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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50 and 77

[Docket No. 94–133–2]

Tuberculosis in Cattle, Bison, and Cervids; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the regulations to provide for the payment of indemnity for cervids destroyed because of tuberculosis, and to provide for the payment of indemnity for cattle, bison, and cervids found to have been exposed to tuberculosis by reason of association with any tuberculous livestock. The interim rule was necessary to encourage owners to rapidly remove cattle, bison, and cervids affected with and exposed to tuberculosis from their herds. Rapid removal of such cattle, bison, and cervids will help protect other cattle, bison, and cervids from tuberculosis and will facilitate tuberculosis eradication efforts in the United States. The interim rule also amended the regulations to deny claims for indemnity for depopulation of cattle, bison, and cervid herds unless other exposed livestock in the herd have been destroyed. This action was necessary to help ensure that when cattle, bison, and cervids in a herd are depopulated, other livestock do not remain as potential sources of infection when the owner restocks the herd with healthy animals.

EFFECTIVE DATE: June 19, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08,

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SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis causes weight loss, general debilitation, and sometimes death. The regulations in 9 CFR part 50 provide for payment of Federal indemnity to owners of certain cattle, bison, or swine destroyed because of tuberculosis.

In an interim rule effective and published in the Federal Register on July 24, 1995 (60 FR 37804–37810, Docket No. 94–133–1), the Animal and Plant Health Inspection Service (APHIS) amended the tuberculosis regulations in 9 CFR part 50 to provide for the payment of indemnity for cervids destroyed because of tuberculosis, at rates not to exceed \$750 for any reactor cervid and \$450 for any exposed cervid. In conjunction with this action, we amended the regulations to make the provisions that apply to cattle and bison also apply to cervids, where appropriate. These provisions include recordkeeping, procedures for claiming indemnity, and claims not allowed.

These provisions also include identification of reactor and exposed cervids to be moved interstate to slaughter. The interim rule required that reactor cervids be identified by branding the letter “T” high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription “U.S. Reactor”, or a similar State reactor tag; and that exposed cervids be identified by branding the letter “S” high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size and by attaching to the left ear an approved metal eartag bearing a serial number. As an alternative to branding, we allowed exposed cervids to be moved interstate to slaughter without branding if they are either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual

authorized for this purpose by an APHIS representative. For reactor cervids, we allowed the same movement without branding as for exposed cervids, if the reactors are identified by a “TB” tattooed on the left ear and with yellow paint sprayed on the left ear.

We also amended the regulations to provide for the payment of indemnity for cattle, bison, and cervids found to have been exposed to tuberculosis by reason of association with any tuberculous livestock, not just by reason of association with tuberculous cattle and bison. Finally, we amended the regulations to deny claims for indemnity for depopulation of cattle, bison, and cervid herds unless other exposed livestock in the herd have been destroyed.

Comments on the interim rule were required to be received on or before September 22, 1995. We received 50 comments by that date. They were from cervid producers and cervid producer associations, other livestock producers, veterinary associations, and animal welfare groups. Forty-eight of the comments supported the interim rule without change; two were opposed to the interim rule. The objections raised by the two comments opposed to the rule are discussed below.

Both of the opposing comments were against the interim rule because it concerns the farming of cervids, and the commenters oppose any activities involving the confinement and breeding of wild animals. One commenter stated that “by offering to pay businesses to slaughter off those captive cervids who test positive for tuberculosis, or who are exposed to the disease, APHIS, in fact, ensures that the confinement and breeding of cervids shall not only continue, but also become more profitable, and, inevitably, more widespread.”

The commenters gave two reasons for objecting to the farming of cervids. One is that they claim the farming of wildlife is ecologically irresponsible. They argue that cervids do not have a long history of domestication and breeding for docility, making them ill-suited for captivity; and, the existence of deer farms encourages the public to view wildlife as private property, undermining efforts to protect wildlife in its natural habitat. The second reason is that they claim the farming of wildlife is epidemiologically unwise because it

facilitates disease transfer between wild and domestic species. We have made no changes based on these comments.

The practice of raising deer and elk for agricultural purposes has existed for thousands of years and is considered an established and legitimate agricultural activity. Deer have been farmed in China since before 3000 B.C. The Romans were active game ranchers, and deer and elk farming is today a standard agricultural practice in Europe. Breeding and production of deer, elk, and other cervids has taken place in the United States since at least the 1930's.

It is true that the last 20 years has seen a marked increase in the number of captive cervid farms and ranches. There are currently more than 1,600 deer and elk owners in the United States, raising about 250,000 head. This may account for the increase in the number of *M. bovis* cases discovered in captive cervid herds in the last decade. It is not APHIS' mission, nor is it within our authority, to prohibit what is considered a legitimate agricultural practice. If APHIS were to ignore discoveries of tuberculosis in captive cervids, the consequences for all U.S. livestock, and for wild cervids and other wildlife that can contract tuberculosis, would be devastating. The mission of APHIS is to ensure the health of all livestock in the United States. The indemnity paid to ranchers who must sacrifice tuberculous livestock is not enough to help make their businesses more profitable—the slaughter of diseased livestock always results in monetary loss to an owner. The payment may enable the ranchers to restock their herds, but also will encourage owners who may not otherwise depopulate a tuberculous herd for fear of monetary loss to slaughter their animals knowing they will receive partial compensation. The payment of indemnity to owners of reactor and exposed cervids is very important not only to achieve tuberculosis-free herds of captive cervids, but for the health of all U.S. livestock and for the health of U.S. wildlife.

One of the opposing commenters asked that, if APHIS does choose to make the interim rule final, we amend it to eliminate the need for branding by requiring that all reactor and exposed cervids moved interstate to slaughter be accompanied by an APHIS or State representative or be moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We have made no changes based on this comment.

It is our belief that most cervid owners will choose to move their animals to slaughter without branding using one of the options provided in the interim rule. Branding a herd of livestock is time-consuming, difficult, and costly because of the effort and personnel needed to restrain each animal. This is even more true for cervids than for other livestock because, as one commenter pointed out, cervids are powerful, flighty, and easily frightened animals requiring firmer restraint than most domesticated cattle and posing a safety risk to anyone handling them. It is far easier to simply herd the animals into a truck which is then sealed by the APHIS representative, State representative, or accredited veterinarian who identified the herd. However, there are always circumstances under which it is impractical or unfeasible for owners to move their animals in this manner, such as lack of a proper vehicle, unavailability of APHIS or State personnel, or inability to market the animals immediately. Under such circumstances, it would be necessary for owners to have the cervids branded.

The commenter further asked that, if we do not make the change requested above, we amend the interim rule by replacing the requirement that cervids be marked with a hot-iron brand with a requirement that allows for any method of marking (specifically, freeze-branding) that produces permanence and legibility by the time of an animal's shipment to slaughter, even if the mark is not instantly recognizable upon application. We have made no changes based on this comment.

This rulemaking concerns animals that have responded to a test for tuberculosis, or are known to have been exposed to an animal that has responded to a test for tuberculosis. Because tuberculosis is such a destructive disease, it is imperative that such animals be either identified immediately or moved to slaughter in such a manner that there is no significant risk the animals will be diverted from their destination. For this reason we did not propose to allow marking methods (such as freeze-branding) that are not instantly recognizable for identifying tuberculosis reactor and exposed cervids. The necessity for an instantly recognizable mark is so that the animals are not unknowingly commingled with healthy animals after they leave the premises where they were identified for slaughter. Even if the "instantly recognizable" requirement were to be waived to allow freeze-branding, the owners of reactor or exposed cervids

would have to keep those animals under quarantine for the 18–21 days that it takes for the mark to become visible. That extra time on the farm would increase the chances that healthy animals might become exposed or infected. A central goal of the tuberculosis eradication program is to identify diseased animals and get them away from other animals before the disease can spread. To require the animals to be kept on the farm runs counter to that goal. The owners of the quarantined cervids would also be subject to economic losses associated with feeding and caring for the animals, potential decreases in market prices, and animals dying before sale.

The commenter pointed out that the tattoo mark that the interim rule allows for reactor cervids moved to slaughter in sealed vehicles is instantly recognizable, and that we should allow this method of marking for exposed cervids, as well. The tattoo mark in the ear of reactor cervids moved to slaughter in a sealed vehicle is an added precaution to ensure that a tuberculosis reactor is not sold for any purpose other than slaughter.

There are problems with tattooing that prevent us from offering it as a general alternative to branding for all disease-affected animals. One is that the tattoo must be on skin (not hair) in order to be legible. We have chosen the inside of the ear as the most accessible and reliable area on which to place a tattoo. However, unlike a brand, which can be applied and spotted more easily, the animal's head must be restrained in order to tattoo the ear, and in order to see the tattoo at a later time. Yellow paint on the ear can help identify an animal which has a "TB" tattoo, but it is not foolproof, as paint can wear or rub off. For these reasons, we have chosen to confine the use of a tattoo as disease identification to tuberculosis reactors that are moved to slaughter in sealed vehicles.

Miscellaneous Change

As stated previously, the interim rule required that reactor cervids be identified by a brand and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or similar State reactor tag; and that exposed cervids be identified by a brand and by attaching to the left ear an approved metal eartag bearing a serial number. We recently published a final rule that required the same identification for tuberculosis reactor and exposed cattle and bison (Docket No. 95–006–2, 60 FR 48362–48369, published September 19, 1995).

Although not mentioned in any comments we received on this interim rule or on the final rule for cattle and bison, it has nevertheless come to our attention that the requirement that exposed cattle, bison, and cervids be tagged on the left ear needs to be revised to allow the eartag to be attached to either ear. The eartag attached to reactor cattle, bison, and cervids bears the inscription "U.S. Reactor", and has historically been attached to the left ear to help quickly differentiate reactors from other cattle, bison, and cervids. The eartag attached to exposed cattle, bison, and cervids is not a special eartag, but is the same eartag used to identify any animal that has been tested for tuberculosis. Historically, we have not specified to which ear the tag should be attached, and in some cases, it has been policy to attach all eartags except reactor tags to the right ear. Veterinarians and cattle, bison, and cervid owners have been used to attaching non-reactor eartags to either ear, and we have experienced no problems with this system.

Therefore, to avoid confusion, we are revising the interim rule to allow exposed cervids to be identified by attaching to either ear an approved metal eartag bearing a serial number. We are also revising the regulations in 9 CFR part 50 and part 77, concerning tuberculosis in cattle and bison, to allow exposed cattle and bison to be identified by attaching to either ear an approved metal eartag bearing a serial number.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the change 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.

This document makes final an interim rule effective and published in the Federal Register on July 24, 1995 (60 FR 37804-37810, Docket No. 94-133-1). As part of the interim rule document, we performed an Initial Regulatory Flexibility Analysis, in which we invited comments concerning potential effects of the interim rule. We stated that we were particularly interested in determining the number and kind of small entities that might incur benefits or costs from implementation of the rule. None of the comments we received on the interim rule addressed our Initial

Regulatory Flexibility Analysis, and none provided any information of the type we requested. We have therefore based this Final Regulatory Flexibility Analysis on the data available to us.

The interim rule provided for the payment of indemnity for the destruction of tuberculosis reactor cervids, at the rate of up to \$750 per head. The interim rule also provided for the payment of indemnity for cervids, cattle, or bison that are destroyed because of tuberculosis after being exposed to any tuberculous livestock, at the rate of up to \$450 per head. These are the same rates currently provided in the regulations for tuberculosis reactor cattle and bison and for cattle and bison exposed to tuberculous cattle and bison. The interim rule was necessary to encourage owners to rapidly remove cattle, bison, and cervids affected with and exposed to tuberculosis from their herds, thereby facilitating tuberculosis eradication efforts in the United States. Depopulation of tuberculous cattle, bison, and cervids is voluntary.

Cervid producers affected by this rule would be primarily producers of deer and elk. There are approximately 1,600 deer and elk producers in the United States, raising about 250,000 head under controlled farm conditions. Holdings vary in size and degree of commercialization, but almost all deer and elk producers can be classified as small businesses (defined by the Small Business Administration as having less than \$0.5 million annual gross receipts). However, many producers rely on other sources of income (such as dairy farming or beef cattle ranching) for their livelihoods.

In general, elk producers concentrate on building up their herds, with most newborns retained as breeding stock. However, a fair market value for a heifer elk is between \$4,000 and \$5,000.

Annual income is earned from the sale of antlers cut in the velvet stage of growth. The antlers sell for about \$65 per pound, and a single bull elk can produce an average of 18 pounds of antlers per year, for more than 10 years. Thus, a gross income of \$1,000 or more can be derived per year from a bull elk.

The value per animal is lower for deer than for elk, and varies by species. Currently, at private sales, prices for good quality fallow does and bucks range between \$500 and \$1,000. Young deer command only \$300 to \$500 per head. Slightly lower prices prevail at public auctions.

Destruction of cervid herds affected with tuberculosis is voluntary on the part of the owners. The indemnity payments of up to \$750 per head for reactor cervids and up to \$450 per head

for exposed cervids will partially compensate cervid producers for lost income incurred by the destruction of the animals. These indemnity payments could provide a significant incentive for the owners of these herds to destroy the tuberculous animals. Although the indemnity payments will not completely cover the monetary losses resulting from whole herd depopulation, the payments will significantly reduce losses for deer and elk producers.

The alternative to the interim rule would have been to take no action. We did not consider taking no action a reasonable alternative because, without the economic incentive of Federal compensation for destroyed animals, owners would be more likely to allow tuberculosis infection to persist in their herds.

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 12778

This rule has been reviewed under Executive Order 12778, 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0084.

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

9 CFR Part 77

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

Accordingly, 9 CFR parts 50 and 77 are amended as follows:

**PART 50—ANIMALS DESTROYED
BECAUSE OF TUBERCULOSIS**

1. The authority citation for part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

§ 50.6 [Amended]

2. In § 50.6, paragraphs (b) and (e), the words “the left ear” are removed from the first sentence of each paragraph and the words “either ear” are added in their place.

PART 77—TUBERCULOSIS

3. 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 371.2(d).

§ 77.5 [Amended]

4. In § 77.5, paragraph (b)(1), the words “the left ear” are removed and the words “either ear” are added in their place.

Done in Washington, DC, this 14th day of May 1996.

Lonnie J. King,

*Administrator, Animal and Plant Health
Inspection Service.*

[FR Doc. 96–12623 Filed 5–17–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 28564; Amdt. No. 1726]

**Standard Instrument Approach
Procedures; Miscellaneous
Amendments**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8722.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR Part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by

publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

The amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.