

MEMORANDUM

TO: Jim Stone, Executive Director, ITBC
FROM: Dennis M. Bear Don't Walk
DATE: September 3, 2013
RE: Research on State Import Regulations

Introduction

This memo is in response to your request for information on the brucellosis vaccination and testing requirements imposed by other states in preparation for an upcoming meeting with State Veterinarian, Dr. Marty Zaluski.

As I understand it, the problem is that the administrative regulations in Montana disallow importation of female bison over 12 months of age unless they are either an official calfhood vaccinate or official adult vaccinate. Furthermore, Montana requires all sexually intact male bison 12 months of age, sexually intact female bison 24 months of age, and sexually intact female bison under 24 months of age that are pregnant or have had a calf to have a negative brucellosis test within 30 days prior to entry into the State. As a result of these requirements, the InterTribal Buffalo Council (ITBC) will have a difficult time providing surplus bison from national parks to member tribes located within the State because most parks do not perform calfhood vaccinations.

In preparation for this memo, I have surveyed the importation rules with regard to brucellosis testing and vaccination requirements for fourteen states; including those wherein ITBC member tribes are located, those with large livestock industries and those with established bison herds. If you would like a review of any other states, please don't hesitate to ask.

Question Presented

1. Are the bison importation rules for Montana comparable to those from other similarly situated states?

Short Answer

Yes and no. The requirement that bison test negative to brucellosis within thirty days of importation appears pretty standard. However, of the fourteen states surveyed for this memo, only two absolutely require official calfhood/adult vaccinations prior to importation.

Discussion

As you are likely aware, testing and vaccination requirements for bison imported from out-of-state depends largely upon the class status of the herd or state of origination. For example, almost across the board, any bison originating in certified brucellosis free herds or class-free states are not subject to any testing or vaccination requirements prior to entry into the state. According to the Brucellosis Affected Herd Report prepared by the USDA, APHIS, Veterinary Services, and National Center for Animal Health Programs dated September 1, 2013, the entire United States is currently classified as Brucellosis Free.¹

While I was unable to find information on the class-status held by bison originating in national parks, I imagine it is different than the states wherein each park is located because National Parks are regulated by the federal government, and a state's class status derives from the regulation of domestic herds within its jurisdiction.

The following list is a summary of the import requirements from the fourteen surveyed states. The top five (Nebraska, Oklahoma, South Dakota, Missouri, and Texas) are the leading livestock producers in America; i.e.-they are responsible for more than 50 percent of the total value of U.S. sales of cattle and calves. Three of those states are home to ITBC Member Tribes; these are identified in bold. The remainder of the list shows states with bison herds, states of ITBC Members, or both. And finally, the four underlined States: Missouri, Texas, Utah and Illinois, are those requiring imported bison to be official vaccinates prior to importation. Note: no surveyed state had specific provision regulating bison transfers to sovereign tribal nations or tribal land. All of the State regulations were primarily geared toward importation of domestic livestock onto private or public lands, so it is unclear whether these regulations are in fact applicable.

- 1. Nebraska:** Must test negative for brucellosis within 30 days prior to entry. Likely to also require immediate quarantine and retesting within 30 days. There does not appear to be a requirement for brucellosis vaccination on bison imported from within the U.S.
- 2. Oklahoma:** Must test negative for brucellosis within 30 days prior to entry. There does not appear to be a brucellosis vaccination requirement.

1

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDcQFjAB&url=http%3A%2F%2Fwww.aphis.usda.gov%2Fanimal_health%2Fanimal_diseases%2Fbrucellosis%2Fdownloads%2Fmonthly_rpt.pps&ei=N_1CUomrI6jfiAKcyoCABQ&usg=AFQjCNFb-I6PyWnho1NKY2hxLjZ2U74tfQ&sig2=sl_2bx0k_Q5vIjB5b7jQEQ&bvm=bv.53077864,d.cGE; last accessed September 25, 2013.

3. **South Dakota:** Must test negative to 2 brucellosis tests within the 30 days before importation. There does not appear to be a vaccination requirement.
4. **Missouri:** All sexually intact animals 18 months of age and over must test negative to brucellosis within 30 days prior to shipment. All female bison four months of age and over from Class B and C states must have an official calfhood vaccination prior to entry.
5. **Texas:** Must test negative for brucellosis within 30 days prior to entry. Likely to be quarantined and required retest. All female bison between 4-12 months of age must be officially calfhood vaccinated prior to entry. However, female bison may enter on a calfhood vaccination permit, and must be vaccinated within 14 days of arrival.
6. **Wyoming:** At the discretion of the Wyoming State Veterinarian, bison shall test negative to brucellosis 30 days prior to entry into the state and may be quarantined and subject to a retest 45-120 days after pre-entry test. Unvaccinated bison under 12 months of age, may be imported outside of designated surveillance area under quarantine, but must be calfhood vaccinated prior to 13 months of age. Bison older than 12 months of age, must become adult vaccinates within 30 days.
7. **Utah:** All test eligible cattle imported from states that have not been designated as brucellosis free must test negative for brucellosis within 30 days before movement into Utah. Bison and beef breed heifers between 4 and 12 months must be officially calfhood vaccinated for brucellosis prior to entering Utah.
8. **Colorado:** All bison over 6 months of age, must test negative for Brucellosis within 30 days prior to entry. If from a class A state, will then be quarantined and isolated and retested 45-120 days after arrival. No class B or C state bison may enter Colorado. Heifers 4-12 months of age must be vaccinated and reported to the State vet within 30 days.
9. **Arizona:** Arizona will not accept bison from brucellosis infected, exposed, or quarantined herds regardless of their vaccination or test status (includes bison from herds with unknown exposure status). Must test negative for brucellosis within 30 days prior to importation. Breeding bison from a Class A States will be quarantined in isolation until they test negative for brucellosis. The test shall be performed no earlier than 45 days and no later than 120 days after entry. It does not appear that bison need to be vaccinated prior to entry
10. **Kansas:** Bulls over 12 months of age and females 18 months of age must have negative brucellosis test within 30 days prior to importation. Bison from Yellowstone National Park and surrounding area are required to have a permit from Kansas animal health department, test negative 30 days prior to importation, and be quarantined and retested between 45-150 days of arrival. However, if from a free roaming herd in the greater Yellowstone area, entry is prohibited. It does not appear that bison are required to be vaccinated prior to entry.

11. **North Dakota:** Test-eligible bison must have a negative brucellosis test within thirty days prior to entry into North Dakota. Bison originating from brucellosis-free states or areas that do not require North Dakota bison to be tested prior to entry are exempt from the brucellosis test requirement. Test-eligible bison are all bison over eighteen months of age except steers, spayed heifers, and official calfhood vaccinates for brucellosis under twenty-four months of age. It does not appear that bison are required to be vaccinated prior to entry.
12. **Kentucky:** Sexually intact females 12 months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to importation. It does not appear that bison are required to be vaccinated prior to entry into the state.
13. **Illinois:** All bison over 6 months of age to have negative brucellosis blood test within 30 days prior to importation. Must be official calfhood vaccinates under 24 months of age, unless moving through state or directly to slaughter.
14. **Wisconsin:** Negative brucellosis test within 30 days of importation. Do not accept bison from Class B or C states, unless approved by Dept. of Ag. It does not appear that bison are required to be officially calfhood vaccinated prior to entry.

Conclusion

The State of Montana's rule for official calfhood vaccinations appears to be unusually restrictive given the low number of similarly situated states that require the same. Every state surveyed required a negative brucellosis test within 30 days of importation, but only 4 require bison be vaccinated prior to entry: Missouri, Texas, Utah, and Illinois. Of those four, only Utah and Illinois allow no exceptions to the rules regarding calfhood vaccinations. Missouri's rules apply only to bison shipped from Class B and C states, while Texas may allow bison to enter on a permit, so long as the bison are vaccinated within 14 days.

Furthermore, there are two important differences to keep in mind. One, transfers to sovereign tribal governments and tribal land are unique and should fall under a different process. And two, National Parks may not have official Class Status' per se, but it appears that bison from Wind Cave National Park and Theodore Roosevelt National Park are generally accepted as brucellosis free. As a result, there is still a very good argument that the State's rules do not and should not apply to ITBC buffalo transfers to tribal governments and tribal land within the exterior boundaries of the State of Montana. This argument is further bolstered by the most recent bison transfer decision issued by the Supreme Court of the State of Montana.

Citizens for Balanced Use, et. al. v. Maurier, et al. **2013 MT 166**

In June of this year, the Montana Supreme Court held that unless the Montana Legislature specifically identifies that a statute, regulation, or rule applies to tribes or tribal land, it should not be interpreted as doing so.

In *Citizens*, an open access to public lands advocacy group asked the District Court to stop the Montana Department of Fish Wildlife and Parks from transferring certified brucellosis free bison from Yellowstone National Park to the federally recognized tribes of Ft. Peck and Ft. Belknap. The District Court issued an injunction against bison transfers concluding that Mont. Code Ann. § 87-1-216(4), prohibiting bison transfers to “public or private land,” necessarily included transfers to tribal lands. *Id.*, ¶16. On appeal, the Supreme Court disagreed and found “the phrase ‘public or private land in Montana’ does not expressly mention tribal lands.” *Id.* As a result, tribal lands were not subject to the statutes requirements. Important to the Court’s holding was evidence showing a multitude of other state laws where the Montana Legislature specifically identified tribes and tribal land were to be affected. Additionally, under Mont. Code Ann. § 81-2-120(1)(d)(ii), the Dept. of Livestock was specifically authorized to transfer bison to qualified tribal entities. Such evidence indicated that if the Montana Legislature intended tribes and tribal land to be bound by the statute at issue in this case, it would have clearly and specifically referred to them. In this case, the Legislature did not, and the statute was therefore held not applicable to bison transfers to tribes and tribal land. In its opinion, the Court found:

Principles of land ownership support the conclusion that tribes and tribal lands should not be impliedly included in statutory schemes without the clearest of reasons to do so.

Reservations and tribal lands are neither public property nor private property, but are in a special class. Article I of the Montana Constitution affirms the special status of tribal lands, declaring that “all land owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States.” The United States and the tribes retain jurisdiction over “Indian Country.” Nothing in these provisions on land ownership suggests that the phrase “private or public land in Montana” should be construed to include tribal lands on the reservation.

Id., at ¶¶ 18 & 19, citing *Big Spring v. Conway*, 2011 MT 109, ¶ 30, 360 Mont. 370, 255 P.3d 121.

Finally, the Court acknowledged that the important relationship the Tribes had with the buffalo was “long-held and deeply rooted in the history, beliefs and traditions of the Tribes.” *Id.* at ¶27. As such, this factor must be considered and given proper weight when determining issues related to bison transfers to tribal governments and tribal land.

As a result of this decision and the important and unique relationship tribes have with the bison, it ITBC has a strong and valid argument that the State’s rules governing importation of domestic livestock should not apply to transfers of bison, from brucellosis free herds to sovereign tribal entities. As the Montana Supreme Court found, Tribes are entitled to special consideration; especially when an important interest like buffalo preservation are implicated.