

address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the establishment of minimum quality testing exemption procedures under the order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action provides procedures to facilitate the review and approval of minimum quality testing exemption requests, denials and revocations of such exemptions, and subsequent appeals, if submitted; (2) the Committee unanimously recommended the procedures at a public meeting and interested parties had an opportunity to provide input; (3) handlers are required to file the exemption form with the Committee by August 1 of each year; and (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 983 is amended as follows:

#### PART 983—PISTACHIOS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In part 983, § 983.141 is added to Subpart-Rules and Regulations to read as follows:

##### § 983.141 Procedures for exempting handlers from minimum quality testing.

(a) *Exemption procedures.* The Committee, or its duly authorized agents, shall notify all handlers each year of the opportunity to apply to be exempted from minimum quality testing and handlers shall submit such requests on forms furnished by the Committee. The deadline for submission shall be

August 1. The Committee, or its duly authorized agents, shall:

(1) Promptly review all exemption applications received. In reviewing applications for exemption, the Committee, or its duly authorized agents, shall determine that the quantity of assessed weight pistachios handled during the prior production year was less than 1 million assessed weight pounds and that the applicants are in compliance with the order's reporting requirements and the provisions of § 983.41. Handler compliance will be determined through handler audits;

(2) Complete the review and approve or disapprove requests for exemptions by August 20;

(3) Maintain complete files detailing the reason(s) for the approval or disapproval of each application for at least three years beyond the crop year of applicability; and

(4) Notify in writing all applicants by August 30 of the approval or disapproval of their requests together with the reason(s) for disapproval, if applicable.

(b) *Revocation of exemptions.* A handler's exemption shall be revoked by the Committee, or its duly authorized agents, if the handler fails to provide reports required under § 983.147, or has not complied with the provisions on minimal quality testing in § 983.41, of this part. Additionally, the Committee, or its duly authorized agents, shall revoke an approved exemption when a handler audit reveals that a handler has handled a million pounds or more of assessed weight pistachios during the current production year. The revocation of a handler's exemption shall be made in writing to the handler and shall specify the reason(s) for and the effective date.

(c) *Appeals.* (1) Any handler who believes that he/she has been improperly denied an exemption or improperly had an exemption revoked, may appeal to the Secretary, within 20 days after notification of the Committee's, or agents of the Committee's, decisions. All appeals shall be in writing. When requested by the Secretary, the Committee, or its duly authorized agents, shall forward a file with all pertinent information related to any handler appeal. The Secretary shall inform the handler and all interested persons of the Secretary's decision.

(2) If handlers do not file an appeal or if their appeal is denied by the Secretary, they shall present all remaining lots of pistachios in inventory for minimum quality testing before moving the pistachios into the channels of commerce.

Dated: July 18, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–14513 Filed 7–19–05; 1:38 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 04–068–1]

#### Tuberculosis in Cattle and Bison; State and Zone Designations; New Mexico

**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 New Mexico from the list of modified accredited advanced States, adding portions of two counties in New Mexico to the list of modified accredited advanced zones, and adding the remainder of the State to the list of accredited-free zones. We are taking this action based on our determination that New Mexico meets the requirements of the regulations for zone recognition and that one of the zones meets the criteria for designation as accredited-free.

**DATES:** This interim rule is effective July 22, 2005. We will consider all comments that we receive on or before September 20, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04–068–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state your comment refers to Docket No. 04–068–1.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**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:** You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://aphis.usda.gov/ppd/rad/webrepor.html>.

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

#### **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.

#### **Conditions for Zone Recognition**

Under §§ 77.3 and 77.4 of the regulations, in order to qualify for zone classification by APHIS, the State must meet the following requirements:

1. The State must have adopted and must be enforcing regulations that impose restrictions on the intrastate movement of cattle, bison, and captive cervids that are substantially the same as those in place in part 77 for the interstate movement of those animals.
2. The designation of part of a State as a zone must otherwise be adequate to prevent the interstate spread of tuberculosis.
3. The zones must be delineated by the animal health authorities in the State making the request for zone recognition and must be the APHIS Administrator.
4. The request for zone classification must demonstrate that the State has the legal and financial resources to implement and enforce a tuberculosis eradication program and has in place an infrastructure, laws, and regulations that require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife.
5. The request for zone classification must demonstrate that the State maintains, in each intended zone, clinical and epidemiological surveillance of animal species at risk of tuberculosis, at a rate that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing.
6. The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

#### **Request for Split-State Status in New Mexico**

The State of New Mexico has been classified as modified accredited advanced for cattle and bison. However, we have received from the State of New Mexico a request for zone recognition in which State animal health officials have demonstrated that New Mexico meets the requirements listed above for the requested zone designation. Therefore, in this interim rule, we are recognizing

two zones in New Mexico as described below.

1. The smaller of the two zones consists of portions of Curry and Roosevelt Counties, NM.

2. The second zone in New Mexico consists of the rest of the State.

With regard to cattle and bison, State animal health officials in New Mexico have demonstrated to APHIS that, except for the smaller zone, New Mexico meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations. In accordance with those conditions, New Mexico has demonstrated that the larger zone has zero percent prevalence of affected cattle or bison herds and has had no findings of tuberculosis in any cattle or bison herds for the last 5 years. Additionally, the State complies with the conditions of the UMR.

State animal health officials in New Mexico have demonstrated that the smaller zone meets the criteria for modified accredited advanced status for cattle and bison set forth in the definition of *modified accredited advanced State or zone* in § 77.5 of the regulations. According to those criteria, the Administrator, upon his or her review, may classify a State or zone as modified accredited advanced—depending on the veterinary infrastructure, livestock demographics, and tuberculosis control and eradication measures in the State or zone—if the State or zone has fewer than 30,000 herds total and, of those, no more than 3 are affected herds for each of the most recent 2 years. Within the smaller zone in New Mexico, there are two tuberculosis-affected cattle herds and New Mexico is conducting an aggressive program to eradicate the disease in the zone. There are no known affected herds in the remainder of the State. Under those conditions, the Administrator has determined that the smaller zone in New Mexico qualifies for modified accredited advanced status with regard to cattle and bison.

Providing zone recognition for New Mexico will allow cattle producers in the State's accredited-free zone to move their cattle without a tuberculosis test, thus saving time and money. This action will therefore relieve restrictions that are no longer warranted, and facilitate further efforts of the National Tuberculosis Eradication Program.

#### **Emergency Action**

This rulemaking is necessary on an emergency basis to establish two zones with separate tuberculosis risk classifications in New Mexico with regard to cattle and bison. Failure to

provide "split-State status" in New Mexico with regard to tuberculosis on an emergency basis could increase the likelihood of the spread of that disease by reducing the incentive for New Mexico to stringently restrict movement of tuberculosis-susceptible animals from high-risk areas within the State and to implement effective containment and eradication measures. 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 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.

We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing New Mexico from the list of modified accredited advanced States, adding portions of two counties in New Mexico to the list of modified accredited advanced zones, and adding the remainder of the State to the list of accredited-free zones. We are taking this action based on our determination that New Mexico meets the requirements of the regulations for zone recognition and that one of the zones meets the criteria for designation as accredited-free.

In 2001, there were approximately 8,500 cattle and bison operations in New Mexico, totaling 1.58 million head. According to the National Agricultural Statistics Service, the Total cash value of cattle in New Mexico was over \$1.3 billion as of that year. Over 92 percent of New Mexico's cattle operations yield less than \$750,000 annually and are, therefore, considered small entities under criteria established by the Small Business Administration.

New Mexico is currently listed as a modified accredited advanced State. This status requires that cattle, bison, dairy goats, and cervids be tested for tuberculosis before they are moved interstate, unless the animals are from an accredited-free herd. This rule will

reclassify nearly all of the counties in New Mexico as accredited-free zones. Only a portion of land lying within Roosevelt and Curry Counties will be classified as a modified accredited advanced zone. Thus, ruminants moved to other States from New Mexico's accredited-free zone will not require testing for tuberculosis prior to movement. Tuberculin testing, including veterinary fees and handling expenses, costs about \$7.50 to \$10 per test. Owners of these animals (other than owners of previously accredited-free herds) will therefore benefit by no longer having to bear the cost of the tuberculosis test. New Mexico producers can be expected to collectively save between \$590,000 and \$985,000 as a result of the upgrade in zone recognition.

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 collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 9 CFR Part 77**

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

■ Accordingly, we are amending 9 CFR part 77 as follows:

#### **PART 77—TUBERCULOSIS**

■ 1. The authority citation for part 77 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 77.7, paragraph (b) is revised to read as follows:

#### **§ 77.7 Accredited-free States or zones.**

\* \* \* \* \*

(b) The following are accredited-free zones: All of the State of New Mexico except for the zone that comprises those portions of Curry and Roosevelt Counties, NM, described in § 77.9(b)(2).

\* \* \* \* \*

■ 3. In § 77.9, paragraphs (a) and (b) are revised to read as follows:

#### **§ 77.9 Modified accredited advanced States or zones.**

(a) The following are modified accredited advanced States: California and Texas.

(b) The following are modified accredited advanced zones:

(1) All of the State of Michigan except for the zone that comprises those counties or portions of counties in Michigan described in § 77.11(b).

(2) The zone in New Mexico that comprises those portions of Curry and Roosevelt Counties, NM, described as follows:

(i) *Curry County* (A) In T. 1 N., R. 34 E., of the New Mexico Prime Meridian (NMPM): S $\frac{1}{2}$  sec. 1; S $\frac{1}{2}$  sec. 2; SW $\frac{1}{4}$  sec. 3; SE $\frac{1}{4}$  sec. 4; W $\frac{1}{2}$  sec. 5; W $\frac{1}{2}$ SE $\frac{1}{4}$  sec. 8; S $\frac{1}{2}$ NE $\frac{1}{4}$  sec. 9; secs. 10 through 17; secs. 20 through 29; secs. 32 through 36.

(B) In T. 1 N., R. 35 E., of the NMPM: S $\frac{1}{2}$  sec. 6; secs. 7 through 9; S $\frac{1}{2}$  sec. 10; secs. 15 through 22; W $\frac{1}{2}$  sec. 23; W $\frac{1}{2}$  sec. 26; secs. 27 through 35.

(ii) *Roosevelt County*. (A) In T. 1 S., R. 34 E., of the NMPM: Secs. 1 through 5; secs. 9 through 14; secs. 23 through 26; secs. 35 through 36.

(B) In T. 1 S., R. 35 E., of the NMPM: Secs. 2 through 10; secs. 15 through 22; SW $\frac{1}{4}$  sec. 23; W $\frac{1}{2}$ SE $\frac{1}{4}$  sec. 26; secs. 27 through 35.

(C) In T. 2 S., R. 34 E., of the NMPM: Secs. 1 and 2; secs. 11 through 13; N $\frac{1}{2}$ SE $\frac{1}{4}$  sec. 14; N $\frac{1}{2}$ SW $\frac{1}{4}$  sec. 23; N $\frac{1}{2}$ SE $\frac{1}{4}$  sec. 24.

(D) In T. 2 S., R. 35 E., of the NMPM: Secs. 2 through 11; secs. 14 through 21; N $\frac{1}{2}$ SW $\frac{1}{4}$  sec. 22; N $\frac{1}{2}$ NW $\frac{1}{4}$  sec. 23; W $\frac{1}{2}$  sec. 30.

\* \* \* \* \*

Done in Washington, DC, this 18th day of July, 2005.

**Kevin Shea,**

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

[FR Doc. 05–14445 Filed 7–20–05; 10:42 am]

**BILLING CODE 3410–34–M**