

A second amendment to the rules and regulations dealt with importers being able to vote on the basis of the volume of the fresh-weight equivalent of imported potatoes and potato products for human consumption and seed potatoes in the same manner that producer members can vote on the basis of potato production within each State.

One of the 1990 Farm Bill amendments to the Act [7 U.S.C. 2611 *et seq.*] extended the Act's coverage to imported potatoes, potato products, and seed potatoes and provided for importer representation on the Board. When the Plan and rules and regulations issued under the Plan were subsequently amended in 1991 to conform with the amended Act, a provision permitting importer members to vote on the basis of the volume of imported product was inadvertently overlooked. From the program's inception, § 1207.325 of the Plan authorized producer members of the Board to call for a production vote in which the Board members from each State are allocated votes based on that State's fresh potato production (i.e., one vote for each 1 million hundredweight of potatoes).

In production votes taken by the Board since imports were included in the program's provisions, importers have voted the volume of potato imports on a fresh-weight basis. At its March 1996 annual meeting, the Board voted to amend the rules and regulations to correct this oversight by amending § 1207.505 to provide the same voting rights as afforded to producer members.

The third amendment provided in the rules and regulations that designated handlers must report to the Board those potatoes of their own production for which the assessments have been paid by another designated handler.

Section 1207.350(a) of the Plan provides authority for the Board to prescribe in the regulations the information designated handlers must report in order for the Board to perform its duties, and this information is set forth in § 1207.513 of the regulations. Some designated handlers are also potato producers and, in some cases, the assessment for their potato production may be paid by another designated handler. For example, a processor who purchases field-run potatoes is considered the designated handler and is responsible for reporting to the Board and paying assessments on those potatoes even though the producer may also be a designated handler who is also submitting reports and paying assessments to the Board. In order for the Board to assure that all handling has been reported and assessments have been paid and credited to the producer,

the Board must be able to cross-reference the handling of potatoes on the reports of both handlers. Since § 1207.513 of the regulations did not specifically state that designated handlers must report to the Board those potatoes of their own production for which the assessments have been paid by another designated handler, it was necessary to amend this section to provide that handlers must report to the Board those potatoes of their own production for which the assessment has been paid by another first handler. Therefore, the interim final rule amended § 1207.513 of the regulations to provide for this reporting.

The interim final rule was issued on August 26, 1997, and published in the **Federal Register** [62 FR 46179] on September 2, 1997. The deadline for comments was November 3, 1997. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board, it is hereby found that the suspended sections of the Plan no longer tend to effectuate the declared policy of the Act. In addition, it is found that the amendments to the rules and regulations are necessary for the appropriate administration of the Plan and the rules and regulations and that they are consistent with the intention of the Act.

#### **List of Subjects in 7 CFR Part 1207**

Advertising, Agricultural research, Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

#### **PART 1207—POTATO RESEARCH AND PROMOTION PLAN**

Accordingly, the interim final rule amending 7 CFR Part 1207 which was published at 62 FR 46175 on September 2, 1997, is adopted as a final rule without change.

Dated: September 30, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 50**

[Docket No. 98-033-2]

### **Tuberculosis in Cattle, Bison, and Captive Cervids; Indemnity for Suspects**

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the regulations concerning animals destroyed because of tuberculosis to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has been determined by the Animal and Plant Health Inspection Service that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. The interim rule also amended the regulations to allow the U.S. Department of Agriculture to pay herd owners some of their expenses for transporting the suspect cattle, bison, and captive cervids to slaughter or to the point of disposal, and for disposing of the animals. Prior to the interim rule, owners of cattle, bison, and captive cervids could only receive Federal indemnity for affected and exposed animals destroyed because of tuberculosis, and animals in an affected herd destroyed as part of a herd depopulation. Indemnity for suspects will provide incentive for owners to promptly destroy suspect animals, thereby hastening the diagnosis of tuberculosis in a herd. The interim rule was necessary to ensure continued progress toward eradicating tuberculosis in U.S. livestock.

**EFFECTIVE DATE:** The interim rule was effective on June 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-5970; or e-mail: james.p.davis@usda.gov.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans,

caused by *Mycobacterium bovis*. Tuberculosis causes weight loss, general debilitation, and sometimes death. The regulations at 9 CFR part 50, "Animals Destroyed Because of Tuberculosis" (the regulations), administered by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (the Department), provide for payment of Federal indemnity to owners of certain cattle, bison, captive cervids, and swine destroyed because of tuberculosis.

In an interim rule effective June 17, 1998, and published in the **Federal Register** on June 24, 1998 (63 FR 34259–34264, Docket No. 98–033–1), we amended the regulations to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has been determined by the Administrator of APHIS that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. This provision was added in a new paragraph (d) to § 50.3, "Payment to owners for animals destroyed." The indemnity will not exceed \$450 per animal and the joint State-Federal indemnity payments, plus salvage, may not exceed the appraised value of each animal. In addition, to help ensure that the remainder of the herd is tested for tuberculosis, the interim rule provides that payment of indemnity for suspects will be withheld until the tuberculosis status of the suspect has been determined and, if the suspect is found to be infected with tuberculosis, all cattle, bison, and captive cervids 2 years of age or over in the herd have been tested for tuberculosis under APHIS or State supervision.

In conjunction with the addition of indemnity for certain suspect cattle, bison, and captive cervids, the interim rule also made a number of other changes to the regulations:

- The interim rule added a new paragraph (c) to § 50.4, "Determination of existence of or exposure to tuberculosis," to state that cattle and bison are classified as suspects for tuberculosis based on a positive response to an official tuberculin test, in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (incorporated into the regulations by reference in part 77); and that captive cervids are classified as suspects for tuberculosis in the same manner as cattle and bison. The interim rule also revised the heading for § 50.4 to read "Classification of cattle, bison, and captive cervids as affected, exposed, or suspect;"

- The interim rule revised § 50.8, concerning payment of expenses for transporting and disposing of affected and exposed animals, to allow such payments for suspect cattle, bison, and captive cervids; and

- The interim rule revised § 50.14(b) to exempt cattle, bison, and captive cervids destroyed under new § 50.3(d) from the requirement that all cattle, bison, and captive cervids 2 years of age or over in the herd must be tested before indemnity may be claimed. As in new § 50.3(d), revised § 50.14(b) requires that, if the suspect is found to be infected with tuberculosis, the remainder of the herd must be tested for tuberculosis if indemnity is to be paid.

The interim rule made one miscellaneous change to the regulations. We added the term "captive" before "cervid" each time it appears in part 50 to clarify that the regulations do not apply to wild cervids.

Comments on the interim rule were required to be received on or before August 24, 1998. We received two comments, both in support of the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### **Proposal to Revise Definition of Captive Cervid**

In § 50.1, a captive cervid is defined to mean "All species of deer, elk, and moose raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition." On April 4, 1996, we published a proposed rule in the **Federal Register** (61 FR 14982–14999, Docket No. 92–076–1) to add interstate movement and testing requirements for captive cervids to 9 CFR part 77. We are currently considering a final rule to follow Docket No. 92–076–1. In the final rule, based on comments received, we are considering adding a definition of captive cervid to part 77 to read: "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. 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 APHIS with which to trace the animal back to its herd of origin."

In the preamble to the interim rule we are affirming in this document, we proposed that, if we added this definition of captive cervid to part 77 in our final rule to Docket No. 92–076–1, we would, in that same final rule, revise the definition of captive cervid in part 50 to be consistent with part 77. Neither of the two comments we received on the interim rule objected to this proposal. Therefore, if we publish a final rule adding the new definition to part 77, the final rule will also revise the definition of captive cervid in part 50. We are making no change to the definition of captive cervid in this document.

#### **List of Subjects in 9 CFR Part 50**

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

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

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 50 and that was published at 63 FR 34259–34264 on June 24, 1998.

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

Done in Washington, DC, this 30th day of September 1998.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

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#### **DEPARTMENT OF AGRICULTURE**

#### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 77**

[Docket No. 97–063–3]

#### **Tuberculosis in Cattle and Bison; State Designation; Hawaii**

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Hawaii from an accredited-free (suspended) State to an accredited-free State. We have determined that Hawaii meets the