

Rules and Regulations

Federal Register

Vol. 73, No. 69

Wednesday, April 9, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS-2008-0037]

Tuberculosis in Cattle and Bison; State and Zone Designations; Minnesota

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing Minnesota from the list of modified accredited advanced States and adding it to the list of modified accredited States. This action is necessary to help prevent the spread of tuberculosis because Minnesota no longer meets the requirements for modified accredited advanced State status.

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

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

Federal eRulemaking Portal: Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0037> to submit or view comments and to view supporting and related materials available electronically.

Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2008-0037, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0037.

Reading Room: You may read any comments that we receive on this

docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 2150 Centre Avenue, Building B, MSC 3-E-20, Fort Collins, CO 80526-8117; (970) 494-7378.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, lymph nodes, 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" (referred to below as the regulations), and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. Subpart B of the regulations contains requirements for

the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

The status of a State or zone is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. Prior to this interim rule, Minnesota was designated as a modified accredited advanced State.

The regulations in § 77.5 define a modified accredited advanced State or zone as a State or zone in which tuberculosis has been prevalent in less than 0.01 percent of the total number of herds of cattle and bison in the State or zone for each of the most recent 2 years. That definition does provide, however, that a State or zone with fewer than 30,000 herds may have up to 3 affected herds for each of the most recent 2 years, depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone. As a State with approximately 21,300 herds, according to data for 2007 obtained from the National Agricultural Statistics Service, Minnesota had been able to retain its modified accredited advanced status despite the detection of 3 tuberculosis-affected herds since October 2007. However, the recent detection of a fourth tuberculosis-affected herd means that Minnesota no longer qualifies for modified accredited advanced status. Therefore, we are amending the regulations by removing Minnesota from the list of modified accredited advanced States or zones and adding it to the list of modified accredited States or zones in § 77.11.

The four affected herds detected in the State have been quarantined, and a complete epidemiological investigation into the potential sources of the disease is being conducted.

Under the regulations in § 77.12, cattle or bison that originate in a modified accredited State or zone, and are not known to be infected with or exposed to tuberculosis, may be moved

interstate only under one of the following conditions:

The cattle or bison are moved directly to slaughter at an approved slaughtering establishment (§ 77.12(a));

The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; and are either officially identified or identified by premises of origin identification; and are accompanied by a certificate stating that they were classified negative to an official tuberculin test conducted within 60 days prior to the date of movement (§ 77.12(b));

The cattle or bison are from an accredited herd and are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement (§ 77.12(c)); or

The cattle or bison are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by a certificate stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 60 days prior to the date of movement, except that the additional test is not required if the animals are moved interstate within 60 days following the whole herd test (§ 77.12(d)).

Minnesota has indicated that it intends to pursue zone classification, or split-State status, under §§ 77.3 and 77.4 of the regulations, and APHIS is initiating a risk assessment to assist in our evaluation of such a request. That risk assessment will be made available as a supporting document for any future

rulemaking we undertake to recognize a zone within Minnesota.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of 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**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The Regulatory Flexibility Act requires agencies to evaluate the potential economic effects of their regulatory actions on small businesses, small organizations and small governmental jurisdictions. This initial regulatory flexibility analysis examines expected impacts for small entities in Minnesota as a result of this interim rule that amends the State's bovine tuberculosis status from modified accredited advanced to modified accredited. We invite comments about this rule as it relates to small entities.

Reason for the Action

Because of increased incidence of bovine tuberculosis, Minnesota no longer qualifies for modified accredited advanced status. It is necessary to reclassify the State as modified accredited and conduct the additional disease prevention measures required by that reclassification in order to mitigate the spread of bovine tuberculosis to other States.

Objectives and Legal Basis for the Rule

The objective of the rule is to limit the spread of tuberculosis from Minnesota to other States. APHIS' authority to carry out operations and measures to detect, control, or eradicate bovine tuberculosis is the Animal Health Protection Act (7 U.S.C. 8301–8317).

A Description of and Estimate of the Number of Small Entities to Which the Rule Will Apply

The cattle industry plays an important role in Minnesota's economy. There were 21,300 cattle and calf operations (herds) in Minnesota in 2007, with a total inventory of 2.4 million head on January 1, 2008.¹ Cash receipts from cattle and calves and dairy products totaled \$925.5 million and \$1,073.7 million, respectively, in 2006, the latest year for which these data are available. Seven-year average receipts for cattle and calves and dairy products between 2000 and 2006 were \$944 million and \$1,162 million, respectively, for an average total of \$2.1 billion.²

The vast majority of cattle operations in Minnesota (99 percent, or over 21,000 enterprises) are small entities that have annual receipts of not more than \$750,000. The composition of Minnesota's cattle inventory is shown in Table 1.

TABLE 1.—MINNESOTA'S CATTLE INVENTORY BY TYPE: JANUARY 1, 2008

Type	Number	Percentage of total
Beef cows	397,000	16.5
Milk cows	463,000	19.3
Heifers:		
Beef cow replacements	100,000	4.2
Milk cow replacements	270,000	11.3
Other heifers	175,000	7.3
Total heifers	545,000	22.7
Steers	445,000	18.5
Bulls	40,000	1.7
Calves	510,000	21.3
Total	2,400,000	100.0

Source: USDA/NASS. <http://usda.mannlib.cornell.edu/usda/current.Catt/Catt-02-01-2008.pdf>.

¹ USDA/NASS. <http://usda.mannlib.cornell.edu/usda/current.Catt/Catt-02-01-2008.pdf>.

² USDA/ERS, Farm Income: Annual Cash Receipts, 1924–2006: Table 5—Cash Receipts, by

Commodity Groups and Selected Commodities, Minnesota, 2000–2006.

A Description of Compliance Requirements and Expected Effects of the Rule

Minnesota's bovine tuberculosis status has been modified accredited advanced. This interim rule amends the State's status to modified accredited. As a result of this action, herd owners are expected to be negatively affected. The additional requirements for movement of cattle as a result of the change in tuberculosis status are shown in Table

2. As shown, no additional requirements are placed on animals moving directly to slaughter or those moving from an accredited herd. Intact heifers moved interstate to an approved feedlot and steers and spayed heifers moved interstate will require certification and testing within 60 days of movement (60-day test). Also, intact animals (that is, beef and milk cows that have calved, beef and milk cow replacements and bulls) from a herd

without accredited status will require a whole herd test within the previous 12 months and a negative 60-day test prior to interstate movement. If the intact animals are moved within 60 days of the whole herd test, they do not require an additional test. Thus, owners of non-accredited herds that move intact animals or steers and spayed heifers interstate will bear additional costs because of Minnesota's loss of modified accredited advanced status.

TABLE 2.—A COMPARISON OF REQUIREMENTS FOR INTERSTATE MOVEMENT FROM STATES OR ZONES HAVING MODIFIED ACCREDITED ADVANCED STATUS AND MODIFIED ACCREDITED STATUS

Type of cattle and movement ^a	Modified accredited advanced status	Modified accredited status
All types moved directly to slaughter at an approved slaughtering establishment.	No test required	No test required.
Intact heifers moved to an approved feedlot ^b	Official ID only	Official ID, certificate of negative 60-day test.
Steers and spayed heifers ^c	Official ID only	Official ID, certificate of negative 60-day test.
Cattle from an accredited herd ^d	Certificate that herd was tested within 1 year of movement.	Certificate that herd was tested within 1 year of movement.
Intact cattle from a herd without accredited status.	Official ID, certificate of negative 60-day test ..	Official ID, certificates of negative whole herd test within previous 12 months and negative 60-day test; 60-day test not required if moved within 60 days of the whole herd test.

Source: 9 CFR 77.10 and 77.12.

^a The movement requirements apply also to bison.

^b Currently, there are no approved feedlots (facilities that handle high risk animals) in the United States.

^c There are few, if any, spayed heifers in Minnesota.

^d There are no accredited herds in Minnesota.

Tuberculosis testing, including veterinary fees, completion of certificate forms and handling expenses, costs about \$10 to \$15 per test. Based on the above information, all steers and intact heifers moved interstate but not directly to slaughter will need certification of a negative 60-day test, and the intact animals from herds without accredited status that move interstate will need a whole herd test and a 60-day test unless moved within the first 60 days following the whole herd test. In estimating what these testing costs may total for Minnesota's cattle producers, and the extent to which small entities may be affected, we have assumed that the change in bovine tuberculosis status will affect all Minnesota herds. We recognize that this assumption overstates the probable number of herds affected, since movement of cattle within Minnesota will not be impacted. However, we also note that there are other marketing costs attributable to the change in status that are not quantified in this analysis; namely, a price discount incurred by sellers of cattle that originate from a State or zone of lower status.

According to National Agricultural Statistics Service (NASS) data, about 32 percent of Minnesota's cattle were

moved directly to slaughter in 2007.³ We do not know the percentage of cattle moved directly to slaughter by class, but assume that the 32 percent is representative for steers. Thus, there will be 302,600 steers (445,000 head × 0.68) that will require certification of a negative 60-day test prior to interstate movement. Applying the above testing costs per animal yields a total annual cost for testing steers of between \$3,026,000 (302,600 head × \$10 per head) and \$4,539,000 (302,600 head × \$15 per head).

Assuming that 32 percent of the "Other Heifers" shown in Table 1 are moved directly to slaughter implies that 119,000 intact heifers (175,000 head × 0.68) from this category will require a negative individual 60-day test if these heifers are moved more than 60 days after their herd of origin has had a whole herd test. We also assume that 85 percent of the intact replacement heifers are moved interstate (with operators retaining 15 percent, on average). These heifers number 314,500 (370,000 head × 0.85). Because intact heifers may be moved interstate within 60 days of the whole herd test of their herd of origin, there will be a 10-month period in

which intact heifers will require the 60-day test. We estimate that 361,250 intact heifers [(119,000 head + 314,500 head) × 10/12] will require the additional 60-day test each year. Applying the estimated testing costs per animal of \$10 to \$15, the 60-day test will result in a total annual cost of between \$3,612,500 and \$5,418,750.

As stated above, there are approximately 21,300 cattle and bison herds or operations in Minnesota with a total of 2.4 million animals or with an average number of 113 animals per herd. In order to be eligible for interstate movement, intact cattle or bison must originate from a herd that has had a whole herd test within 1 year prior to the date of interstate movement. Additionally, all dairies must have a whole herd test annually to comply with the Pasteurized Milk Ordinance (PMO) unless an approved surveillance plan is in place within the State. Assuming that all cattle operations will desire the ability to move their cattle or bison to any other State or zone, or be required to test to comply with PMO, every herd in the State will need to conduct a whole herd test on an annual basis.

A whole herd test requires the testing of all animals in a herd that are 12 months of age and older at the time of

³ USDA/NASS, Livestock Slaughter, 2007 Summary, March 2008.

the test. Calculating a 90 percent yearly calf crop results in an adult population of 60 animals over 12 months of age in the average herd (113 head) in any given year. Based on the 21,300 herds in Minnesota, this results in a total number of 1,278,000 intact cattle (21,300 herds × 60 adult cattle per herd) that will require a whole herd test each year. Assuming, as above, the \$10 to \$15 cost per head, the total cost for whole herd testing is estimated to be between \$12,780,000 and \$19,170,000. These cost estimates may be high because the cost of whole herd testing on a per-animal basis is generally less than the cost of testing animals individually 60 days prior to interstate movement.

By conducting the whole herd test within 60 days prior to interstate movement of the intact cattle, producers will not incur the cost of a 60-day test. They may, in fact, derive savings from the difference between the testing costs per animal when conducted individually and when conducted as part of a whole herd test.

Combining the estimated testing costs for interstate movement of steers and intact heifers and for whole herd testing, we find that Minnesota's loss of modified accredited advanced status may cost its cattle producers between \$19.4 million and \$29.1 million annually due to the additional bovine tuberculosis testing that is required.

Based on the 2002 Census of Agriculture, there were 22,830 small-

entity producers in Minnesota (99 percent of all cattle holdings) that sold a total of 1,068,393 head of cattle (78.8 percent of total sales). They had an average annual income of about \$29,400 in 2002. The remaining one percent of producers had sales of 287,749 animals and an average annual income of about \$1,540,890. As shown in Table 3, the impact of Minnesota's loss of modified accredited advanced status on its small-entity producers may average more than \$1,000 per operation. This amount is equal to about 3.4 percent of average annual sales by small entities in 2002 when based on the upper range of bovine tuberculosis testing costs (\$15 per animal tested).

TABLE 3.—THE ESTIMATED COST OF MINNESOTA'S LOSS OF MODIFIED ACCREDITED ADVANCED STATUS FOR SMALL ENTITIES

Total cost of testing ^a	\$29.1 million.
The cost to small entities ^b	\$22.9 million.
Average cost per small entity ^c	\$1,003.
Average cost per small entity as a percentage of average sales per small entity ^d	3.4%.

^a From the text, assuming an individual bovine tuberculosis testing cost of \$15 per head.

^b Total testing cost multiplied by 78.8 percent, the percentage of cattle and calves sold by producers with annual revenues of not more than \$750,000, that is, small entities. We assume that the total cost of tuberculosis testing incurred by small entities is proportional to their share of the State's total cattle sales.

^c Total cost for small entities divided by the number of small entities (22,830 producers, based on 2002 Census of Agriculture data).

^d Average cost per small entity as a percentage of the average annual revenue per small entity (\$29,400, based on 2002 Census of Agriculture data).

Duplication, Overlap, or Conflict With Other Rules

APHIS has not identified any Federal rules that are duplicative, overlapping, or conflicting with this rule.

Description of Any Significant Alternatives to the Rule

APHIS has determined that there are no significant alternatives to the interim rule that would accomplish the stated objectives and minimize impacts for small entities.

Summary

This analysis examines impacts for Minnesota's small entities of that State's loss of modified accredited advanced status. The State's producers of cattle and calves are predominantly small entities. Those producers who move steers, intact heifers or intact adult cattle out-of-state for breeding or feeding purposes will incur increased costs as a result of the change in bovine tuberculosis status. The additional testing costs may average as much as 3.4 percent of the value of annual sales by small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim 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.

§ 77.9 [Amended]

■ 2. In § 77.9, paragraph (a) is amended by removing the word “Minnesota” and adding the word “None” in its place.

§ 77.11 [Amended]

■ 3. In § 77.11, paragraph (a) is amended by removing the word “None” and adding the word “Minnesota” in its place.

Done in Washington, DC, this 3rd day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–7346 Filed 4–8–08; 8:45 am]

BILLING CODE 3410–34–P