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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 04-009-1]

Brucellosis in Cattle; State and Area Classifications; Wyoming

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning interstate movement of cattle by changing the classification of Wyoming from Class Free to Class A. We have determined that Wyoming no longer meets the standards for Class Free status. This action is necessary to prevent the interstate spread of brucellosis.

DATES: This interim rule was effective February 13, 2004. We will consider all comments that we receive on or before April 20, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 04-009-1, 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. 04-009-1. If you use e-mail, address your comment to 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. 04-009-1" on the subject line.

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.

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

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 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 B and Class A 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 percent of all brucellosis reactors 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.

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 described in paragraph (b)(4) of the definition of *Class Free State or area* in § 78.1. 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:

1. The affected herd must be immediately quarantined, tested for brucellosis, and depopulated; and
2. 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.

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 have been satisfied and that the State is in compliance with all other applicable provisions.

Prior to the effective date of this interim rule, Wyoming was classified as

a Class Free State. On December 29, 2003, we confirmed the discovery of a brucellosis-affected herd in Wyoming. In accordance with § 78.1, the State took immediate measures to maintain its Class Free status. However, on January 21, 2004, another brucellosis-affected herd was confirmed. With the discovery of the second affected herd, Wyoming no longer meets the standards for Class Free status. Therefore, we are removing Wyoming from the list of Class Free States or areas in § 78.41(a) and adding it to the list of Class A States or areas in § 78.41(b).

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus*, of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) trace to the farm of origin at least 90 percent of all brucellosis reactors found in the course of MCI testing; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class A; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating a source herd or recipient herd. After reviewing the brucellosis program records for Wyoming, we have concluded that this State meets the standards for Class A status.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the interstate spread of brucellosis. 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 rule 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.

This rule amends the brucellosis regulations concerning interstate movement of cattle by changing the classification of Wyoming from Class Free to Class A. We have determined that Wyoming no longer meets the standards for Class Free status. This action is necessary to prevent the spread of brucellosis in the United States.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Wyoming from Class Free to Class A increases testing requirements governing the interstate movement of cattle. However, testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are likewise not affected by this change.

The groups affected by this action will be herd owners in Wyoming, as well as buyers and importers of cattle from this State.

There were approximately 6,200 operations in Wyoming with a total inventory of 1.47 million head of cattle as of January 1, 2002. Of that inventory, 70 percent were breeding animals and the rest were composed of animals in feedlots and other animals not intended for breeding. Industry statistics indicate the average value per head of cattle in Wyoming is \$780, with a reported cash value totaling over \$1.14 billion. Of the 6,200 cattle and bison operations in Wyoming, more than 90 percent are small businesses. The downgrade from Class Free to Class A status will result in movement restrictions where none previously existed. Specifically, all bovine animals to be moved interstate, except those moving directly to slaughter or to quarantined feedlots and those from certified brucellosis-free herds, must test negative to a brucellosis test prior to interstate movement.

The estimated cost for brucellosis testing, which includes veterinary fees and handling expenses, is between \$7.50 and \$15 per test. Considering the average value per animal in Wyoming was \$780 in 2002, even using the high-end estimate of \$15 per test, testing costs would represent only 2 percent of the per head value. Of course, the interim rule will have a greater economic effect on herd owners who are more involved in interstate movement. It is estimated that 10 percent of cattle and calves in Wyoming move interstate. While this change in status will result in more restrictive requirements for interstate movement, the benefits of preventing the spread of brucellosis to

other parts of the United States far outweigh the costs imposed.

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 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.

§ 78.41 [Amended]

■ 2. Section 78.41 is amended as follows:

■ a. In paragraph (a), by adding the word “and” before the word “Wisconsin” and by removing the words “, and Wyoming”.

■ b. In paragraph (b), by removing the word “and” before the word “Texas” and adding a comma in its place, and by adding the words “, and Wyoming” following the word “Texas”.

Done in Washington, DC, this 13th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–3723 Filed 2–19–04; 8:45 am]

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