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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 13, 2000

Honorable Samuel E. Hayes, Jr., Secretary  
Department of Agriculture  
211 Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: IRRC Regulation #2-128 (#2088)  
Department of Agriculture  
Importation and Intrastate Transportation of Animals; Brucellosis

Dear Secretary Hayes:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Mary Lou Harris at 772-1284.

Sincerely,

Robert E. Nyce  
Executive Director

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Enclosure

cc: Dr. Phillips C. Debok  
Dr. John I. Enck, Jr.  
Office of General Counsel  
Office of Attorney General  
Lee Ann Labecki

# Comments of the Independent Regulatory Review Commission

on

## Department of Agriculture Regulation No. 2-128

### Importation and Intrastate Transportation of Animals; Brucellosis

April 13, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which has not been met. The Department of Agriculture (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by March 13, 2002, the regulation will be deemed withdrawn.

**1. Section 3.103. (d) Designation of other tests as acceptable - Statutory authority; Legislative intent.**

**Section 7.72. (a) Designation of vaccine - Statutory authority; Legislative intent.**

Section 3.103(d) provides that the Secretary may designate a new test for equine infectious anemia by publishing an order in the *Pennsylvania Bulletin*, provided a proposed regulation follows within one year. Section 7.72 provides that the Secretary may designate a new brucellosis vaccine in the same manner. These provisions are modeled after Section 2322 of the Agriculture Code (3 Pa.C.S.A. § 2322(d)) which authorizes the Secretary to **designate additional transmittable diseases** through issuance of a temporary order published in the *Pennsylvania Bulletin*, which stays in effect for one year, unless reissued, or until a regulation designating the disease is adopted, whichever occurs first.

These regulatory provisions implement Section 2325 of the Code (3 Pa.C.S.A. § 2325), which authorizes the Department to promulgate regulations governing diagnostic agents and vaccines. Language authorizing the Department to do so by publication of a temporary order is conspicuously absent from this statutory provision. Although we agree that it would be expeditious to designate tests and vaccines through temporary orders, **we object to these provisions because they are not consistent with the Department's statutory authority and the intent of the General Assembly.**

**2. Section 3.103. (c) Inconsistent results - Clarity.**

**Section 7.72. (c) Official vaccination - Clarity.**

Section 3.103(c) requires that the Pennsylvania State Veterinarian grant permission before an equid may be imported into the Commonwealth if inconsistent tests results are reported. Section 7.72(c) requires the permission of the Pennsylvania State Veterinarian for the vaccination of cattle over the age of 12 months to be considered an "official vaccination." What is the procedure for obtaining permission? Is there a written procedure? The regulation should outline

how permission is requested and granted from the State Veterinarian, or provide a cross reference to an existing regulation if there is one.

**3. Section 7.72. Procedure - Clarity.**

Subsection (c) states that a vaccination given to cattle over 12 months of age is not considered an official vaccination. The Department should cross reference 9 CFR 78.1 or define "official vaccination."

**4. Section 7.73. Identification on vaccination report - Clarity.**

There is a typographical error in Subsection (c). The Department should delete "or" from the last sentence.