

(viii) Except as provided in paragraph (d)(1)(xii) of this section, to pay a civil penalty of not less than \$275 and not more than \$2,200 for each individual discriminated against before March 27, 2008, and not less than \$375 and not more than \$3,200 for each individual discriminated against on or after March 27, 2008;

(ix) Except as provided in paragraph (d)(1)(xii) of this section, in the case of a person or entity previously subject to a single final order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than \$2,200 and not more than \$5,500 for each individual discriminated against before March 27, 2008, and not less than \$3,200 and not more than \$6,500 for each individual discriminated against on or after March 27, 2008;

(x) Except as provided in paragraph (d)(1)(xii) of this section, in the case of a person or entity previously subject to more than one final order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than \$3,300 and not more than \$11,000 for each individual discriminated against before March 27, 2008, and not less than \$4,300 and not more than \$16,000 for each individual discriminated against on or after March 27, 2008;

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) Not less than \$275 and not more than \$2,200 for each document that is the subject of a violation under section 274C(a)(1) through (4) of the INA before March 27, 2008, and not less than \$375 and not more than \$3,200 for each document that is the subject of a violation under section 274C(a)(1) through (4) of the INA on or after March 27, 2008;

(ii) Not less than \$250 and not more than \$2,000 for each document that is the subject of a violation under section 274C(a)(5) or (6) of the INA before March 27, 2008, and not less than \$275 and not more than \$2,200 for each document that is the subject of a violation under section 274C(a)(5) or (6) of the INA on or after March 27, 2008;

(iii) In the case of a respondent previously subject to one or more final orders under section 274C(d)(3) of the INA, not less than \$2,200 and not more than \$5,500 for each document that is the subject of a violation under section 274C(a)(1) through (4) of the INA before March 27, 2008, and not less than \$3,200 and not more than \$6,500 for each document that is the subject of a violation under section 274C(a)(1) through (4) of the INA on or after March 27, 2008; or

(iv) In the case of a respondent previously subject to one or more final orders under section 274C(d)(3) of the INA, not less than \$2,000 and not more than \$5,000 for each document that is the subject of a violation under section 274C(a)(5) or (6) of the INA before March 27, 2008, and not less than \$2,200 and not more than \$5,500 for each document that is the subject of a violation under section 274C(a)(5) or (6) of the INA on or after March 27, 2008.

\* \* \* \* \*

Dated: January 23, 2008.

**Michael B. Mukasey,**

*Attorney General, Department of Justice.*

Dated: February 11, 2008.

**Michael Chertoff,**

*Secretary, Department of Homeland Security.*

[FR Doc. E8-3320 Filed 2-25-08; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 78

[Docket No. APHIS-2006-0183]

RIN 0579-AC21

### Brucellosis in Cattle; Research Facilities

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending brucellosis regulations by providing an exception in the definition of *herd* for animals held within a federally approved brucellosis research facility, in order to facilitate research on brucellosis-exposed or infected animals in those facilities. Prior to this rule, such animals constituted a herd, and the presence of brucellosis-positive herds within a State can adversely affect that State's brucellosis classification. By providing an exception for brucellosis-exposed or infected animals held within federally approved research facilities, this rule will enable initiation of necessary brucellosis research in Class Free States.

**DATES:** *Effective Date:* March 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Debra Donch, National Brucellosis Epidemiologist, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 136, Riverdale, MD 20737-1231; (301) 734-5952.

**SUPPLEMENTARY INFORMATION:**

## Background

Brucellosis is a contagious disease affecting animals and humans and caused by bacteria of the genus *Brucella*. The brucellosis regulations 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.

In § 78.1, the regulations require that, to achieve and retain Class Free status, a State or area must have no cattle herds under quarantine. In the same section, *herd* is defined, in part, as "all animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm, or ranch)." Such a definition effectively precludes brucellosis research in Class Free States or areas, since infected animals may be used for such research, and the animals held in a research facility would be considered a herd under that definition of the term. Since expertise and infrastructure that could potentially benefit this country's brucellosis eradication efforts can be found in many Class Free States, this definition may impede the progress of brucellosis research and delay the eradication of the disease within the United States.

On December 13, 2006, we published in the **Federal Register** (71 FR 74826-74827) a proposal<sup>1</sup> to amend the definition of *herd* to create an exception for brucellosis-exposed or infected animals held within federally approved research facilities, so that such animals would no longer be considered a herd. We proposed this change to allow States to undertake brucellosis research

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=APHIS-2006-0183>.

without adversely impacting their Class Free status.

We solicited comments concerning our proposal for 60 days, ending February 12, 2007. We received eight comments by that date, from six members of a brucellosis research team at a State university, a State department of agriculture and forestry, and a national scientific society.

All of the commenters supported the proposed rule. However, one of the commenters, noting our reference in the proposed rule to a series of guidelines established by the Animal and Plant Health Inspection Service (APHIS) and the Agricultural Research Service (ARS), recommended that those guidelines be integrated into the existing Federal approval guidelines for agricultural research facilities rather than creating a new Federal process.

This rule pertains solely to the 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. It is not our intent to modify or replace the series of guidelines established by APHIS and ARS for approval of research facilities at this time.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Brucellosis is a contagious, costly disease of ruminants that also affects humans. Although brucellosis can infect other animals, it is primarily a threat to cattle, bison, and swine. In animals, the disease causes weight loss, decreased milk production, loss of young, infertility, and lameness. There is no cure for brucellosis in animals, nor is there a preventative vaccine that is 100 percent effective.

Given the potential for costly consequences related to an outbreak of brucellosis, additional research is needed in order to eradicate this disease. In 1952, when brucellosis was widespread throughout the United States, annual losses from lowered milk production, aborted calves and pigs, and reduced breeding efficiency were estimated at \$400 million. Subsequent studies show that if eradication efforts were stopped, the costs of producing beef and milk would increase by an

estimated \$80 million annually in less than 10 years.

We expect that the groups affected by this action will be herd owners and entities that operate brucellosis research facilities in Class Free States. To the extent that this rule allows for more research with the goal of eradicating brucellosis in the United States, it will benefit all herd owners over time. Brucellosis research facilities in Class Free States will be operated by the State in which they are located or exist as part of colleges and universities that have government contracts to conduct brucellosis research.

The latest agricultural census data show that there were 732,660 farms in the United States primarily engaged in beef cattle ranching and farming and dairy cattle and milk production that reported sales in 2002. Of those farms, more than 99 percent were classified as small entities according to Small Business Association (SBA) standards. There were 82,028 farms in the United States primarily engaged in raising hogs and pigs that reported sales in 2002. Of those farms, over 90 percent were classified as small entities by the SBA. Most, if not all, of the farms primarily engaged in bison production are classified as small entities under SBA standards. Accordingly, the majority of herd owners affected by this rule are considered small entities. For herd owners, any economic effects stemming from this rule will result from advances made toward the eradication of brucellosis in the United States. As such, these economic effects will be positive, but long-term and generalized.

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.)

#### **Executive Order 12988**

This final 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 final 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.

■ 2. In § 78.1, the definition of *herd* is revised to read as follows:

##### **§ 78.1 Definitions.**

\* \* \* \* \*

*Herd.* (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm, or ranch); or

(b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with each other.

(c) For the purposes of this part, the term *herd* does not include animals that are contained within a federally approved research facility.

\* \* \* \* \*

Done in Washington, DC, this 20th day of February 2008.

**Kevin Shea,**

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

[FR Doc. E8–3591 Filed 2–25–08; 8:45 am]

**BILLING CODE 3410–34–P**