

the district director or officer-in-charge determines that it is appropriate for employees of a different rank to conduct ceremonies, the district director or officer-in-charge may make a request through the Commissioner to the Assistant Commissioner, Adjudications, for permission to delegate such authority. The request shall furnish the reasons for seeking exemption from the requirements of this paragraph. The Commissioner may delegate such authority to such other officers of the Service or the Department of Justice as he or she may deem appropriate.

(c) *Execution of questionnaire.* Immediately prior to being administered the oath of allegiance, each applicant shall complete the questionnaire on Form N-445. Each completed Form N-445 shall be reviewed by an officer of the Service who may question the applicant regarding the information thereon. If derogatory information is revealed, the applicant's name shall be removed from the list of eligible persons as provided in § 335.5 of this chapter and he or she shall not be administered the oath.

3. Section 337.3 is revised to read as follows:

**§ 337.3 Expedited administration of oath of allegiance.**

(a) An applicant may be granted an expedited oath administration ceremony by either the court or the Service upon demonstrating sufficient cause. In determining whether to grant an expedited oath administration ceremony, the court or the district director shall consider special circumstances of a compelling or humanitarian nature. Special circumstances may include but are not limited to:

- (1) The serious illness of the applicant or a member of the applicant's family;
- (2) Permanent disability of the applicant sufficiently incapacitating as to prevent the applicant's personal appearance at a scheduled ceremony;
- (3) The developmental disability or advanced age of the applicant which would make appearance at a scheduled ceremony inappropriate; or
- (4) Urgent or compelling circumstances relating to travel or employment determined by the court or the Service to be sufficiently meritorious to warrant special consideration.

(b) Courts exercising exclusive authority may either hold an expedited oath administration ceremony or refer the applicant to the Service in order for either the Immigration Judge or the Service to conduct an oath administration ceremony, if an

expedited judicial oath administration ceremony is impractical. The court shall inform the district director in writing of its decision to grant the applicant an expedited oath administration ceremony and that the court has relinquished exclusive jurisdiction as to that applicant.

(c) All requests for expedited administration of the oath of allegiance shall be made in writing to either the court or the Service. Such requests shall contain sufficient information to substantiate the claim of special circumstances to permit either the court or the Service to properly exercise the discretionary authority to grant the relief sought. The court or the Service may seek verification of the validity of the information provided in the request. If the applicant submits a written request to the Service, but is awaiting an oath administration ceremony by a court pursuant to § 337.8, the Service promptly shall provide the court with a copy of the request without reaching a decision on whether to grant or deny the request.

4. Section 337.7 is amended by revising paragraph (a) to read as follows:

**§ 337.7 Information and assignment of individuals under exclusive jurisdiction.**

(a) No later than at the time of the examination on the application pursuant to § 335.2 of this chapter, an employee of the Service shall advise the applicant of his or her right to elect the site for the administration of the oath of allegiance, subject to the exclusive jurisdiction provision of § 310.3(d) of this chapter. In order to assist the applicant in making an informed decision, the Service shall advise the applicant of the upcoming Immigration Judge or Service conducted and judicial ceremonies at which the applicant may appear, if found eligible for naturalization.

\* \* \* \* \*

5. Section 337.8 is amended by revising paragraph (f) to read as follows:

**§ 337.8 Oath administered by the courts.**

\* \* \* \* \*

(f) *Withdrawal from court.* An applicant for naturalization not subject to the exclusive jurisdiction of § 310.3(d) of this chapter, who has elected to have the oath administered in a court oath ceremony, may, for good cause shown, request that his or her name be removed from the list of persons eligible to be administered the oath at a court oath ceremony and request that the oath be administered in a ceremony conducted by an Immigration Judge or the Service. Such request shall be in writing to the Service

office which granted the application and shall cite the reasons for the request. The district director or officer-in-charge shall consider the good cause shown and the best interests of the applicant in making a decision. If it is determined that the applicant shall be permitted to withdraw his or her name from the court ceremony, the Service shall give written notice to the court of the applicant's withdrawal, and the applicant shall be scheduled for the next available oath ceremony, conducted by an Immigration Judge or the Service, as if he or she had never elected the court ceremony.

6. Section 337.9 is amended by revising paragraph (a) to read as follows:

**§ 337.9 Effective date of naturalization.**

(a) An applicant for naturalization shall be deemed a citizen of the United States as of the date on which the applicant takes the prescribed oath of allegiance, administered either by the Service or an Immigration Judge in an administrative ceremony or in a ceremony conducted by an appropriate court under § 337.8 of this chapter.

\* \* \* \* \*  
Dated: July 14, 1995.

**Janet Reno,**

*Attorney General.*

[FR Doc. 95-18068 Filed 7-21-95; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 50**

[Docket No. 94-133-1]

**Tuberculosis in Cattle, Bison, and Cervids; Payment of Indemnity**

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

**ACTION:** Interim rule.

**SUMMARY:** We are amending the tuberculosis indemnity regulations to provide for the payment of indemnity for cervids destroyed because of tuberculosis. We are also amending these regulations to provide for the payment of indemnity for cattle, bison, and cervids found to have been exposed to tuberculosis by reason of association with any tuberculous livestock. We believe that these changes will encourage owners to rapidly remove cattle, bison, and cervids affected with and exposed to tuberculosis from their herds. Rapid removal of such cattle, bison, and cervids will help protect other cattle, bison, and cervids from

tuberculosis and will facilitate tuberculosis eradication efforts in the United States. We are also amending the regulations to deny claims for indemnity for depopulation of cattle, bison, and cervid herds unless other exposed livestock in the herd have been destroyed. This action will help ensure that when cattle, bison, and cervids in a herd are depopulated, other livestock do not remain as potential sources of infection when the owner restocks the herd with healthy animals.

**DATES:** Interim rule effective July 24, 1995. Consideration will be given only to comments received on or before September 22, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 94-133-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 94-133-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-8715.

**SUPPLEMENTARY INFORMATION:**

**Background**

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis causes weight loss, general debilitation, and sometimes death. The regulations in 9 CFR part 50 (referred to below as the regulations) provide for payment of Federal indemnity to owners of certain cattle, bison, or swine destroyed because of tuberculosis.

As part of our program to control and eradicate tuberculosis in cattle and bison, the payment of indemnity is intended to provide owners with an incentive for promptly destroying cattle or bison affected with or exposed to tuberculosis. Because the continued presence of tuberculosis in a herd seriously threatens the health of animals in that herd and possibly other herds, the prompt destruction of tuberculosis-affected animals is critical if tuberculosis eradication efforts in the

United States are to succeed. Payment of Indemnity for Cervids Destroyed Because of Tuberculosis

Currently, the regulations do not provide for the payment of indemnity for cervids destroyed because of tuberculosis. In the past, the number of captive cervids in this country was not seen as large enough to pose a significant health risk to other cervid herds or to cattle and bison. However, the number of captive cervids has steadily increased during the past decade, so that today there are almost 2,000 deer and elk owners in the United States, raising about 135,000 animals. In some cases, the cervids are pastured in the same fields as cattle and bison.

Because of the growing number of herds of captive cervids, and because cervids are frequently pastured with cattle and bison, captive cervids affected with tuberculosis pose a significant health risk both to other herds of cervids and to cattle and bison. Tuberculosis affects cervids similarly to the way it affects cattle and bison. Cervids infected with tuberculosis can and have been known to spread the disease to cattle and bison. Since January 1991, tuberculosis has been confirmed in 31 herds of elk and deer in the United States. Transmission of tuberculosis from captive cervids to cattle has been confirmed in at least five instances. In addition to concerns over livestock health, another issue of concern is the impact tuberculosis would have on the nation's wild herds of cervids if the disease were to spread. Captive cervids are maintained within fenced areas. However, captive cervids have been known to escape from their enclosures and mingle with wild herds of cervids. At present, there are two confirmed incidences of tuberculosis in wild cervids (each involving only one animal), and it has been determined that at least one of those incidences resulted from contact with a captive cervid herd. We believe that if a widespread outbreak were to occur in wild cervids, it would be very costly to manage, would reduce the wild cervid population, and would pose a serious human health risk.

A National Cooperative State-Federal Bovine Tuberculosis Eradication Program for cattle and bison has been in place since 1917, and is still being carried out. In 1993, the United States Animal Health Association (USAHA) resolved to include captive cervids in this eradication program. We believe preventing the spread of tuberculosis in the cervid population is necessary to help protect the health of cervids, cattle, and bison in the United States.

Because no indemnity is currently offered for cervids destroyed because of tuberculosis, cervid owners can obtain at best only slaughter value if they have the cervids destroyed. There is little or no slaughter value for reactor cervids or for cervids that show evidence of tuberculosis upon slaughter inspection. This makes it less likely that owners will have tuberculous cervids destroyed, for even though infected animals will eventually die, they can live for several years and in that time can produce offspring and antlers for market.

To encourage owners to destroy captive cervids affected with or exposed to tuberculosis, we are amending the regulations to provide for the payment of indemnity for cervids destroyed because of tuberculosis. This will supplement the salvage value an owner can obtain for captive cervids destroyed because of tuberculosis. We are defining *cervid* in § 50.1 to include "all species of deer, elk, and moose, raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition."

Section 50.3 concerns payment to owners for animals destroyed. We are amending § 50.3 (a), (b), and (c) to provide that the indemnity rates will not exceed \$750 for any reactor cervid and \$450 for any exposed cervid. These are the same rates that the regulations allow for reactor and exposed cattle and bison. The herd owner will have the option of destroying only reactor cervids in the herd, or of depopulating the entire herd, the same options available for dealing with affected herds of cattle and bison. The advantage to the owner, as well as to the cervid industry, of whole herd depopulation would be the assured elimination of tuberculosis from the herd. The herd owner could then start anew with healthy stock. We are also amending the definition for *herd depopulation* in § 50.1 to include cervids.

Section 50.4 concerns the determination of existence of or exposure to tuberculosis. We are amending paragraph (a) to provide that cervids are to be classified as affected with tuberculosis in the same manner as cattle and bison: on the basis of an intradermal tuberculin test applied by a Federal, State, or accredited veterinarian, or by another diagnostic procedure approved in advance by the Administrator. The intradermal tuberculin tests approved to detect tuberculosis in cattle and bison have also proven through research, surveys, and testing to be effective in determining the tuberculosis disease status of cervids. We are amending § 50.4(b) to provide that the kinds of

associations which cause cattle or bison to be classified as exposed to tuberculosis also apply to cervids.

We are amending § 50.5, which concerns records of testing, to require the same recordkeeping for cervids as for cattle and bison. We are also making a nonsubstantive change to this section to specify the form to be used for test records.

Section 50.6 contains requirements for the identification of animals to be destroyed because of tuberculosis. We are amending this section to require that reactor cervids be identified by branding the letter "T" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag. We are requiring that exposed cervids be identified by branding the letter "S" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size and by attaching to the left ear an approved metal eartag bearing a serial number.<sup>1</sup>

We are requiring that reactor and exposed cervids be branded on the hip, and not on the jaw, for two reasons. First, branding on the jaw would be physically very difficult for most cervids. The skin on the jaws of most cervids is much thinner than that of cattle or bison, making it possible that the brand could penetrate the skin and injure muscle tissue. Also, the size of the jaw area varies widely among cervid species, with some having a head no larger than that of a medium-sized dog. Such cervid species would not have a jaw large enough to accommodate a brand. Second, there has been increasing concern from the public, and specifically from animal rights groups, that branding on the jaw may cause undue distress to livestock. In response to their concerns, we published a proposal (see footnote 1) to remove branding on the jaw from our regulatory programs for cattle and bison. In keeping with that effort, and the other reasons enumerated, we have chosen not to allow branding on the jaw in our regulatory programs for cervids.

The brands required for cattle and bison in § 50.6, and the brands called for in this interim rule for cervids, are

applied with a hot-iron. We considered allowing identification options such as freeze branding, by requiring that cervids be identified by a brand or by another distinct, permanent, and legible mark. We chose not to allow these options. A limitation of freeze branding is that the brand takes a minimum of 18 to 21 days to become visible. In order that we may continue to prevent the spread of tuberculosis, it is imperative that exposed and affected animals be instantly recognizable from the time of their identification until they are slaughtered, so that they are not commingled with healthy animals. In most cases, an exposed or affected cervid would be identified, shipped, and slaughtered before the freeze brand becomes visible. To date, an acceptable alternative to hot-iron branding has not been found for marking exposed or affected animals that satisfies the criteria of being instantly visible upon application, as well as distinct, permanent, and legible. Until an acceptable alternative is developed, we have chosen to require that the cervids be identified with a brand.

We are, however, including in § 50.6 an alternative to branding exposed and reactor cervids. We will allow exposed cervids to be moved interstate to slaughter without branding if they are either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. For reactor cervids, we will allow the same movement without branding as for exposed cervids, but we are requiring that the reactors be identified by a "TB" tattooed on the left ear, and by spraying the left ear with yellow paint.<sup>2</sup> Carcasses of tuberculosis reactor animals can be sold for consumption only if the meat is cooked. We are unaware of any slaughtering facilities in the United States that will handle cervid carcasses that are to be cooked before sale, so this option would not be available to cervid owners. Consequently, reactor cervids sent to slaughter would constitute a total monetary loss to the owner. Such monetary loss could provide an incentive to substitute less valuable cervids that have tested negative for tuberculosis for more valuable reactor cervids, or to otherwise divert valuable

tuberculosis reactor cervids from slaughter channels, impeding tuberculosis eradication efforts in the United States. We believe that requiring reactors to have their left ear tattooed with a "TB" and spray painted yellow will make it difficult for these reactors to be diverted.

We are also amending §§ 50.7, 50.8, 50.9, 50.10, 50.11, 50.12, 50.13, 50.14, and 50.15 to make the provisions that apply to cattle and bison apply to cervids. These sections concern the destruction and disposal of animals, payment of expenses for transportation and disposal of carcasses, appraisals, reports of salvage proceedings, procedures for claiming indemnity, disinfection of premises and other articles, and claims not allowed.

#### **Payment of Indemnity for Tuberculosis-Exposed Cattle, Bison, and Cervids**

Before the effective date of this interim rule, § 50.3(c) authorized the payment of Federal indemnity, under certain conditions, for cattle and bison found to have been exposed to tuberculosis by reason of association with tuberculous cattle or bison. As explained above, we are amending § 50.3(c) to also provide for the payment of indemnity for cervids found to have been exposed to tuberculosis. We are further amending this paragraph to provide that the exposure of cattle, bison, or cervids may be by reason of association with any tuberculous livestock, not just cattle and bison. Llamas, alpacas, antelope, and other hoofed livestock, in addition to cervids, can be reservoirs of tuberculosis and can spread the disease to cattle, bison, or cervids. The rapidly increasing number of exotic livestock herds has increased the amount of commingling between such animals and cattle or bison. This, in turn, has increased the risk that cattle or bison, and now cervids, will be exposed to tuberculosis by other livestock, a circumstance unforeseen when the regulations were promulgated.

We are adding a definition of *livestock* to § 50.1 to include cattle, bison, cervids, swine, goats, sheep, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition. We are also amending § 50.14, "Claims not allowed," to add a new paragraph to stipulate that compensation for tuberculosis-exposed cattle, bison, or cervids destroyed during herd depopulation will not be allowed if a designated epidemiologist has determined that exotic bovidae (such as antelope) or other livestock species in

<sup>1</sup> A proposal to amend § 50.6(a) to allow reactor cattle and bison to be identified by a brand on the left hip and by attaching an approved metal eartag to the left ear, and to amend § 50.6(b) to allow exposed cattle and bison to be identified by a brand on the left hip and by attaching an approved metal eartag to the left ear, was published in the **Federal Register** on May 17, 1995 (Docket No. 95-006-1, 60 FR 26377-26381).

<sup>2</sup> A proposal to make the same provisions apply to reactor and exposed cattle and bison was published in the **Federal Register** on May 17, 1995 (Docket No. 95-006-1, 60 FR 26377-26381).

the herd have been exposed to tuberculosis by reason of association with tuberculous livestock, and those exotic bovidae or other species have not been destroyed. We are adding this paragraph to ensure that, when a cattle, bison, or cervid herd is depopulated, other exposed species do not remain to infect cattle, bison, or cervids with which the owner restocks the herd. We are including the provision that a designated epidemiologist must determine whether exposure had occurred, because there are situations where cattle, bison, cervids, antelope, and other livestock are maintained under common ownership, but the different species may be sufficiently separated so that they do not necessarily commingle. We are adding a definition for *designated epidemiologist* to § 50.1 to mean "an epidemiologist appointed by a cooperating State animal health official and the Veterinarian in Charge to perform functions specified by the 'Uniform Methods and Rules—Bovine Tuberculosis Eradication.'"

We are making several necessary changes to § 50.1, "Definitions," to make the definitions consistent with the other changes made in this rule. First, we are revising the definition of *herd*. According to the current definition, a herd consists of animals of like kind, or two or more groups of cattle or bison together. We are removing the "like kind" and "cattle and bison" provisions, and will state instead that a herd consists of any group of livestock maintained on common ground, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.

We are removing the definition for *animals* from § 50.1, because adding the term *livestock* will eliminate the need to use the term and define animals. Throughout the regulations, we are removing the word "animal" wherever its meaning is not clear and replacing it with the specific kind of livestock (i.e. cattle, bison, cervid, or swine) that is appropriate to that section.

In the definitions for *approved herd plan* and *quarantined feedlot*, we are replacing "animals" with the term "livestock." In the definition for *owner*, we are replacing "cattle, bison, or swine" with the term "livestock." We are also including cervids in the definitions for *permit*, *reactor cattle and bison*, and *registered cattle and bison*. (The current definition for *reactor cattle and bison* states that cattle and bison are classified as reactors in accordance with the "Uniform Methods and Rules—

Bovine Tuberculosis Eradication," based on a positive response to an official tuberculosis test. As stated earlier in this document, the tuberculin tests approved in the Uniform Methods and Rules to detect TB in cattle and bison have also proven effective in determining the tuberculosis status of cervids. Additionally, the Animal and Plant Health Inspection Service is in the process of adding cervids to the provisions in the Uniform Methods and Rules.)

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to help prevent the spread of tuberculosis in cattle, bison, and cervid herds. We are currently aware of three herds of cattle and bison exposed to tuberculous cervids and six herds of cervids affected with bovine tuberculosis. The lack of Federal compensation for the destruction of these animals has resulted in these herds not being depopulated, allowing the tuberculosis to persist. These herds could spread the disease to healthy herds. Providing indemnity payments immediately will encourage owners to depopulate the tuberculous herds, thereby helping prevent the spread of tuberculosis to healthy herds and reducing the time required to achieve the eradication of bovine tuberculosis from the United States. Immediate action will, we believe, substantially advance our eradication efforts and enhance our ability to achieve the program's objectives.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### 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.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this rule.

In accordance with 21 U.S.C. 114a, as amended, the Secretary of Agriculture is authorized to promulgate regulations to provide for the payment of claims for compensation for animals destroyed because of tuberculosis. This rule provides for the payment of indemnity for the destruction of tuberculous reactor cervids, and for the destruction of cattle, bison, and cervids found to have been exposed to tuberculosis by reason of association with any tuberculous livestock. This rule is necessary to encourage owners to rapidly remove cattle, bison, and cervids affected with and exposed to tuberculosis from their herds, thereby facilitating tuberculosis eradication efforts in the United States.

Cervid producers affected by this rule would be primarily producers of deer and elk. There are approximately 1,000 deer producers and 950 elk producers in the United States, raising about 100,000 deer and 35,000 elk under controlled farm conditions. Holdings vary in size and degree of commercialization, but almost all deer and elk producers can be classified as small businesses (defined by the Small Business Administration as having less than \$0.5 million annual gross receipts). However, many producers rely on other sources of income (such as dairy farming or beef cattle ranching) for their livelihoods.

In general, elk producers concentrate on building up their herds, with most newborns retained as breeding stock. However, a fair market value for a heifer elk is between \$4,000 and \$5,000. Annual income is earned from the sale of antlers cut in the velvet stage of growth. The antlers sell for about \$65 per pound, and a single bull elk can produce an average of 18 pounds of antlers per year, for more than 10 years. Thus, a gross income of \$1,000 or more can be derived per year from a bull elk.

The value per animal is lower for deer than for elk, and varies by species. Currently, at private sales, prices for good quality fallow does and bucks range between \$500 and \$1,000. Young

deer command only \$300 to \$500 per head. Slightly lower prices prevail at public auctions.

Destruction of cervid herds affected with tuberculosis will be voluntary on the part of the owners. At present, there are six cervid herds (four elk herds and two deer herds) affected with tuberculosis, totalling about 700 cervids. The indemnity payments of up to \$750 per head for reactor cervids and up to \$450 per head for exposed cervids will partially compensate cervid producers for lost income incurred by the destruction of the animals. These indemnity payments could provide a significant incentive for the owners of these herds to destroy the tuberculous animals. Although the indemnity payments will not completely cover the monetary losses resulting from whole herd depopulation, the payments will significantly reduce losses for deer and elk producers.

This rule also provides for the payment of indemnity for cattle and bison that are destroyed because of tuberculosis after being exposed to any tuberculous livestock, at the rate of up to \$450 per head. This is the same rate currently provided in the regulations for cattle and bison exposed to tuberculous cattle and bison. Depopulation of the cattle and bison herds will be voluntary.

This rule contains paperwork and recordkeeping requirements. Under this rule, cattle, bison, and cervid owners are required to have a permit for movement of affected or exposed animals to slaughter, records of tests, and reports of appraisals and salvage proceedings. Further, claims for indemnity must be submitted on forms furnished by APHIS, and cervids to be destroyed must be identified with brands and eartags. However, since the provisions regarding exposed animals are voluntary, none of the paperwork or recordkeeping would be required if an owner chooses not to claim indemnity for destroying exposed animals.

The alternative to this rule would be to take no action. We do not consider taking no action a reasonable alternative because, without the economic incentive of Federal compensation for destroyed animals, owners would be more likely to allow tuberculosis infection to persist in their herds. The indemnity payments offered in this rule are the same as those currently offered for affected and exposed cattle and bison.

**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 12778**

This rule has been reviewed under Executive Order 12778, 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**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Docket No. 94-133-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects in 9 CFR Part 50**

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, 9 CFR part 50 is amended as follows:

**PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS**

1. The authority citation for part 50 continues to read as follows:

**Authority:** 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 50.1 [Amended]**

2. Section 50.1 is amended as follows:

a. The definitions for *animals*, *reactor cattle and bison*, and *registered cattle and bison* are removed.

b. In the definition for *approved herd plan*, the word "animals" is removed and the word "livestock" is added in its place.

c. Definitions for *cervid*, *designated epidemiologist*, *livestock*, *reactor cattle*, *bison*, and *cervids*, and *registered cattle*, *bison*, and *cervids* are added in alphabetical order to read as set forth below.

d. The definitions for *herd* and *herd depopulation* are revised to read as set forth below.

e. In the definition for *owner*, the words "cattle, bison, or swine" are removed and the word "livestock" is added in their place.

f. In the definition for *permit*, the word "cervids," is added immediately before "or swine".

g. In the definition for *quarantined feedlot*, the word "animals" is removed and the word "livestock" is added in its place each time it appears.

**§ 50.1 Definitions.**

\* \* \* \* \*

*Cervid.* All species of deer, elk, and moose raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.

\* \* \* \* \*

*Designated epidemiologist.* An epidemiologist appointed by a cooperating State animal health official and the Veterinarian in Charge to perform functions specified by the "Uniform Methods and Rules—Bovine Tuberculosis Eradication."

\* \* \* \* \*

*Herd.* Any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.

*Herd depopulation.* Removal by slaughter or other means of destruction of all cattle, bison, and cervids in a herd prior to restocking with new cattle, bison, or cervids.

*Livestock.* Cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.

\* \* \* \* \*

*Reactor cattle, bison, and cervids.* Cattle and bison are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on a positive response to an official tuberculin test. Cervids are classified as reactors for tuberculosis in the same manner as cattle and bison.

*Registered cattle, bison, or cervids.* Cattle, bison, or cervids for which individual records of ancestry are maintained, and for which individual registration certificates are issued and recorded by a recognized breed

association whose purpose is the improvement of the breed.

\* \* \* \* \*

#### § 50.2 [Amended]

3. In § 50.2, the word "cervids," is added immediately before "or swine".

4. Section 50.3 is amended as follows:

a. In paragraph (a), in the paragraph heading and the regulatory text, the words "and bison" are removed and the words ", bison, and cervids" are added in their place.

b. In paragraph (b), in the paragraph heading and the regulatory text, the words "and bison" are removed each time they appear and the words ", bison, and cervids" are added in their place.

c. Paragraph (c) is revised to read as set forth below.

#### § 50.3 Payment to owners for animals destroyed.

\* \* \* \* \*

(c) *Exposed cattle, bison, and cervids.*

The Administrator may authorize the payment of Federal indemnity to owners of cattle, bison, and cervids destroyed because of tuberculosis not to exceed \$450 for any animal which has been classified as exposed to tuberculosis in accordance with § 50.4(b) when it has been determined by the Administrator that the destruction of the exposed cattle, bison, or cervids will contribute to the Tuberculosis Eradication Program; but, the joint State-Federal indemnity payments, plus salvage, must not exceed the appraised value of each animal.

\* \* \* \* \*

#### § 50.4 [Amended]

5. In § 50.4, paragraph (a), the words "and bison" are removed and the words ", bison, and cervids" are added in their place.

6. In § 50.4, paragraph (b), the words "and bison" are removed and the words ", bison, and cervids" are added in their place; and the word "animals" is removed and the words "cattle, bison, or cervids" are added in its place.

#### § 50.5 [Amended]

7. In § 50.5, in the first sentence, the words "or bison" are removed and the words ", bison, or cervid" are added in their place and the words "of cattle" are removed; and in the second sentence the words "A form acceptable to an APHIS" are removed and the words "VS Form 6-22 or an equivalent State form" are added in their place.

8. In § 50.6, the introductory text, the word "Animals" is removed and the words "Cattle, bison, cervids, or swine" are added in its place; and new

paragraphs (d) and (e) are added to read as follows:

#### § 50.6 Identification of animals to be destroyed because of tuberculosis.

\* \* \* \* \*

(d) *Reactor cervids.* Reactor cervids shall be identified by branding the letter "T" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag. Reactor cervids may be moved interstate to slaughter without branding if they are permanently identified by the letters "TB" tattooed legibly on the left ear, they are sprayed on the left ear with yellow paint, and they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(e) *Exposed cervids.* Exposed cervids shall be identified by branding the letter "S" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size and by attaching to the left ear an approved metal eartag bearing a serial number. Exposed cervids may be moved interstate to slaughter without branding if they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

#### § 50.7 [Amended]

9. In § 50.7, paragraphs (a) and (b) are amended by removing the first word of the regulatory text in each paragraph, "Animals", and adding the words "Cattle, bison, cervids, or swine" in its place.

#### § 50.8 [Amended]

10. In § 50.8, the words "and bison" are removed each time they appear and the words ", bison, and cervids" are added in their place.

#### § 50.9 [Amended]

11. In § 50.9, in the first and the fourth sentences, the word "Animals" is removed and the words "Cattle, bison, cervids, or swine" are added in its place; in the third and the sixth sentences, the word "animals" is removed and the words "cattle, bison,

cervids, or swine" are added in its place; and in the fifth sentence the words "or bison" are removed and the words ", bison, cervids, or swine" are added in their place.

#### § 50.10 [Amended]

12. In § 50.10, the words "and bison" are removed and the words ", bison, cervids, and swine" are added in their place.

#### § 50.11 [Amended]

13. In § 50.11, the words "or bison" are removed each time they appear and the words ", bison, cervids, or swine" are added in their place; and the word "animals" is removed from the ninth sentence immediately following "Destruction of" and the words "cattle, bison, cervids, and swine" are added in its place.

#### § 50.12 [Amended]

14. In § 50.12, the words "or bison" are removed each time they appear and the words ", bison, cervids, or swine" are added in their place.

#### § 50.13 [Amended]

15. In § 50.13, the words "cattle or bison" are removed and the word "livestock" is added in their place.

16. Section 50.14 is amended as follows:

a. In the introductory text, the words "or bison" are removed and the words ", bison, or cervids" are added in their place.

b. In paragraph (b), the words ", bison, and cervids" are added immediately before the phrase "2 years of age or over".

c. In paragraph (b), the words "and bison" are removed each time they appear and the words ", bison, and cervids" are added in their place.

d. In paragraph (d), the words "or bison" are removed each time they appear and the words ", bison, or cervids" are added in their place.

e. In paragraph (d), the words "and bison" are removed and the words ", bison, and cervids" are added in their place.

f. In paragraphs (e), (e)(2)(i), and (e)(2)(ii), the words "or bison" are removed each time they appear and the words ", bison, or cervids" are added in their place.

g. A new paragraph (f) is added to read as set forth below.

#### § 50.14 Claims not allowed.

\* \* \* \* \*

(f) For exposed cattle, bison, or cervids destroyed during herd depopulation, if a designated epidemiologist has determined that exotic bovidae (such as antelope) or

other species of livestock in the herd have been exposed to tuberculosis by reason of association with tuberculous livestock, and those exotic bovidae or other species determined to have been exposed to tuberculosis have not been destroyed.

Done in Washington, DC, this 17th day of July 1995.

**Lonnie J. King,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-18072 Filed 7-21-95; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 95-NM-100-AD; Amendment 39-9306; AD 95-15-03]

#### **Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 series airplanes. This action requires replacement of the currently installed side brace pins of the main landing gear (MLG) with new pins. This amendment is prompted by a report of a ruptured pin on an in-service airplane. The actions specified in this AD are intended to prevent failure of the side brace pins and the subsequent collapse of the MLG.

**DATES:** Effective August 8, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 8, 1995.

Comments for inclusion in the Rules Docket must be received on or before September 22, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-100-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the

Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1149.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42 series airplanes. The DGAC advises that it has received a report indicating that the side brace pin of the main landing gear (MLG) ruptured on an in-service airplane. Investigation revealed that the cause of the ruptured pin may be attributed to a defect in the manufacturing process. The defective pins were improperly dehydrogenated after they were chromium plated. This condition, if not corrected, could result in failure of the side brace pins and the subsequent collapse of the MLG.

The defective pins have been isolated and identified as those installed on airplanes having manufacturer's serial numbers 121 through 125 inclusive, 128 through 139 inclusive, and 141 through 143 inclusive.

Avions de Transport Regional has issued Service Bulletin ATR42-32-0070, dated April 3, 1995, which describes procedures for replacement of the currently installed side brace pins of the MLG with new pins having part number (P/N) S5357841320600. These replacement pins are not susceptible to the rupture problems associated with the currently installed pins. The French DGAC classified this service bulletin as mandatory and issued French airworthiness directive 95-051-058(B), dated March 15, 1995, in order to assure the continued airworthiness of these airplanes in France. -

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the side brace pins of the MLG. This AD requires replacement of the currently installed side brace pins of the MLG with new pins. The actions are required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### **Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic,