(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 60 percent in each of the months of August through February and 70 percent in each of the months of March through July.

* * * * *

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18923 Filed 7–25–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 00–105–1]

RIN 0579–AB36

Payments for Cattle and Other Property Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding payments made in connection with animals and other property disposed of because of bovine tuberculosis to provide that the Animal and Plant Health Inspection Service will make payments to owners of dairy cattle and other property used in connection with a dairy business, and a dairy processing plant in the area of El Paso, TX, provided the owners agree to dispose of their herds, close their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. This action is necessary to further tuberculosis eradication efforts in the United States and protect livestock not affected with bovine tuberculosis from the disease.

DATES: This interim rule is effective July 26, 2002. We will consider all comments that we receive on or before September 24, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–105–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–105–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–105–1'' on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (tuberculosis) is a contagious, infectious, and communicable 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 tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. Additionally, the regulations in 9 CFR part 50 (referred to below as the regulations) provide for the payment of indemnity to owners of certain animals destroyed because of tuberculosis, in order to encourage destruction of animals that are infected with, or at significant risk of being infected with, the disease.

Scope of This Interim Rule

In this interim rule, we are adding provisions to part 50 of the regulations to allow APHIS to make payments to owners of dairy cattle and other property in the area of El Paso, TX, in connection with the disposal of their herds and dairy operations, under the condition that the owners agree to dispose of their herds, close their existing dairies and refrain from establishing new cattle breeding operations in the area. The provisions of this interim rule apply to owners of dairy herds and other property only within a specified area in Texas. All other animals in the United States destroyed because of tuberculosis will continue to be eligible for indemnity in accordance with the existing regulations. To make this clear, we are designating the existing regulations in part 50 as subpart A, and are designating the provisions we are adding in this interim rule (new §§ 50.17 through 50.22) as subpart B of part 50. Additionally, we are adding language to § 50.2 to make clear our intent.

The action we are taking in this interim rule is part of a cooperative plan with the State of Texas to create a buffer zone along the United States-Mexico border that will contain no cattle that are at significant risk of being infected with tuberculosis. Since 1985, State animal health officials in Texas, along with APHIS, have been taking measures to eliminate tuberculosis in dairy herds in the El Paso area. (Tuberculosis has been diagnosed in only one herd of beef cattle in the area, and that infection was due to an infected steer from Mexico that was added to the herd. We believe the lack of tuberculosis infection in beef cattle is due to the relatively short time such cattle remain on a premises, compared to dairy cattle.) As a result of these eradication efforts, dairy herds in the El Paso area have become free of tuberculosis, only to be reinfected despite the application of sound agricultural practices designed to prevent reintroduction of the disease.

Recent epidemiological findings, including the DNA fingerprinting of tuberculosis isolates, have indicated that the reinfection of the dairy herds near El Paso is strongly correlated with the proximity of tuberculosis-infected herds in the area of Ciudad Juarez, Mexico. Based on this evidence, we consider it likely that any dairy herds that remain in the El Paso area will continue to be reinfected with tuberculosis, despite U.S. efforts to eradicate the disease.

Because of this situation, APHIS, in conjunction with State animal health officials in Texas, has determined that, in order to further the eradication of tuberculosis in the United States, it is necessary to remove all bovine dairy herds from the El Paso area. To make this possible, APHIS has secured funding to make payments to the owners of those dairy operations, including payments to owners for the loss of their animals and other property, for the cessation of their dairy operations, for the cessation of the use of their dairy properties for dairy operations, and for relocation of a dairy facility.

Eligibility for Payment

New § 50.17(a) provides that owners of dairy operations, including owners of dairy herds and other property, will be eligible for payment under the provisions of this rule if they meet all applicable requirements of the regulations and if their herds are located in the area in Texas circumscribed by the following boundaries: Beginning at the point where the Hudspeth-El Paso County line intersects U.S. Highway 62; then west along U.S. Highway 62 to the El Paso Toll Bridge; then southeast along the Rio Grande River to the Fort Hancock-El Porvenir Bridge; then northeast along spur 148 to Interstate 10; then northwest along Interstate 10 to the Hudspeth-El Paso County line; then north along the Hudspeth-El Paso County line to the point of beginning.

New § 50.17(b) provides that, to be eligible for payment under this interim rule, all owners of dairy operations, including owners of dairy herds and other property, within the area described above under the heading ‘‘Eligibility for Payment’’ must sign and adhere to an agreement with APHIS to do the following:

- Cease all dairy operations within the described area, and dispose of all sexually intact cattle on the dairy operation premises, no later than 2 years after all eligible owners have signed their respective agreements;
- Conduct no dairy farming or other dairy activity, including the rearing of any breeding cattle, but not including the grazing or feeding of steers and spayed heifers intended for terminal market, within the area described above until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements;
- Allow a covenant to be placed on the property where the dairy operations were conducted that will prevent the establishment of any cattle breeding operations (not including the grazing or feeding of steers and spayed heifers intended for terminal market) on the premises until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less then 20 years after all eligible owners have signed their respective agreements;
- Maintain responsibility for all cattle on the premises used in the dairy operation until those animals are removed from the premises;
- Make all arrangements for the removal of all sexually intact cattle from the premises; and
- Notify APHIS officials of the intended removal of all sexually intact cattle from the premises and provide APHIS officials with the opportunity to monitor and evaluate the removal operations.
- Such other terms, provisions, and conditions as agreed by each owner and APHIS.

Time Limit for Disposal of Cattle and Future Restrictions

There are approximately 12,200 dairy cattle in the described El Paso area. We are providing up to 2 years for owners to dispose of all cattle from dairy operations in the area to minimize any economic effects such disposal might otherwise have on the beef industry in that region.

We are requiring a minimum 20-year period without cattle breeding operations because reinfection of herds in the El Paso area has been linked to the existence of tuberculosis in nearby regions of Mexico, and we consider 20 years to represent a minimum reasonable time frame for the eradication of tuberculosis from those Mexican regions. Additionally, we believe it will take at least 20 years of heightened surveillance in the United States to confirm what we anticipate to be the complete eradication of tuberculosis in livestock in the United States in the next several years. Until that eradication is confirmed, we believe it is necessary to continue to prohibit the breeding of cattle in the El Paso region.

Amount of Payment

New § 50.17(c) provides that we will make payments for cattle and other property based on the following rates:

- For milking cows, an amount not to exceed $2,922 per animal; and
- For heifers, an amount not to exceed $834 per animal.

We used the income approach to determine the value to be paid for disposal of the herds and the cessation of dairy operations and the cessation of use of the properties for dairy operations. We calculated the net present value (NPV) of a milking cow. To calculate the NPV, we used discounted cash flow analysis, which takes into account the quantity, variability, and duration of the forecasted income stream over a specified income projection period, assuming 15 years' worth of expected remaining life of the dairy facility.

The valuation model can be expressed in the following equation form, where r = discount rate, I = annual income per cow, and y = number of years in the discount period:

$$NPV = (1 - 1/((1 + r)^y))/r*I$$

To calculate NPV using the above equation, we had to determine the annual income per cow, the discount rate, and the number of years income is paid. We discuss each of these factors below. For more information regarding our analysis, please contact Terry Disney, APHIS Center for Epidemiology and Animal Health, at 970–490–8000.

Annual income per milking cow. There was some variation in the actual annual net income per milking cow over the past several years among the dairy operations in the El Paso area. Taking this variation into account, we used $320 as the annual net income per milking cow.

Discount rate. The discount rate used in the present value calculation is 7 percent, which is the risk-adjusted rate estimated to be appropriate in this situation.

Number of years income is paid. For the purposes of our equation, we used a term of 15 years.

Difference between discounted fair market value and salvage value. We added a small differential (just under $8 per head) to the NPV to account for the difference between the fair market value of the milking cow discounted over 15 years (because our income calculations assumed that the size of the milking cow herd would remain constant for 15 years) and the amount we estimated the owner would receive as salvage for a dairy cow that was sent to slaughter.

Value of heifers. Some of the dairy operations in the El Paso area include heifers that are not yet being used for milk production. We calculated the value of such heifers by subtracting from the present fair market value of each heifer the amount an owner could expect to receive if the heifer were sold for slaughter.

New § 50.17(d) provides that any dairy cattle added to a premises after the date an owner has signed the agreement discussed above will not be eligible for payment and must be disposed of within 2 years after all eligible owners have signed the agreement.

Amount of Additional Payments

New § 50.17(e) provides amounts for additional payments for two dairy facilities located within the geographic area covered by this interim rule.

Paragraph (e)(1) of § 50.17 provides for payment for relocating the equipment of a reverse osmosis plant. This plant removes water from milk. The plant was located on the premises of one of the dairy farms within the area covered by this interim rule. It would no longer be a viable operation at that location because of the removal of all dairy herds in the area. APHIS will pay the documented costs of relocating the plant's equipment to a location outside the area covered by this interim rule, up to a maximum of $675,000.

Paragraph (e)(2) of § 50.17 provides for payment for the permanent closure of a fluid milk processing plant that is located within the area covered by this interim rule. The fluid milk processing plant processes fresh milk. In determining the amount of payment that will be made for the processing plant, we used the following formula, where $Cost^G$ = amount to be paid by APHIS; ebitd = annual earnings before interest, taxes, and depreciation; and x = the industry standard multiple that is paid for similar businesses (an industry standard multiple takes into account the potential effects on the sale of a company of factors such as the age of the facility, its profitability, and the desirability of markets):

$$Cost^G = ebitd * x - Salvage - Goodwill$$

In applying this formula to the fluid milk processing plant, we considered ebitd to be the average of the plant's last 4 years' earnings, as shown on the company's tax records. We estimated the industry standard multiple in this case to range from 4.5 to 5.25. We based salvage value on appraisals, and we also estimated goodwill (*e.g.,* the value of name recognition and customer base and loyalty). Using these figures, we determined that an amount not to exceed $950,000 was appropriate for the permanent closure of the milk processing plant.

APHIS will make payment to the owners of the fluid milk processing plant in the same manner and at the same times, on a pro rata basis, as we make payments to such owners for their dairy cattle and other property.

Identification and Disposal of Cattle

In order to allow for traceback, if necessary, of cattle disposed of under this interim rule, we are providing in new § 50.18(a) that all cattle so disposed of must travel from the premises of origin to their final destination with an approved metal eartag, supplied by APHIS or the State representative, bearing a serial number and attached to each animal's left ear.

New § 50.18(b) provides that cattle disposed of in accordance with this interim rule must be shipped under permit either (1) directly to slaughter at a Federal or State inspected slaughtering establishment or (2) directly to a livestock market and, under the supervision of an APHIS representative or State representative, through a livestock market pen that is dedicated to and marked exclusively for use for animals moved to slaughter, and then directly to slaughter at a Federal or State inspected slaughtering establishment.

Report of Salvage Proceeds

In order to confirm that dairy cattle affected under this interim rule are disposed of in some way, we are requiring in new § 50.19 a report of the salvage derived from the sale of each animal for which a claim for payment is made. We are requiring that the salvage form be one that is acceptable to APHIS and that is signed by the purchaser or by the selling agent handling the animals. If the cattle are sold by the pound, the salvage form must show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the cattle are not sold on a per-pound basis, the salvage form must show the net purchase price of each animal, accompanied by an explanation showing how that amount was derived. If the animals are not disposed of through regular slaughterers or through selling agents, the owner must furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him or her and must certify that the amount is all he or she has received or will receive as salvage for the animals. The original of the salvage form or the affidavit of the owner must be furnished to the veterinarian in charge within 3 months of the destruction of the animals, if it is not already in his or her possession. Disposal of cattle by burial, incineration, or other means must (1) be supervised by an APHIS or State representative, who will prepare and transmit to the veterinarian in charge a report identifying the animals and showing their disposition; or (2) be documented by an affidavit of the owner identifying the animals and describing their disposition, a copy of which must be provided to the veterinarian in charge within 3 months of the destruction of the animals. The salvage form, disposal certificate, or affidavit will be for information purposes only and will have no effect on the amount of any payment due.

Claims for Payment

New § 50.20 sets forth procedures an owner must follow to submit a claim for payment. In order to coordinate claims, the timing for all claims for payment is based upon disposal of cattle, regardless of whether the payments are attributable to cattle or other property as agreed to by APHIS and the owner. These provisions are largely the same as those set forth in § 50.12 of the existing regulations for claiming indemnity for cattle, bison, captive cervids, or swine destroyed because of tuberculosis.

Under subpart B of part 50, claims for payment must be presented on payment claim forms furnished by APHIS. The payment claim forms may be obtained from the APHIS veterinarian in charge. On the claim form, the owner of the animals or other property must certify that the animals or other property are, or are not, subject to any mortgage. If the owner states that there is a mortgage, the claim form must be signed by the owner and by each person holding a mortgage, who must agree that the person specified on the claim form may receive any payment due. The APHIS veterinarian in charge or the official designated by the veterinarian in charge will record on the claim form the amount of payment that appears to be due the owner, and the owner will be furnished a copy of the APHIS payment claim form. The veterinarian in charge or official designated by the veterinarian in charge will then forward the APHIS payment claim form to the appropriate APHIS official for further action on the claim. Section 50.20 provides that the Department will not pay any costs arising from the holding of the animals pending slaughter or for trucking or other transportation costs, yardage, commission, slaughtering charges, or for any other costs related to having the cattle slaughtered.

Payments

New § 50.21 provides that we will make payments at 90-day intervals, with the first payment to be made no earlier than 30 days after all owners eligible for payment have signed their respective agreements as required under § 50.17(b) of this interim rule. The Department will determine the amount to be paid to each owner in each payment by multiplying the total agreement amount for that owner by a fraction arrived at by dividing the initial census number of dairy cattle for the respective owner into the number of dairy cattle that have been removed from the owner's herd during that payment period. From this amount, 10 percent will be withheld until all animals in the herd have been disposed of and the requirements of this subpart have been met. The payments to owners of property other than animals will be determined by multiplying the total agreement amount for that other property times the same ratio that is used for the herd that is related to that other property, minus the 10 percent withholding.

We will not make final payments until the premises used for dairy operations have been without sexually intact cattle for at least 30 days and have been inspected by APHIS officials and been found to be free of manure, except for non-solid areas such as lagoons, and free of all feedstuffs that are not in barns, containers or feeders.

Claims Not Allowed

New § 50.22 provides that we will not allow claims for payment under this interim rule if the claimant has failed to comply with any of the requirements established by this interim rule, or if there is substantial evidence, as determined by the Administrator, that the claimant has in any way been responsible for any attempt to obtain payment unlawfully or improperly.

Definitions

We are adding definitions of *heifer* and *milking cow* to § 50.1 to read as follows:

Heifer. A female dairy cow that has not given birth.

Milking cow. A female dairy cow that has given birth and is being used for milk production.

Emergency Action

This rulemaking is necessary on an emergency basis to ensure that dairy cattle in the El Paso, TX, area, which are at significant risk of being infected with tuberculosis, are removed from that area as soon as possible. This prompt removal is necessary to help prevent the spread of bovine tuberculosis in the United States. 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 rule 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**. That document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this rule, we have prepared an economic analysis that provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential effects on small entities as required by the Regulatory Flexibility Act. The analyses are set forth below.

Cost-Benefit Analysis: Background

This interim rule provides for specified owners of dairy operations in the area of El Paso, TX, to be paid for the disposal of their herds and the cessation of their operations and the cessation of the use of their dairy properties for dairy operations. Past efforts to permanently eliminate tuberculosis from the El Paso milkshed dairies have been unsuccessful due to the proximity of this area to known tuberculosis-infected dairies in Ciudad Juarez, Mexico. Elimination of the Texas El Paso milkshed dairies would provide a benefit in the form of a permanent buffer zone that would serve to prevent the reintroduction of bovine tuberculosis from the Ciudad Juarez area into U.S. dairy herds. Ten dairy farms with 12,203 milking cows are located in the proposed buffer zone. Payment is needed to obtain producers' voluntary cooperation to cease their dairy operations permanently. With this payment, these producers are expected to neither gain nor lose financially, and the economic impact upon them can be considered neutral.

Additionally, payment will also be offered to one dairy entity in connection with the closure of its fluid milk processing operation, and to another for the relocation of its reverse osmosis equipment. These operations are located on or associated with two of the affected farms in the buffer zone. The discussion below describes how payment for these items is calculated, the total amount of payment expected to be paid to affected owners in El Paso, and impacts of the interim rule.

Milk Production in El Paso

El Paso is one of the top five milk producing counties in Texas and is located in the milkshed of the Southwest Federal Milk Marketing Order, which includes all of New Mexico and Texas. In El Paso County, milk production yielded more cash than any other agricultural product, accounting for about 27 percent of total sales in 2000. The 10 affected El Paso dairies produced about 258 million pounds of milk in 2000 (or a 5 percent share of the milk production of the State of Texas), valued at about $34 million.

Payment Calculation

In order to determine the value to be paid, an appraisal method was utilized by which the future earnings of the 10 affected dairy farms are estimated. These contributions are then discounted to present value over a period of 15 years, the assumed useful life of these profitable dairy farms.[1]

A discount rate of 7 percent was applied to estimates of future producer returns to risk, management, and capital investment. This rate is higher than the risk-free rate (approximately 4.9 percent) that the U.S. Government pays on Series I bonds, reflecting some degree of risk and uncertainty.

Future farm earnings are based on the returns per milking cow. Some of the 10 dairy herds have only milking cows and replacement animals (calves and heifers). Others have additional calves and heifers in excess of replacement needs. APHIS has historically used the fair market value (FMV) appraisal approach to evaluate the value of animals to be indemnified. With this approach, the market value of assets is evaluated by an appraiser(s) and the amount reimbursable to the producer is based on this appraisal. This method is suited to situations where established markets are available and animals are

[1] Armstrong, Dennis. *Arizona Dairy Feasibility Study for Southeast Arizona,* University of Arizona, Department of Animal Science, 1999. This report suggests that modern dairies are obsolete 10 to 15 years after after establishment due to urban encroachment, or technical obsolescence.

being removed and replaced with other animals on the farm. In the current situation, APHIS is requiring permanent cessation of dairying operations on the premises. Therefore, payment is being made for the value of animals plus the value of the cessation of dairy operations plus the value of the cessation of use of the dairy properties for dairy operations. The appraisal methodology used to determine the value is based on documented production records of annual earnings before interest, taxes, and depreciation (ebitd) generated per milking cow. Using this method, the ebitd value of a milking cow is estimated to be $320 per year, or a present value of $2,915 per animal over 15 years. The same valuation method is applied to each farm.

In addition, this interim rule requires each affected producer to sell all animals in the dairy herd to a terminal market for slaughter. The proceeds from this sale are commonly referred to as the salvage value. However, assuming that herd size and structure would be the same 15 years from now (individual animals may change, but the distribution remains the same), most of the animals would still have remaining milking value. The determination of the value should, therefore, be based on the difference between the present value of his herd's FMV (productive worth) 15 years from now and the herd's current salvage value. In sum, the value is composed of the present value of the net income stream per cow ($2,915), plus the difference between the discounted fair market value per cow (about $508) and the assumed salvage value per cow ($500).

Seven of the ten affected dairy operations have heifers beyond the number needed as replacement animals. A portion of the value is, therefore, determined by subtracting from the current FMV of each heifer the amount an owner could expect to receive if the heifer were sold for slaughter. Thus, that portion of the value is estimated at about $834 per head.

The total payment amount to be paid to owners of dairy cattle and other property based upon 12,203 milking cows and 7,190 additional heifers is estimated at nearly $42 million. Eighty-six percent of this total payment is determined by milking cows, and the remaining 14 percent is determined by heifers in excess of replacement needs. Approximately 85 percent of the payments is allocable to 5 farms. The largest payment to an owner is over $12 million. Three owners receive less than $1 million each.

In addition to the 10 dairy farms that are being closed, two additional dairy operations are considered for payment on a case-by-case basis as part of the El Paso buffer zone payment package. The first case involves a reverse osmosis plant that is located on one of the affected farms. The plant, owned by a producer cooperative, would cease operation in its current location and be moved to an area outside the buffer zone. Payments would cover the cost of relocating the equipment and would be limited to qualifying expenditures submitted with receipts. It is estimated that these expenditures would include costs of a reverse osmosis milk unit, silos, boiler and refrigeration equipment, and transport expense. The total amount eligible for payment is estimated at $675,000. This amount does not include the cost of a new building (estimated at $300,000), which will be absorbed by the cooperative.

The second case involves the closure of a dairy processing plant that has been in business for nearly 60 years. This plant processes fresh milk exclusively from one of the affected dairy farms, and with the closing of the latter, this niche market would no longer be commercially maintainable.

The model used to calculate payment for the closure of the processing plant relies on the industry standard framework for purchasing dairy facilities. The framework typically follows the following formula:

(1) $FMV = ebitd * x$,

where FMV represents the fair market value of the dairy plant, ebitd represents annual earnings before interest, taxes, and depreciation are removed, and x reflects the industry standard multiple that is paid for similar businesses.

As APHIS will not be taking possession of the processing plant, the initial formula (1) is therefore modified to reflect the ability of the plant owner to salvage any value remaining in the physical facilities once the plant no longer processes milk. The payment amount will be based on the following formula:

(2) $Cost^G = ebitd * x - Salvage$,

where $cost^G$ is the payment amount. The term salvage (salvage value) can be broken down into two parts: Traditional salvage value of buildings and equipment and the goodwill value that may or may not be marketable independently of the farm's brand name. The final formula for payment can be rewritten as:

(3) $Cost^G = ebitd * x - Salvage - Goodwill$.

In applying formula (3) to the processing plant, ebitd is the average earnings over the last 4 years, obtained directly from tax records. The value of the multiple x was determined based on extensive conversations with industry contacts experienced with similar dairy plant buyouts. Estimates of salvage value of the building and equipment were obtained from an auction house. Goodwill is a difficult concept to quantify, but estimates were made using information from various industry contacts.

Several scenarios for payment were calculated for the processing plant. These scenarios resulted in similar overall estimates of payment. The average compensation estimate was $950,000 for the closure of the processing plant.

In sum, the total amount to be paid by APHIS for the closure of 10 El Paso dairy farm operations and an associated processing plant, and the relocation of a reverse osmosis plant, is almost $44 million.

Impact of the Interim Rule

The impact of the rule on the 10 affected El Paso dairy farms is expected to be economically neutral as owners of the farms will be paid for their animals and other property and the cessation of operations. However, closure of these farms may indirectly affect interrelated activities in the county and/or State such as bottling plants and dairy products manufacturing plants in the area. These effects are expected to be small whether farms move away from Texas or relocate to other areas within Texas.

If the affected farms were to move away from Texas, bottling and dairy plants would likely be minimally impacted due to the close proximity of the affected area to milk-abundant counties of New Mexico. The lost milk production in El Paso will probably be offset over time by increases in milk production in the rest of Texas and New Mexico.

According to discussions with area market economists and with representatives of the Southwest Federal Milk Marketing Order, the farmers are likely to remain in the dairy business and would prefer to relocate to other areas of the State. In this case, the impact on the local economy would be similarly small over time. Therefore, we do not anticipate any long-term increases in milk prices paid by milk processors or retail prices paid by consumers due to the buyout. Furthermore, the impact on beef prices of sending 12,200 dairy cattle to slaughter under this interim rule will be mitigated by the 2-year period allowed to complete depopulation.

Texas has not been able to achieve Statewide tuberculosis accredited-free status because efforts to permanently eliminate tuberculosis from the El Paso dairies has been unsuccessful. The loss to Texas producers from not having accredited-free status, not only for the dairy enterprises, but for the beef cow and cattle-on-feed enterprises, was estimated to be $260 million for a 5-year time horizon. This loss was calculated according to the methodology adapted from Leefers *et al*. (1998) that estimated the economic impact on Michigan of losing its tuberculosis accredited-free status.[2] The impact of the higher producer costs attributed to stricter tuberculosis testing regimen in that study is measured as the difference between the present value of sales with accreditation and without accreditation. The loss to Texas producers of not having accredited-free status is calculated by extrapolating from the percent decline in present value of sales for each of the three types of cattle enterprises (dairy enterprises, beef cow, and cattle-on-feed), as calculated by Leefers *et al*. for Michigan.

Even without taking trade implications of tuberculosis into consideration, the costs associated with the El Paso buyout are relatively small compared to the benefits arising from reducing the risk of spreading tuberculosis to other dairy and livestock herds in other parts of Texas, New Mexico, and other States.

Regulatory Flexibility Analysis

The Small Business Administration defines small dairy cattle and milk production facilities (North American Industry Classification System code 112120) as those earning $750,000 or less in annual receipts. The 10 dairies affected by this rule produced about 258 million pounds of milk in 2000, valued at about $34 million. Assuming an annual milk production per cow of 20,000 pounds, only 1 of the 10 dairy farms has annual gross revenues of less than $750,000. In any event, all 10 dairy farms will be fully paid for the disposal of their herds and other property and cessation of operation.

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.

[2] Leefers, Larry, John Erris, and Dennis Propst. ''*Economic Consequences Associated with Bovine Tuberculosis in Northeastern Michigan*,'' Michigan State University, September 1977 (revised February 1998).

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

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0193 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 00–105–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–105–1 and send your comments within 60 days of publication of this rule.

Under this interim rule, owners of dairy cattle herds and dairy operations in the area of El Paso, Texas, will be eligible for payment from the Department for disposal of their herds and other property and for cessation of their dairy operations and relocation of a dairy plant's equipment. Implementing this payment program will entail the use of a number of information collection activities, including an agreement to cease operations, metal eartags, movement permits, salvage reports, salvage and disposal affidavits, and payment claim forms. We are soliciting comments from the public, as well as from affected agencies, concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.483 minutes per response.

Respondents: Owners of dairy operations, owners and operators of livestock markets and slaughtering plants, cattle purchasers and selling agents, State animal health authorities, and accredited veterinarians.

Estimated annual number of respondents: 95.

Estimated annual number of responses per respondent: 6.210526.

Estimated annual number of responses: 590.

Estimated total annual burden on respondents: 875 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 50

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

Accordingly, we are amending 9 CFR part 50 as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 8304–8306, 8308, 8310, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. Section 50.1 is amended by revising the introductory text and adding definitions of *heifer* and *milking cow*, in alphabetical order, to read as follows:

§ 50.1 Definitions.

For the purposes of this part, the following terms mean:

* * * * *

Heifer. A female dairy cow that has not given birth.

* * * * *

Milking cow. A female dairy cow that has given birth and is being used for milk production.

* * * * *

3. The heading ''Subpart A—General Indemnity'' is added immediately before § 50.2.

4. Section 50.2 is revised to read as follows:

§ 50.2 Applicability of this subpart; cooperation with States.

(a) The provisions of this subpart apply to all payments made by the Department for the destruction of animals because of tuberculosis, except as specifically provided in subpart B of this part.

(b) The Administrator cooperates with the proper State authorities in the eradication of tuberculosis and pays Federal indemnities for the destruction of cattle, bison, captive cervids, or swine affected with or exposed to tuberculosis.

5. A new subpart B is added to read as follows:

Subpart B—Dairy Cattle and Facilities in the El Paso, Texas, Region

Sec.

§ 50.17 Payment.

(a) *Eligibility for payment.* Owners of dairy operations, including owners of dairy cattle and other property used in connection with a dairy business or fluid milk processing plant, are eligible to receive payment from the Department under this subpart in connection with a buffer zone depopulation program due to tuberculosis, provided the owners meet all applicable requirements of this subpart and the dairy cattle herd is within the area circumscribed by the following boundaries: Beginning at the point where the Hudspeth-El Paso County line intersects U.S. Highway 62; then west along U.S. Highway 62 to the El Paso Toll Bridge; then southeast along the Rio Grande River to the Fort Hancock-El Porvenir Bridge; then northeast along spur 148 to Interstate 10; then northwest along Interstate 10 to the Hudspeth-El Paso County line; then north along the Hudspeth-El Paso County line to the point of beginning.

(b) To be eligible for payment, each of the owners of dairy cattle and other property within the area described in paragraph (a) of this section must sign and adhere to an agreement with APHIS to do the following:

(1) Cease all dairy cattle operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 2 years after all eligible owners have signed their respective agreements;

(2) Conduct no dairy farming or other dairy activity, including the rearing of breeding cattle, but not including the grazing or feeding of steers and spayed heifers intended for terminal market, within the area described in paragraph (a) of this section until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(3) Allow a covenant to be placed on their properties where dairy operations have been conducted that will prevent the establishment of any breeding cattle operations (not including the grazing or feeding of steers and spayed heifers intended for terminal market) on the premises until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(4) Maintain responsibility for all cattle on the premises used in the dairy operation until those animals are removed from the premises;

(5) Make all arrangements for the removal of sexually intact cattle from the premises;

(6) Notify APHIS officials of the intended removal of all sexually intact cattle from the premises and provide APHIS officials with the opportunity to monitor and evaluate the removal operations; and

(7) Such other terms, provisions, and conditions as agreed by each owner and APHIS.

(c) *Amount of payment for cattle and other property.* Upon approval of a claim submitted in accordance with § 50.20 of this subpart, owners eligible for payments under paragraph (a) of this section will receive payments for cattle and other property, the amount of which is determined by the following rates:

(1) For milking cows, an amount not to exceed $2,922 per animal; and

(2) For heifers, an amount not to exceed $834 per animal.

(d) Any dairy cattle added to a premises after the date an owner has signed the agreement required under paragraph (b) of this section will not be included in the rate calculation in paragraph (c) of this section and must be disposed of within 2 years after all eligible owners have signed their respective agreements.

(e) *Amount of payment for certain other property.* In addition to the amounts paid under paragraph (c) of this section, amounts will be paid as follows:

(1) For expenses in relocating equipment of a reverse osmosis plant in El Paso County, TX, an amount equal to the costs of relocating the plant's equipment, not to exceed $675,000.

(2) In conjunction with the permanent closure of a fluid milk processing plant in El Paso County, TX, an amount not to exceed $950,000, with payment to be made in the same manner and at the same times, on a pro rata basis, as payments are made to such owners for their dairy cattle and other property.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.18 Identification and disposal of cattle.

(a) All dairy cattle disposed of under this subpart must travel from the premises of origin to their final destination with an approved metal eartag, supplied by APHIS or the State representative, bearing a serial number and attached to each animal's left ear.

(b) Dairy cattle disposed of under this subpart must be shipped under permit either:

(1) Directly to slaughter at a Federal or State inspected slaughtering establishment; or

(2) Under permit directly to a livestock market and, under the supervision of an APHIS representative or State representative, through a livestock market pen that is dedicated to and marked exclusively for use for animals moved to slaughter, and then directly to slaughter at a Federal or State inspected slaughtering establishment.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.19 Report of salvage proceeds.

A report of the salvage derived from the sale of each animal for which a claim for payment is made under this subpart must be made on a salvage form acceptable to APHIS that must be signed by the purchaser or by the selling agent handling the animals. If the cattle are sold by the pound, the salvage form must show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the cattle are not sold on a per-pound basis, the net purchase price of each animal must be stated on the salvage form and an explanation showing how the amount was arrived at must be submitted. In the event the animals are not disposed of through regular slaughterers or through selling agents, the owner must furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him or her and must certify that such amount is all he or she has received or will receive as salvage for the animals. The original of the salvage form or the affidavit of the owner must be furnished to the veterinarian in charge within 3 months of destruction of the animals, if such document is not already in his or her possession. Disposal of cattle by burial, incineration, or other means must be supervised by an APHIS or State representative, who will prepare and transmit to the veterinarian in charge a report identifying the animals and showing their disposition, or be documented by an affidavit of the owner that identifies the animals and describes their disposition. The owner must provide a copy of the affidavit to the veterinarian in charge within 3 months of destruction of the animals. The salvage form, disposal certificate, or affidavit will be for information purposes only and will have no effect on the amount of any payment due.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.20 Claims for payment.

Claims for payment, other than for reimbursement of relocation expenses of the reverse osmosis dairy plant, must be presented on payment claim forms furnished by APHIS.[3] On the claim form, the owner must certify that the animals or other property are, or are not, subject to any mortgage. If the owner states that there is a mortgage, the claim form must be signed by the owner and by each person holding a mortgage on the cattle or other property, who must agree that the person specified on the claim form may receive any payment due. The APHIS veterinarian in charge or the official designated by him or her will record on the claim form the amount of payment that appears to be due to the owner, and the owner will be furnished a copy of the APHIS payment claim form. The veterinarian in charge or official designated by him or her will then forward the APHIS payment claim form to the appropriate APHIS official for further action on the claim. The Department will not pay any costs arising from the holding of the cattle pending slaughter, or for trucking and other transportation costs, yardage, commission, slaughtering charges, or for any other costs related to having the cattle slaughtered. The owner of the reverse osmosis plant must submit copies of the relevant documentation for relocation of equipment to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.21 Schedule of payments.

(a) The Department will make payment, other than for reimbursement of relocation expenses of the equipment of the reverse osmosis plant, at 90-day intervals. The first payment will be made no earlier than 30 days after all owners eligible for payment have signed their agreements required under § 50.17(b). The Department will determine the amount to be paid to each owner in each payment by multiplying the total agreement amount for that owner by a fraction that is arrived at by dividing the initial census number of dairy cattle for the respective owner into the number of dairy cattle that have been removed from the owner's herd during that payment period. From this amount, 10 percent will be withheld until all animals in the herd have been disposed of and the requirements of this subpart have been met. The payments to other property owners will be determined by multiplying the total agreement amount for that other property times the same ratio as for the herd related to that other property, minus 10 percent. The Department will make payment for reimbursement of relocation expenses of the reverse osmosis plant within 30 days after the relocation of the plant is completed and the owner of the plant has submitted to APHIS all documentation of the costs of the relocation.

(b) The Department will not make final payments until the premises used for dairy operations have been without sexually intact cattle for at least 30 days and until APHIS has inspected the premises and has found them to be free of manure, except for non-solid areas such as lagoons, and free of all feedstuffs that are not in barns, containers or feeders.

§ 50.22 Claims not allowed.

The Department will not allow claims for payment if the claimant has failed to comply with any of the requirements of this subpart, or there is substantial evidence, as determined by the Administrator, that the claimant has been responsible for any attempt to obtain payment funds for such cattle or other dairy property unlawfully or improperly.

Done in Washington, DC, this 19th day of July 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

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BILLING CODE 3410–34–U

[3] Claim forms may obtained from the veterinarian in charge. The location of the veterinarian in charge may be obtained by writing to National Animal Health Program VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737, or by referring to the local telephone book.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–202–12504]

Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the contact information for a final rule published in the **Federal Register** June 21, 2002 regarding improved flightdeck security on passenger-carrying aircraft and some cargo aircraft.

In rule FR Doc 02–15524, published on June 21, 2002 (67 FR 42450), second column page 42450, the **FOR FURTHER INFORMATION CONTACT** section is corrected to read as set forth below.

FOR FURTHER INFORMATION CONTACT: For part 25 issues, contact Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425– 227–1149; e-mail: *jeff.gardlin@faa.gov.* For part 129 issues, contact Michael E. Daniel, International Liaison Staff, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4510; facsimile (202) 385–4561; e-mail: *mike.e.daniel@faa.gov.*

Issued in Washington, DC on July 18, 2002.

Richard McCurdy,

Manager Airworthiness Law Branch.

[FR Doc. 02–18762 Filed 7–25–02; 8:45 am]

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