

# Rules and Regulations

Federal Register

Vol. 70, No. 202

Thursday, October 20, 2005

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 02–111–2]

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

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

**ACTION:** Final rule.

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 This action is necessary to provide more clarity in the regulations and because the current definitions are out-of-date and inconsistent.

**EFFECTIVE DATE:** November 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dr. M.J. Gilsdorf, Director, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 77, “Tuberculosis” (referred to below as the regulations), and the “Uniform Methods and Rules—Bovine Tuberculosis Eradication” (UMR), January 22, 1999, edition, which is incorporated by reference into 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.

There have been two definitions of *affected herd* in part 77. In § 77.5, *affected herd* has been 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* has been 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.”

On July 2, 2004, we published in the **Federal Register** (69 FR 40329–40330, Docket No. 02–111–1) a proposal to amend the regulations by removing the two inconsistent definitions of *affected herd* from §§ 77.5 and 77.20 and replacing them with a new definition of the term that would apply to cattle, bison, and captive cervids. Our proposed new definition read as follows: “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.”

We solicited comments concerning our proposal for 60 days ending August 31, 2004. We received three comments by that date. They were from a State government official and two private citizens. The comments are discussed below.

One commenter stated that the “strong and substantial evidence” standard in the proposed definition was too high and that potentially infected animals could remain unidentified as a result. We disagree and believe that the new definition will actually increase the likelihood that the disease will be detected. For example, under the new definition, cervid herds can be classified as affected without first having a diagnosis of tuberculosis confirmed through a culture—a procedure that can be difficult and usually requires at least 8 to 12 weeks to complete. With respect to cattle, the new definition provides that a herd can be classified as affected based on broader criteria than under the

definition in § 77.5, which provided that a diagnosis could only be made when an official test or a post mortem examination was conducted. Therefore, we expect that the new definition will eliminate time constraints, confusion, and differing standards between cattle, bison, and cervids. The new definition also will expand the types of evidence or information that can be considered by a professional veterinary diagnostician when examining herds. Moreover, a designated tuberculosis epidemiologist (DTE), which is already defined in § 77.2, is designated by the Administrator of the Animal and Plant Health Inspection Service to use and interpret diagnostic tests for tuberculosis and the management of tuberculosis affected herds. Thus, a DTE has the expertise necessary to appropriately apply the new definition.

A second commenter suggested that the words “in domestic livestock” should be added to the definition after the words “association with known sources of infection.” We disagree and believe that this language would hinder the diagnosis of tuberculosis as it would eliminate consideration of contacts with infected animals outside of domestic livestock, such as wild animals. For example, in Michigan, wild deer have passed tuberculosis to domestic livestock. Under such circumstances, the suggested limiting language might prevent the introduction of evidence indicating tuberculosis in wildlife populations and possibly slow or deter the detection of the disease in regulated animals.

Another commenter pointed out that the definition in the proposed rule differed slightly from the definition of *affected herd* set forth in a draft update of the UMR, that is currently under consideration. The commenter suggested that we revise the definition in the regulations to match the definition of *affected herd* in the draft UMR update. We agree that the definitions in the regulations and the draft UMR update should be the same. In this final rule, we have slightly modified the definition so that it refers to “epidemiologic evidence such as contact with known sources of infection” rather than naming “epidemiologic evidence” and “association with known sources of infection” as separate considerations. The definition as presented in this final

rule will be added to the draft UMR update.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending 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 have appeared in the regulations are out-of-date and inconsistent. This action will 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 effect 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 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 final 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 final 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, 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. Section 77.2 is 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: Histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or epidemiologic evidence such as contact with known sources of infection.

\* \* \* \* \*

**§§ 77.5 and 77.20 [Amended]**

■ 3. Sections 77.5 and 77.20 are amended by removing the definitions of *affected herd*.

Done in Washington, DC, this 14th day of October 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05–20974 Filed 10–19–05; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2005–21529; Airspace Docket No. 05–AAL–19]**

**Revision of Class E Airspace; Yakutat, AK**

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

**ACTION:** Final rule.

**SUMMARY:** This action revises Class E airspace at Yakutat, AK to provide adequate controlled airspace to contain aircraft executing three new Standard Instrument Approach Procedures (SIAPs), seven existing SIAPs and one revised Departure Procedure. This rule results in new Class E airspace upward from 1,200 feet (ft.) above the surface at Yakutat, AK. The existing airspace

upward from 700 ft. above the surface is not changed.

**EFFECTIVE DATE:** 0901 UTC, December 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, 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: [gary.ctr.rolf@faa.gov](mailto:gary.ctr.rolf@faa.gov). Internet address: <http://www.alaska.faa.gov/at>.

**SUPPLEMENTARY INFORMATION:**

**History**

On Friday, June 24, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Yakutat, AK (70 FR 36542). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing three new SIAPs, seven revised SIAPs and one revised departure procedure for the Yakutat Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 02, original; (2) RNAV (GPS) RWY 11, orig.; and (3) RNAV (GPS) RWY 29, orig. The seven revised SIAPs are (1) Direction Finder (DF) RWY 11, amendment (AMDT) 3, (2) Instrument Landing System (ILS) or Localizer (LOC)-Distance Measuring Equipment (DME) RWY 11, orig., (3) LOC–DME–Back Course RWY 29, AMDT 3, (4) Non-directional Radio Beacon RWY 11, AMDT 3, (5) Very High Frequency Omnidirectional Range (VOR)–DME RWY 02, AMDT 2, (6) VOR–DME RWY 11, AMDT. 1, and (7) VOR–DME RWY 29, AMDT 1. The Departure Procedure is the FAKES–TWO, AMDT 1. Revised Class E controlled airspace extending upward from 700 ft. above the surface in the Yakutat Airport area is revised by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E