

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 77**

[Docket No. APHIS-2008-0117]

Tuberculosis in Cattle and Bison; State and Zone Designations; Minnesota**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Interim rule and request for comments.

SUMMARY: We are amending the regulations to recognize Minnesota for split-State status for tuberculosis. The entire State of Minnesota has been classified as modified accredited; however, all its affected herds are located in portions of four counties in the northwest corner of the State. We have determined that Minnesota meets our requirements for zone classification. Therefore, we are removing Minnesota from the list of modified accredited States, adding an area in the northwest corner to the list of modified accredited zones, and adding the remainder of the State to the list of modified accredited advanced zones. This action relieves restrictions on the interstate movement of cattle and bison from areas of Minnesota other than the modified accredited zone in the northwest corner.

DATES: This interim rule is effective October 10, 2008. We will consider all comments that we receive on or before December 9, 2008.

Compliance Date: The date for complying with the identification requirements for sexually intact heifers moving from the modified accredited advanced zone in Minnesota to approved feedlots and for steers and spayed heifers moving from the modified accredited advanced zone in Minnesota to any destination (9 CFR 77.10(b)), and for complying with the identification and certification requirements for sexually intact heifers moving from the modified accredited advanced zone in Minnesota to unapproved feedlots (9 CFR 77.10(d)), is delayed until further notice. 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 Minnesota is October 10, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0117> to submit or view

comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2008-0117, 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. APHIS-2008-0117.

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. C. William Hench, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Veterinary Services, APHIS, 2150 Centre Ave., Bldg. B, MSC 3E20, Ft. Collins, CO 80526; (970) 494-7378.

SUPPLEMENTARY INFORMATION:**Background**

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis*. Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis*, the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

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

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the

Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999, which is incorporated by reference into the regulations.

Conditions for Zone Classification

Under §§ 77.3 and 77.4 of the regulations, in order to qualify for zone classification by APHIS, a State must meet the following requirements:

1. The State must have adopted and must be enforcing regulations that impose restrictions on the intrastate movement of cattle, bison, and captive cervids that are substantially the same as those in place in part 77 for the interstate movement of those animals.
2. The designation of part of a State as a zone must otherwise be adequate to prevent the interstate spread of tuberculosis.
3. The zones must be delineated by the animal health authorities in the State making the request for zone classification and must be approved by the APHIS Administrator.
4. The request for zone classification must demonstrate that the State has the legal and financial resources to implement and enforce a tuberculosis eradication program and has in place the infrastructure, laws, and regulations to require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife.
5. The request for zone classification must demonstrate that the State maintains, in each intended zone, clinical and epidemiological surveillance of animal species at risk of tuberculosis, at a rate that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing.
6. The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

Request for Zone Classification in Minnesota

The regulations in § 77.5 define a modified accredited advanced State or zone as a State or zone in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for each of the most recent 2 years. That definition does provide, however, that a State or zone with fewer than 30,000 herds may have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

The regulations define a modified accredited State or zone as a State or zone in which tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of cattle and bison in the State or zone for the most recent year. That definition does provide, however, that a State or zone with fewer than 10,000 herds may have up to 10 affected herds for the most recent year, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone.

In an interim rule effective and published in the **Federal Register** on April 9, 2008 (73 FR 19139–19142, Docket No. APHIS–2008–0037), we amended the tuberculosis regulations by removing Minnesota from the list of modified accredited advanced States and adding it to the list of modified accredited States. This action was taken after four affected herds were found in Minnesota within a 5-month period. All of the affected herds were located in portions of four counties in the northwest corner of Minnesota. No tuberculosis-affected herds were found in the remainder of the State.

We have received from the State of Minnesota a request for zone classification for tuberculosis and have conducted a risk assessment to evaluate that request. Our risk assessment, entitled “Assessment of Risk Associated with the Minnesota Proposed Plan for Split-State Status for *Mycobacterium bovis* (Bovine Tuberculosis),” is available for public review and comment in conjunction with this interim rule.

The risk assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of

the reading room). You may request paper copies of the risk assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the risk assessment when requesting copies.

Based on the risk assessment, we have concluded that Minnesota meets the requirements listed above for zone classification and that, except for the area in the northwest corner of the State where the affected herds were found, Minnesota now meets the criteria for modified accredited advanced tuberculosis status. Therefore, we are classifying two zones in Minnesota as follows:

- The modified accredited zone, which is the smaller of the two, consists of portions of the Minnesota Counties of Lake of the Woods, Roseau, Marshall, and Beltrami. A complete description of the boundaries of this zone is contained in the rule text at the end of this document.

- The modified accredited advanced zone consists of the rest of the State of Minnesota.

Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from the newly classified modified accredited advanced zone in Minnesota. 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 action 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 and any amendments we are making to the rule.

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 under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

This interim rule removes Minnesota from the list of modified accredited States, adds an area in the northwest corner to the list of modified accredited zones, and adds the remainder of the State to the list of modified accredited advanced zones. This action relieves restrictions on the interstate movement of cattle and bison from areas of Minnesota other than the modified accredited zone in the northwest corner.

Entities that will be directly affected by this interim rule are Minnesota beef and dairy farms that engage in interstate movement of certain types of cattle. Operations in the modified accredited advanced zone will benefit from reduced costs associated with tuberculosis testing.

The cattle industry plays an important role in Minnesota's economy. There were 25,000 cattle and calf operations in Minnesota in 2006 with a total inventory of 2.4 million head. About 24,700 of these cattle operations, accounting for more than 99 percent of the State's cattle, are located in the modified accredited advanced zone.¹ State-wide cash receipts from cattle and calves and dairy products totaled \$926 million and \$1.074 billion, respectively, in 2006. Seven-year average (2000–2006) cash receipts for cattle and calves and dairy products were \$944 million and \$1.2 billion, respectively.²

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. The Small Business Administration (SBA) has established guidelines for determining which businesses are considered small. According to SBA size standards for beef cattle ranching and farming (North American Industry Classification System (NAICS) 112111) and for dairy cattle and milk production (NAICS 112120), operations with not more than \$750,000 in annual sales are considered small entities. In 2002, more than 95 percent of cattle and calf farms generated less than \$500,000 in cash receipts, and about 1.4 percent generated \$1 million or more. More than 93 percent of dairy farms generated less than \$500,000 in cash receipts, and about 2 percent generated \$1 million or more.³ Clearly, the majority of Minnesota's cattle operations are small entities. The composition of Minnesota's cattle inventory is shown in table 1.

¹ 2007 Minnesota Agricultural Statistics, U.S. Department of Agriculture (USDA)/National Agricultural Statistics Service (NASS), Minnesota Department of Agriculture.

² USDA/Economic Research Service Farm Income: Annual Cash Receipts, 1924–2006; Table 5—Cash Receipts, by commodity groups and selected commodities, Minnesota, 2000–2006.

³ 2002 Census of Agriculture. NASS, USDA.

TABLE 1—MINNESOTA CATTLE INVENTORY, JANUARY 1, 2006

Type	Number	Percentage of total
Beef cows	390,000	16.6
Milk cows	445,000	18.9
Heifers		
Beef cow replacements	95,000	4.0
Milk cow replacements	265,000	11.3
Other heifers	170,000	7.2
Total heifers	530,000	22.6
Steers	450,000	19.2
Bulls	35,000	1.5
Calves	500,000	21.3
Total	2,350,000

Source: NASS, USDA.

Minnesota is currently listed as a modified accredited State. This rule reclassifies nearly all of the State as modified accredited advanced. The reclassification of a zone to modified accredited advanced status from modified accredited status removes certain restrictions on the interstate movement of feeding and breeding cattle. The modified accredited zone restrictions include a negative tuberculosis test within 60 days of the interstate movement of steers and spayed heifers that are being moved not directly to slaughter, but rather for feeding purposes. The modified accredited zone restrictions also include a negative whole herd test within 1 year of the interstate movement of sexually intact cattle from a herd without accredited status, that is, animals being moved for breeding purposes from nonaccredited herds. In addition, dairy herds in a modified accredited advanced zone are not required to have an annual whole herd test in order to comply with the Pasteurized Milk Ordinance (PMO),⁴ whereas a whole herd test is required of dairy herds in a modified accredited zone.

A negative tuberculosis test within 60 days of interstate movement of feeding cattle will no longer be needed for herds in the modified accredited advanced zone. Tuberculosis testing, including veterinary fees, costs about \$10 to \$15 per head.⁵ The Minnesota Board of Animal Health tracks the number of feeding animals moved interstate from Minnesota, as documented on export certificates. In 2007, more than 150,000 head of feeding cattle were moved out of Minnesota. Because the reclassified zone includes about 99 percent of all

cattle in the State, the vast majority of the feeding animals moving out of Minnesota will likely move from the zone reclassified to modified accredited advanced status by this rule and will no longer require a negative tuberculosis test within 60 days of movement. Based on the above range in testing costs per animal, we expect annual cost savings associated with reduced testing of feeder cattle moving out of the State to total between \$1.5 million and \$2.25 million. The more a herd owner in the modified accredited advanced zone engages in the interstate movement of feeding cattle, the greater will be the savings associated with the reduction in movement restrictions.

Owners of nonaccredited herds in the modified accredited advanced zone engaged in interstate movement of breeding cattle also will benefit from reduced costs associated with tuberculosis testing. A negative whole herd test within 1 year of the interstate movement of intact cattle from a herd without accredited status will no longer be needed for herds in the modified accredited advanced zone. In addition, the annual whole herd test for dairies required under the PMO for herds in a modified accredited zone is not required for herds in a modified accredited advanced zone.

A whole herd test requires the testing of all animals in a herd that are 12 months of age or older at the time of the test. In January 2006, there were 870,000 beef and milk cows that had calved and bulls on 25,000 farms in Minnesota. If we assume that these categories of cattle comprise all of the whole herd test animals, then there were, on average, 35 cattle per herd tested under the modified accredited requirements. Annual whole herd testing costs averaged between \$350 and \$525 per herd, based on tuberculosis testing costs

of \$10 to \$15 per head. These cost estimates per herd may be high because the cost of whole herd testing on a per-animal basis is generally less than the cost of testing animals individually.

The State of Minnesota has estimated that there are 5,381 commercial dairies operating in the modified accredited advanced zone. These dairies will no longer be required to perform an annual whole herd test under the PMO.

Beef or mixed herd enterprises in the modified accredited advanced zone that engage in the interstate movement of intact cattle will not be required to have a whole herd test performed in the 1 year prior to that movement. The Minnesota Board of Animal Health tracks the number of breeding animals moved interstate from Minnesota, as documented on export certificates. In 2007, about 61,000 breeding animals moved out of Minnesota. There are fewer than 30 accredited herds in Minnesota. Therefore, most breeding animals moving out of Minnesota are from nonaccredited herds that under modified accredited status require a whole herd test.

All cattle enterprises in the modified accredited advanced zone that move breeding animals out of Minnesota or that operate as dairies will no longer need to perform a whole herd test on an annual basis. Based on the above estimate of the average cost of a whole herd test, and assuming that all Minnesota herds in the modified accredited advanced zone will be affected, the annual cost savings associated with the removal of the whole herd testing requirement could total between \$8.65 million (24,700 herds, multiplied by \$350 per herd) and \$12.97 million (24,700 herds, multiplied by \$525 per herd).

The overwhelming majority of cattle herds in the State will see a reduction

⁴ U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition.

⁵ USDA/APHIS/Veterinary Services, personal communication.

in pre-movement tuberculosis testing requirements as a result of this interim rule, and will therefore benefit from reduced costs associated with that tuberculosis testing. However, tuberculosis testing costs are very small when compared to value of the cattle tested, and the expected savings, therefore, are also relatively small. On January 1, 2007, beef cattle in Minnesota had an average per animal value of \$960.⁶ The average value of dairy cattle is considerably higher, given the value of milk produced. The savings in tuberculosis testing costs represent no more than about 1.6 percent of the average per-head value of beef cattle (\$15/\$960) and an even smaller percentage of the average value of dairy cattle.

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

■ 2. In § 77.9, paragraph (b) is revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

* * * * *

(b) The following are modified accredited advanced zones: All of the State of Michigan except for the zones that comprise those counties or portions of counties in Michigan described in § 77.7(b)(1) and § 77.11(b)(1); and all of the State of Minnesota except for the zones that comprise those counties or portions of counties in Minnesota described in § 77.11(b)(2).

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■ 3. In § 77.11, paragraphs (a) and (b) are revised to read as follows:

§ 77.11 Modified accredited States or zones.

(a) The following are modified accredited States: None.

(b) The following are modified accredited zones:

(1) A zone in Michigan that comprises Alcona, Alpena, Antrim, Charlevoix, Cheboygan, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest.

(2) Those portions of the Minnesota Counties of Lake of the Woods, Roseau, Marshall, and Beltrami bounded by a line as follows: Beginning in Lake of the Woods County at the intersection of the U.S./Canadian border and the western shoreline of Lake of the Woods; then west along the U.S./Canadian border (crossing into Roseau County) to Roseau County Road 115; then south along Roseau County Road 115 to State Highway 11; then southwest along State Highway 11 to State Highway 32; then south along State Highway 32 (crossing into Marshall County) to Marshall County Road 47/124; then east along Marshall County Road 47/124 to 210th Avenue Northeast; then south along 210th Avenue Northeast and southwest to where the name changes to 200th Avenue Northeast; then south along 200th Avenue Northeast to County Road 121; then south along the western boundary of Agassiz National Wildlife Reserve and along the western boundary of the Elm Lake State Wildlife Management Area to the southwest corner of sec. 21 in T. 155 N., R. 42 W. of the Fifth Prime Meridian; then east along the southern boundary of secs. 21, 22, 23, and 24 in T. 155 N., R. 42 W.

and secs. 19 and 20 in T. 155 N., R. 41 W.; then south along the western boundary of secs. 28 and 33 in T. 155 N., R. 41 W.; then continuing south along Marshall County Road 52 to the southern boundary of Marshall County; then east along the southern boundary of Marshall County to the western boundary of Beltrami County (also the boundary of the Red Lake Indian Reservation); then north along the Beltrami County boundary (also the boundary of the Red Lake Indian Reservation) to the northern boundary of the Red Lake Indian Reservation; then east along the northern boundary of the Red Lake Indian Reservation to the southeast corner of sec. 36 in T. 155 N., R. 34 W.; then north along the eastern boundary of Townships 155, 156, 157 (crossing into Lake of the Woods County), 158, 159, 160, and 161 N., R. 34 W., to State Highway 11; then northwest and north along State Highway 11 to County Road 74; then east along County Road 74 to Main Avenue Northeast; then north along Main Avenue Northeast to the northern city limits of Warroad; then east along the Warroad city limits to the shore of Lake of the Woods; then along the shore of Lake of the Woods to the point of beginning.

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Done in Washington, DC, this 7th day of October 2008.

Cindy Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–24223 Filed 10–9–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0835; Directorate Identifier 2008–SW–34–AD; Amendment 39–15684; AD 2008–20–05]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model 600N helicopters. The AD currently requires modifying the fuselage aft section within the next 24 months to

⁶Meat Animals Production, Distribution and Income 2007 Summary. April 2008. Agricultural Statistics Board. NASS, USDA.