

# Rules and Regulations

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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.

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 50 and 77

[Docket No. 00–106–1]

RIN 0579–AB29

#### Animals Destroyed Because of Tuberculosis; Payment of Indemnity

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations regarding the payment of indemnity for animals destroyed because of bovine tuberculosis to provide that the Animal and Plant Health Inspection Service will pay owners of the animals an indemnity equal to the difference between the net salvage received and the appraised value of the animals destroyed, up to \$3,000 per animal. This action is necessary to further tuberculosis eradication efforts and to protect livestock not infected with bovine tuberculosis from the disease.

**DATES:** This interim rule was effective February 14, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 22, 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. 00–106–1, 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. 00–106–1. 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. 00–106–1” 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 bovine 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 risk of being infected with, the disease.

#### Use of the Terms “Affected” and “Infected”

Prior to the effective date of this interim rule, when our intent in part 50 was to refer to individual animals infected with tuberculosis, we referred to the animals as being “affected” with the disease. However, such usage is inconsistent with the tuberculosis regulations in part 77, which refer to infected animals as “infected.” Additionally, it is inconsistent with our general policy of using the term “affected” to mean animals that are either infected with or exposed to a disease. Therefore, in this interim rule, wherever our intent is to refer in part 50 only to animals infected with tuberculosis, we are replacing the term “affected with” with “infected with.”

Making such a change, however, creates the situation of our using two different terms in this explanatory **SUPPLEMENTARY INFORMATION** to mean the same thing—i.e., referring to individual animals affected with tuberculosis when describing the content of the regulations prior to this interim rule and referring to individual animals infected with tuberculosis when describing the content of this interim rule. To make clear that both terms refer to the same category of animals, when we refer in this **SUPPLEMENTARY INFORMATION** to the description used prior to this interim rule of individual animals “affected” with tuberculosis, we follow that reference with the term “infected” in parentheses.

Throughout part 50, there are also references to herds that contain infected animals. In some cases in the regulations, these herds are referred to as being “infected” with tuberculosis; in other cases the herds are referred to as being “affected” with the disease. In such cases where reference is made to a herd of animals that includes at least

one infected animal, but in which other animals in the herd are not necessarily known to be infected, it is more accurate to refer to the herd as "affected," to indicate that it contains at least one infected animal and also other animals that have likely been exposed to tuberculosis. Therefore, in this interim rule, when we refer to a herd that contains at least one infected animal, we refer to the herd as being "affected" with tuberculosis.

#### Previous Indemnity Limits

Prior to the effective date of this interim rule, the regulations in § 50.3 set a maximum dollar figure on the amount that could be paid by APHIS for an animal destroyed because of tuberculosis. When these amounts were established, they approximated the fair market value of the animals, minus any salvage value that could be received for the animals. The limits per animal were as follows:

- \$750 for cattle, bison, and captive cervids affected (infected) with tuberculosis;
- \$450 for cattle, bison, and captive cervids exposed to tuberculosis;
- \$450 for cattle, bison, and captive cervids classified as tuberculosis suspect; and
- \$200 for swine exposed to tuberculosis.

For the most part, however, these amounts were set in 1980 and, in recent years, even when added to the amount received by an owner for salvage, they often came to less than the appraised value of the animals. In this interim rule, we are updating the amount that can be paid for animals destroyed because of tuberculosis to once again allow for payment for the appraised value of the animals, minus salvage value.

In recent years, the disparity between the amount that APHIS could pay for an animal destroyed because of tuberculosis and its appraised value has made some owners reluctant to immediately remove a suspect animal from a herd so that confirmation could be made at slaughter of its tuberculosis status. This has sometimes hindered timely detection and traceback of tuberculous animals, because if a suspect animal were sent to slaughter immediately, and was confirmed there as being infected with tuberculosis, traceback of other animals in the infected animal's herd could have begun immediately, to determine whether they had come in contact with animals from other herds.

However, in instances where cattle have been classified as suspects for tuberculosis based on an official

tuberculosis test, many owners have decided to wait 60 days (the minimum amount of time required between tests of cattle and bison; the minimum interval for captive cervids is 90 days) to have the animal retested, rather than have the animal destroyed as a suspect, in the hope that on the retest the animal would test negative. In cases where suspect animals have turned out to be infected with the disease, this has delayed the start of traceback procedures.

Also, because they have been unable to obtain appraised value for animals destroyed because of tuberculosis, instead of depopulating an entire herd containing animals known to be infected with or exposed to tuberculosis, owners have often chosen to remove only those animals that have tested positive for the disease. While it is possible to eliminate tuberculosis infection from a herd by the "test and removal" method, depopulation of the herd is the most effective method of ensuring that the infection is eliminated. As reported in the proceedings of the 1994 U.S. Animal Health Association Meeting, up to 33 percent of herds that were released from quarantine through the test and removal method between 1985 and 1994 were found to be affected with tuberculosis by the fifth annual quarantine release test. (VanTiem J.S. and Essey M.A. (1994).—Status of the State/Federal bovine tuberculosis eradication program. *Proceedings of Annual Meeting of the U.S. Animal Health Association*, 98, 539–555.)

Because depopulation is a significantly more effective method of eradicating tuberculosis than test and removal, APHIS recently amended the tuberculosis regulations in 9 CFR part 77 to encourage depopulation of affected herds in U.S. States or zones where tuberculous animals are detected. Under those regulations, if a tuberculosis-affected herd is detected in a State or zone classified as accredited-free, and the herd is depopulated with no evidence of the spread of the disease, the State or zone may retain its accredited-free status.

To address the discrepancy that has arisen between the indemnity amounts allowed to be paid to owners of animals and the appraised value of the animals, and to accelerate the eradication of tuberculosis from U.S. cattle, bison, and captive cervid herds, as well as from other susceptible livestock, we are amending the regulations in § 50.3 to provide that owners will receive from APHIS an amount equal to the appraised value of livestock destroyed because of tuberculosis, minus the net

salvage received for the animals. This formula will apply to cattle, bison, and captive cervids infected with tuberculosis, exposed to tuberculosis, or classified as tuberculosis suspect, as well as to other livestock that are exposed to tuberculosis. (As defined in § 50.1, "livestock" includes cattle, bison, captive cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.)

The regulations in part 50 provide for the payment of indemnity for cattle, bison, and captive cervids destroyed because they are either affected (infected) with tuberculosis, exposed to tuberculosis, or determined to be suspect for tuberculosis. Additionally, the regulations prior to the effective date of this interim rule provided that indemnity could be paid for swine considered to be exposed to tuberculosis by association with a cattle, bison, or captive cervid herd depopulated because of the disease.

We do not consider it consistent or effective, however, to provide for payment of indemnity for swine considered exposed to tuberculosis and not to allow for payment for other susceptible livestock exposed to the disease. In § 50.1, the definition of *livestock*, which lists those livestock susceptible to tuberculosis, includes cattle, bison, captive cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope), raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition. In this interim rule, we are providing for the payment of indemnity for infected, exposed, or suspect cattle, bison, and captive cervids, and for other livestock considered to be exposed to tuberculosis by reason of association with a depopulated affected herd.

#### Payment for Animals Destroyed

In this interim rule, we are amending § 50.3 to provide that the APHIS Administrator is authorized to agree on the part of the U.S. Department of Agriculture (Department) to pay indemnity to owners of the following categories of animals:

1. Cattle, bison, or captive cervids destroyed because they are classified as infected with or exposed to tuberculosis;

2. Cattle, bison, or captive cervids destroyed because they are classified as suspect for tuberculosis, except that indemnity will be withheld for suspect animals until the tuberculosis status of the suspect animal has been determined

(through retesting of the animals or through examination of the animals at slaughter) and, if the suspect cattle, bison, or captive cervid is found to be infected with tuberculosis, until all cattle, bison, and captive cervids 12 months of age or older in the claimant's herd have been tested for tuberculosis under APHIS or State supervision; and

3. Other livestock destroyed because they are classified as exposed to tuberculosis by reason of association with a herd destroyed because of tuberculosis, if the designated tuberculosis epidemiologist determines their destruction will contribute to the tuberculosis eradication program.

In each case, the amount of joint State-Federal indemnity payment, together with the amount of net salvage the owner receives when the animals are slaughtered, shall not exceed the appraised value of the animals. Additionally, the Department will in no case pay more than \$3,000 for an animal that is destroyed.

The Department and the U.S. Office of Management and Budget are planning to set overall criteria that would govern how the costs of program activities, including the payment of indemnity, are shared among the Federal government and cooperators such as State and local governments, industry and producers. This interim rule may be amended after publication of final cost-sharing criteria.

#### *Section 50.9—Appraisal of Animals*

Provisions regarding the appraisal of cattle, bison, captive cervids, and swine destroyed because of tuberculosis are set forth in § 50.9. Those provisions require that, except for certain situations, cattle, bison, captive cervids, and swine to be destroyed because of tuberculosis be appraised within 15 days after being classified as affected (infected) with tuberculosis, or otherwise being condemned because of the disease. The phrase “animals condemned because of the disease” refers to animals condemned by the Department's Food Safety and Inspection Service with regard to human consumption, due to the presence in the animal of tuberculosis lesions. Such a finding was relevant under the regulations prior to this interim rule because, although a suspect or exposed animal that was condemned at slaughter would not have any salvage value, it would become eligible for the indemnity rate for an affected (infected) animal (\$750) rather than the rate for a suspect or exposed animal (\$450). However, because this interim rule makes no distinction between infected, exposed, or suspect animals in the amount of indemnity to

be paid, there is no need to include a reference to condemned animals.

We are additionally retaining the provisions in § 50.9 that when the animals to be destroyed are appraised, due consideration shall be given to their breeding value as well as to their dairy or meat value, and that animals presented for payment as registered must be accompanied by their registration papers. If the registration papers are temporarily not available, or if the animals are less than 3 years old and unregistered, the appropriate veterinarian in charge may grant a reasonable period of time for presentation of the registration papers.

We are also retaining the provision that APHIS may decline to accept any appraisal that appears to be unreasonable or out of proportion to the value of like animals of like quality.

Prior to the effective date of this interim rule, § 50.9 provided simply that the appraisal shall be done by an independent professional appraiser at the expense of APHIS, except that the veterinarian in charge could waive the requirement for an independent professional appraiser for reasons satisfactory to the veterinarian in charge. This provision was adequate when the amount to be paid for animals destroyed was a relatively low set amount and the appraisal process was conducted simply to ensure that the maximum set amount did not exceed the appraised value of a destroyed animal. However, because indemnity payments will now equal the appraised value of the animals minus net salvage received (up to \$3,000 per animal), we consider it appropriate to provide owners of animals with the option of requesting a review by the Administrator of an appraised value that the owner considers inadequate.

Therefore, we are amending § 50.9 to provide that animals for which indemnity is to be paid under the regulations must be appraised at their fair market value by an appraiser selected by APHIS. Should the appraisal made by the appraiser selected by APHIS be deemed inadequate by the owner of the animals, the owner will have 15 days from the receipt of the appraisal to submit to the Administrator a request for a review of the appraisal, along with the reasons why the animals should be appraised at a higher value. The decision by the Administrator regarding the value of the animals is final.

#### *Section 50.1—Definitions*

On October 23, 2000, we published a final rule in the **Federal Register** (65 FR 63502–63533, Docket No. 99–038–5) in

which we made a number of changes to the tuberculosis regulations in part 77. Among the changes we made were revisions to definitions of terms used in part 77. Several of the terms that we revised in part 77 are also used and defined in part 50. In this interim rule, we are revising those definitions in § 50.1 to be consistent with the changes we made in part 77. We discuss each of these changes below.

*Captive cervid.* Prior to the effective date of this interim rule, in part 50 of the regulations *captive cervid* was defined in part 50 as all species of deer, elk, moose, and all other members of the family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. That wording is consistent with the definition in part 77 as it appeared prior to our October 23, 2000, final rule. However, in that final rule, we amended the definition of *captive cervid* to clarify that the cervids described above will continue to be considered captive cervids during the time they are moved interstate and that a wild cervid that is moved interstate will be considered a captive cervid during the period of time between its capture and its release into the wild. We also provided that a captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by the Administrator as unique and traceable with which to trace the animal back to its herd of origin. In this interim rule, we are amending the definition of *captive cervid* in part 50 to be consistent with the definition in part 77.

*Designated epidemiologist.* Prior to the effective date of this interim rule, *designated epidemiologist* was defined in part 50 as an epidemiologist appointed by a cooperating State animal health official and the veterinarian in charge to perform functions specified by the “Uniform Methods and Rules Bovine Tuberculosis Eradication.” The individual referred to as “designated epidemiologist” in part 50 is the same individual referred to as “designated tuberculosis epidemiologist” in part 77. However, the definition of “designated tuberculosis epidemiologist” we set forth in part 77 in our October 23, 2000, final rule provides a more specific description of that individual's responsibilities than the definition of “designated epidemiologist” in part 50 prior to this interim rule. Therefore, in this interim rule, we are replacing the definition of *designated epidemiologist* in § 50.1 with a definition of *designated tuberculosis epidemiologist* (DTE) to read: “A State or Federal epidemiologist

designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds. A DTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of animals and herds, assist in the development of individual herd plans, and coordinate disease surveillance and eradication programs within the geographic area of the DTE's responsibility.'

*Herd.* Prior to the effective date of this interim rule, *herd* was defined in part 50 as any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator. That wording is consistent with the definition in part 77 as it appeared prior to our October 23, 2000, final rule, except that the part 77 definition included a clarifying statement that a group means one or more animals. However, in our October 23, 2000, final rule, we amended the part 77 definition of *herd* to provide that livestock assembled at a feedlot will not be considered a herd. In this interim rule, we are amending the definition of *herd* in § 50.1 to make it consistent with that change to the definition in part 77. Additionally, on April 20, 2001, we published an interim rule in the **Federal Register** (66 FR 20187–20190, Docket No. 00–102–1) in which we revised the definition of *herd* in § 93.400 as it applied to the provisions regarding the importation of ruminants. In that interim rule, we provided that for a group of animals to be considered a herd, the animals needed to be maintained as a group for at least 4 months. In this interim rule, we are adding that change to the definitions of *herd* in both §§ 50.1 and 77.2.

*Herd depopulation.* Prior to the effective date of this interim rule, *herd depopulation* was defined as removal by slaughter or other means of destruction of all cattle, bison, and captive cervids in a herd prior to restocking with new cattle, bison, or captive cervids. Because, as discussed above, we consider it necessary to the tuberculosis eradication program to destroy all exposed susceptible animals in an affected herd—not just cattle, bison, and captive cervids—we are revising the definition of *herd depopulation* to state that it involves the removal by slaughter or other means of destruction of all cattle, bison, and captive cervids in a herd, as well as any other exposed

livestock in the herd, prior to restocking with new livestock.

*Permit.* Prior to the effective date of this interim rule, the definition of *permit* referred to a permit for movement of cattle, bison, captive cervids, or swine. For the same reason discussed in the preceding paragraph, we are revising the definition of *permit* to refer to a permit for movement of livestock.

*Registered cattle, bison, and captive cervids.* Prior to the effective date of this interim rule, § 50.1 included a definition of *registered cattle, bison, and captive cervids*. Because this interim rule provides for payment of indemnity for livestock other than cattle, bison, and captive cervids, we are revising the definition of *registered cattle, bison, and captive cervids* to refer instead to *registered livestock*.

*Reactor cattle, bison, and captive cervids.* The definition of *reactor cattle, bison, and captive cervids* states the manner in which cattle and bison are determined to be reactors for tuberculosis, then states that captive cervids will be determined to be reactors in the same way as cattle and bison. We are making a nonsubstantive change to combine the language regarding cattle, bison, and captive cervids to make the definition more concise.

In addition to the revisions to the existing definitions in § 50.1, discussed above, we are adding definitions of *net salvage*, *State animal health official*, and *State representative*. *Net salvage* is defined as the amount received for animals destroyed because of tuberculosis, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner. *Net salvage* does not include any amounts received from Federal or State sources for indemnity. *State animal health official* is defined as the individual employed by a State who is responsible for livestock and poultry disease eradication programs in that State. *State representative* is defined as a veterinarian or other person who is employed in livestock sanitary work of a State or a political subdivision of a State and who is authorized by the State or political subdivision to perform the function involved under a memorandum of understanding with the Department.

#### *Section 50.2—Cooperation With States*

Prior to the effective date of this interim rule, § 50.2 stated that 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 (infected) with or exposed to tuberculosis. We are updating this language to make it consistent with the other provisions in part 50, by stating that the Administrator pays Federal indemnities for the destruction of cattle, bison, and captive cervids that are infected with, exposed to, or suspect for tuberculosis, and for other livestock exposed to tuberculosis.

#### *Section 50.4—Classification of Livestock*

Prior to the effective date of this interim rule, § 50.4 set forth only the criteria used to classify cattle, bison, or captive cervids as affected (infected) with, exposed to, or suspect for tuberculosis. In this interim rule, we are adding a paragraph (d) to § 50.4 to provide that the designated tuberculosis epidemiologist will determine whether livestock other than cattle, bison, or captive cervids are classified as exposed to tuberculosis by reason of association with an affected herd of cattle, bison, or captive cervids.

#### *Section 50.6—Identification of Animals To Be Destroyed*

Section 50.6 of the regulations sets forth requirements for the identification of animals that are to be destroyed because of tuberculosis. Those provisions include the requirement that, except in certain specified situations, cattle, bison, captive cervids, and swine to be destroyed because of tuberculosis must be identified within 15 days after being classified as reactors or otherwise condemned because of the disease. Consistent with the change we are making to the regulations at § 50.9 regarding the appraisal of animals for which indemnity is to be paid, we are providing in § 50.6 that the 15-day time limit for identifying animals to be destroyed because of tuberculosis applies to animals classified as either tuberculosis reactors or animals suspect for tuberculosis.

#### *Section 50.7—Destruction of Animals*

Section 50.7 of the regulations sets forth certain requirements for the destruction of cattle, bison, captive cervids, and swine destroyed because of tuberculosis and for which indemnity will be paid. We are amending § 50.7(a) and (b) to make the requirements of the section applicable to all livestock.

#### *Section 50.8—Payment for Transportation and Disposal*

Section 50.8 of the regulations provides that the Department may pay one-half or more of the expenses of transporting affected (infected),

exposed, or suspect cattle, bison, and captive cervids to slaughter because of tuberculosis or to the point where disposal will otherwise take place, and may also pay one-half or more of the expenses of destroying, burying, incinerating, rendering, or otherwise disposing of the animals. To encourage the destruction of all susceptible livestock exposed to tuberculosis, we are expanding the payment provisions of § 50.8 to include all such livestock.

#### *Section 50.10—Report of Appraisals*

Section 50.10 includes provisions for recording information regarding the appraisal of cattle, bison, captive cervids, and swine destroyed because of tuberculosis. We are amending the section to make its provisions applicable to all livestock destroyed because of tuberculosis.

#### *Section 50.11—Report of Salvage Proceeds*

Section 50.11 includes provisions for the reporting of salvage proceeds for cattle, bison, captive cervids, and swine destroyed because of tuberculosis. We are amending the section to make its provisions applicable to all livestock destroyed because of tuberculosis.

#### *Section 50.12 Claims for indemnity*

Section 50.12 includes provisions for making a claim for indemnity for cattle, bison, captive cervids, and swine destroyed because of tuberculosis. We are amending the section to make its provisions applicable to all livestock destroyed because of tuberculosis. Similarly, we are applying to all livestock destroyed because of tuberculosis the provision in § 50.12 that no charges for holding animals on the farm pending slaughter or for trucking by the owner shall be paid by the Department.

#### *Section 50.14 Claims not Allowed*

Section 50.14 provides that claims for compensation for cattle, bison, or captive cervids destroyed because of tuberculosis will not be allowed under certain conditions. For instance, compensation will not be allowed if all cattle, bison, and captive cervids in the claimant's herd have not been tested for tuberculosis, except under certain specified conditions. Nor will claims be paid if there is substantial evidence that the owner of the animals has attempted to obtain indemnity unlawfully or improperly.

In this interim rule, we are amending § 50.14 by revising certain provisions and adding others. We are changing the introductory language of § 50.14, and also § 50.14(d) so that these sections

apply to all livestock destroyed because of tuberculosis, not just to cattle, bison, and captive cervids. In § 50.14(d), we are removing references to animals condemned because of tuberculosis, consistent with changes we are making elsewhere in the part.

Prior to this interim rule, paragraph (b) of § 50.14 provided that claims for payment were not allowed if all cattle, bison, and captive cervids 2 years of age or older in the claimant's herd had not been tested for tuberculosis under APHIS or State supervision. However, in our October 2000 final rule, discussed above, we provided that, in general, animals 12 months of age or older in a herd, rather than 2 years of age or older, needed to be tested for a test to qualify as a whole herd test. Consistent with the provisions of part 77, we are applying the testing requirement in § 50.14(b) to animals 12 months of age or older, rather than 2 years of age or older.

Finally, we are adding a new paragraph (g) to § 50.14 to provide that claims for compensation for livestock other than cattle bison, and captive cervids that are destroyed because of association with herds of affected cattle, bison, or captive cervids will not be allowed if any of the following apply: (1) The livestock did not reside among the herd for a period of 4 months or more; (2) the livestock have not received a postmortem examination for tuberculosis; or (3) the livestock were added to a herd that was under quarantine for tuberculosis at the time the livestock were added to the herd, unless an approved herd plan was in effect at that time. The requirement that the livestock must have resided among the herd for a period of 4 months or more is consistent with the change we are making to the definition of herd, discussed above, to provide that a group of animals maintained on common ground will not be considered a herd unless they have been maintained together for at least 4 months.

#### *Section 50.15 Payment Disclaimer*

We are removing § 50.15 because it is no longer necessary. Prior to the effective date of this interim rule, § 50.15 stated that no claim for Federal indemnity for cattle and bison destroyed because of tuberculosis would be paid under the regulations in part 53, but rather would be paid under the regulations in part 50. That section was added a number of years ago when the provisions that are currently in part 50 were established. Those provisions have been in place long enough now to make it unnecessary to state that tuberculosis

indemnity payments will not be paid under part 53.

#### *Section 50.16 Cattle on the Island of Molokai*

We are also removing § 50.16 because it is no longer necessary. Prior to the effective date of this interim rule, § 50.16 contained provisions governing the payment of indemnity for cattle on the island of Molokai in Hawaii that had been exposed to tuberculosis. These provisions provided that, under certain conditions, indemnity could be paid for exposed cattle on Molokai that were moved to a quarantined feedlot. Because tuberculosis no longer exists among livestock on Molokai, we are removing the provisions of § 50.16.

#### **Emergency Action**

This rulemaking is necessary on an emergency basis to ensure that livestock affected by tuberculosis are destroyed as soon as possible to allow for rapid detection of the disease and prevent its spread. 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 that are received within 60 days of publication of this rule in the **Federal Register**. 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 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.

#### *Tuberculosis Eradication Strategic Plan*

The program to eliminate tuberculosis in livestock in the United States was begun in 1917. Since that time, the rate of tuberculosis has been reduced from about 5 percent of susceptible livestock to today's rate of less than .0002 percent. However, the final instances of a disease are often the most difficult to find and eliminate. The action being taken in this interim rule is one component of a strategic plan APHIS has developed to complete the eradication of bovine tuberculosis in domestic livestock. In addition to the

increase in allowable indemnities for cattle and other livestock, we also have implemented, or are in the process of implementing, the following: Improvement of Federal diagnostic capabilities and national surveillance for tuberculosis; payment of indemnity for the depopulation of herds at high risk for recurrence of the disease; establishment of identification requirements for animals imported into the United States for feeding and slaughter; assistance in eradicating tuberculosis from foreign areas adjacent to the United States that are at high risk for the disease; and research, control, and surveillance of tuberculosis in wildlife, captive cervids, and zoos in the United States.

On October 23, 2000, we published in the **Federal Register** a notice of a declaration by the U.S. Secretary of Agriculture (65 FR 63227, Docket No. 00-066-1), effective October 11, 2000, that authorized the transfer and use of emergency funds to expand the tuberculosis eradication program in the United States, as described in the preceding paragraph. Approximately \$1 million of the emergency funds was earmarked for the current fiscal year for livestock eligible for indemnity under this interim rule. APHIS has requested appropriated funding for such indemnity payments for future years to equal approximately \$1.6 million per year.

Prior to the effective date of this interim rule, the regulations in § 50.3 set a maximum dollar figure on the amount that could be paid by APHIS for an animal destroyed because of tuberculosis. When these amounts were established, they approximated the fair market value of the animals, minus any salvage value that could be received for the animals. For the most part, however, these amounts were set in 1980 and, in recent years, even when added to the amount received by an owner for salvage, they often came to less than the appraised value of the animals. In this interim rule, we are updating the amount that can be paid for animals destroyed because of tuberculosis to once again allow for payment for the appraised value of the animals, minus salvage value.

In recent years, the disparity between the amount that APHIS could pay for an animal destroyed because of tuberculosis and its appraised value has made some owners reluctant to immediately remove a suspect animal from a herd so that confirmation could be made at slaughter of its tuberculosis status. This has sometimes hindered timely detection and traceback of tuberculous animals, because if a

suspect animal were sent to slaughter immediately, and was confirmed there as being infected with, traceback of other animals in the infected animal's herd could have begun immediately, to determine whether they had come in contact with animals from other herds.

However, in instances where cattle have been classified as suspects for tuberculosis based on an official tuberculosis test, many owners have decided to wait 60 days (the minimum amount of time required between tests of cattle and bison; the minimum interval for captive cervids is 90 days) to have the animal retested, rather than have the animal destroyed as a suspect, in the hope that on the retest the animal would test negative. In cases where suspect animals have turned out to be infected with the disease, this has delayed the start of traceback procedures.

Also, because they have been unable to obtain appraised value for animals destroyed because of tuberculosis, instead of depopulating an entire herd containing animals known to be infected with or exposed to tuberculosis, owners have often chosen to remove only those animals that have tested positive for the disease. Studies have shown that up to 33 percent of herds that were released from quarantine through the test and removal method between 1985 and 1994 were found to be affected with tuberculosis by the fifth annual quarantine release test. (VanTiem J.S. and Essey M.A. (1994).—Status of the State/Federal bovine tuberculosis eradication program. *Proceedings of Annual Meeting of the U.S. Animal Health Association*, 98, 539-555.)

#### **Livestock Other Than Cattle, Bison, Captive Cervids, and Swine**

Prior to this interim rule, the tuberculosis indemnity regulations allowed for payment for cattle, bison, captive cervids, and swine. In this interim rule, we are also providing payment of indemnity for other livestock considered to be exposed to tuberculosis by reason of association with a depopulated affected herd of cattle, bison, or captive cervids. These "other livestock" are defined as including dairy goats and other hoofed animals, such as llamas, alpacas, and antelope. Our primary concern with such animals is that they might spread tuberculosis to cattle, bison, or captive cervids, among which they are sometimes kept. We anticipate that there will be a low likelihood that indemnity will need to be paid for such other livestock, but we are including them in this regulation to address those

limited situations where such indemnity will be necessary.

#### *Changes in Indemnity Maximums*

Currently, herd owners are paid up to \$750 for animals infected with tuberculosis and up to \$450 for suspect and exposed animals. Initially, these indemnity limits were consistent with the relative market value of the animals. However, prevailing market values of animals vary by weight class, by breed, and by function. During the past 20 years, the value of livestock has increased while the indemnity rates have remained constant. Livestock entities also specialize in high value stock that exceed these limits of Federal indemnity. This interim rule will allow for higher indemnity payments than do the existing regulations by raising the maximum amount that will be paid for cattle, bison, captive cervids, or other livestock destroyed because of tuberculosis. As with the existing regulations, this interim rule provides for payment of indemnity up to a limit set in the regulations. However, the increase in the limit will, in most cases, provide owners with payment equal to the appraised value of the animals. Also, it will continue to allow for payment by APHIS for one-half or more of the cost of transporting affected animals or herds to diagnostic labs or to slaughter.

These changes are expected to speed up the diagnosis of tuberculosis and, if necessary, herd depopulation. This action will produce positive benefits at relatively minimal cost by hastening the eradication of an economically damaging disease from the United States. This action will have long-term positive budgetary effects. If, as expected, many owners respond to this incentive, initial indemnity costs will rise, but the rapid diagnosis and depopulation of bovine tuberculosis herds will aid in reducing costs of the National Tuberculosis Eradication Program. Additionally, both small and large herd owners will experience a positive economic impact as they will now be fairly compensated for the destruction of any suspect animals, thereby allowing the removal of any interstate quarantines. Furthermore, the value of their herds will increase, both domestically and internationally, when tuberculosis is eliminated from the United States.

#### *Economic Analysis*

As of January 1, 2000, the total number of cattle in the United States was approximately 98 million, valued at approximately \$58 billion. There were 1,095,960 U.S. operations with cattle.

Over 99.1 percent of these operations were small businesses with gross annual receipts of \$500,000 or less. Slaughtering is more concentrated than production of animals. Four firms accounted for 70 percent of commercial cattle slaughter, while over 99 percent of cattle are produced by small herd owners. Nearly 63 percent of slaughters occurred in plants that slaughtered more than a million steers and heifers.

There are about 112,700 bison on 1,150 premises in the United States, valued at about \$250 million. Additionally, in 1999, there were about 165,000 known captive cervids, valued at about \$390 million, of which 50.9 percent were deer and 48.9 percent, elk. Cervid operations vary in size and degree of commercialization, and many cervid producers also rely on other sources of income. Most, if not all, cervid operations are relatively small and earn less than \$500,000.

Prevailing spot market prices of animals are likely to vary by breed, by market, and by weight class. Generally, purebred animals command much higher prices than nonpurebred animals. Registered animals earn more than nonregistered animals. Prices are likely to be influenced by whether the animal is purebred or crossbred, its grade, and by factors such as calving ease, reproductive soundness, weight and body consistency, the calving season, and the animal's general health. Market conditions can also influence the price of bred cows and heifers and bulls. High calf or dairy product prices can induce an interest in beef cow or dairy cow herd expansion, which will in turn lead to an increased demand for bred heifers.

Average grade bred heifer prices range between \$800 and \$2,000 and most are around \$1,500. Top selling bulls are priced a little above this amount. Average grade 2-year old bison heifers sell for about \$2,100 (average of Kansas and Nebraska), with average prices ranging between \$975 and \$2,900. The prices of 2-year old bison bulls range between \$750 and \$3,250, with the average price about \$1,150. Average grade deer prices range between \$600 and \$1,000, with an average of about \$800. Reported elk prices are at the higher end. Bred heifers average about \$4,000, while bulls average about \$5,500. All of these prices are spot market prices and are likely to vary over time depending on the market situation and the economic outlook.

There is no salvage value when a reactor or suspect animal is taken to a diagnostic laboratory for postmortem examination for bovine tuberculosis. When an animal is found to be infected,

the other animals in the herd are all classified at least as exposed. A reactor is generally not salvageable because the Department's Food Safety and Inspection Service requires the meat to be cooked, and most slaughter plants currently do not cook meat from tuberculous animals. Any exposed or suspect animal with post mortem evidence of bovine tuberculosis is classified as a reactor. Exposed animals that were previously tested and had a response to a presumptive test are classified as reactors. Under the regulations prior to this interim rule, an indemnity of \$750 each was paid for reactor animals.

A reactor animal can be reclassified as a suspect animal by the epidemiologist under some conditions and can go to slaughter and receive salvage value and up to \$450 indemnity if there are no tuberculosis lesions. Exposed animals have been treated the same as suspect animals with regard to the amount of indemnity, and salvage has been paid accordingly. Salvage values of cattle also vary by weight, age, and type. Salvage values of bred heifers or cows range between \$350 and \$750, with an average of about \$550. Bison bulls sell at about \$2 per pound of dressed weight. The dressed weight of a bison averages about 640 pounds, with a range of between 550 and 775 pounds, with a consequent average value of about \$1,300 (ranging from \$1,100 to \$1,450). Bison cows are of lower value and sell at about \$1 per pound. Their weight is similar to that of bulls. Elk sell on average for \$2 per pound of dressed weight. Elk bulls average 700 pounds, with a range of 600 and 1,000 pounds, while an elk cow averages 500 pounds, with a range of between 450 and 650 pounds. Dressed weight is about 67 percent of live weight. Thus, using an average of \$2 per pound, the salvage value of an average elk bull and cow is about \$938 and \$670, respectively.

Given the variability of spot market prices for cattle, bison, and cervids, the current indemnity payments are not sufficient for replacement bred heifers and live bulls auctioned for breeding purpose. This rule, by making a close connection between indemnity payments of animals destroyed because of tuberculosis and their market values at the time the animals are destroyed, provides owners sufficient incentive to eliminate possibly infected animals. This change is expected to speed up the diagnosis of tuberculosis and, when necessary, subsequent herd depopulation.

Because the number of herds and cattle infected with tuberculosis is small relative to the national cattle supply, it

is unlikely that this rule will measurably affect livestock prices. Disease status is only one of the components affecting prices of animals. Accelerated and expanded surveillance and testing could yield more suspect herds or animals. However, complete depopulation of an affected herd has been shown to be the most effective way of eliminating tuberculosis in the United States. Reported recurrences of bovine tuberculosis in herds after release of quarantine by test and removal have been estimated at up to 33 percent.

It is expected that final fiscal year 2001 Federal costs for tuberculosis indemnity will total approximately \$775,000, as payment for approximately 1,050 animals. However, slightly more than 1,000 of those animals were from Michigan, where known pockets of infection are disproportionately high in comparison to the rest of the United States. Following the depopulation of herds in Michigan in fiscal year 2001, the number of animals eligible for indemnity in that State is expected to fall significantly.

In the remainder of the United States, there is expected to be an increase in the amount of Federal costs for animals depopulated because of tuberculosis, due to the increase in the maximum amount to be paid per animal under this interim rule, along with the likelihood that a greater percentage of owners with indemnity-eligible animals will choose to have their animals destroyed. Projected indemnity costs for each of the 3 years following the effective date of this interim rule are expected to total approximately \$1.6 million, as payment for approximately 1,100 animals per year. As noted above, APHIS has requested appropriated funding for such indemnity payments for the next 3 years. Our goal during that period is to reach the point where there are no reported cases of tuberculosis in the United States. However, even at that point, surveillance for tuberculosis will continue in the United States, and it is expected that sporadic cases of tuberculosis will be detected in this country in future years, and that indemnity will need to be paid for the destruction of those affected animals.

Compared to the significance of the livestock industry in the U.S. economy, these additional short-term costs are small. The livestock industry plays a very important role in the U.S. economy. It accounts for over \$60 billion of the U.S. gross domestic product. Additionally, it plays a very significant role in international trade. In 1999, the total earnings from exports of live cattle, beef and veal were

approximately \$2.8 billion. The U.S. competitiveness in international markets depends to a great degree upon its reputation for producing high quality animals, a reputation that would be enhanced if bovine tuberculosis were eradicated in this country. Purchasers' perceptions of quality contribute to continued world market acceptance. Although relationships between perceived quality and export levels are not sufficiently developed to estimate impacts on trade, it is concluded that eradication of bovine tuberculosis serves the best economic interests of the nation.

Indemnity payments that will be made under this rule for the current fiscal year will come from emergency funds authorized by the Secretary of Agriculture. APHIS has requested appropriated funding for such indemnity payments for future years. This action will have no effect on other Federal agencies or local governments. State governments, however, will benefit from the rapid diagnostic sampling and, if necessary, the depopulation of affected herds. This action will have long-term positive budgetary effects. Additionally, both small and large herd owners will eventually experience a positive economic effect as a result of this action since they will now have an incentive to destroy suspect animals, thereby allowing the removal of quarantine. The value of their herds will increase when tuberculosis is eliminated from the United States. Expediting increased indemnity payments will further rapid detection of tuberculous animals, and thus protect against the spread of tuberculosis in the United States and accelerate eradication of the disease in U.S. livestock.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not

require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**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, Incorporation by reference, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR parts 50 and 77 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 371.4.

2. In § 50.1, the definitions of *captive cervid*, *herd*, *herd depopulation*, *permit*, and *reactor cattle, bison, and captive cervids* are revised; the definition of *designated epidemiologist* is removed and a definition of *designated tuberculosis epidemiologist (DTE)* is added in its place; the definition of *registered cattle, bison, or captive cervids* is removed and a definition of registered livestock is added in its place; and definitions of *net salvage* and *State animal health official*, and *State representative* are added in alphabetical order, to read as follows:

**§ 50.1 Definitions.**

\* \* \* \* \*

*Captive cervid.* All species of deer, elk, moose, and all other members of the family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition, including time such animals are moved interstate; or any wild cervid that is moved interstate, during the period of time from capture until release into the wild. A captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by the Administrator as unique and traceable

with which to trace the animal back to its herd of origin.

\* \* \* \* \*

*Designated tuberculosis epidemiologist (DTE).* A State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds. A DTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of animals and herds, assist in the development of individual herd plans, and coordinate disease surveillance and eradication programs within the geographic area of the DTE's responsibility.

\* \* \* \* \*

*Herd.* Except for livestock assembled at feedlots, any group of livestock maintained for at least 4 months on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.

*Herd depopulation.* Removal by slaughter or other means of destruction of all cattle, bison, and captive cervids in a herd, as well as any other exposed livestock in the herd, prior to restocking with new livestock.

\* \* \* \* \*

*Net salvage.* The amount received for animals destroyed because of tuberculosis, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

\* \* \* \* \*

*Permit.* A permit for movement of livestock directly to slaughter, listing the disease status and identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification.

\* \* \* \* \*

*Reactor cattle, bison, and captive cervids.* Cattle, bison, and captive cervids are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules Bovine Tuberculosis Eradication," based on a positive response to an official tuberculin test.

*Registered livestock.* Livestock for which individual records of ancestry are maintained, and for which individual registration certificates are issued and recorded by a recognized breed association whose purpose is the improvement of the breed.

\* \* \* \* \*



*State animal health official.* The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs in that State.

*State representative.* A veterinarian or other person who is employed in livestock sanitary work of a State or a political subdivision of a State and who is authorized by the State or political subdivision to perform the function involved under a memorandum of understanding with the Department.

\* \* \* \* \*

3. Section 50.2 is revised to read as follows:

#### **§ 50.2 Cooperation with States.**

The Administrator cooperates with the proper State authorities in the eradication of tuberculosis and pays Federal indemnities for the destruction of cattle, bison, and captive cervids that are infected with, exposed to, or suspect for tuberculosis, as well as for other livestock that are exposed to tuberculosis.

4. Section 50.3 is revised to read as follows:

#### **§ 50.3 Payment to owners for animals destroyed.**

(a) The Administrator is authorized to agree on the part of the Department to pay indemnity to owners of the following animals:

(1) Cattle, bison, or captive cervids destroyed because the animals are infected with or exposed to tuberculosis;

(2) Cattle, bison, or captive cervids that have been classified as suspect for tuberculosis, except that the payment of indemnity for the destruction of suspect cattle, bison, and captive cervids will be withheld until the tuberculosis status of the suspect animal has been determined and, if the cattle, bison, or captive cervid is found to be infected with tuberculosis, until all cattle, bison, and captive cervids 12 months of age or older in the claimant's herd have been tested for tuberculosis under APHIS or State supervision; and

(3) Other livestock destroyed because they are classified as exposed to tuberculosis by the designated tuberculosis epidemiologist by reason of an association with an affected herd of cattle, bison, or captive cervids.

(b) In each case, the joint State-Federal indemnity paid, together with the amount for net salvage the owner receives, may not exceed the appraised value of the animal, as determined in accordance with § 50.9. Additionally, the Department will in no case pay more than \$3,000 for an animal that is destroyed.

5. Section 50.4 is amended as follows:

a. The section heading is revised.

b. Paragraph (a) is amended by removing the word "affected" and adding the word "infected" in its place.

c. A new paragraph (d) is added.

#### **§ 50.4 Classification of cattle, bison, captive cervids, and other livestock as infected, exposed, or suspect.**

\* \* \* \* \*

(d) The designated tuberculosis epidemiologist will determine whether livestock other than cattle, bison, or captive cervids are classified as exposed to tuberculosis by reason of association with an affected herd of cattle, bison, or captive cervids.

6. Section 50.6 is revised to read as follows:

#### **§ 50.6 Identification of animals to be destroyed because of tuberculosis.**

(a) Livestock to be destroyed because of tuberculosis must be identified as follows:

(1) Livestock classified as reactors for tuberculosis must be identified within 15 days after being classified as reactors, except that the veterinarian in charge may extend the time limit for identification to 30 days when he or she receives a request for such an extension prior to the expiration date of the original 15-day period allowed and circumstances beyond the control of the owner warrant such an extension, and the Administrator may extend the time limit for identification beyond 30 days upon request in specific cases when circumstances beyond the control of the owner warrant such an extension.

(2) Livestock other than reactors for tuberculosis that are to be destroyed because of tuberculosis must be identified prior to movement from the premises of origin to the place of destruction.

(b) *Reactor cattle, bison, and captive cervids.* Reactor cattle, bison, and captive cervids must be identified by branding the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead 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. Reactor cattle, bison, and captive cervids may be moved interstate to slaughter without branding if they are permanently identified by the letters "TB" tattooed legibly in the left ear, they are sprayed on the left ear with yellow paint, and they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. The official seals must be applied and removed by an

APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(c) *Exposed cattle, bison, and captive cervids.* Exposed cattle, bison, and captive cervids must be identified by branding the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to either ear an approved metal eartag bearing a serial number. Exposed cattle, bison, and captive cervids may be moved interstate to slaughter without branding if they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. The official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(d) *Other exposed livestock.* Livestock other than cattle, bison, or captive cervids that are destroyed under the provisions of § 50.3 must be identified by tagging with a serially numbered metal eartag attached to either ear. All such animals to be destroyed must be transported to the place of destruction in vehicles closed with seals provided by APHIS or shall be accompanied to the place of destruction by an APHIS or State representative: *Provided, however,* that animals destroyed and disposed of under the direct supervision of an APHIS or State representative on the premises where they were exposed do not require individual identification.

#### **§ 50.7 [Amended]**

7. In § 50.7, paragraphs (a) and (b) are amended by removing the words "Cattle, bison, captive cervids, or swine" and adding in their place the word "Livestock"

#### **§ 50.8 [Amended]**

8. Section 50.8, including the section heading, is amended by removing the word "affected" each time it appears, and adding in its place the word "infected"; and by removing the words "cattle, bison, and captive cervids" each time they appear, and adding in their place the word "livestock".

9. Section 50.9 is revised to read as follows:

#### **§ 50.9 Appraisals.**

(a) Livestock to be destroyed because of tuberculosis under § 50.3 must be appraised within 15 days after being classified as infected with tuberculosis, except that the veterinarian in charge may extend the time limit for appraisal to 30 days when he or she receives a

request for such an extension before the end of the expiration date of the original 15-day period allowed and circumstances beyond the control of the owner warrant such an extension, and the Administrator may extend the time limit for appraisal beyond 30 days upon request in specific cases when circumstances beyond the control of the owner warrant such an extension.

(b) Animals for which indemnity is to be paid under this part must be appraised at their fair market value by an appraiser selected by APHIS. APHIS may decline to accept any appraisal that appears to it to be unreasonable or out of proportion to the value of like animals of a like quality. Should the appraisal made by the appraiser selected by APHIS be deemed inadequate by the owner of the animals, the owner will have 15 days from the receipt of the appraisal to submit to the Administrator a request for a review of the appraisal, along with the reasons why the animals should be appraised at a higher value. The decision by the Administrator regarding the value of the animals is final.

(c) When livestock to be destroyed because of tuberculosis are appraised, due consideration will be given to their breeding value as well as to their dairy or meat value. Livestock presented for payment as registered must be accompanied by their registration papers. If the registration papers are temporarily not available, or if the livestock are less than 3 years old and unregistered, the veterinarian in charge may grant a reasonable time for the presentation of their registration papers.

#### § 50.10 [Amended]

10. Section 50.10 is amended by removing the words "cattle, bison, captive cervids, and swine" and adding in their place the word "livestock".

#### § 50.11 [Amended]

11. Section 50.11 is amended by removing the words "cattle, bison, captive cervids, or swine" both times they appear, and adding in their place the word "livestock"; and by removing the words "cattle, bison, captive cervids, and swine" and adding in their place the word "livestock".

#### § 50.12 [Amended]

12. Section 50.12 is amended by removing the words "cattle, bison, captive cervids, or swine" both times they appear, and adding in their place the word "livestock".

#### § 50.13 [Amended]

13. Section 50.13 is amended by removing the word "affected" and adding in its place the word "infected".

14. Section 50.14 is revised to read as follows:

#### § 50.14 Claims not allowed.

Claims for compensation for livestock destroyed because of tuberculosis will not be allowed in any of the following cases:

(a) The claimant has failed to comply with any of the requirements of this part:

(b) All cattle, bison, and captive cervids 12 months of age or over in the claimant's herd have not been tested for tuberculosis under APHIS or State supervision: *Provided, however*, that cattle, bison, and captive cervids destroyed because of tuberculosis are exempt from this testing requirement if the cattle, bison, and captive cervids are subjected to a postmortem examination for tuberculosis by a Federal or State veterinarian.

(c) There is substantial evidence that the owner of the animals or the agent of the owner has in any way been responsible for any attempt to obtain indemnity funds for the animals unlawfully or improperly.

(d) At the time the cattle, bison, or captive cervids in the claimant's herd were tested for tuberculosis, the cattle, bison, captive cervids, or other livestock in the herd belonged to or were on the premises of any person to whom they had been sold, shipped, or delivered for slaughter unless or until all of the cattle, bison, captive cervids, and other livestock remaining on the premises or in the herd from which the tested cattle, bison, or captive cervids originated are tested or otherwise examined for tuberculosis in a manner satisfactory to the Administrator or his or her designated representative.

(e) If the cattle, bison, or captive cervids were added to a herd while the herd was quarantined for tuberculosis, unless an approved herd plan was in effect at the time the claim was filed. As part of the approved herd plan, cattle, bison, or captive cervids added to a herd quarantined for tuberculosis must:

(1) Be from an accredited herd, as defined in § 77.1 of this chapter; or (2)(i) Be from a herd that tested negative to an official tuberculin test, as defined in § 77.1 of this chapter, during the 60 days before the cattle, bison, or captive cervids were added to the claimant's herd; and

(ii) Have been found negative to an official tuberculin test, as defined in § 77.1 of this chapter, during the 60 days

before the cattle, bison, or captive cervids were added to the claimant's herd.

(f) For exposed cattle, bison, or captive cervids destroyed during herd depopulation, if a designated tuberculosis epidemiologist has determined that other livestock in the herd have been exposed to tuberculosis by reason of association with tuberculous livestock, and those other livestock determined to have been exposed to tuberculosis have not been destroyed.

(g) For livestock other than cattle, bison, and captive cervids that are destroyed because of association with herds of affected cattle, bison, or captive cervids:

(1) If the livestock did not reside among the herd for a period of 4 months or more;

(2) If the livestock have not received a postmortem examination for tuberculosis; or

(3) If the livestock were added to a herd that was under quarantine for tuberculosis at the time the livestock were added to the herd, unless an approved herd plan was in effect at that time.

#### §§ 50.15 and 50.16 [Removed and Reserved]

15. Sections 50.15 and 50.16 are removed and reserved.

### PART 77—TUBERCULOSIS

16. 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 371.4.

17. In § 77.2, the definition of *herd* is revised to read as follows:

#### § 77.2 Definitions.

\* \* \* \* \*

*Herd* Except for livestock assembled at feedlots, any group of livestock maintained for at least 4 months on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.

\* \* \* \* \*

Done in Washington, DC, this 14th day of February 2002.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 02–4059 Filed 2–19–02; 8:45 am]

BILLING CODE 3410–34–U