

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 02–111–1]

#### Tuberculosis; Amend the Definition of Affected Herd

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the tuberculosis regulations by removing the two different definitions of *affected herd* and replacing them with a single, updated definition. This action is necessary because the definitions that appear in the regulations are out-of-date and inconsistent. This action would provide more clarity to the regulations.

**DATES:** We will consider all comments that we receive on or before August 31, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the “View Open APHIS Dockets” link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 02–111–1, 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. 02–111–1.

- **E-mail:** Address your comment to [regulations@aphis.usda.gov](mailto: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. 02–111–1” on the subject line.

- **Agency Web Site:** Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to submit an e-mail comment through the APHIS Web site.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dr. Terry Beals, National Tuberculosis Program Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4020 N. Lincoln Blvd., Suite 101, Oklahoma City, OK 73105; (405) 427–2998.

#### SUPPLEMENTARY INFORMATION:

##### Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, lymph nodes, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past 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 tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS)

works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, “Tuberculosis” and in the “Uniform Methods and Rules—Bovine Tuberculosis Eradication” (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis. Subpart A of part 77 (§§ 77.1–77.4) contains general provisions of the tuberculosis regulations such as definitions; subpart B (§§ 77.5–77.19) contains specific provisions regarding cattle and bison; and subpart C (§§ 77.20–77.41) contains specific provisions regarding captive cervids.

Currently, there are two definitions of *affected herd* in part 77. In § 77.5, *affected herd* is defined as “a herd in which tuberculosis has been disclosed in any cattle or bison by an official tuberculin test or by post mortem examination.” In § 77.20, *affected herd* is defined as “a herd of captive cervids that contains or that has contained one or more captive cervids infected with *Mycobacterium bovis* (determined by bacterial isolation of *M. bovis*) and that has not tested negative to the three whole herd tests as prescribed in § 77.39(d) of this part.”

We are proposing to remove these two definitions, which are out-of-date and inconsistent, and replace them with a new definition that would apply to cattle, bison, and captive cervids and be consistent with that in the UMR.

We would define *affected herd* as “a herd of livestock in which there is strong and substantial evidence that *Mycobacterium bovis* exists. This evidence should include, but is not limited to, any of the following: Epidemiologic evidence, histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or association with known sources of infection.” This single definition, which matches the definition in the UMR, would provide more clarity to the regulations. In addition, the proposed definition would

make the regulations more consistent with the UMR.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

We are proposing to amend the tuberculosis regulations by removing the two different definitions of *affected herd* and replacing them with a single, updated definition. This action is necessary because the definitions that appear in the regulations are out-of-date and inconsistent. This action would provide more clarity to the regulations.

No economic benefits or costs are associated with this action, which would simply update and clarify our definition of *affected herd*. This action would have no effects on small entities, other Federal agencies, State governments, or local governments.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This proposed 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 77

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

Accordingly, we propose to amend 9 CFR part 77 as follows:

### PART 77—TUBERCULOSIS

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

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 77.2 would be amended by adding, in alphabetical order, a definition of *affected herd* to read as follows:

#### § 77.2 Definitions.

\* \* \* \* \*

*Affected herd.* A herd of livestock in which there is strong and substantial evidence that *Mycobacterium bovis* exists. This evidence should include, but is not limited to, any of the following: Epidemiologic evidence, histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or association with known sources of infection.

\* \* \* \* \*

#### §§ 77.5 and 77.20 [Amended]

3. Sections 77.5 and 77.20 would be amended by removing the definitions of *affected herd*.

Done in Washington, DC, this 29th day of June 2004.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–15072 Filed 7–1–04; 8:45 am]

BILLING CODE 3410–34–P

### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2004–18061; Airspace Docket No. 04–AAL–9]

#### Proposed Establishment of Class E Airspace; Beaver, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish new Class E airspace at Beaver, AK. Two new Standard Instrument Approach Procedures (SIAPs) are being published for the Beaver Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Beaver, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Beaver, AK.

**DATES:** Comments must be received on or before August 16, 2004.

**ADDRESSES:** Send comments on the proposal to the Docket Management

System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18061/ Airspace Docket No. 04–AAL–9, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

#### FOR FURTHER INFORMATION CONTACT:

Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: [Jesse.CTR.Patterson@faa.gov](mailto:Jesse.CTR.Patterson@faa.gov). Internet address: <http://www.alaska.faa.gov/at>.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. FAA–2004–18061/Airspace Docket No. 04–AAL–9.” The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may