

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 02-021-1]

Tuberculosis in Cattle and Bison; State and Zone Designations; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing the split-State status of Texas and classifying the entire State as modified accredited advanced. This action is necessary to help prevent the spread of tuberculosis because Texas no longer meets the requirements for split-State status. In this document, we are also soliciting comments on the current regulatory provisions of the domestic bovine tuberculosis eradication program.

DATES: This interim rule was effective June 3, 2002.

Compliance Date: The date for complying with certain requirements of 9 CFR 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the State of Texas is January 1, 2003 (see "Delay in Compliance" under **SUPPLEMENTARY INFORMATION**). The compliance date for all other provisions in 9 CFR part 77 applicable to the interstate movement of cattle and bison from the State of Texas was June 3, 2002.

Comment Date: We will consider all comments that we receive on or before August 5, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/

commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-021-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-021-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-021-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of the 20th century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal Register

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Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

The status of a State or zone is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. In an interim rule published in the **Federal Register** and effective on November 22, 2000, (65 FR 70284-70286, Docket No. 99-092-1), we recognized two separate zones with different classifications in Texas. Portions of El Paso and Hudspeth Counties were classified as a modified accredited advanced zone, and the remainder of the State was classified as an accredited-free zone.

Recently, two tuberculosis-affected herds (a beef herd in the summer of 2001 and a dairy herd in the fall of 2001) were detected in the accredited-free zone of Texas. Under the regulations in § 77.7(c), if two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced. Therefore, we are amending the regulations by removing the split-State status of Texas and classifying the entire State as modified accredited advanced.

The two affected herds detected in the former accredited-free zone in Texas have been depopulated and a complete epidemiological investigation into the potential sources of the disease has been

conducted. In addition, we have heightened our surveillance activities at slaughtering plants in Texas and in the surrounding States. We will continue increased surveillance activity for up to 20 years after the State (or any future zone) has been classified accredited free.

Under the regulations in § 77.10, cattle or bison that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

- The cattle or bison are moved directly to slaughter at an approved slaughtering establishment (§ 77.10(a));
- The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; and are either officially identified or identified by premises of origin identification (§ 77.10(b));
- The cattle or bison are from an accredited herd and are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement (§ 77.10(c)); or
- The cattle or bison are sexually intact animals, are not from an accredited herd, are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculin test conducted within 60 days prior to the date of movement (§ 77.10(d)).

Delay in Compliance

Nationally, most animals that are moved interstate are sexually intact heifers moving to feedlots or steers and spayed heifers. Prior to this interim rule, the identification requirements for such animals found in §§ 77.10(b) and 77.10(d) applied only to approximately 120 cattle moved annually from the small modified accredited advanced zone in Texas. However, this interim rule's classification of the entire State of Texas as modified accredited advanced will necessitate the identification of all sexually intact heifers moving from Texas to feedlots (both approved feedlots and other feedlots) and all steers and spayed heifers moving interstate from Texas to destinations other than an approved slaughtering establishment. Approximately 3 million cattle per year are moved interstate from Texas.

Given the large number of animals that will now require identification before being moved interstate from Texas, we recognize that additional time will be needed before full compliance

with the identification requirements of §§ 77.10(b) and 77.10(d) can be achieved. Identification devices must be obtained, the procedures and processes for numbering the identification must be developed, and a new State-Federal system to record the data from the identification may need to be developed, if the existing State-Federal system is not adequate to deal with the volume of cattle. Once the system of identification is developed, it must be communicated to the State and Federal animal health officials and the industry before it can be coordinated and implemented. Since the system and procedures to be implemented have not yet been determined, we do not know if any new information collection or recordkeeping requirements will be necessary.

The primary purpose of the identification requirements in §§ 77.10(b) and 77.10(d) is to allow for traceback in the event an animal is determined to be infected with or exposed to tuberculosis. If an animal is found to be infected with or exposed to tuberculosis in slaughter channels, it is necessary for control and eradication purposes to be able to identify the premises from which the animal originated as well as the places it has moved through since. Individual unique identification provides the most effective traceback capability. However, if an animal is moved from its premises of origin without identification, the value of any individual identification that might be applied at some later point is diminished. Because most of Texas held accredited free status prior to this interim rule, animals that have been moved from their premises of origin into channels leading to slaughter have not been required to be identified. Animal health officials in Texas have suggested, and we agree, that identification efforts should be concentrated on animals that are still on their premises of origin. Those officials expect that all animals that have already been moved from their premises of origin will have completed their movement through normal industry channels by January 1, 2003.

Therefore, in the former accredited-free zone that encompassed most of Texas, we are delaying the date of compliance with the following interstate movement requirements of § 77.10 until January 1, 2003:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d)); and

- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

The identification requirements of §§ 77.10(b) and 77.10(d) will remain in place under a memorandum of understanding with the State of Texas for animals in the former modified accredited advanced zone in El Paso and Hudspeth Counties. All other applicable provisions of the regulations will be in effect as of the effective date of this rule.

Request for Comments

In addition to requesting comments on this specific change in the tuberculosis classification status of Texas, we are requesting comments on the current regulatory provisions of the domestic bovine tuberculosis eradication program. Based on our experience enforcing the regulations, on information received from the public, and on the availability of new testing strategies and disease prediction models, we are examining whether certain changes to the regulations would be appropriate.

Although we are inviting comments on all regulatory aspects of the domestic tuberculosis eradication program, we are particularly seeking comment on the following issues, which are discussed at greater length below:

- Identification requirements associated with the interstate movement of sexually intact heifers;
- Timeframes for tuberculosis prevalence in determining a State or zone's qualification for a particular disease risk status;
- Appropriate exceptions to disease prevalence levels governing a State or zone's status when there are a limited number of herds in a State or zone; and
- Conditions under which animals could be moved from nonaccredited areas without incurring an unacceptable risk of spreading tuberculosis.

The risk of an animal spreading tuberculosis is much higher in breeding animals than in animals destined for slaughter. Heifers are currently considered as breeding animals because they are sexually intact. However, heifers that move through feedlots could be destined for slaughter without being bred. The regulations do not distinguish between heifers intended for breeding and heifers destined for slaughter. Therefore, we are asking for comments on distinguishing between the destination of heifers and where in the movement process to apply any identification. We are also requesting comments on what type of

identification, such as applying brands to heifers destined for slaughter, could be used to distinguish the destination of heifers.

The regulations stipulate the periods of time States or zones must retain certain tuberculosis prevalence levels to qualify for a particular risk classification, which vary depending on the risk classification and other factors. For example, § 77.9(f) provides that, to qualify for accredited-free status, a modified accredited advanced State or zone must demonstrate, among other things, that it has zero percent prevalence of affected cattle and bison herds and has had no findings of tuberculosis in any cattle or bison in the State or zone for the previous 5 years. However, the requirement of freedom from tuberculosis is 2 years from the depopulation of the last affected herd in States or zones that were previously accredited free and in which all herds affected with tuberculosis were depopulated, 3 years in all other States or zones that have depopulated all affected herds, and 3 years in States or zones that have conducted surveillance that demonstrates that other livestock herds and wildlife are not at risk of being infected with tuberculosis, as determined by the Administrator based on a risk assessment conducted by the Animal and Plant Health Inspection Service.

Based on recently developed tuberculosis disease models that use mathematical simulation to predict the occurrence and spread of disease, we believe it may be necessary to reevaluate our criteria for advancing from one State or zone classification to the next to determine if appropriate timeframes and prevalence levels are being used. Therefore, we are asking for scientific data on whether the timeframes and disease prevalence levels currently being used to classify the tuberculosis risks in States and zones are appropriate and, if not, what timeframes and disease prevalence levels would be appropriate for each classification.

Although risk classifications are based on tuberculosis prevalence levels as set forth in the regulations, the regulations also provide for exceptions to those prevalence levels in cases where a State or zone has a limited number of herds. When the number of herds in a State or zone is less than 10,000 for modified accredited status or less than 30,000 for modified accredited advanced status, disease prevalence may be based on an absolute value of 10 or 3 affected herds, respectively, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or

zone. In addition to comments on the timeframes and disease prevalence criteria, we are asking for scientific data for using different numbers of herds and for other approaches that will give us the same level of confidence that a State or zone is at the appropriate disease prevalence level for the risk classification.

Finally, we are asking for comments on allowing the interstate movement of animals from nonaccredited areas if there are mitigating factors in place, and we are asking for comments on what those mitigating factors should include. Currently, the regulations do not allow cattle or bison to be moved interstate from nonaccredited States or zones. However, because new testing strategies and new models are now available that better predict infection within a State or zone and the ability for that infection to move out of the State or zone, we are inviting comments on whether interstate movement from nonaccredited States or zones could be allowed under certain conditions without an undue risk of the spread of tuberculosis and what those conditions might be.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of tuberculosis in the United States. 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 regarding this rule's reclassification of the State of Texas 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. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Prior to this rule, the majority of Texas was listed as an accredited-free zone, and the remaining portion was listed as a modified accredited advanced zone. Under this rule, the entire State of Texas is reclassified as modified accredited advanced.

The 1997 *Census of Agriculture* reports that there are 144,354 farms in Texas with cattle and calves. Statistics on the number of farms in Texas with bison were not available, but the number is believed to be very small. While it can be assumed that the majority of these farms are located within the former accredited-free zone that encompassed most of Texas, the number of farms that move animals interstate is unknown. However, cattle operators commonly move their animals interstate for breeding, slaughter, or feeding. In fact, approximately 3 million cattle are moved interstate from the State of Texas each year.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. The businesses primarily affected by this rule are cattle owners in Texas, most of whom are small in size. Based on data from the 1997 *Census of Agriculture*, the average cattle and calf sales per farm for all 144,354 farms in Texas with cattle inventories was \$49,650, well below the U.S. Small Business Administration's criterion of \$750,000 in annual sales for businesses primarily engaged in cattle farming. Of the 144,354 farms in Texas with cattle inventories in 1997, 92 percent had herds of fewer than 200 cattle.

This rule potentially affects all cattle and bison herd owners in Texas who are located in the former accredited-free zone in that State and who move cattle or bison interstate. Herd owners affected by this rule will see additional interstate movement requirements and associated costs. The tuberculin tests for sexually intact animals and official identification of certain animals will result in minimal costs to the herd owner.

The total cost for tuberculin tests will depend on the number of animals that are being moved interstate. The average cost of the tuberculin test is about \$380 per herd. The cost per animal varies depending on the size of the herd. For an average-sized herd of 101 animals, the average cost would be approximately \$3.76 per animal.

Assuming that 5 percent of the cattle in the average-sized herd are sexually intact animals that move interstate, tuberculin testing for such animals would cost approximately \$19 per herd.

Herd owner costs for applying official identification or premises of origin identification should also be minimal. Herd owners can apply approved premises of origin identification without the services of a veterinarian. The cost of each eartag is about 4 cents, and the cost of the eartag applicator is only about \$12. Assuming that 10 percent of the cattle in the average-sized herd are

moved interstate and require identification, the cost of materials for individual identification would be only about 40 cents per herd.

We do not expect that the increased costs stemming from this rule will have a significant economic impact on herd owners. The cost increases are small when compared to the overall value of the animals. According to *Agricultural Statistics 2001*, the average value per head for all 13.7 million cattle and calves in Texas was \$610. The approximate \$3.76 cost per animal for the tuberculin testing and the 4-cent cost per animal for identification are equivalent to less than 1 percent of the per-head value of the animals.

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 interim 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 rule contains no new 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 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

2. In § 77.7, paragraph (b) is revised to read as follows:

§ 77.7 Accredited-free States or zones.

* * * * *

(b) The following are accredited-free zones: None.

* * * * *

3. In § 77.9, paragraphs (a) and (b) are revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: Texas.

(b) The following are modified accredited advanced zones: None.

* * * * *

Done in Washington, DC, this 3rd day of June, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

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BILLING CODE 3410-34-P

State under the Interstate Act primarily for the purpose of deposit production, and provides guidelines for determining whether such bank is reasonably helping to meet the credit needs of the communities served by these branches. Section 106 of the Gramm-Leach-Bliley Act of 1999 expanded the coverage of section 109 of the Interstate Act to include any branch of a bank controlled by an out-of-State bank holding company. This final rule amends the regulatory prohibition against branches being used as deposit production offices to include any bank or branch of a bank controlled by an out-of-State bank holding company, including a bank consisting only of a main office.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT:

OCC: Karen Tucker, National Bank Examiner, Compliance Division, (202) 874-4428; Kathryn Ray, Counsel, Community and Consumer Law Division, (202) 874-5750; Patrick T. Tierney, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; or with respect to foreign banks, Martha Clarke, Acting Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090.

Board: Michael J. O'Rourke, Counsel, Legal Division, (202) 452-3288; Shawn McNulty, Assistant Director, Division of Consumer and Community Affairs, (202) 452-3946; or with respect to foreign banks, Ann E. Misback, Assistant General Counsel, Legal Division, (202) 452-3788.

FDIC: Louise Kotoshirodo Kramer, Policy Analyst, Division of Compliance and Consumer Affairs, (202) 942-3599; or Mark Mellon, Counsel, Supervision and Legislation Section, (202) 898-3884.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. Background
- II. Overview of the Comments Received
- III. Analysis of the Joint Final Rule
 - A. Bank Locations Subject to Section 109 as Amended
 1. Coverage of Banks' Main Offices
 2. Coverage of Interstate and Intrastate Branches
 - B. Multi-Tier Bank Holding Companies
 - C. Definition of "Home State" for a Bank Holding Company
 - D. Foreign Banks and Branches
 - E. Impact of the Rule
 - IV. Regulatory Analysis
 - A. Paperwork Reduction Act
 - B. Regulatory Flexibility Act
 - C. OCC Executive Order 12866
 - D. OCC Unfunded Mandates Reform Act of 1995
 - E. The Treasury and General Government Appropriations Act, 1999—Assessment of Impact of Federal Regulation on Families