

administrative adjudication determining that the common law marriage is valid.

[FR Doc. E6-207 Filed 1-11-06; 8:45 am]

BILLING CODE 6760-01-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 04-094-1]

#### Tuberculosis in Captive Cervids; Extend Interval for Conducting Reaccreditation Test

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding tuberculosis in captive cervids by extending, from 2 years to 3, the term for which accredited herd status is valid and increasing by 12 months the interval for conducting the reaccreditation test required to maintain the accredited tuberculosis-free status of cervid herds. We are also proposing to reduce, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd. These actions would reduce testing costs for herd owners, lessen the potential for animal injury or death during testing, and lower administrative costs for State and Federal regulatory agencies. In addition, we are proposing to amend the regulations by removing references to the blood tuberculosis test for captive cervids, as that test is no longer used in the tuberculosis eradication program for captive cervids. This proposed change would update the regulations so that they refer only to those official tests currently in use.

**DATES:** We will consider all comments that we receive on or before March 13, 2006.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the “Search for Open Regulations” box, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select APHIS-2005-0119 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can

be viewed using the “Advanced Search” function in Regulations.gov.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04-094-1, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 04-094-1.

**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:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD, 20737-1231, (301) 734-5467.

#### SUPPLEMENTARY INFORMATION:

##### Background

Bovine tuberculosis (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, 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 bovine 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” (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 tuberculosis. Subpart C of the regulations (§§ 77.20 to 77.41) addresses captive cervids.

#### Accredited Herd Status

In § 77.20, *accredited herd* is defined as “A herd of captive cervids that has tested negative to at least three consecutive official tuberculosis tests of all eligible captive cervids in accordance with § 77.33(f) and that meets the standards set forth in § 77.35. The tests [i.e., the three tests necessary to qualify for accredited herd status] must be conducted at 9–15 month intervals.” The regulations in § 77.35(d) set out the conditions that must be met in order for a herd of captive cervids to maintain its accredited herd status. Specifically, to maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 21–27 months from the anniversary date of the third consecutive test with no evidence of tuberculosis disclosed (that is, the final test necessary for the herd to be recognized as an accredited herd). Each time the herd is tested for reaccreditation, it must be tested 21–27 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every second year thereafter). Accredited herd status is valid for 24 months (730 days) from the anniversary date of the accrediting test. If the herd is tested between 24 and 27 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be considered “unclassified” and captive cervids may be moved interstate from the herd only in accordance with the movement requirements for the state or zone in which the herd is located.

In this document, we are proposing to amend the regulations to increase, by 1 year, the term for which accredited herd status is valid and to allow reaccreditation tests to be performed within 33–39 months of the anniversary date. We are also proposing to amend the regulations by reducing, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd.

Experience has shown that careful management in accredited herds of captive cervids in accordance with the regulations and the UMR virtually eliminates the already low probability of introducing tuberculosis into the herd from outside sources. Amending our regulations to extend the period between reaccreditation tests of captive cervid herds, as well as reducing the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd, would reduce testing costs for herd owners, lessen the potential for animal injury or death during testing, and lower administrative costs for state and Federal regulatory agencies.

Tuberculin testing, including veterinary fees and handling expenses, costs about \$10 to \$15 per test. Thus, increasing the term for which accredited herd status is valid would result in a savings of \$10 to \$15 per head over a 6-year period, as there would be only two tests required instead of three. Similarly, reducing the number of tests required to qualify for accredited herd status would save another \$10 to \$15 per head, again due to a reduction in the number of tests from three to two. Additionally, injury and death losses of about 3 to 5 percent can occur in captive cervid herds as animals attempt to jump fences and other hurdles during roundup for testing. Extending the testing period and reducing the number of qualifying tests would eliminate some of these costs as well.

We do not believe that these proposed changes would reduce the effectiveness of our tuberculosis surveillance and eradication program. On the contrary, we expect that lengthening the reaccreditation interval would encourage owners to continue to test their herds rather than abandoning the program. Continued participation by owners in this program will yield monitoring and surveillance data on cervids that is extremely important to our efforts to detect and eliminate tuberculosis-affected herds in the United States.

With respect to the number of qualifying tests, recent surveillance in captive cervids shows that the prevalence of tuberculosis is far lower than originally thought, and we no longer believe that the risk of tuberculosis in captive cervids is high enough to justify requiring three negative official tuberculosis tests before a herd can be eligible for recognition as an accredited herd. In addition, by reducing the number of consecutive negative tests required, we would bring

the requirements for the accreditation of cervid herds more in line with the existing bovine tuberculosis regulations and UMR testing requirements for cattle and bison.

Thus, the proposed changes would reduce testing costs for the herd owner, lessen the potential of animal injury or death during testing, and lower administrative costs for State and Federal regulatory agencies. In addition, these proposed rule changes would help further tuberculosis eradication efforts and protect livestock not infected with bovine tuberculosis from the disease.

#### *Blood Tuberculosis Test*

The definition of *official tuberculosis test* in § 77.20 identifies the single cervical tuberculin (SCT) test, the comparative cervical tuberculin (CCT) test, and the blood tuberculosis (BTB) test as official tests for tuberculosis in captive cervids. However, the BTB test is no longer used in the program because its sensitivity and specificity were determined to be inadequate for the tuberculosis eradication program's needs; in effect, the test can miss some infected animals and misdiagnose non-infected animals at rates that are unacceptable. Because the BTB test is no longer being used to test captive cervids, we are proposing to amend the definition of *official tuberculosis test* in § 77.20 so that it refers only to the SCT and CCT tests. We would also remove the other references to the BTB test that appear in the regulations.

#### **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 regulations regarding tuberculosis in captive cervids by extending, from 2 years to 3, the term for which accredited herd status is valid and increasing by 12 months the interval for conducting the reaccreditation test required to maintain the accredited tuberculosis-free status of cervid herds. We are also proposing to reduce, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd. These actions would reduce testing costs for herd owners, lessen the potential for animal injury or death during testing, and lower administrative costs for state and Federal regulatory agencies. In addition,

we are proposing to amend the regulations by removing references to the blood tuberculosis test for captive cervids, as that test is no longer used in the tuberculosis eradication program for captive cervids. This proposed change would update the regulations so that they refer only to those official tests currently in use.

Of primary importance among captive cervids are deer and elk, which are farmed for breeding stock, velvet antler, meat, and sales to game parks and exhibits. This is a relatively small industry, and as such was not tracked as a separate line item in census data before the 2002 Census of Agriculture. The 2002 Census estimates there are 286,863 deer being raised on 4,901 farms, and 97,901 elk on 2,371 farms in the United States. Due to the devastating effects of chronic wasting disease in captive cervids, these numbers are largely believed to be an overstatement of current market conditions. Unfortunately, the census data do not consider the per head value of deer or elk. However, limited data are collected by the two major cervid industry associations, the North American Elk Breeders Association (NAEBA) and the North American Deer Farmers Association (NADeFA). Membership in the above mentioned associations is estimated to constitute 60 percent of the farmed cervid industry. Attempts to get current information on deer and elk industries and corresponding values were unsuccessful. However, we previously gathered information from the above mentioned major industry associations in connection with another rulemaking related to deer and elk,<sup>1</sup> and have used that information as the source of the estimates in this analysis. We welcome public comment regarding current market conditions in the farmed cervid industry.

NAEBA estimates about 75 percent of its members have 100 or fewer animals, 15 percent have more than 100 but fewer than 500, and the remaining 10 percent have more than 500 elk. Numbers of elk per farm vary depending on the farm classification, commercial or hobby. The value per elk also varies, depending on type of animal (e.g., bull, calf) and market conditions, ranging from a high of \$5,000 for superior animals to a low of \$500 for non-pedigree animals. In 2002, NAEBA estimated the average value per head of elk was \$2,000; using this figure, we can approximate the value of the 97,901 elk on U.S. farms to be \$195.8 million. In

<sup>1</sup> See Docket No. 00-108-2, published in the *Federal Register* on December 24, 2003 (68 FR 74513-74529).

2001, gross receipts for members in NAEBA (velvet antler, breeding stock, and meat) totaled \$44.3 million.

NADeFA estimates there are an average of 50 deer per farm. The actual number of deer per farm varies, depending on usage, from a high of 3,000 for commercial farms to a low of 5 for hobby farms. The value of each deer also varies depending on the type of animal (e.g., wapiti, white-tail, fallow) and market conditions. NADeFA estimates the average value per animal to be \$1,687, with wapiti deer at the high end at \$4,000 each, and fallow deer at the low end at \$375 each. Using this average per head value of \$1,687, the value of the 286,863 deer on U.S. farms can be approximated at \$483.9 million.

This proposed rule would amend the regulations by extending the term for which accredited herd status is valid, increasing the interval for conducting reaccreditation tests, and reducing the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd. We expect these proposed changes would encourage producers already participating in this voluntary program to maintain accredited herds, as they would reduce testing costs. Continued participation in this program is important to bovine tuberculosis eradication efforts, as accreditation testing yields monitoring and surveillance data on cervids which greatly assist in our efforts to detect and eliminate tuberculosis-affected herds in the United States.

The potential benefits of this proposed rule are fairly clear, the most obvious being decreased testing costs for those producers maintaining accredited herds. Furthermore, reducing testing requirements would lower administrative costs for state and Federal regulatory agencies. In addition, by extending the interval between reaccreditation tests and reducing the number of qualifying tests, the need to round up deer and elk for testing, and the potential for animal injury or death during that process, would be reduced.

Currently, APHIS records indicate there are 1,024 accredited herds of captive cervids in the United States. APHIS is currently in the process of researching the average cost to producers of identifying animals and testing them for tuberculosis, and we welcome public comment on these costs with respect to cervids. Our preliminary research indicates the average cost of tuberculosis testing ranges from \$10 to \$15 per head. Thus, in a 6-year period, the proposed changes in the regulations would translate to a cost savings of \$20

\$30 per head, as there would be only two tests required for reaccreditation and two tests required to qualify for initial accreditation instead of three in each case. If we were to assume each of the 1,024 accredited herds had an average of 50 animals, the longer interval between reaccreditation tests and the reduction in the number of qualifying tests would result in a total cost savings to the domestic industry of approximately \$1,024,000 to \$1,536,000 over a 6-year period.<sup>2</sup>

According to the two major cervid associations, the majority of their members would be classified as small entities by U.S. Small Business Administration standards.<sup>3</sup> For producers wishing to maintain accredited status, considering that the estimated average value per head is \$2,000 and \$1,687 for elk and deer, respectively, the cost savings of reduced testing represent less than 2 percent of the per head value. In general practice, we assume a regulation that has compliance costs which equal a small business' profit margin, or 5 to 10 percent of annual sales, pose an impact which can be considered "significant."<sup>4</sup> For the purposes of illustration and analysis of potential effects on small entities, if we assume a cervid producer owns only a single average herd of 50 deer, with annual sales or value of approximately \$84,350, compliance costs totaling between \$4,218 and \$8,435 would qualify as posing a "significant" economic impact on this entity. In this case, the average compliance costs of tuberculosis testing for an entire herd would be \$750, using the high-end average cost per head of \$15, which would not qualify as monetarily significant. Thus, for those producers participating in the voluntary cervid accreditation program, the cost savings from the elimination of two tests, while beneficial, would not represent a significant monetary savings.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

<sup>2</sup> Calculation: 1,024 herd × 50 animals per herd × \$10 (or \$15 for high-end estimate) × 2 tests.

<sup>3</sup> NAEBA estimates 75 percent of its members have 100 or fewer animals, which translates to an average value per elk farm of \$200,000 (100 animals × \$2,000). NADeFA estimates there are an average of 50 deer per farm, which translates into an average total value per deer farm of \$84,350 (50 animals × \$1,687). A small cervid operation is one having \$750,000 or less in annual receipts. Table of Size Standards based on NAICS 2002. Washington, DC: U.S. Small Business Administration, 2004.

<sup>4</sup> Verkuil, Paul R. "A Critical Guide to the Regulatory Flexibility Act." Duke Law Journal, Apr. 1982: 928.

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 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 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 77.20 would be amended as follows:

a. In the definition for *accredited herd*, by removing the word "three" and adding the word "two" in its place.

b. By removing the definition for *blood tuberculosis (BTB) test*.

c. In the definition for *negative*, by removing the words "classified by the testing laboratory as "avian" or "negative" on the BTB test."

d. By revising the definition for *official tuberculosis test* to read as set forth below.

e. In the definition for *reactor*, by removing the words ", or is classified by the testing laboratory as "*M. bovis positive*" on the BTB test,".

f. In the definition for *suspect*, by removing the words ", or that is classified by the testing laboratory as equivocal on the BTB test,".

The revision reads as follows:

**§ 77.20 Definitions.**

\* \* \* \* \*

*Official tuberculosis test.* Any of the following tests for bovine tuberculosis in captive cervids, applied and reported in accordance with this part:

(1) The single cervical tuberculin (SCT) test.

(2) The comparative cervical tuberculin test (CCT) test.

\* \* \* \* \*

**§ 77.33 [Amended]**

3. Section 77.33 would be amended as follows:

a. In paragraph (a) introductory text, by removing the words “in paragraphs (a)(1) and (a)(2)” and adding the words “in paragraph (a)(1)” in their place.

b. By removing and reserving paragraphs (a)(2), (b)(2), (d)(2), and (e)(3).

**§ 77.34 [Amended]**

4. Section 77.34 would be amended as follows:

a. In paragraph (a)(1), by removing the words “either the CCT test or the BTB test” and adding the words “the CCT test” in their place.

b. By removing paragraph (c).

5. Section 77.35 would be amended as follows:

a. In paragraph (a)(1), by removing the word “three” in the first sentence and adding the word “two” in its place.

b. By revising paragraph (d) to read as set forth below.

**§ 77.35 Interstate movement from accredited herds.**

\* \* \* \* \*

(d) *Maintenance of accredited herd status.* To maintain status as an accredited herd, the herd must test negative to an official tuberculosis test within 33–39 months from the anniversary date of the second consecutive test with no evidence of tuberculosis disclosed (that is, the test on which the herd was recognized as accredited or the accrediting test). Each time the herd is tested for reaccreditation, it must be tested 33–39 months from the anniversary date of the accrediting test, not from the last date of reaccreditation (for example, if a herd is accredited on January 1 of a given year, the anniversary date will be January 1 of every third year). Accredited herd status is valid for 36 months (1,095 days) from the anniversary date of the accrediting test. If the herd is tested between 36 and 39 months after the anniversary date, its accredited herd status will be suspended for the interim between the anniversary date and the reaccreditation test. During the suspension period, the herd will be

considered “unclassified” and captive cervids may be moved interstate from the herd only in accordance with the movement requirements for the State or zone in which the herd is located.

**§ 77.37 [Amended]**

6. In § 77.37, paragraph (a)(2), footnote 3 would be redesignated as footnote 2.

7. In § 77.39, paragraph (a) would be amended as follows:

a. In paragraph (a)(1)(i) introductory text, by removing the words “or the BTB test”.

b. By removing and reserving paragraph (a)(1)(i)(B).

c. In paragraph (a)(1)(ii) introductory text, by removing the words “or the first BTB test”.

d. In paragraph (a)(1)(ii)(A), by removing the word “; or” and adding a period in its place.

e. By removing and reserving paragraph (a)(1)(ii)(B).

f. In paragraph (e) introductory text, by removing the fourth sentence after the paragraph heading and revising the last two sentences of the paragraph to read as set forth below.

**§ 77.39 Other interstate movements.**

\* \* \* \* \*

(e) *Herds that have received captive cervids from an affected herd.* \* \* \* Any exposed captive cervid that responds to the SCT test must be classified as a reactor and must be slaughter inspected or necropsied. Any exposed captive cervid that tests negative to the SCT test will be considered as part of the affected herd of origin for purposes of testing, quarantine, and the five annual whole herd tests required for affected herds in paragraph (d) of this section.

\* \* \* \* \*

Done in Washington, DC, this 6th day of January 2006.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E6-198 Filed 1-11-06; 8:45 am]

BILLING CODE 3410-34-P

**DEPARTMENT OF AGRICULTURE****Food Safety and Inspection Service****9 CFR Part 392**

**[Docket No. 00-019P]**

**RIN 0583-AC81**

**Petitions for Rulemaking**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to adopt regulations governing the submission to FSIS of petitions for rulemaking. The Agency is proposing this action to supplement existing non-regulatory guidance on the submission of petitions to FSIS to consider requests to issue, amend, or repeal regulations administered by the Agency. FSIS expects that this proposed rule, if adopted, will help to ensure the filing of well-supported petitions that contain the information necessary to proceed with consideration of the requested rulemaking in a timely manner.

**DATES:** Comments must be received on or before March 13, 2006.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

**Federal eRulemaking Portal:** This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and, in the “Search for Open Regulations” box, select “Food Safety and Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select the FDMS Docket Number to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the “Advanced Search” function in *Regulations.gov*.

Mail, including floppy disks or CD-ROM’s, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

Electronic mail:

[fsis.regulationscomments@fsis.usda.gov](mailto:fsis.regulationscomments@fsis.usda.gov). All submissions received must include the Agency name and docket number 00-019P.

All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be posted to the *Regulations.gov* Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.