iii) so the word "needs" does not follow the list-ending "etc." The commenter suggested rewriting the parenthetical as "(e.g., comparable needs for water, soil, etc.)".

*Response:* FCIC agrees with the commenter and has revised redesignated section 18(f)(2)(ii)(E) accordingly.

In addition to the changes listed above, FCIC has determined verifiable production records from the crop or similar crop planted in the area can be used if a producer has not actually planted the crop or similar crop in the county. There may be cases where the farm crosses county lines or the more representative planting of the insured crop or similar crop is located across county lines and limiting the records to the insured crop or similar crop planted in the county may be too restrictive. Section 508(a)(4)(B) of the Act authorizes FCIC to "offer to enter into a written agreement with an individual producer operating in the area for insurance coverage." The Basic Provisions define "area" as "Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage." Using this definition will add the needed flexibility to use the best available records to establish insurance while still ensuring the producer has the capability of producing the crop or a similar crop in the county or area where the producer intends to produce the insured crop.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. Good cause exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to the public interest to delay its implementation. The changes made by this rule clarify existing provisions to ensure that written agreements based on similar crops are implemented in an actuarially sound manner and to eliminate any potential confusion regarding the requirements for such written

agreements. Delaying the implementation of these provisions, which make a sounder, more stable program, would be contrary to the public interest.

If FCIC were required to delay the implementation of this rule until 30 days after the date it is published, the provisions of this rule could not be implemented until the next crop year for those crops having a contract change date prior to the effective date of this publication.

For the reasons stated above, good cause exists to make these policy changes effective upon publication in the **Federal Register**.

#### List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

#### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2007 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule and for the 2008 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule, as follows:

#### PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(p).

#### § 457.8 [Amended]

■ 2. Amend § 457.8 by revising sections 18(f)(2)(i) and (ii) to read as follows:

##### 18. Written Agreements

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) For a crop you have previously planted in the county or area for at least three years:

(A) A completed APH form (only for crops that require APH) based on verifiable production records for at least the three most recent crop years in which the crop was planted; and

(B) Verifiable production records for at least the three most recent crop years in which the crop was planted:

(1) The verifiable production records do not necessarily have to be from the same physical acreage for which you are requesting a written agreement; and

(2) Verifiable production records do not have to be submitted if you have insured the crop in the county or area for at least the previous three crop years and have certified the yields on the

applicable production reports or the yields are based on your insurance claim (although you are not required to submit production records, you still must maintain production records in accordance with section 21);

(ii) For a crop you have not previously planted in the county or area for at least three years:

(A) A completed APH form (only for crops that require APH) based on verifiable production records for at least the three most recent crop years for a similar crop from acreage:

(1) In the county; or

(2) In the area if you have not produced the crop in the county; and

(B) Verifiable production records for at least the three most recent crop years in which the similar crop was planted:

(1) The verifiable production records for the similar crop do not necessarily have to be from the same physical acreage for which you are requesting a written agreement; and

(2) Verifiable production records do not have to be submitted if you have insured the similar crop for at least the three previous crop years and have certified the yields on the applicable production reports or the yields are based on your insurance claim (although you are not required to submit production records, you still must maintain production records in accordance with section 21);

(C) If you have at least one year of production records, but less than three years of production records, for the crop in the county or area but have production records for a similar crop in the county or area such that the combination of both sets of records results in at least three years of production records, you must provide the information required in sections 18(f)(2)(i)(A) & (B) for the years you grew the crop in the county or area and the information required in sections 18(f)(2)(ii)(A) & (B) regarding the similar crop for the remaining years; and

(D) A similar crop to the crop for which a written agreement is being requested must:

(1) Be included in the same category of crops, e.g., row crops (including, but not limited to, small grains, coarse grains, and oil seed crops), vegetable crops grown in rows, tree crops, vine crops, bush crops, etc., as defined by FCIC;

(2) Have substantially the same growing season (i.e., normally planted around the same dates and harvested around the same dates);

(3) Require comparable agronomic conditions (e.g., comparable needs for water, soil, etc.); and

(4) Be subject to substantially the same risks (frequency and severity of loss would be expected to be comparable from the same cause of loss);

\* \* \* \* \*

Signed in Washington, DC, on June 23, 2006.

**Eldon Gould,**

Manager, Federal Crop Insurance Corporation.

[FR Doc. 06-5809 Filed 6-28-06; 8:45 am]

BILLING CODE 3410-08-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 78

[Docket No. APHIS-2006-0001]

#### Brucellosis in Cattle; State and Area Classifications; Idaho

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning interstate movement of cattle by changing the classification of Idaho from Class Free to Class A. That action was necessary to prevent the interstate spread of brucellosis.

**DATES:** Effective on June 29, 2006, we are adopting as a final rule the interim rule that became effective on January 12, 2006.

**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) 734-6954.

#### SUPPLEMENTARY INFORMATION:

##### Background

Brucellosis is a contagious disease 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.

In an interim rule<sup>1</sup> effective January 12, 2006, and published in the **Federal Register** on January 19, 2006 (71 FR 2991-2993, Docket No. APHIS-2006-0001), we amended § 78.41 of the regulations by changing the classification of Idaho from Class Free to Class A. That action was necessary to prevent the interstate spread of brucellosis.

Comments on the interim rule were required to be received on or before March 20, 2006. We received two comments by that date. One comment was from a private citizen who questioned why the affected cattle had not been vaccinated for brucellosis. Although vaccination can be effective to some degree in preventing the transmission and spread of the *Brucella* bacteria, it is not 100 percent effective; therefore, disease transmission may still occur even though a herd is vaccinated. The commenter also objected to cattle being allowed to graze on publicly owned land. This issue is not within the scope of the interim rule.

The second comment was from a representative of the Idaho Department of Agriculture, who stated that the Animal and Plant Health Inspection Service (APHIS) should not have changed Idaho's brucellosis status from Class Free to Class A because the second affected herd was the result of the movement, from the first affected herd, of a heifer that was subsequently classified as a reactor. According to the commenter, the heifer cannot positively be diagnosed with brucellosis because the heifer tested positive for *Yersinia*, because no *Brucella* organism was cultured from the heifer's tissues, because the cow was vaccinated with RB51, which could cause false positives in brucellosis testing in some cases, and because the heifer was not pregnant and there are no studies proving that a heifer that is not pregnant may pass along the brucellosis bacteria through bodily discharge of wastes.

The regulations define an affected herd as "Any herd in which any animal has been classified as a brucellosis reactor and which has not been released from quarantine." Both herds designated as affected herds in Idaho contained at least one animal that was classified by the State's designated brucellosis epidemiologist as a brucellosis reactor.

<sup>1</sup>To view the interim rule and the comments we received, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2006-0001, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

The State's designated brucellosis epidemiologist classified the heifer as a brucellosis reactor based on that fact that it originated from an infected herd and based on a panel of positive serological test results, which were repeated in both State and Federal laboratories. Culture confirmation of reactors is not 100 percent successful in all brucellosis cases and therefore is not required under the regulations for classification of infected animals. Although *Yersinia*, another bacteria found in cattle, may cause false positive results on a serologic test for *Brucella*, most of these tests are not able to differentiate *Brucella* from *Yersinia*. Currently there is no conclusive evidence that the RB51 vaccine caused the positive results on the serology tests for *Brucella*.

Although the probability of brucellosis exposure from a virgin heifer is lower than from a pregnant heifer because the primary method of transmission of brucellosis is usually via an infected, aborted fetus, an infected newborn calf, and/or infected tissues and fluids that accompany a birth event, transmission of brucellosis via the urine and feces of infected animals is also possible.

In addition, State status is based on herd infection rates, not on the likelihood of disease transmission. The regulations specifically state that to qualify for Class Free status, a State "must have a cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months due to field strain *Brucella abortus* of 0.0 percent or 0 herds per 1,000." Idaho has exceeded the criteria of 0.0 percent herd infection rate according to the regulations. Idaho also does not qualify for retaining its Class Free status because more than one herd has been found to be affected with brucellosis during a 2-year period.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change. This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action the Office of Management and Budget has waived its review under Executive Order 12866.

#### List of Subjects in 9 CFR Part 78

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