

factor used in the Class III and Class IV product-pricing formulas.

On Friday, August 15, 2008, a lawsuit was filed in the District Court for the District of Columbia requesting that a temporary restraining order be issued by the court until a preliminary injunction hearing could be held as part of the pre-hearing process. USDA determined that it was in the best interest of the dairy industry to delay implementation of the Final Rule one month until October 1, 2008. Delaying implementation allows sufficient time for a preliminary injunction hearing to be held.

The revised manufacturing allowances and butterfat yield factor will be used in computing the October 2008 Federal order minimum advance Class I and Class II prices and pricing factors to be announced on September 19, 2008 unless a court order directs otherwise. The revised manufacturing allowances and butterfat yield factor of the Interim Final Rule will be used to compute minimum Federal order Class III and Class IV prices for October 2008 and in the announcement of advanced prices and pricing factors thereafter.

Authority: 7 U.S.C. 601–674, and 7253.

Dated: August 28, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–20391 Filed 8–28–08; 4:15 pm]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2008–0086]

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 interstate movement of cattle by changing the classification of Montana from Class Free to Class A. We have determined that Montana no longer meets the standards for Class Free status. This action is necessary to prevent the interstate spread of brucellosis.

DATES: This interim rule is effective September 3, 2008. We will consider all comments that we receive on or before November 3, 2008.

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-2008-0086> 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–2008–0086, 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–2008–0086.

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, 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, caused by bacteria of the genus *Brucella*, that affects both animals and humans. The disease mainly affects cattle, bison, and swine; however, goats, sheep, horses, and humans are susceptible as well. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

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, the Animal and Plant Health Inspection Service (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 publication of this interim rule, Montana was classified as a Class Free State. On May 18, 2007, we confirmed the discovery of a brucellosis-affected herd in Montana. In accordance with § 78.1, the State took immediate measures to maintain its Class Free status. However, on June 9, 2008, another brucellosis-affected herd was confirmed. With the discovery of the second affected herd within 2 years, Montana no longer meets the standards for Class Free status. Therefore, we are removing Montana 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 Montana, 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.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

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

A reclassification from Class Free to Class A status with respect to brucellosis will result in movement restrictions. Specifically, all bovine animals moved interstate, except those moving directly to slaughter or to quarantined feedlots, must test negative to a brucellosis test 30 days prior to interstate movement.

Costs of brucellosis testing depend on a number of factors such as the location of the herd, veterinarian fees (subject to the veterinarian's discretion), and the laboratory blood test fee. Private veterinary practitioners in Montana charge an average of \$6.00 per head for the test, including shipping and testing of the blood sample. In addition, there is a "farm call" charge that can range from \$20 to over \$200, depending on the distance traveled by the veterinarian and the number of animals tested. Based on these charges, the estimated average cost for brucellosis testing is between \$7.50 and \$15 per head.¹ Considering the average value per head of cattle in Montana was \$1,050 in 2007, costs to producers associated with brucellosis

testing are expected to range between 0.7 and 1.4 percent of the value of the cattle moved interstate. Costs for any single herd owner will depend upon the volume of non-slaughter cattle that the owner moves interstate. Many operations are already bearing these testing costs; since June 11, 2008, 10 surrounding States have issued movement requirements in response to the Montana brucellosis findings that include a negative brucellosis test 30 days prior to movement.²

In 2001, about 818,000 head of cattle (excluding ones destined for immediate slaughter) were moved out of Montana to 22 other States, with the majority shipped to Colorado, Iowa, Kansas, Minnesota, South Dakota and Wyoming.³ These cattle represented about one-third of Montana's total 2001 cattle inventory. Assuming that a similar percentage currently moves interstate (other than for immediate slaughter or to quarantined feedlots), the estimated direct industry cost to Montana livestock operations of the State's reclassification from Class Free to Class A could range between approximately \$6 million and \$12 million per year.⁴ The upper value is less than 0.5 percent of the total value of the Montana cattle herd.

Additionally, Montana sellers of non-slaughter cattle to other States may face a price discount because of the State's loss of Class Free status. Various market factors influencing the price of cattle make it difficult to predict the size of the price discount.

Despite the costs incurred by Montana operations, the overall economic effect of this action will be positive in preventing brucellosis from spreading to other States. Studies indicate the costs of producing beef and milk could increase by an estimated \$80 million annually in less than 10 years if movement restrictions and other requirements of the Cooperative State-Federal Brucellosis Eradication Program were discontinued.⁵

² Montana Department of Livestock. Testing Requirements. 7/28/08. States include California, Colorado, Georgia, Idaho, Kansas, Nebraska, North Dakota, South Dakota, Washington, and Wyoming. <http://liv.mt.gov/Brucellosis/index.asp>.

³ Economic Research Service Data Sets. Interstate Livestock Movements: State-to-State Flows. Compiled in 2001 from State veterinary certificates. <http://www.ers.usda.gov/Data/InterstateLivestockMovements/View.asp>. No data were listed for many States, including the western States of Arizona, Nebraska, New Mexico, Oklahoma, Utah, or Washington.

⁴ (2.4 million head)(0.33)(\$7.50 per head) = \$5.9 million. (2.4 million head)(0.33)(\$15.00 per head) = \$11.9 million.

⁵ APHIS/USDA. "Facts About Brucellosis." Animal Health, Brucellosis Disease Information. P. 2. http://www.aphis.usda.gov/animal_health/

¹ Donch, Debra. National Brucellosis Epidemiologist, USDA/APHIS/Veterinary Services. Information confirmed by Dr. Bret Thompson, Veterinary Medical Officer in Montana. Personal communication 7/31/08.

Impact on Small Entities

In 2007, there were 12,400 cattle operations in Montana with a total inventory of approximately 2.4 million head. Industry statistics indicate that the average value of cattle in Montana for 2007 was \$1,050 per head, yielding a total estimated cattle herd value of \$2.52 billion.⁶

Based on data from the 2002 Census of Agriculture and Small Business Administration (SBA) guidelines, we expect a majority of operations affected by the interim rule will be small entities. Entities that comprise the North American Industry Classification System (NAICS) categories of beef cattle ranching and farming (NAICS 112111) and dairy cattle and milk production (NAICS 112120) are considered small if their total annual receipts do not exceed \$750,000. The 2002 Census of Agriculture indicates that 99 percent of entities within NAICS 112111, and 89 percent of entities within NAICS 112120, earned less than \$500,000 annually. Most, if not all, of the beef and dairy herds in Montana are considered small entities.

The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) provides the statutory authority for APHIS to carry out operations and measures to detect, control, and eradicate brucellosis. While this change in status will result in additional requirements for interstate movement of cattle for Montana producers, the benefits of the restriction in preventing the spread of brucellosis to other parts of the United States outweighs the additional costs of brucellosis testing. APHIS does not expect additional costs to have a significant impact on a substantial number of small entities. This rulemaking is necessary on an emergency basis to prevent the interstate spread of brucellosis.

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 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.)

⁶ *animal_diseases/brucellosis/downloads/bruc-facts.pdf*. Accessed 8/4/08.

⁶ National Agricultural Statistics Service/U.S. Department of Agriculture (USDA). Agricultural Statistics 2007. http://www.nass.usda.gov/Statistics_by_State/Montana/index.asp.

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 removing the word “Montana,”.

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

Done in Washington, DC, this 27th day of August 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–20374 Filed 9–2–08; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 430

[Docket No. 2007–0046]

Control of *Listeria monocytogenes* in Ready-To-Eat Meat and Poultry Products

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Interim final rule; schedule for review under section 610 requirements.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it did not conduct a review of the

interim final rule, Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products, in 2007 as stated in its amended schedule plan for reviewing regulations under Section 610 of the Regulatory Flexibility Act, as amended. The Agency has decided to wait until it publishes a final rule in this proceeding before amending its plan so it can conduct a review of that final rule instead of the interim final rule.

FOR FURTHER INFORMATION CONTACT: For further information contact Rachel Edelstein, Director, Policy Issuances Division, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 3538, Washington, DC 20250–3700, (202) 202/720–5627.

SUPPLEMENTARY INFORMATION:

Background

Section 610 of the Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601–612), requires that all Federal agencies review any regulations that have been identified as having a significant economic impact upon a substantial number of small entities as a means to determine whether the associated impact can be minimized by considering the following factors: (1) The continued need for the rule; (2) the nature of the complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules; and (5) the length of time since the rule has been initially evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

On January 28, 2005, FSIS published an amended scheduling plan in the **Federal Register** (70 FR 4047) for reviewing regulations. This plan scheduled a review in 2007 of the interim final rule, Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products (68 FR 34208; June 6, 2003). Because FSIS intends to issue a final rule in this rulemaking, it does not plan to review the interim final rule. Once the Agency publishes the final rule, it will amend its plan so it will be able to properly assess the impact of the final rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at <http://>