

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 78

[Docket No. APHIS–2009–0040]

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

**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 cattle by changing the classification of Montana from Class A to Class Free. We have determined that Montana meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Montana.

**DATES:** This interim rule is effective July 10, 2009. We will consider all comments that we receive on or before September 8, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0040> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0040.

*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:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Debbi A. Donch, National Brucellosis Epidemiologist and Program Manager, Ruminant Health Programs Staff, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1231; (301) 734–5952.

#### SUPPLEMENTARY INFORMATION:

##### Background

Brucellosis is a contagious disease affecting animals and humans, 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.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class A and Class B fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percentage of all brucellosis reactor cases found in the course of Market Cattle Identification

(MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the publication of this interim rule, Montana was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the consecutive 12-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

The last brucellosis-affected cattle herd in Montana was detected in May 2008. The brucellosis reactor cattle in Montana were destroyed on May 27, 2008, and the affected herd was subsequently depopulated. Since then, no brucellosis-affected cattle herds have been detected in the State.

After reviewing the brucellosis program records for Montana, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Montana from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Montana.

#### Immediate Action

Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Montana. 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.

Brucellosis is a contagious, costly disease of ruminant and other animals that can also affect humans. It is mainly a threat to cattle, bison, and swine. The disease causes decreased milk production, weight loss in animals, loss of young, infertility, and lameness. There is no known effective treatment. Depopulation of infected and exposed animals is the only effective means of disease containment and eradication.

The State of Montana has met all the requirements for obtaining Class Free status as outlined in the definition of "Class Free State or area" in § 78.1 of the regulations. This interim rule upgrades the brucellosis status of Montana from Class A to Class Free. Cattle and bison that are to be moved interstate from Class A States, except those moving directly to slaughter or to quarantined feedlots, must be tested before they are eligible for movement. Attaining Class Free status allows producers in Montana to forgo the cost of this testing.

Brucellosis testing, including veterinary fees and handling expenses, costs between \$7.50 and \$15 per test. The expenses eliminated as a result of this reclassification in status will not be significant for cattle owners in Montana. In 2007, there were 11,526 cattle and calf operations in Montana, with total sales of 1.84 million head of cattle.<sup>1</sup> The average per-head value in Montana was \$1,050 in 2007.<sup>2</sup> Thus, the cost of testing would represent between 0.7 and

1.4 percent of the average value of the animal sold.

In 2001, 818,146 cattle moved interstate from Montana, excluding cattle moved directly to slaughter.<sup>3</sup> Assuming the current proportion of cattle moved interstate from Montana is similar to that in 2001, the overall annual cost for Montana cattle operations for brucellosis testing required under Class A classification is estimated to range between \$6 million and \$12 million.<sup>4</sup> These costs will not be borne with promulgation of this rule.

The Small Business Administration has established guidelines for determining whether an enterprise is considered small under the Regulatory Flexibility Act. An enterprise producing cattle and calves (North American Industry Classification System [NAICS] code 112111) is considered small if it has annual receipts of \$750,000 or less. There were 11,526 farms with sales of cattle and calves in Montana in 2007. Over 98 percent of these farms had annual receipts not exceeding \$750,000.<sup>5</sup>

We expect that the majority of cattle and calves operations that will be affected by the interim rule are small entities. The interim rule will benefit producers that sell cattle and calves out of State for breeding and feeding purposes. However, the savings from the forgone testing will be very small, estimated to be between 0.7 percent and 1.4 percent of the value of the animals sold.

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

<sup>3</sup> Dennis A Shields and Kenneth H Mathews, Interstate Livestock Movements, USDA/Economic Research Service (ERS), LDP-M-108-01, June 2003 (<http://www.ers.usda.gov/publications/ldp/jun03/ldpm10801/ldpm10801.pdf>), and <http://www.ers.usda.gov/Data/InterstateLivestockMovements/StateShipments.xls>.

<sup>4</sup> We base this estimate on Montana's 2007 cattle inventory. The total cattle inventories in 2001 and 2007 were 2,550,000 and 2,589,679, respectively. The calculated values were obtained as follows: (1) \$6.2 million (= 818,146/2,550,000\*2,589,679\*\$7.5=\$6,231,575) and (2) \$12.5 million (=818,146/2,550,000\*2,589,679\*\$15=\$12,463,150). Cattle numbers are from USDA/NASS, Cattle, released on February 1, 2002 (<http://usda.mannlib.cornell.edu/usda/nass/Catt/2000s/2002/Catt-02-01-2002.pdf>) and USDA/NASS, 2007 Census of Agriculture.

<sup>5</sup> Based upon 2007 Census of Agriculture—State Data and the "Small Business Size Standards by NAICS Industry," Code of Federal Regulations, Title 13, Chapter I.

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 interim 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.

##### **§ 78.41 [Amended]**

■ 2. Section 78.41 is amended as follows:

■ a. In paragraph (a), by adding the word "Montana," after the word "Missouri,".

■ b. In paragraph (b), by removing the word "Montana" and adding the word "None" in its place.

Done in Washington, DC, this 6th day of July 2009.

**Kevin Shea,**

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

[FR Doc. E9–16336 Filed 7–9–09; 8:45 am]

**BILLING CODE 3410–34–P**

## **FEDERAL ELECTION COMMISSION**

### **11 CFR Part 111**

[Notice 2009–12]

#### **Procedural Rules for Audit Hearings**

**AGENCY:** Federal Election Commission.

**ACTION:** Rule of Agency Procedure.

**SUMMARY:** The Federal Election Commission ("Commission") is

<sup>1</sup> USDA/National Agricultural Statistics Service (NASS), Cattle, released January 30, 2009.

<sup>2</sup> USDA/NASS, Meat Animal Production, Disposition, and Income: 2007 Summary, April 2008.